

North Yorkshire County Council
15 May 2019
The Report of the Executive

1.0 Purpose of the Report

- 1.1 To provide County Council with details of reports received, decisions made and recommendations to County Council by the Executive.

2.0 Details of meetings

- 2.1 The following sections provide details of the meetings of the Executive that were held on 19 February 2019, 26 March 2019, 16 April 2019 and 30 April 2019. The meeting that had been scheduled for 12 March 2019 was cancelled.

2.2 19 February 2019 Executive meeting

The Executive met on Tuesday 19 February 2019. County Councillor Carl Les in the Chair. County Councillors Gareth Dadd, Andrew Lee, Don Mackenzie, Michael Harrison, Caroline Dickinson, Greg White, David Chance, Janet Sanderson and Patrick Mulligan were in attendance.

Also in attendance: County Councillors John Clark, John Ennis and Janet Jefferson.

Substantive agenda items were:

- Quarterly Performance and Budget Monitoring Report
- Appointments to Committees and Other Bodies.

The link to the reports and minutes from this meeting is as follows:

<http://democracy.northyorks.gov.uk/committees.aspx?commid=18&meetid=3786>

2.3 26 March 2019 Executive meeting

The Executive met on Tuesday 26 March 2019. County Councillor Carl Les in the Chair. County Councillors Gareth Dadd, Andrew Lee, Don Mackenzie, Caroline Dickinson, Greg White, David Chance and Janet Sanderson were in attendance.

Apologies: County Councillors Patrick Mulligan and Michael Harrison.

Also in attendance: County Councillors Derek Bastiman, Paul Haslam and David Jeffels.

Substantive agenda items were:

- Adoption of new Howardian Hills AONB Management Plan 2019-2024
- Extension of Temporary Vehicle Activated Sign (VAS) Protocol
- Review of Cash-based, Over the Counter Banking and Post Office Services in Rural Areas of the County
- Corporate and Partnerships Overview and Scrutiny Committee response to the Notice of Motion - North Yorkshire County Council's Current Level of Compliance with the Charter against Modern Slavery
- Lowering the age range of Thornton in Craven Community Primary School to 3-11
- SEND Special Provision Capital Funding (SPCF) - LA Plan for use of Years 2

- and 3 Funding
- Redevelopment of Land forming part of Yew Tree Farm Marton cum Grafton to Brierley Homes Limited
- Funding for Harrogate Rail Improvement Scheme (PRIVATE ITEM).

The link to the reports and minutes from this meeting is as follows:

<http://democracy.northyorks.gov.uk/committees.aspx?commid=18&meetid=3788>

2.4 **16 April 2019 Executive meeting**

The Executive met on Tuesday 16 April 2019. County Councillor Carl Les in the Chair. County Councillors Andrew Lee, Don Mackenzie, Michael Harrison, Caroline Dickinson, Greg White, David Chance, Janet Sanderson and Patrick Mulligan were in attendance.

Apologies: County Councillor Gareth Dadd.

Substantive agenda items were:

- Proposed Changes to the Constitution
- Proposed Changes to the Contract Procedure Rules and Key Decision Exemptions
- Proposal to Case to Maintain Arkengarthdale Church of England Primary School
- Winding-up of YNY Limited
- Scarborough Junction Improvements - Approval of LEP Funding
- Appointments to Committees and Other Bodies
- Extra Care Delivery in Skipton (Appendix C EXEMPT INFORMATION)
- Future Delivery of the Highways Service (Appendices A, B and D EXEMPT INFORMATION).

The link to the reports and minutes from this meeting is as follows:

<http://democracy.northyorks.gov.uk/committees.aspx?commid=18&meetid=3789>

2.5 **30 April 2019 Executive meeting**

The Executive met on Tuesday 30 April 2019. County Councillor Carl Les in the Chair. County Councillors Gareth Dadd, Andrew Lee, Don Mackenzie, Michael Harrison, Caroline Dickinson, Greg White, David Chance, Janet Sanderson and Patrick Mulligan were in attendance.

Also in attendance: County Councillors Paul Haslam and David Ireton.

Substantive agenda items were:

- Proposals to cease to maintain Clapham Church of England Primary School - Closure Proposal
- Loan Facility for Richmondshire Building Preservation Trust
- A59 Kex Gill Diversion - Progress Update
- Strengthening Families, Protecting Children Programme (Appendix A EXEMPT INFORMATION)
- Appointments to Committees and Other Bodies.

The link to the reports and minutes from this meeting is as follows:

<http://democracy.northyorks.gov.uk/committees.aspx?commid=18&meetid=4221>

3.0 Recommendations by Executive for approval/information at Full Council

The following recommendations were made by Executive at the above meetings for approval and/or information at Full Council:

3.1 Response by the Corporate and Partnerships Overview and Scrutiny Committee to the Notice of Motion to County Council on 14 November 2018 on North Yorkshire County Council's current level of compliance with the Charter against Modern Slavery.

This item was considered at Executive on 26 March 2019. A full report on this has been included in the Council papers under agenda item 10, as it is the response to the Notice of Motion previously raised at County Council.

3.2 Appointments to Committee and Other Bodies.

The following appointments are to be noted by County Council.

This item was considered at Executive on 19 February 2019. That Andrew Pippin, Yorkshire Ambulance Service Sector Commander for North and East Yorkshire as the representative of the emergency services on the North Yorkshire Health and Wellbeing Board and Lesley Butterworth, Yorkshire Ambulance Service Group Station Manager as his substitute.

This item was considered at Executive on 16 April 2019. That County Councillor Gillian Quinn is appointed to the Airedale Hospital Trust's Governing Body.

3.3 Proposed Changes to the Constitution

This item was considered at Executive on 16 April 2019 where Executive was asked to make recommendations to the County Council as follows:

The Executive RECOMMENDS:

That:

- i) The proposed approach to the level of recording of executive and non-executive decisions by officers, and the proposed amendments to the Access to Information Procedure Rules set out in Appendices 1 and 2 of the report, be recommended to full Council for approval and if agreed, reviewed after two years' implementation.
- ii) The proposed changes to the Constitution set out in Appendix 3 be recommended to full Council for approval.

A copy of the report that went to Executive is in Appendix A.

3.4 Proposed Changes to the Contract Procedure Rules and Key Decision Exemptions

This item was considered at Executive on 16 April 2019 where Executive was asked to make recommendations to the County Council as follows:

The Executive RECOMMENDS:

That the recommendations and changes to the Contract Procedure Rules and Key Decision exemptions set out in the Audit Committee report be recommended to the County Council for approval.

A copy of the report that went to Executive is in Appendix B.

3.5 Pension Board Membership

This item was considered at Executive on 30 April 2019 when Executive was asked to make recommendations to the County Council as follows:

The Executive RECOMMENDS:

That the Independent Chair, and Members appointed to the Pension Board in July 2015, be given a temporary continuation to their terms of office, until January 2020.

CARL LES
Chairman
County Hall
Northallerton

7 May 2019

APPENDIX A TO EXECUTIVE REPORT TO COUNTY COUNCIL

North Yorkshire County Council

EXECUTIVE

16 April 2019

Proposed Changes to the Constitution for recommendation to County Council

Report of the Assistant Chief Executive (Legal and Democratic Services)

1.0 PURPOSE OF REPORT

- 1.1 To present to Members, for their consideration for recommendation to full Council for approval, proposed changes to the Constitution.

2.0 BACKGROUND

- 2.1 The Constitution is maintained by the Monitoring Officer and kept under review on an ongoing basis. This report sets out amendments required to the Constitution to keep it up to date.

3.0 AMENDMENTS TO THE CONSTITUTION

- 3.1 The more substantive items for consideration are the subject of separate sections in this report and **Appendices 1 to 2**.
- 3.2 Other proposed miscellaneous changes to the Constitution are set out in the table of proposed amendments set out at **Appendix 3**.

4.0 ACCESS TO INFORMATION PROCEDURE RULES

- 4.1 The Access to Information Procedure Rules include provisions around the taking and recording of executive decisions by officers and individual Executive Members and certain types of non-executive decisions by officers. All such decisions by those individuals must be the subject of a decision record. It has been suggested that guidance should be included in the Rules to clarify a de minimis threshold above which such decisions should be the subject of a decision record, to avoid an unnecessary bureaucratic burden in producing decision records for almost all decisions.

Executive decisions

- 4.2 Regarding individual officer decisions, previously only *key* executive decisions by officers needed to be recorded and published however under current law all individual executive decisions (key or otherwise) by officers need to be recorded by way of a decision record (which then needs to be available for public inspection and published on the website for six years) as soon as reasonably practicable after the decision is taken. Some executive decisions can be relatively minor/routine in nature or indeed purely administrative, however there is no stated de minimis threshold in the legislation.

- 4.3 At the time the legislative framework was expanded to cover all executive decisions by officers (with the aim of furthering openness and transparency in decision making), it was recognised nationally that this could potentially lead to almost all decisions being caught by the recording regime, presenting a significant logistical challenge and bureaucratic burden on authorities.
- 4.4 Whether authorities can differentiate between executive decisions (other than key decisions) will depend on whether the decision in question is being made in connection with the discharge of an executive function and whether it is closely connected to (in which case record the decision) or remotely connected to the function. Purely administrative decisions in connection with the discharge of an executive function are unlikely to be caught by the recording requirement as they are only very remotely connected. However, some decisions may be fairly routine but are closely connected to the executive function, in which case they would need to be recorded even if this brings about a disproportionate burden. To do otherwise would require a change in the law. Executive decisions by individual officers which are closely connected to the discharge of the executive function need to be recorded and published.
- 4.5 DCLG issued guidance on the issue which is published online:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343182/140812_Openness_Guide.pdf

The extracts relevant to officer executive decisions are:

Are all decisions made by councils' officers to be so recorded?

No. The requirement to record decisions extends only to "executive decisions". Executive decisions can sometimes be defined in your council's rules. Decisions which are taken by officers under specific delegations from a meeting of their council's executive are clearly executive decisions. However, many administrative and operational decisions officers take on how they go about their day to day work will be delegated within the council's rules and are not in this "executive decisions" category; as such they do not need to be recorded.

The decisions that should be not recorded might include the following examples:

- *Decisions to allocate social carers to particular individuals, or for example, to provide walking aids;*
- *decisions to allocate a social housing unit to an applicant or to send someone to carry out repairs;*
- *decisions to review the benefit claims of an individual applicant and*
- *decisions to allocate market stalls to individual traders.*

Where officers have been empowered to act on behalf of their council's executive, examples of decisions that should be recorded could include:

- *Decisions about awarding contracts above specified individual or total values;*
- *decisions to exercise powers of Compulsory Purchase;*

- *decisions on disposal of and/ or provision of allotment land and green spaces;*
- *awarding of Discretionary Rate Relief*
- *the opening hours of local libraries; and*
- *the holding of car boot sales/markets on council-owned land.*

This is not intended to be an exhaustive list, rather a series of examples to illustrate that, in the interests of maximum transparency, these Regulations require more than just key decisions to be recorded.

Ultimately it is for local decision makers to decide what information should be recorded on the basis of the national rules.

- 4.6 Executive functions are executive functions however they are delegated (whether specifically at a meeting or generally via the Delegation Scheme). All functions not prescribed in law to be non-executive functions are, by default, executive functions. The guidance indicates that the recording requirements should catch significant other executive decisions falling short of a key decision, and those specifically delegated by the Executive, but not those decisions which fall within general delegated powers within which officers operate on a day to day basis and which form the substance of their operational work. But this is not what the legislation actually says: the law requires the recording and publishing of all executive decisions by officers.

Non-executive functions

- 4.7 The Openness of Local Government Bodies Regulations introduced in 2014, regarding the recording of non-executive decisions by officers, specifically require the publication of a decision record for a non-executive decision by an officer where it has been delegated to an officer either:
- (i) under a specific express authorisation; or
 - (ii) under a general authorisation to officers to take such decisions and, the effect of the decision is to:
 - grant a permission or licence (although that requirement is satisfied where a written record containing the prescribed details is already required to be produced under other legislation);
 - affect the rights of an individual; or
 - award a contract or incur expenditure which, in either case, materially
 - affects that relevant local government body's financial position.

- 4.8 Extracts from the Guidance for these Regulations:

Can I see all decisions made by my council or local government body's officers?

No. The requirement to record applies to all decisions taken by officers whilst acting under a specific express authorisation and to only three categories of decision taken whilst acting under a general authorisation. These categories cover decisions to "grant a permission or licence"; that "affect the rights of an individual" (i.e. to change an individual's legal rights); or to "award a contract

or incur expenditure which, in either case, materially affects xx that relevant local government body's financial position".

Officers take many administrative and operational decisions about how they go about their day to day work within the council's or local body's rules. These decisions will not need to be recorded.

You will not be able to inspect some recorded decisions if the whole or part of the records contains confidential or exempt information.

Examples of decisions that should be recorded could include:

- Decisions about awarding contracts above specified individual or total values (the values will vary according to the relevant council or local government body);*
- a decision to carry out major road works;*
- determination of licencing applications, building control decisions and notices; and*
- decisions to give listed building consents.*

Where decisions are already required to be published by other legislation, they do not need to be recorded again provided the record published includes the date the decision was taken and the reasons for the decision.

Decisions that do not need to be recorded might include the following examples:

- Routine administrative and organisational decisions such as giving permission to a local society to use the authority's premises;*
- decisions on operational matters such as day to day variations in services;*
- decisions to give business relief to individual traders;*
- decisions to review the benefit claims of an individual applicant; and*
- decisions taken in response to requests under the Data Protection Act 1998 or the Freedom of Information Act 2000.*

These are a few selected examples and not an exhaustive list. It is for the council or local government body to decide what information should be recorded on the basis of the national rules.

4.9 Regarding decisions which might affect a person's rights, the Guidance states that "These decisions do not include decisions taken pursuant to an existing framework of rights". It is therefore arguable that decisions taken within current policy would be deemed to be administrative/operational and not subject to the recording requirement.

4.10 Regarding decisions affecting the Council's financial position, the Guidance states that "...what constitutes the material threshold is a judgement that should be made by individual bodies."

Proportionate application of guidance

4.11 It is therefore for the Council to decide what level of executive and non-executive decisions by officers should be subject to the decision record requirements, taking into account the need for openness, accountability and transparency in decision making and balancing this against the need for a workable and proportionate

recording system. It is recommended that the proposed amendments to the Access to Information Procedure Rules set out in **Appendix 1** to this report by way of tracked changes represent an appropriate and proportionate approach to the application of the legislative framework.

- 4.12 The Members' Working Group on the Constitution agreed that the proposed amendments in this respect represented a proportionate way forward and requested that, if agreed, they be reviewed after two years' implementation.

Miscellaneous

- 4.13 The opportunity has also been taken to suggest the following other 'housekeeping' amendments to the Access to Information Procedure Rules, including:

- (a) clarify Rule 19.1 (reports intended to be taken into account) to ensure consistency with the rest of the Constitution.
- (b) clarify Rule 19A to ensure it is clear regarding the existing rule that regarding officer decisions, it is only key decisions which can be called in.
- (c) update the Explanatory Note re the Current Rules Applying to Types of Decision in the Appendix to the Access to Information Procedure Rules as set out in **Appendix 2** to this report, to reflect the content of the current Rules (and to update the reference to Area Constituency Committees).

- 4.14 Certain proposed amendments to the exemptions from the Key Decision definition in Article 13 of the Constitution, for clarification purposes to reflect current interpretation and practice, are set out in a separate report to the Executive at its meeting.

5.0 OTHER PROPOSED AMENDMENTS

- 5.1 Other proposed changes to the Constitution are set out in the table of proposed amendments set out at **Appendix 3** to this report, including:

- (a) referencing the Council's Petitions Scheme in the Constitution;
- (b) highlighting the public's right to make representations about why a proposed private meeting/part of a meeting of an executive decision making body should be held in public;
- (c) consideration of the resolution of the Audit Committee on 26 July 2018 that the term of appointment of Independent Members of the Audit Committee shall be four years from the 31st July during the year which follows a County Council election in order to provide consistency during the period for production, and subsequent approval of, the Statement of Final Accounts;
- (d) clarifying the Pension Fund Committee Terms of Reference to make it clear that it is a legal requirement for the Audit Committee to approve the Statement of Final Accounts;
- (e) to update the Constitution re:
 - i. the transfer of responsibilities following staff changes;
 - ii. including the Shareholder Committee Terms of Reference;

iii. correcting administrative type amendments eg correcting a statutory reference;

(f) to update the Schedule of Appointments to Outside Bodies;

(g) and, in Part B of the table, amendments are set out for information which have or will be undertaken by the Assistant Chief Executive (Legal and Democratic Services) under his delegated powers powers in Article 15.02(c) of the Constitution to reflect administrative changes, legal requirements and changes to arrangements for the distribution of responsibilities and the delegation of powers in accordance with decisions taken by those authorised to do so.

6.0 **FINANCIAL IMPLICATIONS**

6.1 There are no specific financial implications arising from this report.

7.0 **LEGAL IMPLICATIONS**

7.1 The legal implications of the proposed amendments to the Constitution are set out in the body of this report and in the Appendices.

8.0 **CONSULTATION**

8.1 Relevant Officers and Members have been consulted on the proposed changes set out in this report and its appendices. The papers have been considered at the Members' Working Group on the Constitution on 29 March 2019.

9.0 **REASONS FOR RECOMMENDATIONS**

9.1 For the reasons set out in the Amendments Chart at **Appendix 3** and in the body of this report, it is recommended that, subject to any comments Members may have, the recommendations and changes to the Constitution set out below be recommended to the County Council for approval.

10.0 **RECOMMENDATIONS**

10.1 That, subject to any comments Members may have, the proposed approach to the level of recording of executive and non-executive decisions by officers and the proposed amendments to the Access to Information Procedure Rules as set out in **Appendices 1 and 2** to this report be recommended to full Council for approval and that, if agreed, they be reviewed after two years' implementation.

10.2 That, subject to any comments Members may have, the proposed changes to the Constitution set out in **Appendix 3** be recommended to full Council for approval.

BARRY KHAN
Assistant Chief Executive (Legal and Democratic Services)

County Hall
NORTHALLERTON

4 April 2019

Background Documents:

- The Council's Constitution

Access to Information Procedure Rules

...

19. EXECUTIVE DECISIONS BY INDIVIDUAL OFFICERS OR INDIVIDUAL MEMBERS OF THE EXECUTIVE

(For the decision making powers of individual Executive members and Officers, see the Executive Members' and Officers' Delegation Schemes in Part 3).

19.1 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 executive decision; or
- an Officer (either alone or in consultation with an Executive Member) receives a report which he/she intends to take into account in making any key decision,

then (subject to Rule 16) he/she will not make the decision until at least five clear days after receipt of that report.

19.2 Provision of copies of reports to Overview and Scrutiny Committees

On the 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 every relevant overview and scrutiny committee as soon as reasonably practicable, and make it publicly available at the same time.

19.3 Record of individual decision

- (a) As soon as reasonably practicable after an executive decision has been taken by an individual member of the Executive or by an Officer, (either alone or in consultation with an Executive Member) he/she will prepare a record of the decision including the date it was made, a statement of the reasons for it and any alternative options considered and rejected, a record of any conflict of interest declared by any executive member who is consulted in relation to the decision, and a note of any dispensation granted in respect of any declared conflict of interest, in the format contained in the Appendix to these Rules.

Guidance points:

Regarding executive decisions by Officers, those executive decisions which are purely administrative or operational in nature will not usually be subject to the decision record recording and publication requirements. The authority has agreed to categorise as administrative/operational those executive decisions which are not key decisions and which:

- are routine, day to day operational decisions under general delegations; and
- are within approved budget and policy; and

Commented [MB1]: To clarify and reflect the position as recorded elsewhere in the Constitution that for executive decisions by individual executive members, any report on which the decision will be based needs to be published 5 clear working days in advance of the decision being taken. The wording of 19.1 currently implies that it is only key decisions by individual executive members which would need the report to be pre-published. This is inconsistent with other constitutional provisions.

- have financial implications of £50,000 or less;

HOWEVER, each matter should be considered in light of its particular circumstances and with regard to the likely level of public interest in it.

DCLG has offered guidance on what should and should not be recorded:

...

The decisions that should be not recorded might include the following examples:

- Decisions to allocate social carers to particular individuals, or for example, to provide walking aids;
- decisions to allocate a social housing unit to an applicant or to send someone to carry out repairs;
- decisions to review the benefit claims of an individual applicant and
- decisions to allocate market stalls to individual traders.

Where officers have been empowered to act on behalf of their council's executive, examples of decisions that should be recorded could include:

- Decisions about awarding contracts above specified individual or total values;
- decisions to exercise powers of Compulsory Purchase;
- decisions on disposal of and/ or provision of allotment land and green spaces;
- awarding of Discretionary Rate Relief
- the opening hours of local libraries; and
- the holding of car boot sales/markets on council-owned land

- (b) Copies of the decision record will be sent electronically, as soon as possible, to:
- ♦ All Members of the Council
 - ♦ All Management Board
 - ♦ All Management Board Secretaries
 - ♦ All Senior Managers
 - ♦ All Democratic Services Officers
 - ♦ All Corporate Development Officers
 - ♦ Senior Press Officer
 - ♦ Communications Officer
- (c) The Assistant Chief Executive (Legal and Democratic Services) will be responsible for forwarding the record to all Members, and will publish the record on the Council's website on the day of receipt.
- (d) Any record containing confidential and/or exempt information, must be marked "not for publication" in the top right hand corner. Where possible, The Assistant Chief Executive (Legal and Democratic Services) will remove any confidential and/or exempt information before publishing it on the Council's website.

- (e) The provisions of Rules 7 and 8 (inspection of documents after meetings) will also apply to the making of executive decisions by individual members of the Executive and officers. This does not require the disclosure of exempt or confidential information.

19A IMPLEMENTATION OF EXECUTIVE DECISIONS

[19A.1](#) After a decision record has been produced and published (whether in the form of Minutes of a meeting or in the decision record format contained in the Appendix to these Rules), there will be a period of 5 clear [working days](#) before the decision will take effect if not called in within that time, in accordance with Overview and Scrutiny Procedure Rule 16. [\(NB: please note that regarding decisions by officers, only key decisions by officers are subject to the call in period\).](#)

Commented [MB2]: For clarity.

Deleted: .

Commented [MB3]: To allocate a paragraph number for clarity and consistency and to clarify the existing rule that regarding officer decisions, it is only key decisions which can be called in.

19B OTHER DECISIONS BY INDIVIDUAL OFFICERS

19B.1 An officer must produce a written record of any decision which he/she makes which falls within paragraph 19B.2.

19B.2 A decision falls within this paragraph if it would otherwise have been taken by North Yorkshire County Council, or a committee, sub-committee of the County Council (or a joint committee in which the County Council participates), but it has been delegated to an officer of the County Council either -

- (i) under a specific express authorisation; or
- (ii) under a general authorisation to officers to take such decisions and, the effect of the decision is to -
 - grant a permission or licence;
 - affect the rights of an individual; or
 - award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position.

Guidance points:

Regarding non-executive decisions by Officers, examples of such decisions which should normally be recorded include:

- those made in pursuance of a specific delegation made at a formal committee meeting;
- those granting planning/development control/licensing permissions;
- those awarding a contract or incurring expenditure of more than £50,000.

Regarding non-executive decisions by Officers, those decisions which are purely administrative or operational in nature will not usually be subject to the decision record recording and publication requirements. The authority has agreed to categorise as administrative/operational those non-executive decisions of the type specified in 19B.2(ii) above which:

- are routine, day to day operational decisions under general delegations; and
- are within approved budget and policy; and
- have financial implications of £50,000 or less;

HOWEVER, each matter should be considered in light of its particular circumstances and with regard to the likely level of public interest in it.

DCLG has offered guidance on what should and should not be recorded: ...

Examples of decisions that should be recorded could include:

- Decisions about awarding contracts above specified individual or total values (the values will vary according to the relevant council or local government body);
- a decision to carry out major road works;
- determination of licencing applications, building control decisions and notices; and
- decisions to give listed building consents.

Where decisions are already required to be published by other legislation, they do not need to be recorded again provided the record published includes the date the decision was taken and the reasons for the decision.

Decisions that do not need to be recorded might include the following examples:

- Routine administrative and organisational decisions such as giving permission to a local society to use the authority's premises;
- decisions on operational matters such as day to day variations in services;
- decisions to give business relief to individual traders;
- decisions to review the benefit claims of an individual applicant; and
- decisions taken in response to requests under the Data Protection Act 1998 or the Freedom of Information Act 2000.

19B.3 As soon as reasonably practicable after a [recordable](#) decision at 19B.2 has been taken by an individual Officer, he/she will prepare a record of the decision including the date it was made; a statement of the reasons for it and any alternative options considered and rejected; and, where the decision falls under paragraph (i) of 19B.2, the names of any Member of the relevant local government body who has declared a conflict of interest in relation to the decision.

19B.4 The duty imposed by paragraph 19B.1 is satisfied where, in respect of a decision, a written record containing the following information is already required to be produced in accordance with any other statutory requirement -

- the date the decision was taken; and
- a record of the decision taken along with reasons for the decision.

19B.5 Where an officer makes a decision which falls within paragraph 19B.2, he/she will, as soon as reasonably practicable after the record is made -

- make the decision record, together with any background papers, available for inspection by members of the public, at all reasonable hours, at the offices of the relevant local government body; and

- forward a copy of the decision record, together with any background papers, to the Assistant Chief Executive (Legal and Democratic Services) who will publish the decision record, together with any background papers, on the website of the relevant local government body, if it has one, and email copies of the decision record, as soon as possible, to the Members and officers listed in paragraph 19.3(b) of the County Council's Access to Information Procedure Rules,

subject to the exclusion of any document or part of a document which the Proper Officer is of the opinion contains, or may contain, confidential or exempt information.

CURRENT RULES APPLYING TO TYPES OF DECISION

<i>Decision type</i>		<i>Taken by</i>	<i>28 clear calendar¹⁰ days' publication on Forward Plan?</i>	<i>28 and 5 clear days' notices of exempt information?¹⁰</i>	<i>5 clear days' notice and report?³</i>	<i>Decision record?</i>	<i>Subject to call-in?</i>
Executive decisions	Key decisions	Member body¹	YES	YES ⁹	YES	YES ⁵	YES
		Individual Executive Member	YES	NO	YES	YES	YES
		Individual Officer	YES	NO	YES	YES	YES
	Other Executive decisions	Member body¹	NO	YES ⁹	YES	YES ⁶	YES
		Individual Executive member	NO	NO	YES	YES	YES
		Individual Officer	NO	NO	NO	YES ⁸	NO
Non-executive decisions	Major decisions	Member body²	YES ⁴	NO	YES	YES ⁶	NO
		Individual Officer	YES ⁴	NO	NO	NO	NO
	Other non-executive decisions	Member body²	NO	NO	YES	YES ⁶	NO
		Individual Officer	NO	NO	NO	YES ⁷	NO

Notes:

1. *Either the Executive, Committee of the Executive or an Area Committee.*
2. *The Planning and Regulatory Functions Committee, Area Constituency Committees, Standards Committee, Audit Committee, Appeals Committee (Home to School Transport), Chief Officers Appointments and Disciplinary Committee, Pension Fund Committee and the County Council.*
3. *Five clear days' notice and report – this requirement will be met in relation to member bodies by the publication of agenda papers. For Executive Members it will be met by the requirement that if there is a report which is to be taken into account in making any executive decision, it will be made available to the relevant Overview and Scrutiny Committee Chairman and Vice-Chairman and be available for public inspection. The same will apply to key decisions to be taken by officers. For the purpose of counting five clear days, only days when County Hall is open should be counted, i.e. not weekends or bank holidays.*
4. *Publication of these matters in the Forward Plan is a locally adopted practice and not a statutory obligation.*
5. *By minutes of Executive (or Committee of Executive) meeting or by decision record for Area Committees.*
6. *By way of minutes of meetings.*
7. *A decision record must be produced, published on the website, and made available for public inspection, where the decision has been made by an individual officer either -*
 - (i) *under a specific express authorisation; or*
 - (ii) *under a general authorisation to officers to take such decisions and, the effect of the decision is to -*
 - *grant a permission or licence;*
 - *affect the rights of an individual; or*
 - *award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position.*

NB: No need to publish decision record where the decision already has to be published under other legislation (provided it includes date of decision and reasons for it).

Where a non-executive decision by an individual Officer does not fall into one of the above descriptions, a decision record is not required.

8. *The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 require the recording of **executive** decisions made by individual members or officers under delegated arrangements (this changed the previous provision that only key decisions by officers needed to be the subject of a decision record).*
9. *The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 require the publishing of notices of any exempt/confidential items **by executive decision making bodies** at least 28 clear calendar days and, subsequently, 5*

clear working days' before the meeting. This does NOT apply to individual decisions by individual Executive Members or officers.

10. *For longer publication requirements such as 28 days, this is a reference to clear calendar days. For shorter publication requirements eg 5 days, this is a reference to clear working days (see note 3 above).*

APPENDIX 3

Proposed Amendments to Constitution – 2019

Where amendments are suggested to part of a paragraph, only the relevant part is replicated in the amendment chart below.

<u>PART A: ITEMS FOR DECISION</u>			
Provision in Constitution	Current Wording	Proposed Amendment	Reason(s)
<p>Part 1 Summary and Explanation</p> <p>Citizens' Rights</p>	<p>...</p> <p>Citizens have the right to:</p> <ul style="list-style-type: none"> ◆ vote at local elections if they are registered; ◆ contact their local Councillor about any matters of concern to them; ◆ attend meetings of the Council and its committees except where, for example, personal or confidential matters are being discussed; ◆ participate in the Council's question time and contribute to investigations by the overview and scrutiny committees ◆ find out, from the Executive's forward plan, what major decisions are to be discussed by the Executive or decided by the Executive or Officers, and when; ◆ attend meetings of the Executive except when sensitive private information is being considered ◆ see reports and background papers, and any record of decisions made by 	<p>..</p> <p>Citizens have the right to:</p> <ul style="list-style-type: none"> ◆ vote at local elections if they are registered; ◆ contact their local Councillor about any matters of concern to them; ◆ attend meetings of the Council and its committees except where, for example, personal or confidential matters are being discussed; ◆ participate in the Council's question time and contribute to investigations by the overview and scrutiny committees ◆ find out, from the Executive's forward plan, what major decisions are to be discussed by the Executive or decided by the Executive or Officers, and when; ◆ attend meetings of the Executive except when sensitive private information is being considered ◆ see reports and background papers, and any record of decisions made by 	<p>To reference the Council's Petitions Scheme in the Constitution.</p>

	<p>the Council and Executive;</p> <ul style="list-style-type: none"> ◆ comment or make suggestions in relation to the Council and the services it delivers, and complain if they feel something has gone wrong; ◆ complain to the Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints process; ◆ complain to the Council's Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct for Members; ◆ inspect the Council's accounts and make their views known to the external auditor. ◆ petition to request a referendum on a different form of Constitution; and ◆ obtain a copy of the Constitution; 	<p>the Council and Executive;</p> <ul style="list-style-type: none"> ◆ comment or make suggestions in relation to the Council and the services it delivers, and complain if they feel something has gone wrong; ◆ complain to the Ombudsman if they think the Council has not followed its procedures properly. However, they should only do this after using the Council's own complaints process; ◆ complain to the Council's Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct for Members; ◆ <u>inspect the Council's accounts and make their views known to the external auditor;</u> ◆ <u>submit a petition to the Council regarding issues of concern;</u> ◆ petition to request a referendum on a different form of Constitution; and ◆ obtain a copy of the Constitution; 	
<p>Part 2</p> <p>Articles of the Constitution</p> <p>Article 3 – Citizens and the Council</p> <p>3.01 Citizens' rights</p>	<p>3.01 Citizens' rights</p> <p>Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:</p> <p>(a) Voting and petitions: Citizens on the electoral roll for the area have the right:</p> <p>(i) to vote at Council elections; and</p> <p>(ii) to sign a petition to request a referendum for a different form of Constitution.</p>	<p>3.01 Citizens' rights</p> <p>Citizens have the following rights. Their rights to information and to participate are explained in more detail in the Access to Information Rules in Part 4 of this Constitution:</p> <p>(b) Voting and petitions: Citizens on the electoral roll for the area have the right:</p> <p>(i) to vote at Council elections;</p> <p>(ii) <u>to submit a petition to the Council regarding issues of concern. Details of the Council's Petitions' Scheme are published on the Council's website; and</u></p>	<p>To reference the Council's Petitions Scheme in the Constitution.</p>

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		(iii) to sign a petition to request a referendum for a different form of Constitution.	
<p>Part 2</p> <p>Articles of the Constitution</p> <p>Article 3 – Citizens and the Council</p> <p>3.01 Citizens' rights</p>	<p>...</p> <p>(b) Information: Citizens have the right to:</p> <p>(i) attend meetings of the Council and its committees and of the Executive, except where confidential or exempt information (as defined in the Access to Information Procedure Rules contained in Part 4 of this Constitution) is likely to be disclosed, and the meeting is therefore held in private;</p> <p>(ii) find out from the forward plan what key decisions will be taken by the Executive and other decision takers and when. Also, subject to urgency procedures, to have at least 28 days' prior notice of a private meeting of an executive decision making body;</p> <p>(iii) see reports and background papers (except where these contain confidential or exempt information), and any records of decisions made by the Council and the Executive; and</p> <p>(iv) inspect the Council's accounts and make their views known to the external auditor.</p>	<p>...</p> <p>(b) Information: Citizens have the right to:</p> <p>(i) attend meetings of the Council and its committees and of the Executive, except where confidential or exempt information (as defined in the Access to Information Procedure Rules contained in Part 4 of this Constitution) is likely to be disclosed, and the meeting is therefore held in private;</p> <p>(ii) find out from the forward plan what key decisions will be taken by the Executive and other decision takers and when. Also, subject to urgency procedures, to have at least 28 days' prior notice of a private meeting of an executive decision making body;</p> <p>(iii) see reports and background papers (except where these contain confidential or exempt information), and any records of decisions made by the Council and the Executive; ▼</p> <p>(iv) <u>make representations about why a proposed private meeting/part of a meeting of an executive decision making body should be held in public; and</u></p> <p>(iv) inspect the Council's accounts and make their views known to the external auditor.</p>	<p>To raise awareness of the public's statutory right to do this and increase openness and transparency.</p>

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<p>Part 2</p> <p>Articles of the Constitution</p> <p>Article 12 – Staff</p> <p>Article 12.06 Proper Officer Functions</p>		<p><i>Under (a) <u>Local Government Act 1972, re the entries for Schedule 29 paras 41(3) and (4):</u></i></p> <ul style="list-style-type: none"> • <i>amend the post “Assistant Director Library and Community Services” to read “Assistant Director Policy, Partnerships and Communities”</i> <p><i>and to similarly amend all other references to the Assistant Director (Library and Community Services) throughout the Constitution.</i></p>	<p>To update the Constitution re transfer of responsibilities for these functions following the retirement of the Assistant Director (Library and Community Services).</p>
<p>Part 3</p> <p>Responsibility for Functions</p> <p>Schedule 1 - Council Committees, their membership and their powers</p> <p>Membership list for the Audit Committee</p>		<p><i>Add the following note at the end of the Membership list for the Audit Committee:</i></p> <p><u>The term of appointment of Independent Members of the Audit Committee shall be four years from the 31st July during the year which follows a County Council election in order to provide consistency during the period for production, and subsequent approval of, the Statement of Final Accounts.</u></p>	<p>To comply with the resolution of the Audit Committee on 26 July 2018 that the Constitution Members’ Working Group be recommended to agree that the term of appointment of Independent Members of the Audit Committee shall be four years from the 31st July during the year which follows a County Council election in order to provide consistency during the period for production, and subsequent approval of, the Statement of Final Accounts.</p>
<p>Part 3</p> <p>Responsibility for Functions</p> <p>Schedule 1 - Council Committees, their membership and their powers</p> <p>Pension Fund Committee</p>	<p>...</p> <p>1. To exercise the powers of the County Council to invest monies forming part of the Pension Fund, including:-</p> <ul style="list-style-type: none"> ♦ to determine and periodically review the Investment Strategy of the Fund ♦ to appoint managers to manage and invest Fund monies on the County Council’s behalf; ♦ to receive reports from the appointed managers, at least once every three months, setting out the action they have 	<p>...</p> <p>1. To exercise the powers of the County Council to invest monies forming part of the Pension Fund, including:-</p> <ul style="list-style-type: none"> ♦ to determine and periodically review the Investment Strategy of the Fund ♦ to appoint managers to manage and invest Fund monies on the County Council’s behalf; ♦ to receive reports from the appointed managers, at least once every three months, setting out the action they have 	<p>To clarify within the Constitution that it is a legal requirement for the Audit Committee to approve the Statement of Final Accounts (SOFA).</p> <p>Whilst this is already clear in the Audit Committee Terms of Reference, it is less so in those of the Pension Fund Committee.</p> <p>The current Terms of Reference of the Pension Fund Committee are</p>

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Delegated Powers	<p>taken under their appointment;</p> <ul style="list-style-type: none"> ♦ to receive reports, at least once every three months from the Investment Adviser, Investment Consultant and the Performance Measurer, regarding the investment performance of the appointed investment managers and the Fund overall; ♦ from time to time to consider the desirability of continuing or terminating the appointments of any organisations involved in the investment of the monies of the Fund and / or advising / reporting thereon; ♦ to approve a Statement of Final Accounts and associated governance statements for submission to the Audit Committee; and ♦ from time to time reporting to the Executive. 	<p>taken under their appointment;</p> <ul style="list-style-type: none"> ♦ to receive reports, at least once every three months from the Investment Adviser, Investment Consultant and the Performance Measurer, regarding the investment performance of the appointed investment managers and the Fund overall; ♦ to receive regular budget reports regarding the administration of the Pension Fund; ♦ from time to time to consider the desirability of continuing or terminating the appointments of any organisations involved in the investment of the monies of the Fund and / or advising / reporting thereon; and ♦ from time to time reporting to the Executive. 	<p>potentially misleading and therefore require amendment to provide absolute clarity re the current position.</p>
<p>Part 3</p> <p>Responsibility for Functions</p> <p>Schedule 2 – The Executive</p> <p>▪ Executive Members and their Responsibilities</p> <p>The Area of Responsibility entry for the Executive Member for Access</p>	<p>...</p> <p>Access - inc highways, road and rail transport, broadband and mobile phones</p>	<p><i>The Leader to add the following to the portfolio of the Executive Member for Access and the Constitution to be consequently amended:</i></p> <p>Access - inc highways, road and rail transport, broadband and mobile phones; and to act as the Council's Digital Infrastructure Champion.</p>	<p>To comply with a letter from the Minister for Digital and the Creative Industries, and the Minister for Local Government requesting that authorities nominate a Digital Infrastructure Champion for their organisation.</p>
<p>Part 3</p> <p>Responsibility for Functions</p>	<p><u>4.9 To the Assistant Director (Library and Community Services)</u></p> <p>(a) To undertake the Council's functions in</p>	<p><u>4.9 To the Assistant Director (Policy, Partnerships and Communities)</u></p> <p>(a) To undertake the Council's functions in</p>	<p>To update the Constitution re transfer of responsibilities for these functions following the retirement of the Assistant Director (Library and Community</p>

Deleted: <#>to approve a Statement of Final Accounts and associated governance statements for submission to the Audit Committee; and ¶

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<p>Schedule 4 – Officers’ Delegation Scheme</p> <p><u>4.0 Specific Delegations</u></p>	<p>relation to Library, Customer and Community Services and Registration, Coroners and Archives.</p> <p>(b) To exercise the functions of the Council in relation to public libraries, the County Archives and the provision of schools library services, except for the withdrawal or modification of public facilities.</p> <p>(c) To exercise all functions of the Coroner’s Service.</p> <p>(d) To approve premises for the solemnisation of marriages and to exercise all functions of the County Council for the Registration of Births, Deaths and Marriages.</p> <p>NOTE: The following matters are excluded from this delegation</p> <p>(e) Major changes in the pattern of provision of library services, including permanent closure of libraries.</p> <p>(f) Major changes in the pattern of provision for the Registration Service or the Coroners’ Service.</p>	<p>relation to Library Services and Registration, Coroners and Archives.</p> <p>(b) To exercise the functions of the Council in relation to public libraries, and the County Archives, except for the withdrawal or modification of public facilities.</p> <p>(c) To exercise all functions of the Coroner’s Service.</p> <p>(d) To approve premises for the solemnisation of marriages and to exercise all functions of the County Council for the Registration of Births, Deaths and Marriages.</p> <p>NOTE: The following matters are excluded from this delegation</p> <p>(e) Major changes in the pattern of provision of library services, including permanent closure of libraries.</p> <p>(f) Major changes in the pattern of provision for the Registration Service or the Coroners’ Service.</p>	<p>Services).</p>
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<p>Part 3</p> <p>Responsibility for Functions</p> <p>Schedule 5</p> <p>Appointments to Outside Bodies</p>		<p><i>Amend Schedule 5 as follows to reflect that Citizens Advice Hambleton, Richmondshire and Selby and the Ryedale Citizens Advice Bureau have merged to form Citizens Advice Mid-North Yorkshire.</i></p> <p><i>In section 1. PARTNER BODIES:</i></p> <ul style="list-style-type: none"> • <i>Change the name of 'Citizens Advice Hambleton, Richmondshire and Selby' to 'Citizens Advice Mid-North Yorkshire'</i> • <i>Amend to show that there are 2 seats</i> • <i>Amend to show that CC Les and CC Goodrick are currently serving on the body and to formalise those appointments.</i> <p><i>In section 2. LOCAL BODIES (appointments by Area Constituency Committees):</i></p> <ul style="list-style-type: none"> • <i>Remove the entry relating to Ryedale Citizens Advice Bureau.</i> 	<p>To reflect the appointments to the merged body and to keep the Constitution up to date.</p>
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<p>Part 4 - Rules of Procedure</p> <p>Council Procedure Rules</p> <p>8.0 Quorum</p>	<p>8.1 Council Meetings</p> <p>If during any meeting of the Council the Chairman declares that there is not a quorum present (one quarter of the whole number of Members) the meeting shall stand adjourned. (If at any time more than one third of the Members have a disclosable pecuniary interest, the quorum shall be one quarter of the Members remaining).</p> <p>8.2 Other Meetings</p> <p>The quorum of any other meeting will be one quarter of the total voting membership of the body or three voting members, whichever is the larger. During any meeting if the Chairman counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chairman. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.</p>	<p>8.1 Council Meetings</p> <p>If during any meeting of the Council the Chairman declares that there is not a quorum present (one quarter of the whole number of Members) the meeting shall stand adjourned. (If at any time more than one third of the Members have a disclosable pecuniary interest, the quorum shall be one quarter of the Members remaining).</p> <p>8.2 Other Meetings</p> <p>The quorum of any other meeting will be one quarter of the total voting membership of the body or three voting members, whichever is the larger. During any meeting if the Chairman counts the number of Members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chairman. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.</p> <p><u>8.2.1, Regarding formal Council, Executive, Committee or Sub-Committee meetings, "present" means physical presence, in person, at the meeting (in order to be able to count towards the quorum and to vote). Electronic 'attendance' via the internet may be permissible for other informal meetings – please liaise with Legal and Democratic Services re any such queries.</u></p>	<p>To clarify that presence at a formal Council, Executive, Committee or Sub-Committee meeting is, by law, required to be in person in order to count towards the quorum and to enable the Member to vote.</p>
<p><u>PART B: ITEMS FOR INFORMATION</u></p>			

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Whole Constitution		<i>Amend all references to “Democratic Services Manager” to read “Scrutiny Team Leader and Democratic Services Manager”</i>	<p>To ensure that the Constitution is up to date.</p> <p>The Monitoring Officer will include the Terms of Reference in the Constitution under his delegated powers in Article 15.02(c) of the Constitution to reflect changes to arrangements for the distribution of responsibilities and the delegation of powers in accordance with decisions taken by those authorised to do so.</p>
Part 3 Responsibility for Functions Schedule 2 – The Executive Sub-Committees of the Executive 1. Shareholder Committee – membership and terms of reference		<i>Include the Shareholder Committee Terms of Reference as set out in Appendix 4 to this report after the Committee’s membership page.</i>	<p>To ensure that the Constitution is up to date, to reflect the Terms of Reference for the Shareholder Committee which were previously agreed by the Executive.</p> <p>The Monitoring Officer will include the Terms of Reference in the Constitution under his delegated powers in Article 15.02(c) of the Constitution to reflect changes to arrangements for the distribution of responsibilities and the delegation of powers in accordance with decisions taken by those authorised to do so.</p>

<p>Part 3 Responsibility for Functions</p> <p>Schedule 4</p> <p>Officers' Delegation Scheme</p> <p>Introductory paragraph</p>	<p>North Yorkshire County Council has functions given to it by statute. Certain functions rest with the authority as a whole. These powers can be delegated to Officers under s101 Local Government and Housing Act 1989. Other functions, called Executive Functions rest with the Council's Executive, and can be delegated by the Executive to Officers. Within this scheme, functions delegated are marked either Executive or Council to indicate the origin of the delegation.</p>	<p>North Yorkshire County Council has functions given to it by statute. Certain functions rest with the authority as a whole. These powers can be delegated to Officers under s101 Local Government Act 1972. Other functions, called Executive Functions rest with the Council's Executive, and can be delegated by the Executive to Officers. Within this scheme, functions delegated are marked either Executive or Council to indicate the origin of the delegation.</p>	<p>To correct the statutory reference which is currently incorrect.</p> <p>The Monitoring Officer will make the correction under his delegated power to amend the Constitution set out in Article 15.02(c)(i) of the Constitution to correct administrative issues</p>	<p>Deleted: and Housing</p> <p>Deleted: 1989</p>
<p>Part 3 Responsibility for Functions</p> <p>Schedule 4</p> <p>Officers' Delegation Scheme</p> <p>4.0 <u>Specific Delegations</u></p> <p>4.1 <u>To the Chief Executive Officer</u></p>	<p>...</p> <p>(f) Through the County Emergency Planning Officer, to exercise the functions of the Executive for civil aid and emergency planning.</p> <p>...</p> <p>(k) To approve recommendations from external partnerships in relation to the distribution of Area Based Grant and Single Capital Pot Grant, in consultation with the relevant Executive Member.</p>	<p>...</p> <p>(f) To exercise the functions of the Executive for civil aid and emergency planning.</p> <p>...</p> <p>(k) To approve recommendations from external partnerships in relation to the distribution of <u>funds overseen by those partnerships</u>, in consultation with the relevant Executive Member.</p>	<p>To reflect that the County Emergency Planning Officer post no longer exists, <u>that Area Based Grant and Single Capital Pot Grant no longer exist</u>, and to ensure that the Constitution is up to date.</p> <p>The Monitoring Officer will make this amendment under his delegated powers in Article 15.02(c) of the Constitution to reflect changes to arrangements for the distribution of responsibilities and the delegation of powers in accordance with decisions taken by those authorised to do so.</p>	<p>Deleted: Through the County Emergency Planning Officer, t</p> <p>Deleted: Area Based Grant and Single Capital Pot Grant</p>

<p>Part 3</p> <p>Responsibility for Functions</p> <p>Schedule 4</p> <p>Officers' Delegation Scheme</p> <p>4.0 <u>Specific Delegations</u></p> <p>4.1 <u>To the Chief Executive Officer</u></p>		<p><i>Insert a new sub-paragraph (n) as follows:</i></p> <p><u>(n) to act as, and exercise all functions of, the Chief Executive of NYCC and Group (Shareholder Representative) in relation to the Council's companies and shareholdings.</u></p>	<p>To ensure that the Constitution is up to date, to reflect the previous resolutions of the Executive regarding governance arrangements for the Council's companies.</p> <p>The Monitoring Officer will include the delegation in the Constitution under his delegated powers in Article 15.02(c) of the Constitution to reflect changes to arrangements for the distribution of responsibilities and the delegation of powers in accordance with decisions taken by those authorised to do so.</p>
<p>Part 3</p> <p>Responsibility for Functions</p> <p>Schedule 4</p> <p>Officers' Delegation Scheme</p> <p>4.0 <u>Specific Delegations</u></p> <p>4.6 <u>To the Assistant Chief Executive (Legal and Democratic Services)</u></p>	<p>(d) [Not used] Council</p>	<p>(d) [Not used] </p>	<p>To amend the Constitution as there is no corresponding entry.</p>

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<p>Part 3</p> <p>Responsibility for Functions</p> <p>Schedule 4</p> <p>Officers' Delegation Scheme</p> <p>4.0 Specific Delegations</p> <p>4.6 To the Assistant Chief Executive (Legal and Democratic Services)</p>		<p><i>The addition of the following sub-paragraph (l) to the specific delegations to the Assistant Chief Executive (Legal and Democratic Services):</i></p> <p>(l) To take all decisions in relation to the Legal and Democratic Services Alternative Business Structure company, subject to the controls given to the Council by the Shareholders' agreement, and to exercise day to day control of the Alternative Business Structure attached to the company.</p>	<p>The Monitoring Officer has previously amended the Officers' Delegation Scheme under his delegated powers in Article 15.02(c) of the Constitution to ensure the Scheme is updated to reflect delegations which have previously made to him by the Executive, and is now reporting back to full Council.</p>
<p>Part 3</p> <p>Responsibility for Functions</p> <p>Schedule 4</p> <p>Officers' Delegation Scheme</p> <p>4.0 Specific Delegations</p> <p>4.6 To the Assistant Chief Executive (Legal and Democratic Services)</p>		<p><i>The addition of the following sub-paragraph (m) to the specific delegations to the Assistant Chief Executive (Legal and Democratic Services):</i></p> <p>(m) To exercise all necessary powers to implement the Executive's resolutions regarding the governance arrangements for the Council's companies and shareholdings, including reviewing the terms of the Companies governance documents.</p>	<p>To ensure that the Constitution is up to date, to reflect the previous resolutions of the Executive regarding governance arrangements for the Council's companies.</p> <p>The Monitoring Officer will include the delegation in the Constitution under his delegated powers in Article 15.02(c) of the Constitution to reflect changes to arrangements for the distribution of responsibilities and the delegation of powers in accordance with decisions taken by those authorised to do so.</p>

<p>Part 4 – Rules of Procedure</p> <p>Council Procedure Rules</p> <p>19. MEMBERS' CONDUCT</p>	<p>...</p> <p>(c) Members must at all times observe the Members' Code of Conduct set out at Part 5 of this Constitution. Whilst observance of the Code is the individual responsibility of each Member, advice may be sought from Officers (in particular the Monitoring Officer, Chief Finance Officer, Chief Executive Officer, Assistant Chief Executive (Legal and Democratic Services) or any Director) as to the requirements of the Code.</p>	<p><i>Amend Council Procedure Rule 19 (c) as follows:</i></p> <p>(c) Members must at all times observe the Members' Code of Conduct set out at Part 5 of this Constitution. <u>If you are present at a meeting when a matter is to be considered or is being considered, in which you have a disclosable pecuniary interest, you must declare that you have an interest (if the interest is not already registered in the Register of Members' Interests) not participate in the discussion or vote and leave the meeting room (subject to the granting of a dispensation by the Standards Committee or Monitoring Officer).</u> Whilst observance of the Code is the individual responsibility of each Member, advice may be sought from Officers (in particular the Monitoring Officer, Chief Finance Officer, Chief Executive Officer, Assistant Chief Executive (Legal and Democratic Services) or any Director) as to the requirements of the Code.</p>	<p>To ensure that the Constitution prominently reflects the previous resolution of the Council on 18 July 2012 (resolution 139(f)) regarding the Council's ethical framework to include a Council Procedure Rule to this effect (provision is already included in the Constitution in paragraph 10.3 at page 350 but not in the Council Procedure Rules themselves).</p> <p>The Assistant Chief Executive (Legal and Democratic Services) will make this amendment under his delegated powers in Article 15.02(c)(iv) of the Constitution to consequentially amend the Constitution to give effect to changes explicitly approved by full Council.</p>
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<p>Part 7 – Management Structure</p>		<p><i>Amend the Structure Chart by:</i></p> <ul style="list-style-type: none"> • <i>removing the post “AD Library, Customer & Community Services”</i> • <i>amending the post title “AD Policy and Partnerships” to “AD Policy, Partnerships and Communities” and changing the post grading from AD1 to AD2.</i> • <i>to update the postholder of the Head of Communications</i> 	<p>To ensure the Constitution is up to date.</p> <p>As this post no longer exists.</p> <p>To reflect amendments to the delegations to this post.</p> <p>To reflect change of personnel.</p> <p>The Monitoring Officer will make these amendments under his delegated powers in Article 15.02(c) of the Constitution to reflect changes to arrangements for the distribution of responsibilities and the delegation of powers in accordance with decisions taken by those authorised to do so.</p>
		<p><i>Certain typographical/administrative errors have been corrected in the Constitution under the Monitoring Officer’s delegated powers as set out in Article 15.02(c)(i) of the Constitution to correct administrative issues.</i></p>	<p>To ensure that the Constitution is accurate and up to date.</p>

DELEGATIONS OF DECISION-MAKING POWERS FOR COMPANIES

For matters relating to a company which would require a Council decision or where approval of the Council is required within the company's governance arrangements the following distribution of powers will apply:

Decisions reserved to the Executive

1. Approving steps to wind up a company.
2. Making loans in excess of (£500k) other than by way of normal trade credit.

Decisions which would fall within the remit of the Shareholders Committee

3. Approving or making amendments to the strategic or business plans.
4. Monitoring the strategic and business plans
5. Acquiring shares in another company.
6. Changes to company governance eg changes to Articles, Shareholder Agreements.
7. Establishing subsidiary companies.
8. Approving disposals of assets valued over (£500k) [subject to the Company's articles of association]
9. Approving borrowing in excess of (£500k). [subject to the Company's articles of association]
10. Entering, amending or terminating any agreements which create a potential liability for the company in excess of £500k. [subject to the Company's articles of association]
11. Making changes to the nature of the company's business.
12. Matters relating to the approval of dividends requiring Council consent.
13. Reviewing the decisions of the Chief Executive of NYCC and Group (Shareholder Representative) and holding the decisions and that individual to account. Formal decisions made will be reported back to the Shareholders Committee

Decisions which fall within the remit of the Chief Executive of NYCC and Group (Shareholder Representative)

14. Monitoring the strategic and business plans and approving emergency amendments.
15. Approving the appointment or dismissal of company Directors including the Chair.
16. Matters relating to the terms and conditions of company Directors.
17. Matters relating to the entering of any contracts with company Directors.
18. Matters relating to the employment of senior management team of the company.

19. Changes to share capital and admission of shareholders.
20. Making changes to the nature of the company's business.
21. Approving changes to the area in which the company works.
22. Altering the company's name or registered office.
23. Where required giving any further specific approval to a matter provided for within the approved business plan.
24. To Act on behalf of the Shareholder's Committee to monitor Performance of the Company
25. To take appropriate action and decisions as the Shareholder as directed by the Shareholders Committee
26. To take all other decisions as the Shareholder as provided for by legislation or the Company's governance documents.
27. To report back to the Shareholders Committee from time to time on formal decisions made

APPENDIX B TO EXECUTIVE REPORT TO COUNTY COUNCIL

North Yorkshire County Council

EXECUTIVE

16 April 2019

Proposed changes to the Contract Procedure Rules and Key Decision exemptions, for recommendation to County Council

Report of the Corporate Director – Strategic Resources

1.0 PURPOSE OF REPORT

- 1.1 To present to Members, for their consideration for recommendation to full Council for approval, proposed changes to the Contract Procedure Rules and clarification of the Key Decision exemptions.

2.0 BACKGROUND

- 2.1 On 20 December 2018, the Audit Committee considered a review of and certain proposed changes to the Contract Procedure Rules (and consequential amendments to the Constitution), in accordance with the Committee's terms of reference, for onward recommendation to the Members' Working Group on the Constitution, the Executive and full Council for consideration.
- 2.2 The Committee also considered certain proposed amendments to the exemptions in the Key Decision definition in order to provide clarification as to how they are applied in practice.

3.0 AMENDMENTS TO THE CONSTITUTION

- 3.1 The report to Audit Committee on 20 December 2018 is attached at **Appendix 1** to this report for Members' consideration.
- 3.2 Other proposed amendments to the Constitution are the subject of a separate report to the Executive.

4.0 FINANCIAL IMPLICATIONS

- 4.1 Any financial implications are set out in the Appendix to this report.

5.0 LEGAL IMPLICATIONS

- 5.1 There are no significant legal implications arising out of this report.

6.0 CONSULTATION

- 6.1 Relevant Officers and Members have been consulted on the proposed changes set out in this report and its appendices. The report was also considered by the Members' Working Group on the Constitution on 29 March 2019.

7.0 **REASONS FOR RECOMMENDATIONS**

- 7.1 For the reasons set out in the Audit Committee report, it is recommended that, subject to any comments Members may have, the recommendations and changes to the Contract Procedure Rules and Key Decision exemptions set out in the Audit Committee report be recommended to the County Council for approval.

8.0 **RECOMMENDATIONS**

- 8.1 That, subject to any comments Members may have, the recommendations and changes to the Contract Procedure Rules and Key Decision exemptions set out in the Audit Committee report be recommended to the County Council for approval.

GARY FIELDING
Corporate Director Strategic Resources

County Hall
NORTHALLERTON

4 April 2019

Background Documents:

- The Council's Constitution

NORTH YORKSHIRE COUNTY COUNCIL

AUDIT COMMITTEE

20th December 2018

REVIEW OF THE PROCUREMENT AND CONTRACT PROCEDURE RULES

Report of the Corporate Director – Strategic Resources

1.0 PURPOSE OF REPORT

- 1.1. To inform Members on the latest thinking relating to potential changes to the Procurement and Contract Procedure Rules (the Rules).

2.0 BACKGROUND

- 2.1. According to the Audit Committee Terms of Reference, the Audit Committee is to review and recommend to the Executive, changes to the Contract Procedure Rules.
- 2.2. A comprehensive review of the Rules takes place following County Council elections every four years; however it is recognised that in the interim there is a need to ensure the Rules are kept up to date for organisational and legal reasons.
- 2.3. This report identifies specific changes to the Rules, set out in **Appendix 1**, for subsequent referral to the Executive. The complete proposed Rules are set out in **Appendix 2**.
- 2.4. As a result of the proposed changes to the Procurement and Contract Procedure Rules, it has been identified that minor amendments will be required to other areas of the Council's Constitution. These are set out in **Appendix 3**.
- 2.5. This report seeks to give members of the Audit Committee an overview of the thinking behind the proposed changes which will take effect from the 1st April 2019, subject to Executive and Full Council approval.

3.0 PROPOSED FUTURE CHANGES

- 3.1. The Rules govern how we procure goods, works and services and align to The Public Contract Regulations 2015.
- 3.2. The Public Contract Regulations 2015 and the Council's Rules aim to:
- Simplify the procurement process

- Speed up the procurement process
- Provide more cost effective procurement processes
- Promote sustainable procurement
- Drive supplier engagement and innovation

3.3. The Procurement and Contract Management Strategy sets the vision of “working collaboratively to deliver efficiencies, value for money and sustainable quality through a proactive commercial approach to procurement and commissioning for the communities of North Yorkshire”. The Public Contract Regulations 2015 support the Council in delivering this vision and the amendments to the Rules in 2016 embraced the new flexibilities. After operating under the new governance for a number of years, and based on consultation feedback from Officers undertaking low value procurements and procurement professionals delivering high value / complex procedures, further changes are recommended. The changes aim to provide clarity and support the Council’s commercial ambitions.

4.0 KEY CHANGES

Powers and Key Decisions

4.1. The wording in the Rules has remained the same however further guidance on the application of Article 13, Decision Making, has been included in the Constitution to provide clarity on circumstances in which a key decision is required. To supplement this further additional operational guidance will be drafted to ensure appropriate application of key decisions in relation to procurement and contract award decisions.

OJEU Tenders

4.2. A new Rule has been included, Rule 11.9, to offer clarity on the process where a contract is terminated within the first 6 months of the contract commencement. This Rule allows for the contract to be awarded to the second placed supplier, with agreement of the Head of Procurement in consultation with the ACE (LDS) provided this demonstrates best value and none of the original award criteria has changed. This rarely happens, however the introduction of this Rule provides clarity in relation to what action officers can take.

Contract Management

4.3. Additional requirements related to contract management have been introduced to reinforce the importance of effectively monitoring and managing contracts.

Authorisations

4.4. Rule 18.1 has been amended and includes a table to clearly outline the officer approvals required in relation to each “gate” within the procurement gateway process. Due to the high value, potential complexity and procurement risks

associated with these procurements, a Director or delegated officer; CD-SR or delegated officer and Assistant Chief Executive Legal & Democratic Services approval is required.

Grants

- 4.5. Whilst additions were made previously in relation to the administering of grants which has proven helpful to officers, it is acknowledged that there remains a degree of ambiguity in relation to the circumstances in which allocating a grant is permissible. This Rule has been expanded further to clearly outline the circumstances in which a grant would be a preferable means to achieving the Council's objectives rather than following a competitive bid / tender process. This guidance is based on best practice from the National Audit Office and other local authorities.
- 4.6. Further to this, for clarity a new Rule has been included to outline the financial threshold where a competitive grants process must be completed.

Quotes

- 4.7. Rule 8 is a new addition to the Procurement and Contract Procedure Rules. The inclusion of guidance around the quote process will provide clarity to Officers specifically related to procuring low value contracts i.e. below £25,000. It also provides clarity on use of the best value form.

Transparency

- 4.8. We will continue to ensure transparency of forthcoming expenditure for contracts using the Forward Procurement Plan (FPP) and the national Contracts Finder system, which is published to all potential suppliers to raise awareness of opportunities to work with the Council.
- 4.9. Where the procurement is subject to the OJEU threshold the opportunity will be published in the official journal. As such all of the above will ensure openness and transparency.

Small and Medium Enterprise (SMEs)

- 4.10. Through our procurement initiatives, including the Corporate Procurement Strategy, we are continuing to ensure that SMEs have access to NYCC contract opportunities, encouraging ways to make it easier for them to do business with us and therefore aiming to increase spend either directly or in supply chains, which goes to SMEs and the local economy.
- 4.11. Through transparency, such as the procurement pipeline, we continue to give businesses timely information, to support investment in skills and capabilities to deliver contracts. We are actively encouraging SMEs to work collaboratively, where deemed appropriate, to deliver contracts.

- 4.12. The prominence of market engagement continues to gain momentum and through our commissioning and procurement cycle, early market intelligence from SMEs and the voluntary and community sector in particular is helping to develop the overarching strategy forward. Moving forward this intelligence will be instrumental in the development of category sourcing strategies in terms of identifying innovative approaches to meeting customer and business needs.
- 4.13. The simplified processes introduced through the last round of changes continue to operate and as such support SMEs as the process is less bureaucratic; time/resource intensive and less costly.

5.0 RECOMMENDATIONS

- 5.1. Members of the Audit Committee are requested to note the contents of the report and to offer any observations in advance of a formal request for changes to the Rules.

Gary Fielding
Corporate Director, Strategic Resources

Author of Report –

Kevin Draisey
Head of Procurement and Contract Management
10 December 2018

Appendix 1CONTRACT PROCEDURE RULESSUGGESTED AMENDMENTS

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Contract Procedure Rules	Procurement and Contract Procedure Rules	To provide clarity.
		Not currently included	8. Quotes <i>(please note, the insertion of this Rule at section 8 means that all subsequent rule numbering has been amended)</i>	To reflect additional Rule regarding quotes which provides clarity on process.
		15. Exceptions to Contract Procedure Rules	16. Exceptions to Procurement and Contract Procedure Rules	To reflect change as above.
1.1	1.1	These terms will have the following meanings in the Contract Procedure Rules	These terms will have the following meanings in the Procurement and Contract Procedure Rules.	To reflect change as above.
		Best Value Form means the form to be completed to capture the rationale for not seeking bids in accordance with Rule 8.1	Best Value Form means the form to be completed to capture the rationale for not seeking bids in accordance with Rule 8.3	To reflect additional Rule regarding quotes which provides clarity on process.
		CM – means Corporate Contract Manager	CM – means the Contract Manager	To provide clarity.
		Contract Register – means the register of Contract maintained by the Council as set out in Rule 16.8	Contract Register – means the register of Contract maintained by the Council as set out in Rule 17.8	To reflect change to Rule references.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Directors Recommendation – means a written record of the decision and justification to apply one of the exceptions set out in Rule 15.1 to be signed and kept by the relevant Director	Directors Recommendation – means a written record of the decision and justification to apply one of the exceptions set out in Rule 16.1 to be signed and kept by the relevant Director	To reflect change to Rule references.
		Not currently included	Contract Management Practitioners Group means the Council's practitioner group responsible for improving contract management standards, chaired by the Contracts Manager	To ensure the new practitioner group is sufficiently referenced in the Rules and provide clarity.
		Gateway Process means the Council's value based gateway procurement process that combines assessment and understanding of various aspects of value with appropriate review and scrutiny at defined points in the procurement cycle	Gateway Process means the Council's value based gateway commissioning and procurement process that combines assessment and understanding of various aspects of value with appropriate review and scrutiny at defined points in the commissioning and procurement cycle	To provide clarity. This change reflects the role of commissioning in this process.
		Not currently included	ITQ means an invitation to quote	To provide clarity.
		Procurement Strategy means the Council's Procurement Strategy as agreed from time to time	Procurement and Contract Management Strategy means the Council's approved Procurement and Contract Management Strategy as agreed from time to time	To provide clarity.
		Rules means these Contract Procedure Rules	Rules means these Procurement and Contract Procedure Rules	To reflect change as above.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Not currently included	Scheme of Delegation means a record of all duties and responsibilities as delegated under these Rules which is to be maintained by each Director, the CD-SR and the ACE(LDS)	To provide clarity. This change reflects the process in place and ensures an open and transparent list of signatories for audit purposes.
		Waiver Request Form – means the prescribed form to be completed when requesting a waiver in accordance with Rule 15.4	Waiver Request Form – means the prescribed form to be completed when requesting a waiver in accordance with Rule 16.4	To reflect change to Rule references.
N/A	1.2	Not currently included	These Procurement and Contract Procedure Rules form part of the overall control framework within which North Yorkshire County Council operates. They aim to facilitate sound, innovative service delivery by setting out best practice for the administration of all procurement and contract management matters throughout the Council, ensuring a high quality of procurement and contract management information, robust procurement and contract management and enabling good decision making. They should not be viewed as a barrier to executive action and are constantly kept under review to ensure that they remain relevant to the day to day activities of the Council and contribute to the delivery of value for money.	To provide clarity on the role and function of the service.
1.2 (e) (i)	1.3 (e) (i)	Director – Rules 8.6, 15.1(d), (g) and (h), 15.3(b) and 17.1	Director – Rules 9.6, 16.1(d), (g) and (h), and 16.3(b)	To provide clarity. This change reflects that the

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
				Director can delegate their authority in relation to Rule 18.1, therefore removed from this section. Rule 8.6 is now Rule 9.6.
1.2 (e) (ii)	1.3 (e) (ii)	CD-SR – Rules 2.1, 2.4, 2.5, 8.6, 15.1(d), (g) and (h), 15.3(b), 15.4, 15.5, 16.2 and 17.1	CD-SR – Rules 2.1, 2.4, 2.5, 9.6, 16.1(d), (g) and (h), 16.3(b), 16.4, and 16.5	To provide clarity. This change reflects that the CD-SR can delegate their authority in relation to Rule 18.1 therefore removed from this section. Rule 8.6 is now Rule 9.6.
1.2 (e) (iii)	1.3 (e) (iii)	ACE(LDS) - Rules 2.1, 2.4, 8.6, 15.3(b), 15.4 and 17.1	ACE(LDS) - Rules 2.1, 2.4, 9.6, 16.3(b), 16.4 and 18.1	To provide clarity. This change reflects that the CD-SR can delegate their authority in relation to Rule 18.1 therefore removed from this section.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
				Rule 8.6 is now Rule 9.6.
2.1	2.1	These Rules are made by the Council on the advice of the CD-SR (in consultation with the ACE(LDS)) under Article 14.02 of the Constitution.	These Rules are made by the Council on the advice of the CD-SR (in consultation with the ACE(LDS)) under Article 14.02 of the Constitution and define the correct procedures to be followed when the Council enters into any contractual arrangement and should be read in conjunction with the Finance Procedure Rules under Article 14.01 of the Constitution.	Includes reference to Finance Procedure Rules to provide clarity that these Rules relate to the Finance Procedure Rules. .
2.3	N/A	The Council has made Financial Procedure Rules under Article 14.01 of the Constitution which shall be applied in conjunction with these rules.	Delete	This has been incorporated into Rule 2.1 above.
2.8	2.7	Directors shall ensure that all documentation relating to Contracts and procurement processes (including quotations) is retained in accordance with the Council's Records Retention and Destruction Schedule.	Directors and the HoP shall ensure that all documentation relating to Contracts and procurement processes is retained in accordance with the Council's Records Retention and Destruction Schedule.	Includes reference to HoP for clarity. Reference to quotations has also been removed. The rule applies to all documentation so no requirement to separate out quotations.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
2.9	2.8	Where the Council has awarded a contract to any person to supervise or otherwise manage a contract on its behalf such a person shall be required to comply with these Rules as if he were an Officer of the Council.	Where the Council has awarded a contract to any person to supervise or otherwise manage a contract on its behalf such a person shall be required to comply with these Rules as if they were an Officer of the Council.	Replaced 'he' with 'they' to ensure gender-neutral.
2.10	2.9	Wherever appropriate procurement should be undertaken using the standard precedent documents contained in the Procurement Manual applying to SQ's, ITT's or ITB's. Wherever alternative documents are to be used they must be approved by the CD-SR and where appropriate the ACE(LDS).	Wherever appropriate procurement should be undertaken using the standard precedent documents contained in the Procurement Manual applying to SQ's, ITT's or ITB's. Wherever alternative documents are to be used they must be approved by the HoP and where appropriate the ACE(LDS).	Replaced CD-SR with HoP to provide clarity.
N/A	2.10	Not currently included	All Officers shall adhere to the approved Procurement and Contract Management Strategy of the Council.	To ensure a robust process and provide clarity.
N/A	2.11	Not currently included	Where the Council is procuring in partnership with another Authority who are the lead procurer, subject to agreement from the HoP, the Council will follow the lead procurers Procurement and Contract Procedure Rules or equivalent.	To ensure a robust process and provide clarity.
2.11	2.12	Where the total Contract value for procurement is within the values in the first column of Tables 1-3, below, the award procedure in the second column must be followed.	Where the total Contract value for procurement is within the values in the first column of Tables 1-4 , below, the award procedure in the second column must be followed.	To reflect addition of table 4 being added.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
2.11	2.12 Table 1	<p>Up to £25,000</p> <p>Award Procedure Bids not mandatory. Best Value Form to be completed where Bids are not invited.</p> <p>Signature / Sealing Contracts One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Director's behalf).</p>	<p>Up to £25,000</p> <p>Award Procedure Quotes should be invited in accordance with Rule 8. Quotes do not need to be advertised using the E-Sourcing system or Contracts Finder. If Quotes are not obtained, the Best Value Form must be completed.</p> <p>Signature / Sealing Contracts One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Director's behalf, as defined in the Scheme of Delegation).</p>	To ensure a robust process and provide clarity.
2.11	2.12 Table 1	<p>£25,000 up to EU Threshold</p> <p>Award Procedure Bids must be invited in accordance with Rule 8. These must be advertised using the E-Sourcing system and published to Contracts Finder.</p> <p>Signature / Sealing Contracts One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Director's behalf).</p>	<p>£25,000 up to EU Threshold</p> <p>Award Procedure Bids must be invited in accordance with Rule 9. These must be advertised using the E-Sourcing system and published to Contracts Finder.</p> <p>Signature / Sealing Contracts One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Director's behalf, as defined in the Scheme of Delegation).</p>	To ensure a robust process and provide clarity and to reflect additional Rule at Rule 8.
2.11	2.12 Table 1	<p>Above EU Threshold</p> <p>Award Procedure</p>	<p>Above EU Threshold</p> <p>Award Procedure</p>	To ensure a robust process and

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>Follow the appropriate EU Procedure as set out in Rules 10 and 11. The Director must be informed of the procurement and approval sought through the Gateway Process.</p> <p>Signature / Sealing Contract Two signatures: The Director (or by an Officer authorised by the Director to sign on the Directors behalf).</p> <p>AND The ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf).</p> <p>Sealing (where appropriate) ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf) in accordance with Rule 6.</p>	<p>Follow the appropriate EU Procedure as set out in Rules 11 and 12. Approval must be sought through the Gateway Process.</p> <p>Signature / Sealing Contract Two signatures: The Director (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).</p> <p>AND The ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation).</p> <p>Sealing (where appropriate) ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation) in accordance with Rule 6.</p>	<p>provide clarity and to reflect additional Rule at Rule 8.</p>
2.11	2.12 Table 2	<p>Up to £25,000 Award Procedure Bids not mandatory. Best Value Form to be completed where Bids are not invited.</p>	<p>Up to £25,000 Award Procedure Quotes should be invited in accordance with Rule 8. Quotes do not need to be advertised using the E-Sourcing system or Contracts Finder. If Quotes are not obtained, the Best Value Form must be completed.</p>	<p>To ensure a robust process and provide clarity.</p>

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>Signature / Sealing Contracts One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Director's behalf).</p>	<p>Signature / Sealing Contracts One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Director's behalf, as defined in the Scheme of Delegation).</p>	
2.11	2.12 Table 2	<p>£25,001 up to EU Threshold Award Procedure Bids must be invited in accordance with Rule 8. These must be advertised using the E-Sourcing system and published to Contracts Finder.</p> <p>Signature / Sealing Contracts One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Director's behalf).</p>	<p>£25,001 up to EU Threshold Award Procedure Bids must be invited in accordance with Rule 9. These must be advertised using the E-Sourcing system and published to Contracts Finder.</p> <p>For Contracts with a value of £1m+, approval must be sought through the Gateway Process Signature / Sealing Contracts One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Director's behalf, as defined in the Scheme of Delegation).</p> <p>Contracts with a value in excess of £1m must be sealed by ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation) in accordance with Rule 6.</p>	To ensure a robust process and provide clarity and to reflect additional Rule at Rule 8.
2.11	2.12 Table 2	<p>Above EU Threshold Award Procedure Follow the appropriate EU Procedure as set out in Rules 10</p>	<p>Above EU Threshold Award Procedure Follow the appropriate EU Procedure as set out in Rules 11 and 12. Approval must be sought through the Gateway Process.</p>	To ensure a robust process and provide clarity and

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>and 11. The Director must be informed of the procurement and approval sought through the Gateway Process.</p> <p>Signature / Sealing Contract Contracts must be sealed by ACE(LDS) (or by an Officer authorised by the ACE(LDS) to sign on his behalf) in accordance with Rule 6.</p>	<p>Signature / Sealing Contract Contracts must be sealed by ACE(LDS) (or by an Officer authorised by the ACE(LDS) to sign on his behalf, as defined in the Scheme of Delegation) in accordance with Rule 6.</p>	to reflect additional Rule at Rule 8.
2.11	2.12 Table 3	<p>Up to £25,000 Award Procedure Bids not mandatory. Best Value Form to be completed where Bids are not invited.</p> <p>Signature / Sealing Contracts One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Director's behalf).</p>	<p>Up to £25,000 Award Procedure Quotes should be invited in accordance with Rule 8. Quotes do not need to be advertised using the E-Sourcing system or Contracts Finder. If Quotes are not obtained, the Best Value Form must be completed.</p> <p>Signature / Sealing Contracts One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Director's behalf, as defined in the Scheme of Delegation).</p>	To ensure a robust process and provide clarity.
2.11	2.12 Table 3	<p>£25,000 up to EU Threshold Award Procedure Bids must be invited in accordance with Rule 8. These must be advertised using the E-</p>	<p>£25,000 up to EU Threshold Award Procedure Bids must be invited in accordance with Rule 9. These must be advertised using the E-Sourcing system and published to Contracts Finder.</p>	To ensure a robust process and provide clarity and to reflect additional Rule at Rule 8.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>Sourcing system and published to Contracts Finder.</p> <p>Signature / Sealing Contracts One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Director's behalf).</p>	<p>Signature / Sealing Contracts One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Director's behalf, as defined in the Scheme of Delegation).</p>	
2.11	2.12 Table 3	<p>Above EU Threshold</p> <p>Award Procedure Follow the appropriate EU Procedure as set out in Rules 10 and 11. The Director must be informed of the procurement and approval sought through the Gateway Process.</p> <p>Signature / Sealing Contract Two signatures: The Director (or by an Officer authorised by the Director to sign on the Directors behalf).</p> <p>AND The ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf).</p>	<p>Above EU Threshold</p> <p>Award Procedure Follow the appropriate EU Procedure as set out in Rules 11 and 12. Approval must be sought through the Gateway Process.</p> <p>Signature / Sealing Contract Two signatures: The Director (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).</p> <p>AND The ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation).</p> <p>Sealing (where appropriate)</p>	To ensure a robust process and provide clarity and to reflect additional Rule at Rule 8.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Sealing (where appropriate) ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf) in accordance with Rule 6 .	ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation) in accordance with Rule 6 .	
2.11	2.12 Table 4	Not currently included	<p>Up to £175,000 over three years</p> <p>Award Procedure A competitive application process should be completed in accordance with Rule 22. Competitive applications do not need to be advertised using the E-Sourcing system or Contracts Finder. If competitive applications are not obtained the Best Value Form must be completed.</p> <p>Signature / Sealing Contract The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).</p>	To ensure a robust process and provide clarity and to reflect additional Rule at Rule 8.
2.11	2.12 Table 4	Not currently included	<p>Above £175,000 – relevant EU Threshold</p> <p>Award Procedure A competitive application process should be completed in accordance with Rule 22. This should be advertised using the E-Sourcing system. The use of Contracts Finder is not mandatory.</p> <p>Signature / Sealing Contract</p>	To ensure a robust process and provide clarity and to reflect additional Rule at Rule 8.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
			The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).	
2.11	2.12 Table 4	Not currently included	<p>Above EU Threshold</p> <p>Award Procedure</p> <p>Where the grant value meets the relevant EU Threshold the Gateway Process must be completed.</p> <p>A competitive process must be completed.</p> <p>The opportunity must be advertised using the E-Sourcing system.</p> <p>The use of Contract Finder is not mandatory.</p> <p>Signature / Sealing Contract</p> <p>Two signatures</p> <p>The Director (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).</p> <p>AND</p> <p>The ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation).</p> <p>Sealing (where appropriate)</p> <p>ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf), as defined in the Scheme of Delegation) in accordance with Rule 6.</p>	To ensure a robust process and provide clarity in relation to allocation of grants.
5.1	5.1	Every contract shall be evidenced in writing (by the use of a purchase order, exchange of correspondence or other written medium).	Every contract shall be evidenced in writing (by the use of a purchase order, exchange of correspondence or other written medium). A signed contract must be in place on or before the service commencement date, unless otherwise agreed by the HoP or ACE(LDS).	To ensure a robust process and provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
5.5	5.5	The standard clauses contained in the Procurement Manual relating to the Freedom of Information Act 2000 and the Data Protection Act 1998 shall, wherever possible, be included in all Contracts exceeding £25,000 in value.	The standard clauses contained in the Procurement Manual relating to the Freedom of Information Act 2000 and the Data Protection Act 2018 shall, wherever possible, be included in all Contracts exceeding £25,000 in value.	Replaced 1998 with 2018 to reflect new Data Protection Act legislation.
6.1	6.1	Every written Contract must be either signed or sealed in accordance with this Rule.	Every written Contract must be either signed or sealed in accordance with this Rule. The ACE(LDS) (or an Officer authorised by the ACE(LDS)) will determine whether a Contract must be signed or sealed.	To provide clarity on who has responsibility for determining whether a contract is signed or sealed as a deed.
6.3	6.3	The ACE(LDS) also authorises such Contracts to be signed as outlined in Rule 2.11, Tables 1-3 provided that:-	The ACE(LDS) also authorises such Contracts to be signed as outlined in Rule 2.12, Tables 1-4 and Rule 1.3(e) provided that:-	To reflect additional table 4 being added and the inclusion of the Scheme of Delegation within Rule 1.2(e).
N/A	8.	Not currently included	8. Quotes	To reflect additional Rule regarding quotes.
N/A	8.1	Not currently included	Where the estimated value of a contract is £25,000 or less (taking into account the whole life cost of the contract, including extensions and / or variations and excluding VAT) a minimum of three quotes should be sought. There is no requirement to use	To ensure a robust process and provide clarity regarding quotes

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
			the E-Sourcing system or publish the opportunity on Contracts Finder.	to support a fully auditable process.
N/A	8.2	Not currently included	It is the Officer's responsibility to keep a record of quotes sought for audit purposes and to demonstrate best value has been achieved.	To ensure a robust process and provide clarity regarding quotes to support a fully auditable process.
N/A	8.3	Not currently included	If three quotes are not sought, the contract may be directly awarded using the Best Value Form. It is the Officer's responsibility to complete the Best Value Form.	To ensure a robust process and provide clarity regarding quotes to support a fully auditable process.
8.1	N/A	Where the estimated value of a contract is £25,000 or less, the invitation of Bids is not mandatory but written Bids should be invited where appropriate and best value should always be sought. If an Officer is not seeking three bids then the Best Value Form must be completed to capture the rationale for this decision.	Delete	This is now reflected within Rule 8 Quotes.
8.7	9.6	A Bid cannot be accepted where the value exceeds the relevant EU Threshold. If the value of the Bid exceeds the EU Threshold a Director must seek tenders in	A Bid cannot be accepted where the value exceeds the relevant EU Threshold. If the value of the Bid exceeds the EU Threshold a Director must seek tenders in accordance with Rules 11 and 12 .	To reflect change to Rule references.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		accordance with Rules 10 and 11 .		
8.9	9.8	Bids may be altered only in accordance with Rule 9 .	Bids may be altered only in accordance with Rule 10 .	To reflect change to Rule references.
N/A	9.9	Not currently included	Where a Contract is terminated within the first six months of the contract commencement date, the Council may award the contract to the second placed supplier, provided that this demonstrates Best Value and with agreement from the HoP in consultation with the appropriate SCM.	To provide clarity in relation to flexibilities and ensure these are managed in a robust manner which supports an auditable processes.
9.1	10.1	Post Bid negotiations may not be undertaken where the value of the Contract exceeds the relevant EU Threshold. If the value of the Bid exceeds the EU Threshold, the Director must invite tenders in accordance with Rules 10 and 11 .	Post Bid negotiations may not be undertaken where the value of the Contract exceeds the relevant EU Threshold. If the value of the Bid exceeds the EU Threshold, the Director must invite tenders in accordance with Rules 11 and 12 .	To reflect change to Rule references.
9.3	10.3	Rules 9.1 and 9.2 shall not operate to prevent clarification of all or part of any Bid to the extent permitted by law and where such clarifications are sought the provisions of Rules 9.2 (c) and 9.2 (d) shall apply, except that the word “clarification” shall be	Rules 10.1 and 10.2 shall not operate to prevent clarification of all or part of any Bid to the extent permitted by law and where such clarifications are sought the provisions of Rules 10.2 (c) and 10.2 (d) shall apply, except that the word “clarification” shall be substituted for the word “negotiation” in these rules.	To reflect change to Rule references

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		substituted for the work “negotiation” in these rules.		
10.1	11.1	Tenders for Contracts which exceed the EU Threshold shall be invited and awarded in accordance with the PCR’s and as prescribed in Rule 10 and 11 .	Tenders for Contracts which exceed the EU Threshold shall be invited and awarded in accordance with the PCR’s and as prescribed in Rule 11 and 12 .	To reflect change to Rule references
10.7	11.7	All Tenders undertaken in accordance with Rule 10 shall have a minimum of 3 appropriate Officers (excluding the Procurement and Contract Management Service representative) to undertake the evaluation process.	All Tenders undertaken in accordance with Rule 11 shall have a minimum of 3 appropriate Officers (excluding the Procurement and Contract Management Service representative) to undertake the evaluation process.	To reflect change to Rule references
N/A	11.8	Not currently included	All evaluation panel members must have completed the evaluation training prior to completing any evaluation process.	To ensure a robust process and provide clarity.
N/A	11.9	Not currently included	Where a Contract is terminated within the first six months of the contract commencement date, the Council may award the contract to the second placed supplier with agreement from the HoP in consultation with the ACE(LDS) provided that this demonstrated Best Value and none of the original award criteria has changed.	To ensure a robust process and support a fully auditable process.
11.1 (xi)	12.1 (xi)	Light Touch Regime (as prescribed by Regulations 74-76)	Social and Other Specific Services (Light Touch Regime) (as prescribed by Regulations 74-76)	Regulations 74-76 refer to Social and Other Specific Services, rather than Light Touch

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
				Regime and so has been changed for consistency.
12.1 (c)	13.1 (c)	(subject to Rule 12.4) it has been received by the OJEU Tender closing date and time.	(subject to Rule 13.4) it has been received by the OJEU Tender closing date and time.	To reflect change to Rule references.
12.4	13.4	If an OJEU Tender is received after the specified closing date and time it may not be considered unless the ACE(LDS) is satisfied that the OJEU Tender was submitted electronically or posted or otherwise dispatched in sufficient time to be delivered before the specified time but that delivery was prevented by an event beyond the control of the Participant.	If an OJEU Tender is received after the specified closing date and time it may not be considered unless the HoP is satisfied that the OJEU Tender was submitted electronically or posted or otherwise dispatched in sufficient time to be delivered before the specified time but that delivery was prevented by an event beyond the control of the Participant.	Replaced CD-SR with HoP to provide clarity.
13.1	14.1	The Responsible Officer shall evaluate OJEU Tenders using the evaluation model published in accordance with Rule 10.2 .	The Responsible Officer shall evaluate OJEU Tenders using the evaluation model published in accordance with Rule 11.2 .	To reflect change to Rule references
13.5	14.5	On completion of the evaluation of the OJEU Tenders received and once all internal approvals have been obtained through the Gateway Process (Gate 3), the HoP shall write to all Participants informing them of the outcome of	On completion of the evaluation of the OJEU Tenders received and once all internal approvals have been obtained through the Gateway Process (Gate 3), the HoP (or an Officer authorised by the HoP) shall write to all Participants informing them of the outcome of the OJEU Tender evaluation and providing feedback on the content of their submission, in accordance with Regulation 55 of the PCR's.	To ensure a robust process and provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		the OJEU Tender evaluation and providing feedback on the content of their submission, in accordance with Regulation 55 of the PCR's.		
13.6	14.6	The HoP shall wait a minimum of ten days (15 days if not sent electronically) from the date of issue of the letters notifying the Participants of the result of the evaluation before completing the Contract with the successful Participant.	The HoP (or an Officer authorised by the HoP) shall wait a minimum of ten days (15 days if not sent electronically) from the date of issue of the letters notifying the Participants of the result of the evaluation before completing the Contract with the successful Participant.	To ensure a robust process and provide clarity.
13.7	14.7	The HoP shall send for publication a Contract Award Notice stating the outcome of the procurement procedure no more than 30 days after the award of the Contract.	The HoP (or an Officer authorised by the HoP) shall send for publication a Contract Award Notice stating the outcome of the procurement procedure no more than 30 days after the award of the Contract.	To ensure a robust process and provide clarity.
14.1	15.1	The Local Government (Contracts) Act 1997 clarified the power of local authorities to enter into certain contracts, including Private Finance Initiative Contracts. Where Contracts need to be certified under the 1997 Act, only the following Officers are authorised to do so: the Corporate Director Children and	The Local Government (Contracts) Act (LGCA) 1997 clarified the power of local authorities to enter into certain contracts, including Private Finance Initiative Contracts. Where Contracts need to be certified under the 1997 Act, only the following Officers are authorised to do so: the Corporate Director Children and Young People's Service, the Corporate Director Business and Environmental Services, the Corporate Director Health and Adult Services, the Director of Public Health, the ACE(LDS) and the CD-SR. Any contract which requires certifying as a LGCA contract, must have approval from the Council's Executive.	To ensure a robust process and provide clarity that these contracts must have approval from the Council's Executive.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Young People's Service, the Corporate Director Business and Environmental Services, the Corporate Director Health and Adult Services, the Director of Public Health, the ACE(LDS) and the CD-SR.		
15.0	16.0	Exceptions to contract procedure rules	Exceptions to procurement and contract procedure rules	To reflect change to Rule references and to amend the Rule title.
15.1	16.1	A Director does not need to invite bids in accordance with Rule 8 in the following circumstances:-	A Director does not need to invite bids in accordance with Rule 9 in the following circumstances:-	To reflect change to Rule references
15.3	16.3	A Director does not need to invite OJEU Tenders in accordance with Rule 10 and 11 in the following circumstances:-	A Director does not need to invite OJEU Tenders in accordance with Rule 11 and 12 in the following circumstances:-	To reflect change to Rule references.
15.4	16.4	Specific exceptions to Rule 8 are permitted in such other circumstances as the CD-SR and the ACE(LDS) may agree.	Specific exceptions to Rule 9 are permitted in such other circumstances as the CD-SR and the ACE(LDS) may agree.	To reflect change to Rule references
15.6	16.6	The CD-SR shall maintain a register of all requests made under this Rule and the responses given to them.	Any requests for waivers shall be made in consultation with the relevant SCM's, and be signed, dated and kept. The Procurement and Contract Management Service shall maintain a register of all waivers made under this Rule.	To ensure a robust process and provide clarity.
16.1	17.1	Every officer shall comply with these Rules and any	Every Officer shall comply with these Rules and any unauthorised failure to do so may lead to disciplinary action.	officer changed to Officer to reflect

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		unauthorised failure to do so may lead to disciplinary action.		defined term for clarity.
N/A	17.9	Not currently included	All Responsible Officers will notify the Procurement and Contract Management Service of any contract awarded below £25,000. The Responsible Officer will use the format prescribed by the Procurement and Contract Management Service and report this information quarterly.	To ensure a robust process and improve visibility of contracts.
16.9 (a)	17.10 (a)	All relevant Contracts (including those Contracts to which Rule 15 applies) are entered onto the Contract Register.	All relevant Contracts (including those Contracts to which Rule 16 applies) are entered onto the Contract Register.	To reflect change to Rule references
16.10	17.11	When a Contract in excess of £25,000 is awarded the Procurement and Contract Management Service shall ensure that such information as is prescribed in the PCR's is published on Contracts Finder via the E-Sourcing system.	When a Procurement leading to a Contract in excess of £25,000 is awarded the Procurement and Contract Management Service shall ensure that such information as is prescribed in the PCR's is published on Contracts Finder via the E-Sourcing system. This does not apply to Grants as detailed in Rule 2.12 Table 4 .	To ensure a robust process and provide clarity on the process for grants
17.1	18.1	When a procurement is being considered which is expected to exceed the financial value thresholds specified in Rule 17.2 the Gateway Process must be completed and signed off by the relevant Officers, as detailed in Table 4 below.	When a procurement is being considered which is expected to exceed the financial value thresholds specified in Rule 18.2 the Gateway Process must be completed and signed off by the relevant Officers, as detailed in Table 5 below.	To reflect change to Rule references

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
17.1 Table 4	18.1 Table 5	Gateway Process gate Gate 1 – Options Appraisal / Project Initiation Document	Gateway Process gate Gate 1 – Commissioning and Procurement Options Appraisal	To clarify use of the document.
17.1 Table 4	18.1 Table 5	Gate 1 – Approval process PAB AND The relevant Director or <i>Procurement Assurance Board to decide as appropriate</i> AND The ACE(LDS)	Gate 1 – Approval process PAB AND The relevant Director or delegated Assistant Director AND Finance – CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate</i> AND The ACE(LDS)	To ensure a robust process and provide clarity in relation to the scheme of delegation.
17.1 Table 4	18.1 Table 5	Gate 3 – Approval process PAB AND The relevant Director or <i>Procurement Assurance Board to decide as appropriate</i>	Gate 3 – Approval process PAB AND The relevant Director or delegated Assistant Director AND Finance – CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate</i>	To ensure a robust process and provide clarity in relation to the scheme of delegation.
17.1 Table 4	18.1 Table 5	Gate 4(a) – Approval process PAB AND The relevant Director or <i>Procurement Assurance Board to decide as appropriate</i> AND The ACE(LDS) – only in cases where the extension is not part of	Gate 4(a) – Approval process PAB AND The relevant Director or delegated Assistant Director AND Finance – CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate</i> AND The ACE(LDS) – only in cases where the extension is not part of the original contract.	To ensure a robust process and provide clarity in relation to the scheme of delegation.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		the original contract, or where the variation is a material change.		
17.1 Table 4	18.1 Table 5	Gate 4(b) – Approval process PAB AND The relevant Director or DMT <i>Procurement Assurance Board to decide as appropriate</i>	Gate 4(b) – Approval process PAB AND The relevant Director or delegated Assistant Director AND Finance – CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate</i>	To ensure a robust process and provide clarity in relation to the scheme of delegation.
17.2	18.2	The whole contract financial value thresholds for the purposes of Rule 17.1 are:	The whole contract financial value thresholds for the purposes of Rule 18.1 are:	To reflect change to Rule references.
17.3	18.3	No action leading towards procurement, including any steps to undertake a further competition under an existing PSBOs framework arrangement or other legally compliant framework agreement accessible by the Council, shall be undertaken until confirmation of the process has been given under the terms set out in Rule 17.1 .	No action leading towards procurement, including any steps to undertake a further competition under an existing PSBOs framework arrangement or other legally compliant framework agreement accessible by the Council, shall be undertaken until confirmation of the process has been given under the terms set out in Rule 18.1 .	To reflect change to Rule references.
18.	19.	18. Contract Monitoring	19. Contract Management	To reflect change to Rule references and title amended from monitoring to management.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
18.1	19.1	The Responsible Officer and the CM, in relation to all corporate contracts shall take all such steps as are appropriate to monitor and review the performance of the Contract, having regard to its value, nature, duration and subject matter. As part of the monitoring and review process the Responsible Officer shall maintain adequate records of Contract performance and details of review meetings with the Contractor. Such records and details shall be made available to Internal Audit whenever required and shall be recorded in any relevant Gateway Process report (Gate 4). Such records shall also be used on the basis for any permitted extension to the Contract.	The Responsible Officer shall take all such steps as are appropriate to monitor and review the performance of the Contract, having regard to its value, nature, duration and subject matter. As part of the monitoring and review process the Responsible Officer shall maintain adequate records of Contract performance and details of review meetings with the Contractor. Such records and details shall be made available to Internal Audit whenever required and shall be recorded in any relevant Gateway Process report (Gate 4). Such records shall also be used on the basis for any permitted extension to the Contract.	Removed reference to Corporate Contract Manager as they are the Responsible Officer for corporate contracts. This is to provide clarity.
N/A	19.2	Not currently included	Where appropriate the Responsible Officer involved in contract management shall have received a level of formal training commensurate with the nature of the contract.	To ensure a robust process and emphasise the importance of contract management.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
N/A	19.3	Not currently included	Where appropriate the Responsible Officer will attend the Contract Management Practitioners Group.	This change reflects the implementation of the Group and supports the importance of contract management
18.3	19.5	Contracts with a value in excess of the relevant EU Threshold may be varied or extended in accordance with the terms of that Contract or as outlined in Regulation 72 of the PCR's. Approval must be sought in accordance with Rule 17.1 , (Table 4 – Gateway Process – Authorisation to Approve Gate 4a).	Contracts with a value in excess of the relevant EU Threshold may be varied or extended in accordance with the terms of that Contract or as outlined in Regulation 72 of the PCR's. Approval must be sought in accordance with Rule 18.1 , (Table 5 – Gateway Process – Authorisation to Approve Gate 4a).	To reflect change to Rule references.
18.4	19.6	If an Officer requires a Contract which exceeds the financial values stated in Rule 17.2 to be terminated then this must be done in accordance with the terms of the Contract or as outlined in Regulation 72 of the PCRs. Approval must be sought in accordance with Rule 17.1 ,	If an Officer requires a Contract which exceeds the financial values stated in Rule 18.2 to be terminated then this must be done in accordance with the terms of the Contract or as outlined in Regulation 72 of the PCRs. Approval must be sought in accordance with Rule 18.1 , (Table 5 – Gateway Process – Authorisation to Approve Gate 4b)	To reflect change to Rule references.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		(Table 4 – Gateway Process – Authorisation to Approve Gate 4b)		
N/A	21.1	Not currently included	To ensure that persons involved in the procurement process are aware of, and adhere to the principles of impartiality and professional standards when dealing with, and completing commercial undertakings, a Conflict of Interest and Confidentiality Undertaking Declaration form is required. This must be completed by all members of the evaluation panel upon commencement of the project.	To ensure a robust and fully auditable process through the implementation of the relevant form.
20.1	21.2	If it comes to the knowledge of a Member, Responsible Officer or other Officer that a Contract in which he has an interest (determined in accordance with the Members' and / or Officer's Code of Conduct as appropriate) has been or is proposed to be entered into by the Council, he shall immediately give written notice to the ACE(LDS).	If it comes to the knowledge of a Member, Responsible Officer or other Officer that a Contract in which they have an interest (determined in accordance with the Members' and / or Officer's Code of Conduct as appropriate) has been or is proposed to be entered into by the Council, they shall immediately give written notice to the ACE(LDS).	Replaced 'he' to 'they' to be gender-neutral.
N/A	22.1	Not currently included	The Council cannot procure services which it is itself required to deliver by means of a grant. The Council may grant-fund third party organisations to help deliver community cohesion or to provide complementary activities.	To ensure a robust process and provide clarity regarding grant funding.
21.1	22.2	Director shall consider when procuring the provision of the Services, Supplies Works or Social & Other Specific Services,	Taking into account 21.1 above Directors and the HoP shall consider when procuring the provision of the Services, Supplies Works or Social & Other Specific Services, whether a grant would be a preferable means to achieving its objectives rather	To ensure a robust process and provide clarity

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>whether a grant would be a preferable means to achieving its objectives rather than following a competitive Bid process. A grant may only be awarded in circumstances where:</p> <ul style="list-style-type: none"> • There is the legal power to make a grant for the purpose envisaged; • It does not contravene EU rules on state aid. 	<p>than following a competitive Bid process. A grant may only be awarded in circumstances where:</p> <ul style="list-style-type: none"> • There is the legal power to make a grant for the purpose envisaged; • It does not contravene EU rules on state aid. 	<p>regarding grant funding.</p>
21.2	22.3	<p>Where the value of a Grant exceeds £25,000, the Director shall have the discretion to conduct a competitive application process for the award of that Grant if doing so demonstrates best value for the Council. If a Director is not conducting a competitive application process then the Best Value Form must be completed to capture the rationale for the decision.</p>	<p>Where the value of a Grant is less than £175,000 over 3 years, the Director shall have the discretion to conduct a competitive application process for the award of that Grant if doing so demonstrates best value for the Council. If a Director is not conducting a competitive application process then the Best Value Form must be completed to capture the rationale for the decision.</p>	<p>To ensure a robust process and provide clarity regarding grant funding.</p>
N/A	22.4	<p>Not currently included</p>	<p>Where the value of the Grant exceeds £175,000 over 3 years but is less than the relevant EU Threshold detailed in Rule 2.12 Table 4 a competitive grants process must be completed. The opportunity must be advertised on the Council's E-Sourcing system.</p>	<p>To ensure a robust process and provide clarity regarding grant funding.</p>

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
21.3	22.5	Where the value of a Grant exceeds the relevant EU Thresholds, the Director shall complete the Gateway Process in accordance with Rule 17 .	Where the value of a Grant exceeds the relevant EU Thresholds, the Gateway Process must be completed in accordance with Rule 18 . A competitive process must be completed and the opportunity must be advertised on the council E-Sourcing system.	To ensure a robust process and provide clarity regarding grant funding and to reflect change to Rule references.

Procurement and Contract Procedure Rules

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*These Rules constitute the Council's Standing Orders in relation to contracts under Section 135 of the Local Government Act 1972 and apply to all contracts (excluding those stated in **Rule 2.2**), including those made in the course of the discharge of functions which are the responsibility of the Executive.*

1 INTRODUCTION

1.1 These terms will have the following meanings in the Procurement and Contract Procedure Rules:-

ACE(LDS)	means Assistant Chief Executive (Legal and Democratic Services)
Best Value Form	means the form to be completed to capture the rationale for not seeking bids in accordance with Rule 8.3
CD-SR	means the Corporate Director - Strategic Resources
CM	means the Contracts Manager
Constitution	means the Council's Constitution of which these Rules form part
Contract	means any agreement made between the Council and any other person which is intended to be legally enforceable and involves the acceptance of an offer made by one party to commit itself to an action or series of actions and subject to the exceptions in Rule 2.2
Contracts Finder	means the web-based portal as described in the PCRs
Contract Register	means the register of Contracts maintained by the Council as set out in Rule 17.8
Contract Management Practitioners Group	means the Council's practitioner group responsible for improving contract management standards, chaired by the Contracts Manager
Contractor	means a person or entity with whom the Council has a Contract
Council	means North Yorkshire County Council
Director	means the Chief Executive Officer; Corporate Director Business and Environmental Services; Corporate Director Health and Adult Services; Corporate Director Children and Young People's Service; Corporate Director - Strategic Resources as the context requires
Directors Recommendation	means a written record of the decision and justification to apply one of the exceptions set out in Rule 16.1 to be signed and kept by the relevant Director

DMT	means the Directorate Management Team
Electronic Signatures	means an advanced electronic signature which is: <ul style="list-style-type: none"> (i) uniquely linked to the signatory; and (ii) capable of identifying the signatory; and (iii) created using means that the signatory can maintain under his/her sole control; and (iv) linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.
E-Sourcing system	means the Council's chosen E-sourcing system (currently YORtender) or an approved alternative
EU	means the European Union
EU Threshold	means the current threshold above which the PCR's apply, currently £181,302 for services and supplies £615,278 for social and other specific services and £4,511,413 for works
FPP	means the Forward Procurement Plan which outlines all future procurement requirements of the Council
Framework Agreement	means an agreement with one or more contracting authorities and one or more economic operator which establishes an arrangement for: <ul style="list-style-type: none"> (i) multiple orders to be placed with one Contractor (a single supplier framework), or (ii) a framework of multiple Contractors to engage in further competitions (a multiple supplier framework)
Gateway Process	means the Council's value based gateway commissioning and procurement process that combines assessment and understanding of various aspects of value with appropriate review and scrutiny at defined points in the commissioning and procurement cycle
HoP	means the Head of Procurement
Internal Audit	means the Council's appointed internal auditors (currently Veritau)
ITB	means an Invitation to Bid
ITQ	means an Invitation to Quote

ITT	means an Invitation to Tender
Key Decision	means a decision made in connection with the discharge of a function which is the responsibility of the Executive set out in Article 13.03(b) of the Constitution [http://democracy.northyorks.gov.uk/]
Leasing Agreement	means a Contract for the provision of finance to enable goods or services to be obtained and where ownership in those goods does not automatically pass to the Council at the end of the Contract period
LDSO	means a Legal and Democratic Services Officer
MEAT	means the Most Economically Advantageous Tender
Member	means a member of the Council or co-opted member on a Council committee
Officer	means a Council employee or other authorised agent
OJEU	means the Official Journal of the European Union
OJEU Tender	means the procurement process to be followed where the estimated whole life value of a Contract exceeds the relevant EU Threshold
PAB	means the Procurement Assurance Board, chaired by the HoP
Participant	means a person or entity participating in a procurement process, who has expressed an interest in tendering for a Contract or who has tendered for a Contract
PSBO	means Public Sector Buying Organisation
PCR	means the Public Contracts Regulations 2015
Person	means any individual, partnership, company, trust, other local authority, Government department or agency
Procurement Manual	means the manual to accompany these Rules which provides detailed guidance on procurement techniques and the effect of the Rules
Procurement and Contract Management Strategy	means the Council's approved Procurement and Contract Management Strategy as agreed from time to time
Property Contract	means a Contract which creates an estate or interest in land or buildings
Responsible Officer	means the Officer who is responsible for the procurement and/or management of a Contract

Rules	means these Procurement and Contract Procedure Rules
SCM	means Senior Category Manager
Scheme of Delegation	means a record of all duties and responsibilities as delegated under these Rules which is to be maintained by each Director, the CD-SR and the ACE(LDS)
Services or Supplies	means as defined in Regulation 2 of the PCRs
Social and Other Specific Services	means those services defined as such in Schedule 3 of the PCRs
SQ	means the Selection Questionnaire
Waiver Request Form	means the prescribed form to be completed when requesting a waiver in accordance with Rule 16.4
Works	means as defined in Regulation 2 of the PCRs

1.2 These **Procurement and Contract Procedure Rules** form part of the overall control framework within which North Yorkshire County Council operates. They aim to facilitate sound, innovative service delivery by setting out best practice for the administration of all procurement and contract management matters throughout the Council, ensuring a high quality of procurement and contract management information, robust procurement and contract management and enabling good decision making. They should not be viewed as a barrier to executive action and are constantly kept under review to ensure that they remain relevant to the day to day activities of the Council and contribute to the delivery of value for money.

1.3 References in these Rules to:-

- (a) any legislation (e.g. Act, Statutory Instrument, EU Directive) include a reference to any amendment or re-enactment of such legislation;
- (b) the value of any Contract are to the total estimated aggregate gross value payable over the full period of the Contract including any options or extensions to the Contract without any deduction for income due to the Contractor or the Council;
- (c) the singular include the plural and vice versa;
- (d) the masculine include the feminine and vice versa;
- (e) Directors, the CD-SR and the ACE(LDS) shall be taken to include such Officers as are designated by those officers to undertake the duties and responsibilities set out in these Rules, except in the case of the following Rules:-

- (i) Director - **Rules 9.6, 16.1(d), (g) and (h), and 16.3(b)**
- (ii) CD-SR - **Rules 2.1, 2.4, 2.5, 9.6, 16.1(d), (g) and (h), 16.3(b), 16.4, 16.5, and 17.2**
- (iii) ACE(LDS) - **Rules 2.1, 2.4, 9.6, 16.3(b), 16.4 and 18.1**

where delegation is not permitted. A record of all duties and responsibilities as delegated under these Rules is to be maintained by each Director, the CD-SR and the ACE(LDS).

2 GENERAL

- 2.1 These Rules are made by the Council on the advice of the CD-SR (in consultation with the ACE(LDS)) under Article 14.02 of the Constitution and define the correct procedures to be followed when the Council enters into any contractual arrangement and should be read in conjunction with the Financial Procedure Rules under Article 14.01 of the Constitution.
- 2.2 These Rules apply to all Contracts for Works, Supplies, Services or Social and Other Specific Services but do not apply to:-
 - (a) contracts of employment;
 - (b) property contracts (which are covered by the Property Procedure Rules); and
 - (c) financial instruments (including, but without limitation, shares, bonds, bills of exchange, future or options contracts) (which are covered by the Financial Procedure Rules).
- 2.3 The CD-SR (in consultation with the ACE(LDS)) shall review the application and effect of these Rules and make an annual report or as required but no less than once per year to the Audit Committee recommending such amendments to the Rules as are considered appropriate.
- 2.4 The CD-SR has produced a Procurement Manual which sets out important issues to be considered in the procurement context. These Rules should be read in conjunction with the Procurement Manual.
- 2.5 The CD-SR has also produced a Finance Manual which gives advice on financial procedures.
- 2.6 Where a Contract for the acquisition or hire of goods or services involves any form of Leasing Agreement to finance the transaction then the CD-SR shall undertake the negotiation of terms and authorise the arrangement in accordance with Rule 9.3 of the Financial Procedure Rules.
- 2.7 Directors and the HoP shall ensure that all documentation relating to Contracts and procurement processes is retained in accordance with the Council's Records Retention and Destruction Schedule.
- 2.8 Where the Council has awarded a Contract to any person to supervise or otherwise manage a Contract on its behalf such a person shall be required to comply with these Rules as if they were an Officer of the Council.
- 2.9 Wherever appropriate procurement shall be undertaken using the standard precedent documents contained in the Procurement Manual applying to SQ's, ITT's or ITBs. Wherever alternative documents are to be used they must be approved by the HoP and where appropriate the ACE(LDS).

- 2.10 All Officers shall adhere to the approved Procurement and Contract Management Strategy of the Council.
- 2.11 Where the Council is procuring in partnership with another Authority who are the lead procurer, subject to agreement from the HoP, the Council will follow the lead procurers Procurement and Contract Procedure Rules or equivalent.
- 2.12 Where the total Contract value for procurement is within the values in the first column of Tables 1-4, below, the award procedure in the second column must be followed.

Table 1: Goods and Services (excluding Social & Other Specific Services)

Total Contract Value	Award Procedure	Signature/Sealing Contract
Up to £25,000	Quotes should be invited in accordance with Rule 8 . Quotes do not need to be advertised using the E-Sourcing system or Contracts Finder. If Quotes are not obtained the Best Value Form must be completed.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).
£25,001 up to EU Threshold (currently £181,302)	Bids must be invited in accordance with Rule 9 . These must be advertised using the E-Sourcing system and published to Contracts Finder.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).
Above EU Threshold (currently £181,302)	Follow the appropriate EU Procedure as set out in Rules 11 and 12 . Approval must be sought through the Gateway Process.	Two signatures: The Director (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation). AND The ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation). Sealing (where appropriate) ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation) in accordance with Rule 6 .

Table 2: Works

Total Contract Value	Award Procedure	Signature/Sealing Contract
Up to £25,000	Quotes should be invited in accordance with Rule 8 . Quotes do not need to be advertised using the E-	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign

Total Contract Value	Award Procedure	Signature/Sealing Contract
	Sourcing system or Contracts Finder. If Quotes are not obtained the Best Value Form must be completed.	on the Directors behalf, as defined in the Scheme of Delegation).
£25,001 up to EU Threshold (currently £4,511,413 for Works)	Bids must be invited in accordance with Rule 9 . These must be advertised using the E-Sourcing system and published to Contracts Finder. For Contracts with a value of £1m+, approval must be sought through the Gateway Process.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation). Contracts with a value in excess of £1m must be sealed by ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation) in accordance with Rule 6 .
Above EU Threshold (currently £4,511,413 for Works)	Follow the appropriate EU Procedure as set out in Rules 11 and 12 . Approval must be sought through the Gateway Process.	Contracts must be sealed by ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation) in accordance with Rule 6 .

Table 3: Social & Other Specific Services

Total Contract Value	Award Procedure	Signature/Sealing Contract
Up to £25,000	Quotes should be invited in accordance with Rule 8 . Quotes do not need to be advertised using the E-Sourcing system or Contracts Finder. If Quotes are not obtained the Best Value Form must be completed.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).
£25,001 up to EU Threshold (currently £615,278)	Bids must be invited in accordance with Rule 9 . These must be advertised using the E-Sourcing system and published to Contracts Finder.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).
Above EU Threshold (currently £615,278)	Follow the appropriate EU Procedure as set out in Rules 11 and 12 . Approval must be sought through the Gateway Process.	Two signatures The Director (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation). AND The ACE(LDS) (or by an Officer authorised by the ACE (LDS) to

		<p>sign on his behalf, as defined in the Scheme of Delegation).</p> <p>Sealing (where appropriate) ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation) in accordance with Rule 6.</p>
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Table 4: Grants

Total Contract Value	Award Procedure	Signature/Sealing of Contract
Up to £175,000 over 3 years	<p>A competitive application process should be completed in accordance with Rule 22. Competitive applications do not need to be advertised using the E-Sourcing system or Contracts Finder.</p> <p>If competitive applications are not obtained the Best Value Form must be completed.</p>	<p>One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).</p>
Above - £175,000 – relevant EU Threshold	<p>A competitive application process must be completed. This should be advertised using the E-Sourcing system. The use of Contracts Finder is not mandatory.</p>	<p>One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).</p>
Above EU Threshold	<p>Where the grant value meets the relevant EU Threshold the Gateway Process must be completed. A competitive process must be completed. The opportunity must be advertised using the E-Sourcing system. The use of Contracts Finder is not mandatory.</p>	<p>Two signatures The Director (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation). AND The ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation).</p> <p>Sealing (where appropriate) ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf), as defined in the Scheme of Delegation) in accordance with Rule 6.</p>

3 COMPLIANCE WITH LEGISLATION AND STANDARDS

- 3.1 Every Contract shall comply with all relevant applicable legislation and government guidance including:-

- (a) EU Law;
 - (b) Acts of Parliament;
 - (c) Statutory Instruments including, but without limitation, the Public Contracts Regulations 2015.
- 3.2 Where relevant, every Contract shall specify that materials used, goods provided, services supplied or works undertaken (as the case may be) shall comply with applicable standards. Such standards are, in order of priority:-
- (a) EU Standards;
 - (b) British Standards implementing international standards;
 - (c) British Standards.

4 POWERS AND KEY DECISIONS

- 4.1 In consultation with the ACE(LDS) Directors shall ensure that the Council has the legal power to enter into any Contract and that in respect of all Contracts, regardless of whether they involve the procurement or provision by the Council of Works, Supplies, Services or Social and Other Specific Services Directors shall ensure that no Contract shall be entered into which is ultra vires.
- 4.2 Directors shall ensure that a written record of the decision to procure a Contract is made in accordance with the Gateway Process where **Rule 18** applies. Where such a decision comprises a Key Decision under the Constitution, Directors shall ensure that it is entered on to the Forward Plan and treated as a Key Decision in all respects.

5 FORM OF CONTRACT

- 5.1 Every Contract shall be evidenced in writing (by the use of a purchase order, exchange of correspondence or other written medium). A signed Contract must be in place on or before the service commencement date, unless otherwise agreed by the HoP or ACE(LDS).
- 5.2 Wherever appropriate, and for all Contracts exceeding £25,000 in value, such written agreements shall be made on the basis of terms and conditions agreed by the ACE(LDS). Such terms and conditions may be incorporated into standard order conditions. The Council may accept different terms and conditions proposed by a Contractor provided that the advice of the ACE(LDS) or CD-SR as to their effect has been sought and considered.
- 5.3 The written form of agreement must clearly specify the obligations of the Council and the Contractor and shall include:-
- (a) the work to be done or the Supplies, Services or Social and Other Specific Services to be provided;
 - (b) the standards which will apply to what is provided;
 - (c) the price or other consideration payable;

(d) the time in which the Contract is to be carried out;

(e) the remedies which will apply to any breach of Contract.

5.4 The written form of agreement for all Contracts exceeding £25,000 in value must include the following or equivalent wording:-

(a) "If the Contractor:-

(i) Has offered any gift or consideration of any kind as an inducement or disincentive for doing anything in respect of this Contract or any other Contract with the Council; or

(ii) Has committed any offence under the Bribery Act 2010; or

(iii) Has committed an offence under Section 117 (2) of the Local Government Act 1972;

the Council may terminate the Contract immediately and will be entitled to recover all losses resulting from such termination".

(b) "If the Contractor is in persistent and/or material breach of Contract the Council may terminate the Contract and purchase the Supplies, Works, Services or Social and Other Specific Services from a third party and the Council may recover the cost of doing so from the Contractor."

5.5 The standard clauses contained in the Procurement Manual relating to the Freedom of Information Act 2000 and the Data Protection Act 2018 shall, wherever possible, be included in all Contracts exceeding £25,000 in value.

5.6 Other standard clauses are contained in the Procurement Manual relating to, for example, equalities, the Public Services (Social Value) Act 2012, sustainability and best value; these are not mandatory for each such written agreement referred to in **Rule 5.4** above, but should be included where appropriate.

6 SIGNATURE/SEALING OF CONTRACTS

6.1 Every written Contract must be either signed or sealed in accordance with this Rule. The ACE(LDS) (or an Officer authorised by the ACE(LDS)) will determine whether a Contract must be signed or sealed.

6.2 The ACE(LDS) and such of his staff as he may designate are authorised to sign any such Contract.

6.3 The ACE(LDS) also authorises such Contracts to be signed as outlined in **Rule 2.12**, **Tables 1-4** and **Rule 1.3 (e)** provided that:-

(a) appropriate authority exists for the Council to enter into the Contract; and

(b) the Contract is either:-

(i) in a nationally recognised form; or

- (ii) a standard form prepared or approved by the ACE(LDS); or
 - (iii) is otherwise in a form approved by the ACE(LDS); and
- (c) any variations to approved forms of Contract must themselves be approved by the ACE(LDS), whether or not they are effected by amending the Contract itself or by correspondence.
- 6.4 Only the ACE(LDS) (or a Legal and Democratic Services' Officer (LDSO) authorised by the ACE(LDS)) may seal a Contract on behalf of the Council, in each case being satisfied that there is appropriate authority to do so.
- 6.5 Signatures may be affixed to a Contract either using physical, handwritten means or an Electronic Signature, as appropriate and in accordance with both UK and European law.
- 6.6 Electronic Signatures may only be affixed using the Council's chosen electronic signature system or an approved alternative.
- 6.7 The use of Electronic Signatures is not permitted in circumstances where:
 - (a) the Contract is to be sealed;
 - (b) a physical handwritten signature needs to be filed;
 - (c) there is a proviso in the Contract which prevents the use of an Electronic Signature;
 - (d) the Contract may need to be enforced in a jurisdiction where Electronic Signatures are not accepted;
 - (e) the Contract needs to be notarised.

7 BONDS AND LIQUIDATED DAMAGES

- 7.1 Where appropriate Directors (in consultation with the CD-SR) shall consider whether to include provision for the payment of liquidated damages by a Contractor for breach of Contract. Such consideration shall be recorded in the Gateway Process (Stage 1).
- 7.2 Where considered appropriate by a Director (in consultation with the CD-SR), the Contractor will be required to provide a performance bond to secure the performance of the Contract. Such performance bonds should provide for a sum of not less than 10% of the total value of the Contract or such other sum as the CD-SR considers appropriate.
- 7.3 Agreements made under Section 38 (adoption of new highways) or Section 278 (development of existing highways) of the Highways Act 1980 shall always include provision for a bond in respect of such sum as the Corporate Director Business and Environmental Services shall consider appropriate except where:-
 - (a) the identity of the developer renders the need for a bond unnecessary; or
 - (b) adequate alternative security is provided; or
 - (c) the Corporate Director Business and Environmental Services (in consultation with the CD-SR) agrees that it is inappropriate for a bond to be required.

8 QUOTES

- 8.1 Where the estimated value of a Contract is £25,000 or less (taking into account the whole life cost of the Contract, including extensions and/or variations and excluding VAT) a minimum of three quotes should be sought. There is no requirement to use the E-Sourcing system or publish the opportunity on Contracts Finder.
- 8.2 It is the Officers responsibility to keep a record of quotes sought for audit purposes and to demonstrate that best value has been achieved.
- 8.3 If three quotes are not sought the Contract may be directly awarded using the Best Value Form. It is the Officers responsibility to complete the Best Value Form.

9 BIDS

- 9.1 If the estimated value of a Contract exceeds £25,000 but is less than the appropriate EU Threshold, Bids must be invited from all potential Contractors in accordance with **Rule 2.12, Tables 1-4**. A notice advertising the opportunity shall be published through the E-Sourcing System and on Contracts Finder and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the value, location and subject matter of the Contract. The notice shall specify brief details of the Contract, how the ITB documents may be obtained and the closing date for receipts of Bids by the Council.
- 9.2 All potential Contractors invited to submit Bids shall be provided in all instances with identical information and instructions. Where considered appropriate, Directors may permit potential Contractors who have been invited to submit Bids under **Rule 9.1** to also submit variant Bids (i.e. Bids which do not comply with some or all of the requirements of the primary Bid). The same opportunity to submit variant Bids must be given to all potential Contractors.
- 9.3 A written Bid may only be considered if:-
 - (a) it has been received electronically through the E-Sourcing System, or
 - (b) (where permitted in exceptional circumstances) it has been received in a sealed envelope marked "Bid" and indicating the subject matter of the Bid and
 - (c) it has been opened after the expiry of the deadline for submissions and at the same time as other Bids for the same subject matter in the presence of at least two Officers authorised to open Bids.
- 9.4 Before Bids with a value in excess of £25,000 are requested the evaluation criteria must be recorded in writing in the ITB evaluation model. The evaluation criteria must be identified and the weighting between price and quality established and stated in the request for Bids sent to Participants.
- 9.5 If a Bid other than the lowest or the most economically advantageous Bid is to be accepted, the written approval of the Director (in consultation with the CD-SR or if the relevant Director is the CD-SR, in consultation with the Chief Executive) shall be sought and obtained before the Bid is accepted.

- 9.6 A Bid cannot be accepted where the value exceeds the relevant EU Threshold. If the value of the Bid exceeds the relevant EU Threshold a Director must seek tenders in accordance with **Rules 11 and 12**.
- 9.7 Before a Contract is awarded after a Bid exercise such steps shall be taken by the Responsible Officer, in conjunction with the CD-SR, as are reasonably necessary (having regard to the subject matter, value, duration of the Contract and other relevant factors) to complete a risk assessment of the potential Contractor's financial stability.
- 9.8 Bids may be altered only in accordance with **Rule 10**.
- 9.9 Where a Contract is terminated within the first 6 months of the Contract commencement date, the Council may award the Contract to the second-placed supplier, provided this demonstrates Best Value and with agreement from the HoP in consultation with the appropriate SCM.

10 POST BID NEGOTIATION AND CLARIFICATION

- 10.1 Post Bid negotiations may not be undertaken where the value of the Contract exceeds the relevant EU Threshold. If the value of the Bid exceeds the relevant EU Threshold, the Director must invite tenders in accordance with **Rules 11 and 12**.
- 10.2 Post Bid negotiations with selected Participants shall only be carried out where:-
- (a) post tender negotiations are permitted by law; and
 - (b) the Director in consultation with the HoP considers that added value may be obtained; and
 - (c) post Bid negotiations are conducted by a team of suitably experienced Officers approved by the Director and who have been trained in post Bid negotiations; and
 - (d) a comprehensive, written record of the post Bid negotiations is kept by the Director; and
 - (e) a clear record of the added value to be obtained as a result of the post Bid negotiations is incorporated into the Contract with the successful Participant.
- 10.3 **Rules 10.1 and 10.2** shall not operate to prevent clarification of all or part of any Bid to the extent permitted by law and where such clarifications are sought the provisions of **Rules 10.2(c) and 10.2(d)** shall apply, except that the word "clarification" shall be substituted for the word "negotiation" in these Rules.

11 OJEU TENDERS

- 11.1 Tenders for Contracts which exceed the EU Threshold shall be invited and awarded in accordance with the PCRs and as prescribed in **Rules 11 and 12**.

General Requirements

- 11.2 Before an OJEU Tender is requested the evaluation criteria to be applied to the OJEU Tender must be recorded in writing in the ITT evaluation model. The evaluation criteria must be identified and the weighting between price and quality established and stated in the ITT sent to Participants.
- 11.3 Irrespective of the procurement process being undertaken an OJEU notice must be published through the E-Sourcing system.
- 11.4 All Participants invited to submit OJEU Tenders shall be provided in all instances with identical instructions and information.
- 11.5 Where considered appropriate, the HoP may, in consultation with the SCM, permit Participants to submit variant OJEU Tenders (i.e. tenders which do not comply with some or all of the requirements of the primary tender). The same opportunity to submit variant OJEU Tenders shall be given to all Participants. Variant OJEU Tenders shall only be considered if the Participant also submits a compliant primary tender.
- 11.6 The evaluation of the OJEU Tender submissions shall be carried out by Officers who are considered appropriate having regard for the subject matter and value of the Contract.
- 11.7 All Tenders undertaken in accordance with **Rule 11** shall have a minimum of 3 appropriate Officers (excluding the Procurement and Contract Management Service representative) to undertake the evaluation process. The evaluation process will include:
- Individual evaluation assessment and scoring
 - Consensus marking exercise, chaired by a member of the Procurement and Contract Management Service
 - Moderation, where required
 - Independent verification, where required and in accordance with the Gateway Process, Gate 3.
- 11.8 All evaluation panel members must have completed the evaluation training prior to completing any evaluation process.
- 11.9 Where a Contract is terminated within the first 6 months of the Contract commencement date, the Council may award the Contract to the second-placed supplier, with agreement of the HoP in consultation with the ACE(LDS) provided this demonstrates Best Value and none of the original award criteria has changed.

12 OPTIONS FOR OJEU TENDER

- 12.1 The Gateway Process shall identify which of the following OJEU Tender processes shall be used to invite tenders for Contracts with a value in excess of the relevant EU Threshold:
- (i) the Open Procedure (as prescribed by Regulation 27)
 - (ii) the Restricted Procedure (as prescribed by Regulation 28)
 - (iii) the Competitive Procedure with Negotiation (as prescribed by Regulation 29)

- (iv) the Competitive Dialogue Procedure (as prescribed by Regulation 30)
- (v) the Innovation Partnership Procurement (as prescribed by Regulation 31)
- (vi) Negotiated Procedure without prior publication (as prescribed by Regulation 32)
- (vii) Framework Agreement (as prescribed by Regulation 33)
- (viii) Dynamic Purchasing System (as prescribed by Regulation 34)
- (ix) Electronic auctions (as prescribed by Regulation 35)
- (x) Electronic catalogues (as prescribed by Regulation 36)
- (xi) Social and Other Specific Services (Light Touch Regime) (as prescribed by Regulations 74-76)

and such identified process shall be used for the invitation of OJEU Tenders in accordance with the requirements of the PCR's.

13 RECEIPT AND OPENING OF OJEU TENDERS

13.1 A written OJEU Tender may only be considered if:-

- (a) it has been received electronically through the E-Sourcing System; or
- (b) (where permitted under Regulation 84(h)) it has been received in hard copy in a sealed envelope marked "OJEU Tender" and indicating the subject matter of the OJEU Tender, and the identity of the Participant cannot be ascertained from the tender envelope; and
- (c) (subject to **Rule 13.4**) it has been received by the OJEU Tender closing date and time.

13.2 The CD-SR (or a person designated by him) shall be responsible for the reception and safe custody of OJEU Tenders until they are opened.

13.3 OJEU Tenders, whether electronic or hard copy must be opened at the same time and in the presence of the CD-SR (or a person designated by him) or, where the Procurement and Contract Management Services is undertaking the procurement, the ACE(LDS) (or an Officer designated by him). The E-Sourcing System records the date and time of OJEU Tender opening, the identity of the Officer(s) present, the identities of Participants and the tendered sums. Where permitted under Regulation 84(h) of the PCRs and OJEU Tenders are returned in hard copy format a written record shall be maintained by the HoP, of the OJEU Tenders received. Such a record shall include the date and time of OJEU Tender opening, the identity of the Officer(s) present, the identities of Participants and the tendered sums (where readily ascertainable).

13.4 If an OJEU Tender is received after the specified closing date and time it may not be considered unless the HoP is satisfied that the OJEU Tender was submitted electronically or posted or otherwise dispatched in sufficient time to be delivered before the specified time but that delivery was prevented by an event beyond the control of the Participant.

14 OJEU TENDER EVALUATION AND ACCEPTANCE

- 14.1 The Responsible Officer shall evaluate OJEU Tenders using the evaluation model published in accordance with **Rule 11.2**.
- 14.2 Only in circumstances where an OJEU Tender is agreed by the CD-SR to be an abnormally low tender in accordance with the PCR's can an OJEU Tender other than the MEAT be accepted. In those circumstances a signed and dated record of the reasons for the action taken shall be made within the Gateway Process (Gate 3).
- 14.3 If, as a result of the OJEU Tender evaluation process the HoP is satisfied that an arithmetical error has been made inadvertently by a Participant such an error may, after clarification with the Participant, be corrected. The HoP shall record any such clarification in writing.
- 14.4 Before a Contract is awarded the HoP shall, in consultation with the SCMs, determine whether it is proportionate and appropriate to complete a risk assessment to ascertain the financial stability of the successful Participant. The risk assessment shall take into account the subject matter, complexity, duration, value and any other such factors as may be deemed to be relevant. This shall be recorded in accordance with the Gateway Process (Gate 3) where appropriate.
- 14.5 On completion of the evaluation of the OJEU Tenders received and once all internal approvals have been obtained through the Gateway Process (Gate 3), the HoP (or an Officer authorised by the HoP) shall write to all Participants informing them of the outcome of the OJEU Tender evaluation and providing feedback on the content of their submission, in accordance with Regulation 55 of the PCR's.
- 14.6 The HoP (or an Officer authorised by the HoP) shall wait a minimum of ten days (15 days if not sent electronically) from the date of issue of the letters notifying the Participants of the result of the evaluation before completing the Contract with the successful Participant.
- 14.7 The HoP (or an Officer authorised by the HoP) shall send for publication a Contract Award Notice stating the outcome of the procurement procedure no more than 30 days after the award of the Contract.

15 CERTIFICATION OF CONTRACTS

- 15.1 The Local Government (Contracts) Act (LGCA) 1997 clarified the power of local authorities to enter into certain Contracts, including Private Finance Initiative Contracts. Where Contracts need to be certified under the 1997 Act, only the following Officers are authorised to do so: the Corporate Director Children and Young People's Service, the Corporate Director Business and Environmental Services, the Corporate Director Health and Adult Services, the Director of Public Health, the ACE(LDS) and the CD-SR. Any Contract which requires certifying as a LGCA Contract, must have approval from the Council's Executive.

16 EXCEPTIONS TO PROCUREMENT AND CONTRACT PROCEDURE RULES

16.1 A Director does not need to invite bids in accordance with **Rule 9** in the following circumstances:-

- (a) purchases via Framework Agreements which have been established either by the Council or by other public sector bodies or consortia (including, but not limited to PSBOs) and where such framework agreements are lawfully accessible to the Council. Contracts awarded from such Framework Agreements shall be awarded in accordance with the provisions of that Framework Agreement; or
- (b) the instruction of Counsel by the ACE(LDS); or
- (c) where a grant or other external funding is received by the Council, either in its own right or as an accountable body, and the terms of such grant or other external funding state that such grant or other external funding must be applied in accordance with the terms of such grant or other external funding; or
- (d) purchases at public auctions (including internet auction sites, e.g. Ebay) where the Director is satisfied that value for money will be achieved; or
- (e) the purchase of Supplies, Works, Services or Social and Other Specific Services which are of such a specialised nature as to be obtainable from one Contractor only; or
- (f) repairs to or the supply of parts for existing proprietary machinery or plant where to obtain such supplies from an alternative supplier would invalidate the warranty or contractual provisions with the existing supplier; or
- (g) Social or Other Specific Services Contracts where:-
 - (i) the service is currently supplied by a Contractor to the satisfaction of the relevant Corporate Director, is considered to be offering value for money and where the foreseeable disruption to service users cannot justify the invitation of further bids; or
 - (ii) the service is of a specialist or personal nature and where service users must be involved in the selection of the Contractor and where the Corporate Director Health and Adult Services and the Corporate Director Children and Young People's Service considers it inappropriate for bids to be invited; or
 - (iii) where the relevant Corporate Director is satisfied that the urgency of the need for the service prevents the invitation of bids in which case consideration shall be given to the duration of that service; or
- (h) Contracts where the Director with the agreement of the HoP agree that for reasons of extreme urgency brought about by unforeseeable events unattributable to the Council, the timescales for obtaining bids cannot be met. A written record shall be signed and dated by the Director, whenever this Rule applies.

16.2 Where any of the exceptions set out in **(d) to (h)** above are applied a Directors Recommendation, in consultation with the relevant SCMs, shall be signed, dated and kept. The Procurement and Contract Management Service shall maintain a register of all recommendations made under this Rule.

16.3 A Director does not need to invite OJEU Tenders in accordance with **Rule 11 and 12**, in the following circumstances:-

(a) purchases via Framework Agreements which have been established either by the Council or by other public sector bodies or consortia (including, but not limited to PSBO's) and where such Framework Agreements are lawfully accessible to the Council. Contracts awarded from such Framework Agreements shall be awarded in accordance with the provisions of that Framework Agreement. Where appropriate Officers should apply a minimum 10 day standstill period for all call-off Contracts awarded under an existing Framework Agreement. This is not mandatory but is deemed best practice; or

(b) where:-

(i) Regulations 12 or 72 of the PCRs apply; or

(ii) any other specific exclusions as set out in the PCRs apply;

and the ACE(LDS), the relevant Director and CD-SR are in agreement. A written record shall be signed and dated whenever this Rule applies and the Procurement and Contract Management Service shall maintain a register of such written records.

Waivers

16.4 Specific exceptions to **Rule 9** are permitted in such other circumstances as the CD-SR and the ACE(LDS) may agree.

16.5 Requests for waivers shall be made using the Waiver Request Form prescribed by the CD-SR which shall specify the reasons for the request.

16.6 Any requests for waivers shall be made in consultation with the relevant SCMs, and be signed, dated and kept. The Procurement and Contract Management Service shall maintain a register of all waivers made under this Rule.

17 COMPLIANCE, CONTRACT REGISTER AND FORWARD PROCUREMENT PLANS

17.1 Every Officer shall comply with these Rules and any unauthorised failure to do so may lead to disciplinary action.

17.2 The CD-SR shall be responsible for monitoring adherence to these Rules.

17.3 The HoP shall nominate a representative to act as a key contact point in relation to procurement matters for spend categories; such representatives shall be termed SCMs.

17.4 Each Director, in conjunction with the HoP, shall take all such steps as are reasonably necessary to ensure that Officers within their Directorate are aware of and comply with these Rules, the Procurement Manual and the Finance Manual referred to in **Rule 2.5**.

17.5 SCMs are responsible for the production of a spend category FPP which will be completed in such format as the HoP shall require.

- 17.6 The SCMs shall each present an updated category FPP to the relevant directorate management teams every 6 months for approval.
- 17.7 An annual report on procurement matters, such report to include an annual procurement plan and actions arising from the annual procurement plan, will be presented to a meeting of the Audit Committee.
- 17.8 The Council maintains a Contract Register the purpose of which is to record key details of all Contracts with an aggregate value of £25,000 or more.
- 17.9 All Responsible Officers will notify the Procurement and Contract Management Service of any Contract awarded below £25,000. The Responsible Officer will use the format prescribed by the Procurement and Contract Management Service and report this information quarterly.
- 17.10 The CM shall ensure that:-
- (a) all relevant Contracts (including those Contracts to which **Rule 16** applies) are entered onto the Contract Register
 - (b) the Contract Register is maintained by entering new Contracts onto it and removing expired Contracts from it in line with the Council's Records Retention and Destruction Schedule.

Contracts Finder

- 17.11 When a Procurement leading to a Contract in excess of £25,000 is awarded the Procurement and Contract Management Service shall ensure that such information as is prescribed in the PCRs is published on Contracts Finder via the E-Sourcing system. This does not apply to Grants as detailed in **Rule 2.12 Table 4**.

18 GATEWAY PROCESS REPORTS INCLUDING NOTIFICATION OF SECTION 151 OFFICER AND MONITORING OFFICER

- 18.1 When a procurement is being considered which is expected to exceed the financial value thresholds specified in **Rule 18.2** the Gateway Process must be completed and signed off by the relevant Officers, as detailed in Table 5 below.

Table 5: Gateway Process - Authorisation to Approve

Gateway Process Gate	Approval process
Gate 1 – Commissioning and Procurement Options Appraisal	PAB AND The relevant Director or delegated Assistant Director AND Finance – CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate.</i> AND The ACE(LDS)
Gate 2 – Authorisation of Documents	SCM

Gate 3 – Contract Award	PAB AND The relevant Director or delegated Assistant Director AND Finance – CD-SR or delegated Assistant Director – <i>Procurement Assurance Board to decide as appropriate.</i>
Gate 4(a) – Contract Extension/Variation	PAB AND The relevant Director or delegated Assistant Director AND Finance – CD-SR or delegated Assistant Director – <i>Procurement Assurance Board to decide as appropriate.</i> AND, where appropriate ACE(LDS) – <i>only in cases where the extension is not part of the original Contract.</i>
Gate 4(b) – Contract Termination (during the Contract period)	PAB AND The relevant Director or delegated Assistant Director AND Finance – CD-SR or delegated Assistant Director – <i>Procurement Assurance Board to decide as appropriate.</i>

18.2 The whole Contract financial value thresholds for the purposes of **Rule 18.1** are:

- (a) Works Contracts - £1m
- (b) Social and Other Specific Services Contracts - £615,278
- (c) Supplies and Services Contracts - £181,302.

18.3 No action leading towards procurement, including any steps to undertake a further competition under an existing PSBOs framework arrangement or other legally compliant framework agreement accessible by the Council, shall be undertaken until confirmation of the process has been given under the terms set out in **Rule 18.1**.

19 CONTRACT MANAGEMENT

19.1 The Responsible Officer, shall take all such steps as are appropriate to monitor and review the performance of the Contract, having regard to its value, nature, duration and subject matter. As part of the monitoring and review process the Responsible Officer shall maintain adequate records of Contract performance and details of review meetings with the Contractor. Such records and details shall be made available to Internal Audit whenever required and shall be recorded in any relevant Gateway Process report

(Gate 4). Such records shall also be used on the basis for any permitted extension to the Contract.

19.2 Where appropriate the Responsible Officer involved in contract management shall have received a level of formal training commensurate with the nature of the Contract.

19.3 Where appropriate the Responsible Officer will attend the Contract Management Practitioners Group.

Contract Variation

19.4 Contracts with a value below the relevant EU Threshold may be varied or extended in accordance with the terms of that Contract. Any proposed variations which have the effect of materially changing the Contract must be approved by the ACE(LDS), whether or not they are effected by amending the Contract itself or by correspondence.

19.5 Contracts with a value in excess of the relevant EU Threshold may be varied or extended in accordance with the terms of that Contract or as outlined in Regulation 72 of the PCRs. Approval must be sought in accordance with **Rule 18.1**, (Table 5 - Gateway Process - Authorisation to Approve Gate 4a).

Contract Termination

19.6 If an Officer requires a Contract which exceeds the financial values stated in **Rule 18.2** to be terminated then this must be done in accordance with the terms of the Contract. Approval must be sought in accordance with **Rule 18.1**, (Table 5 - Gateway Process - Authorisation to Approve Gate 4b).

20 TRAINING FOR PROCUREMENT

20.1 Where appropriate any Officer involved in procurement activities shall have received a level of formal training commensurate with the nature of the procurement activity being undertaken.

21 DECLARATION OF INTERESTS

21.1 To ensure that persons involved in the procurement process are aware of, and adhere to the principles of impartiality and professional standards when dealing with, and completing commercial undertakings, a Conflict of Interest and Confidentiality Undertaking Declaration form is required. This must be completed by all members of the evaluation panel upon commencement of the project.

21.2 If it comes to the knowledge of a Member, Responsible Officer or other Officer that a Contract in which they have an interest (determined in accordance with the Members' and/or Officers' Code of Conduct as appropriate) has been or is proposed to be entered into by the Council, they shall immediately give written notice to the ACE(LDS).

22 GRANTS

- 22.1 The Council cannot procure services which it is itself required to deliver by means of a grant. The Council may grant-fund third party organisations to help deliver community cohesion or to provide complementary activities.
- 22.2 Taking into account 22.1 above Directors and the HoP shall consider when procuring the provision of the Services, Supplies Works or Social & Other Specific Services, whether a grant would be a preferable means to achieving its objectives rather than following a competitive Bid process. A grant may only be awarded in circumstances where:-
- There is the legal power to make a grant for the purpose envisaged;
 - It does not contravene EU rules on state aid.
- 22.3 Where the value of a Grant is less than £175,000 over 3 years, the Director shall have the discretion to conduct a competitive application process for the award of that Grant if doing so demonstrates best value for the Council. If a Director is not conducting a competitive application process then the Best Value Form must be completed to capture the rationale for the decision.
- 22.4 Where the value of the Grant exceeds £175,000 over 3 years but is less than the relevant EU Threshold detailed in **Rule 2.12 Table 4** a competitive grants process must be completed. The opportunity must be advertised on the Council's E-Sourcing system.
- 22.5 Where the value of a Grant exceeds the relevant EU Thresholds, the Gateway Process must be completed in accordance with **Rule 18**. A competitive process must be completed and the opportunity must be advertised on the Council's E-Sourcing system.
- 22.6 The Responsible Officer shall take all such steps as are appropriate to monitor and review the performance of the grant agreement, having regard to its value, nature, duration and subject matter. As part of the grant monitoring and review process the Responsible Officer shall maintain adequate records of performance and details of review meetings with the grant recipient.

23 HIRING AND ENGAGING STAFF

- 23.1 Where an Officer is hiring or engaging a staff member who is not on the Council payroll there is a legal requirement to determine whether it is the responsibility of the Council to deduct tax and national insurance at source, in accordance with the requirements of the Social Security Contributions (Intermediaries) Regulations 2000, as amended (IR35).

Appendix 3NORTH YORKSHIRE COUNTY COUNCIL CONSTITUTIONSUGGESTED AMENDMENTS

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
Contents (p3)	Contents (p3)	Part 4 – Rules of Procedure Contract Procedure Rules	Part 4 – Rules of Procedure Procurement and Contract Procedure Rules	To reflect change in name of Rule.
Index (p5)	Index (p5)	Contract Procedure Rules	Procurement and Contract Procedure Rules	To reflect change in name of Rule.
Article 13 13.03 Types of Decision	Article 13 13.03 Types of Decision	(a) Decisions reserved to full Council. Decisions relating to the functions listed in Article 4.02 will be made by the full Council and not delegated. (b) Key decisions. (i) A key decision means a decision made in connection with the discharge of a function which is the responsibility of the Executive and which is likely: ♦ to result in the Council incurring expenditure, or making savings, which are significant having regard to the Council's budget for the service or function to which the decision relates; or	(a) Decisions reserved to full Council. Decisions relating to the functions listed in Article 4.02 will be made by the full Council and not delegated. (b) Key decisions. (i) A key decision means a decision made in connection with the discharge of a function which is the responsibility of the Executive and which is likely: (aa) to result in the Council incurring expenditure, or making savings, which are significant having regard to the Council's budget for the service or function to which the decision relates; or (bb) to be significant in terms of its effects on more than one community. (ii) For the purposes of (i) (aa) above, savings or expenditure are significant if they are equal to or greater than £500,000 or 20% of the gross expenditure of the relevant budget service area (as explained in the Financial Procedure Rules relating to virement) whichever is the less, but, subject to (i) (bb) above, does not include: • a decision concerning a bid for funding;	To provide clarity on application of the Rule.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>♦ to be significant in terms of its effects on more than one community.</p> <p>(ii) For the purposes of (i) above, savings or expenditure are significant if they are equal to or greater than £500,000 or 20% of the gross expenditure of the relevant budget service area (as explained in the Financial Procedure Rules relating to virement) whichever is the less, but does not include:</p> <ul style="list-style-type: none"> ♦ a decision taken for the purpose of implementing an earlier key decision; ♦ a decision concerning a bid for funding; ♦ a decision taken on expenditure within budget approved by Council on items necessary for normal operational service delivery. <p>Access to information legislation sets out additional requirements upon local authority decision-making in relation to key decisions. These are incorporated in the Council's Access to</p>	<ul style="list-style-type: none"> • a decision taken on expenditure specifically identified within budget approved by Council on items necessary for normal operational service delivery. <p>NB: Where the decision will also have a significant impact on more than one community (as well as the significant financial impact) then the above exclusions should not generally be relied upon.</p> <p>(iii) For the purposes of (i) (aa) and (bb) above, a key decision does not include:</p> <ul style="list-style-type: none"> • a decision taken for the purpose of implementing an earlier key decision. <p>Access to information legislation sets out additional requirements upon local authority decision-making in relation to key decisions. These are incorporated in the Council's Access to Information Procedure Rules in Part 4 of the Constitution.</p> <p>(iv) A decision maker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution.</p>	

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Information Procedure Rules in Part 4 of the Constitution. (iii) A decision maker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution.		
Article 14 14.02 Contracts (p57)	Article 14 14.02 Contracts (p57)	Every contract made by the Council will comply either with the Contract Procedure Rules or Property Procedure Rules (set out in Part 4 of this Constitution) as appropriate.	Every contract made by the Council will comply either with the Procurement and Contract Procedure Rules or Property Procedure Rules (set out in Part 4 of this Constitution) as appropriate.	To reflect change in name of Rule.
Part 4 Rules of Procedure (p173)	Part 4 Rules of Procedure (p173)	7 Contract Procedure Rules	7 Procurement and Contract Procedure Rules	To reflect change in name of Rule.
Financial Procedure Rules 1.2 (p249)	Financial Procedure Rules 1.2 (p249)	Contract Procedure Rules	Procurement and Contract Procedure Rules	To reflect change in name of Rule.
Financial Procedure Rules 1.3 (p249)	Financial Procedure Rules 1.3 (p249)	The Constitution defines the rules governing the procedures of the Council including Responsibility for executive and non-executive functions, Access to Information	The Constitution defines the rules governing the procedures of the Council including Responsibility for executive and non-executive functions, Access to Information Procedure Rules, Procurement and Contract Procedure Rules, the Property Procedure Rules and these Financial Procedure Rules.	To reflect change in name of Rule.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Procedure Rules, Contract Procedure Rules, the Property Procedure Rules and these Financial Procedure Rules.		
Financial Procedure Rules 1.5 (p249)	Financial Procedure Rules 1.5 (p249)	The Contract Procedure Rules define the correct procedures to be followed when the Council enters into any contractual arrangement and should be read in conjunction with these Rules. The Property Procedure Rules define the correct procedures for the acquisition, disposal and redeployment of land and buildings and also cover other property related matters.	The Procurement and Contract Procedure Rules define the correct procedures to be followed when the Council enters into any contractual arrangement and should be read in conjunction with these Rules. The Property Procedure Rules define the correct procedures for the acquisition, disposal and redeployment of land and buildings and also cover other property related matters.	To reflect change in name of Rule.
Financial Procedure Rules 2.1 (p250)	Financial Procedure Rules 2.1 (p250)	CPR means the Contract Procedure Rules.	PCPR means the Procurement and Contract Procedure Rules.	To reflect change in name of Rule.
Financial Procedure Rules 2.3 (b) (p251)	Financial Procedure Rules 2.3 (b) (p251)	The CPR apply to the procurement of works, supplies and services.	The PCPR apply to the procurement of works, supplies and services.	To reflect change in name of Rule.
Financial Procedure Rules 4.2	Financial Procedure Rules 4.2	These Rules apply to all activities of the Council although the CD-SR may approve variations from the	These Rules apply to all activities of the Council although the CD-SR may approve variations from the Rules to reflect specific circumstances. At present the only approved variations relate to	To reflect change in name of Rule.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
(p252)	(p252)	Rules to reflect specific circumstances. At present the only approved variations relate to primary/secondary/special schools operating under the approved LMS Contract Procedure Rules and LMS Financial Procedure Rules. No other variations from the Rules have currently been approved.	primary/secondary/special schools operating under the approved LMS Procurement and Contract Procedure Rules and LMS Financial Procedure Rules. No other variations from the Rules have currently been approved.	
Financial Procedure Rules 9.0 Preamble (p264)	Financial Procedure Rules 9.0 Preamble (p264)	<i>This Rule refers to the arrangements under which Budget Holders shall undertake the procurement of the services and assets they require and, where relevant, the disposal of surplus assets. They do not apply to Property (ie land and buildings). Property transactions are regulated by the PROPERTY PROCEDURE RULES. These Rules should be read in conjunction with the CONTRACT PROCEDURE RULES which describe in detail the procedures Officers must follow when procuring services, assets and property.</i>	<i>This Rule refers to the arrangements under which Budget Holders shall undertake the procurement of the services and assets they require and, where relevant, the disposal of surplus assets. They do not apply to Property (ie land and buildings). Property transactions are regulated by the PROPERTY PROCEDURE RULES. These Rules should be read in conjunction with the PROCUREMENT AND CONTRACT PROCEDURE RULES which describe in detail the procedures Officers must follow when procuring services, assets and property.</i>	To reflect change in name of Rule.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
Financial Procedure Rules Responsibilities of a Director 9.1 (p264)	Financial Procedure Rules Responsibilities of a Director 9.1 (p264)	the procurement of all supplies, services and assets (but not Property) relating to the provision of services by his Directorate	In conjunction with the HoP, the procurement of all supplies, services and assets (but not Property) relating to the provision of services by his Directorate	To mirror Rule PCPR 17.4 (16.4)
Financial Procedure Rules Responsibilities of a Director 9.1 (p264)	Financial Procedure Rules Responsibilities of a Director 9.1 (p264)	ensuring adherence to the approved Procurement Strategy of the Council	ensuring adherence to the approved Procurement and Contract Management Strategy of the Council	To reflect reference to Contract Management in Strategy.
Financial Procedure Rules Disposal of Assets 9.8 (p265)	Financial Procedure Rules Disposal of Assets 9.8 (p265)	The procedures defined in the Contract Procedure Rules apply to the disposal of any assets of the Council. In particular no quotations or tenders for other than the highest price shall be accepted without reference to Contract Procedure Rules 8.6, 8.8 and 8.10 and/or 9.3 and 12.2 as appropriate. The provisions of Contract Procedure Rule 13 shall also apply to any post tender negotiation or clarification.	The procedures defined in the Procurement and Contract Procedure Rules apply to the disposal of any assets of the Council. In particular no quotations, bids or tenders for other than the highest price shall be accepted without reference to the Procurement and Contract Procedure Rules 9.5 and 9.7 and/or 10.3 and 13.2 as appropriate. The provisions of Procurement and Contract Procedure Rule 14 shall also apply to any post tender negotiation or clarification.	To reflect change in name of Rule and change to Rule references.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
Property Procedure Rules 2.4 (p306)	Property Procedure Rules 2.4 (p306)	The Council has made Financial Procedure Rules ('FPR') which apply to budgetary and other issues relating to property; the FPR shall be applied in conjunction with these Rules. The Council has also made Contract Procedure Rules, but they do not apply to Property Contracts.	The Council has made Financial Procedure Rules ('FPR') which apply to budgetary and other issues relating to property; the FPR shall be applied in conjunction with these Rules. The Council has also made Procurement and Contract Procedure Rules, but they do not apply to Property Contracts.	To reflect change in name of Rule.