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Date: **19 August 2013**
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STANDARDS COMMITTEE

4 SEPTEMBER 2013

A meeting of the Standards Committee will be held at **7.00 pm on Wednesday, 4 September 2013** in the Austen Room, Cecil Street, Margate, Kent.

Membership:

Independent Members; Mr Hills (Chairman), Mrs Frampton (Vice-Chairman), Mrs Bhore and Ms Pearman

Councillors: Grove, E Green, Johnston, Marson, Nicholson, Harrison, Roberts and M Tomlinson and Harrison (*as substitute for Councillor Nicholson*)

Town & Parish Councillors: Cllr Mrs Fletcher, Lawson and Way

S U P L E M E N T A R Y A G E N D A

- | <u>Item No</u> | <u>Subject</u> |
|----------------|---|
| 6. | <u>GUIDANCE FOR COUNCILLORS ON PERSONAL INTERNET BLOGGING AND USE OF SOCIAL MEDIA</u>
Withdrawn |
| 9. | <u>CONTRACT STANDING ORDERS AND PURCHASING GUIDE</u> (Pages 1 - 62) |
| 10. | <u>REVISION TO FINANCIAL PROCEDURE RULES RE REPORTING OF BALANCE SHEET DEBT</u> (Pages 63 - 68) |
| 12. | <u>FILMING OF COUNCIL MEETINGS</u> (Pages 69 - 92) |
| 13. | <u>REVIEW OF DECISIONS MADE IN PRIVATE SESSION</u> (Pages 93 - 102) |

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CONTRACT STANDING ORDERS AND PURCHASING GUIDE

To: **Standards Committee**

Date: **4th September 2013**

Main Portfolio Area: **Business, Corporate and Regulatory Services**

By: **Karen Paton, Strategic Procurement Manager**

Classification: **Unrestricted**

Ward: **(Not applicable)**

Summary: Review of Contract Standing Orders and associated Purchasing Guide

For Decision

1.0 Introduction and Background

- 1.1 This report was submitted and discussed at Constitutional Review Working Party on 21st August 2013.
- 1.2 The Contract Standing Orders (CSO's) and the associated Purchasing Guide were last reviewed by the Standards Committee in March 2012 and the amendments contained recommendations to Council which were adopted in April 2012. Clause 16.1 of the CSOs stipulates that 'these Contract Standing Orders shall be reviewed and updated on a regular basis'. A review to update both documents to reflect both internal changes and external changes in legislation has now been undertaken.

2.0 The Current Situation

- 2.1 The review of Contract Standing Orders and the Purchasing Guide has concentrated on four areas including reinforcement of management protocols in respect of any potential conflict of interest and confidentiality obligations within the procurement process; inclusion of obligations now required of the council under the Public Services (Social Value) Act 2012, realignment of headings of Standard Contract Clauses listed at CSO17 with clause headings contained within the council's General Conditions of Contract and updating contract details to reflect the current organisational structure. For ease of reference the proposed changes are emboldened and underlined within the Contract Standing Orders and the Purchasing Guide Annex's 1 & 2.
- 2.2 The council has in place an existing declaration protocol to manage potential conflict of interest, which for procurement projects also includes a confidentiality undertaking for those participating in Procurement activity on behalf of the council, forming part of the council's Procurement framework. For completeness and to further evidence best practice it is proposed to include reference to this protocol as appropriate to the related CSO's throughout both Contract Standing Orders and the Purchasing Guide. Reference to this protocol is included at CSO 5, "Responsibilities of Senior Managers, Service Managers and Responsible Officers" at 5.4.2. and included at Appendix 1 "Tender

opening - Instructions to opening members/officers” in order to inform the proceedings from the outset and application throughout the course of tender opening process.

- 2.3 Inclusion of Conflict of Interest as detailed in the General Conditions of Contract, as a standard contract clause at CSO 17 to be included for all procurements valued £10K and over.
- 2.4 The Public Services (Social Value) Act 2012 came into full force 31st January 2013 which places a requirement on all public bodies as contracting authorities for the purposes of the Public Procurement Regulations applying to services, to consider the economic, environmental and social benefits of their approaches to procurement before the procurement process starts. This requirement previously appended to CSO’s is now included under CSO 5 “Responsibilities of Senior Managers, Service Managers and Responsible Officers” at section 5.6 and guidance in application, included within the Purchasing Guide.
- 2.5 Changes to CSO 17 Standard Contract Clause headings to align with clause headings found in the General Conditions of Contract these having been reviewed since the last refresh of CSO’s and the Purchasing Guide.
- 2.6 Non material amendments to Job Titles and Section headings to align with the current council structure/establishment and authorisation to the Strategic Procurement Manager to undertake such non-material amendments as a result of restructures, as required from time to time, without the requirement to revert to the Constitutional Review Working Party, provided that a report on amendments be brought to the next available meeting of the Constitutional Review Working Party.

3.0 Options

- 3.1 To recommend approval of the proposed changes to Contract Standing Orders and these reflected in the associated Purchasing Guide as listed at 2.2, 2.3, 2.4 2.5 & 2.6, which include amendments as proposed by the Constitutional Review Working Party as follows:
 - 3.1.1 the words, “**minor amendments**”, being changed to “**non-material amendments**”;
and
 - 3.1.2 the words, “**provided that a report on the amendments be brought to the next available meeting of the Constitutional Review Working Party**”, being added to the final recommendation
- 3.2 To retain the Contract Standing Orders and Purchasing Guide in their current format.

4.0 Next Steps

- 4.1 N/A

5.0 Corporate Implications

5.1 Financial and VAT

- 5.1.1 Costs would be limited to officer time required to make the amendments to the current Contract Standing Orders and Purchasing Guide.

5.2 Legal

- 5.2.1 Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972

5.3 Corporate

5.3.1 These Contract Standing Orders support the organisation in the delivery of corporate priorities within the Corporate Plan 2012/2016.

5.3.2 Ensuring Contract Standing Orders and associated documents are updated as required, is critical to maintaining robust procurement framework and formal procedures, which give clear guidance and instruction on compliance requirements and upholds transparency of operation, which reduces risk of challenge within procurement activity.

5.4 Equity and Equalities

5.4.1 These Contract standing Orders and Purchasing Guide identify the statutory requirement under European and UK law and obligations placed on the contractor to comply with relevant legislation. Application of these CSO's and Purchasing Guide are contained within the Equality Impact Assessment for Procurement.

6.0 Recommendation(s)

6.1 The Standards Committee approve and recommends to the Full Council the amendments to the Contract Standing Orders and Purchasing Guide as shown in Annex's 1 and 2, such amendments relating to the following areas:

- Reinforcement of Conflict of Interest and confidentiality undertaking protocols including addition of "Conflict of Interest" contract clause as standard for contracts valued £10K and over.
- Inclusion of obligations and requirements of the council in respect of Public Services (Social Value) Act 2012.
- Realignment of headings of Standard Contract Clauses to the council's General Conditions of Contract
- **Non-material** amendments to Job Titles and Section headings to align with the current council structure/establishment.
- Authorisation to the Strategic Procurement Manager to undertake such **non-material** amendments as a result of restructures, as required from time to time, without the requirement to revert to the Constitutional Review Working Party, **provided that a report on amendments be brought to the next available meeting of the Constitutional Review Working Party.**

7.0 Decision Making Process

7.1 This is a non-key decision subject to Call in.

7.2 Presented to the Standards Committee who will subsequently make recommendation to Full Council.

Future Meeting if applicable: Council	Date: 3 October 2013
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Contact Officer:	<i>Karen Paton, Strategic Procurement Manager</i>
Reporting to:	<i>Sue McGonigal, Chief Executive</i>

Annex List

<i>Annex 1</i>	<i>Contract Standing Orders (Draft Revision 2013)</i>
<i>Annex 2</i>	<i>Purchasing Guide (Draft Revision 2013)</i>

Background Papers

Title	Details of where to access copy
<i>Minutes of Constitutional Working Party 21st August 2013</i>	<i>Democratic Services</i>

Corporate Consultation Undertaken

<i>Finance</i>	<i>Sarah Martin</i>
<i>Legal</i>	<i>Harvey Patterson</i>
<i>Democratic Services</i>	<i>Nicholas Hughes</i>



Contract Standing Orders

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Contract Standing Orders

1 Introduction – Purpose of the Contract Standing Orders

- 1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Council:
 - 1.1.1 Furthers its corporate objectives
 - 1.1.2 Uses its resources efficiently
 - 1.1.3 Purchases quality goods, services and works
 - 1.1.4 Safeguards its reputation from any implication of dishonesty or corruption.
- 1.2 Purchasing by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costing and cost savings.
- 1.3 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 1.4 These Contract Standing Orders do not provide guidelines on what is the best way to purchase works, supplies (goods) and services. They set out **minimum** requirements to be followed. Further information and guidelines are set out in the Council's Purchasing Guide that accompanies this document.

2 General Principles – Application and Compliance with Contract Standing Orders

- 2.1 These Contract Standing Orders apply to the purchase by or on behalf of the Council of works, supplies (goods) and services.
- 2.2 These Contract Standing Orders apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.
- 2.3 These Contract Standing Orders do not apply to:
 - 2.3.1 Employment contracts
 - 2.3.2 Contracts relating solely to the purchase or sale of interests in land
 - 2.3.3 Contracts for retention of legal counsel and the appointment of expert witnesses in legal proceedings
 - 2.3.4 Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies.
 - 2.3.5 Post Entry Training Schemes
 - 2.3.6 When, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the goods, services or works may be provided only by a particular service provider.

3 General Principles Applying to All Contracts

- 3.1 There should be written evidence of all purchases.
- 3.2 Standard contract clauses shall be used in all contracts of a value of £10,000 or more. The standard contract clauses are issued by Legal Services and can be found on the intranet.
- 3.3 As a minimum, all contracts of a value of £10,000 or more shall include clauses which set out:
 - 3.3.1 The works, supplies (goods), services, material, matters or things to be carried out or supplied
 - 3.3.2 The time within which the contract is to be performed
 - 3.3.3 Quality requirements and/or standards which must be met
 - 3.3.4 Requirements on the contractor to hold and maintain appropriate insurance
 - 3.3.5 What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part)
 - 3.3.6 Requirements on the contractor to comply with all relevant equalities and health and safety legislation
 - 3.3.7 That the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or s117(2) Local Government Act 1972.
- 3.4 Written contracts shall not include non-commercial terms unless these are necessary to achieve best value for the Council. In this context, “non commercial” means requirements unrelated to the actual performance of the contract.
- 3.5 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council’s Purchasing Guide.
- 3.6 All contracts of a value of £10,000 or more or which involve a substantial risk to the Council must be subject to a written risk assessment, which should be kept on the contract file held by the responsible officer.

4 Regulatory Context

- 4.1 All purchasing shall be conducted in accordance with Regulatory Provisions which are:
 - 4.1.1 All relevant statutory provisions
 - 4.1.2 The relevant EU Rules and EC Treaty Principles which are defined in the Council’s Purchasing Guide
 - 4.1.3 The Council’s Constitution including these Contract Standing Orders, the Council’s Financial Procedure Rules and Scheme of Delegation
 - 4.1.4 The Council’s Purchasing Guide and other policies and procedures of the Council as appropriate.
- 4.2 In the event of conflict between the above, **the EU Rules will take precedence**, followed by UK legislation, then the Council’s Constitution, the Council’s Purchasing Guide and guidelines, policies and procedures.

5 Responsibilities of Senior Managers, Service Managers and Responsible Officers

- 5.1 Each Senior Manager shall have overall responsibility for the purchasing undertaken by his/her Department.
- 5.2 Each Service Manager shall be responsible for the purchasing undertaken by his or her service and shall
 - 5.2.1 be accountable to the Senior Manager for the performance of his/her duties in relation to purchasing
 - 5.2.2 comply with the Council's decision making processes including, where appropriate, implementing and operating a Scheme of Delegation
 - 5.2.3 appoint a Responsible Officer in writing who shall be an authorised signatory
 - 5.2.4 take immediate action in the event of breach of these Contract Standing Orders.
- 5.3 A Responsible Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services on behalf of the Council.
- 5.4 A Responsible Officer's duties in respect of purchasing are to ensure:
 - 5.4.1 compliance with all Regulatory Provisions and integrity of the tender process
 - 5.4.2 compliance with the relevant statutory provisions and the Council's requirements relating to declarations of interest **and confidentiality undertakings of those involved in procurement procedures** affecting any purchasing process
 - 5.4.3 that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used
 - 5.4.4 the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costing and cost savings
 - 5.4.5 compliance with the Council's decision making processes
 - 5.4.6 that all contracts of a value of £75,000 or more are included on the Council's Contract Register
 - 5.4.7 that proper records of all contract award procedures, waivers, exemptions and extensions are maintained, with separate files for each purchase of a value of £75,000 or more
 - 5.4.8 that value for money is achieved
 - 5.4.9 that adequate and appropriate security (such as a bond or guarantee) is taken to protect the Council in the event of non-performance.
- 5.5 In considering how best to procure works, supplies and services, Senior Managers, Service Managers and/or Responsible Officers (as appropriate in the context), shall take into account wider contractual delivery opportunities and purchasing methods including the use of Purchasing Schemes and e-procurement/purchasing methods, and the availability of local authority charging and trading powers under the Local Government Act 2003.

5.6 The Responsible Officer, if procuring services under the Public Contracts Regulations 2006, has obligations under the "Public Services (Social Value) Act 2012" namely "a duty to consider" at the pre-procurement planning stage, the following considerations:

- 5.6.1 how what is proposed to be procured might improve the economic, social and environmental well-being of the "relevant" local area.**
- 5.6.2 how in conducting a procurement process it might act with a view to securing that improvement and whether to undertake a consultation with stakeholders on these matters.**

- 5.6 It is a disciplinary offence to fail to comply with these Contract Standing Orders and the Council's Purchasing Guide. All employees have a duty to report breaches of Contract Standing Orders to the Financial Services Manager and Deputy Section 151 Officer or the Corporate and Regulatory Services Manager **and Monitoring Officer**
- 5.7 Any officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services must refer to the Council's Whistleblowing Code which can be found on the intranet and follow the guidance contained within.

6 Scheme of Delegation

- 6.1 Council purchasing may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme of Delegation. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing by the officer delegating the task and notified to the relevant Service Manager.
- 6.2 Each Service Manager shall inform officers, where appropriate, of the extent of any delegated authority and applicable financial thresholds.

7 Financial Thresholds and Procedures

- 7.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values.
- 7.2 There is a general presumption in favour of competition. Wherever possible contract opportunities should be advertised by way of a public notice and/or the Council's and South East Business Portal. The Council must consider the potential effect of a contract on interstate trade (at a European level). If a contract may be of interest to contractors from other member states then this may result in a need to advertise in a manner which ensures that potential contractors from other member states are aware of the opportunity, even for small value contracts or contracts under the EU Threshold levels outlined below.
- 7.3 The public notice referred to at 7.2 may take the form of a notice or advertisement in an electronic or paper format, on an easily accessible website or other electronic media and/or in the press, trade journals or Official Journal of the European Union ("OJEU") (as appropriate). The Responsible Officer may choose to place one or more public notices in different media.

7.4 Table setting out financial thresholds and procedures

Total value £	Type of contract	Procedure to be used
1,000 to 9,999	Works, supplies and services	At least one quote in advance – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
10,000 to 74,999	Works, supplies and services	At least three written quotes in advance. – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
75,000 to 173,934**	Works, supplies and services	At least three written tenders in advance, following advertisement by public notice
173,934** plus	Supplies and services	EU Rules apply – full competitive process following advertisement in the OJ for supplies and Part A* services.
**EU Threshold for		For Part B* services reduced requirements

supplies and services		apply under the EU Rules but there is a presumption in favour of advertising and a competitive process
173,934 to 4,348,350**	Works	Full competitive process with tenders following advertisement by public notice
4,348,350** **EU Threshold for works	Works	EU Rules apply – full competitive process with tenders following OJ advertisement

* For the purposes of the EU Rules services are divided into two types and the EU Rules apply to a different degree. Responsible Officers should act cautiously and seek advice when considering the procedure to be used and application of the EU Rules to services contracts.

** or relevant threshold in force at the time under the EU Rules.

7.5 Where contracts are of a type and value that mean the EU Rules apply to them then there are four main types of EU procedures available. These are the open, restricted, competitive dialogue and competitive negotiated procedures. Care must be taken to ensure that the correct and most appropriate procedure is used and assistance on the choice and use of EU procedure should be sought from Legal Services and process progressed via the Procurement and Contracts Unit.

8 Financial Thresholds and Processes Applying to Approval and Execution of Contracts

8.1 For contracts over the relevant EU threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to advertisement must be authorised in writing by the relevant Service Manager in consultation with the Corporate and Regulatory Services Manager in advance.

8.2 When a decision is made to award a contract then the Responsible Officer must, in addition to complying with his/her general obligations under these Contract Standing Orders ensure, in particular, that:

8.2.1 the appropriate approvals have been obtained to authorise that decision; and

8.2.2 where appropriate, a standstill period complying with the EU Rules is incorporated into the final award process.

8.3 Any contracts valued at £75,000 or above shall be executed as a deed under the Council's common seal. Officers with appropriate delegated authority may sign all other contracts. £10,000 shall be the threshold for the purposes of Regulation 8 of the Local Authority (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.

8.4 Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Shared Services Director for East Kent Services and Corporate and Regulatory Services Manager **and Monitoring Officer**.

9 Calculating the Contract Value

9.1 The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (**including proposed extensions and options**).

9.2 There shall be no artificial splitting of a contract to avoid the application of the provisions of the EU Rules and/or these Contract Standing Orders.

- 9.3 The EU Rules can cover contracts, which are below the stated EU threshold, where they constitute repeat purchases and/or purchases of a similar type in a specified period. Responsible Officers should therefore seek advice on the application of the EU Rules where they envisage that they may require to make such purchases.

10 Principles Underlying Tendering Processes and Tender Evaluation

- 10.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:
- 10.1.1 Sufficient time is given to plan and run the process
 - 10.1.2 Equal opportunity and equal treatment
 - 10.1.3 Openness and transparency
 - 10.1.4 Probity
 - 10.1.5 Outcomes that deliver sustainability, efficiency and cost savings (where appropriate).

11 Submission and Opening of Tenders

- 11.1 An Invitation to Tender shall be issued by the Council for all contracts over £75,000 and tenders shall be submitted in accordance with the requirements of the Invitation to Tender.
- 11.2 Any tenders received (other than those received electronically, to which 11.3 shall apply) shall be:
- 11.2.1 addressed to the Democratic Services **and Scrutiny** Manager
 - 11.2.2 in a sealed envelope marked "Tender" followed by the subject matter to which it relates
 - 11.2.3 kept in a locked cabinet by Democratic Services
 - 11.2.4 retained unopened until the date and time specified for its opening.
- 11.3 Where the Council has indicated in the Invitation to Tender that a tender can or must be submitted electronically, then those tenders shall be:
- 11.3.1 addressed to the e-mail address as notified in the Invitation to Tender
 - 11.3.2 in the format specified in the Invitation to Tender
 - 11.3.3 stored in a secure mailbox, which requires a code or other appropriate security measure, to open it
 - 11.3.4 retained unopened until the date and time specified for its opening.
- 11.4 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the relevant Service Manager is satisfied that there is sufficient evidence of the tender having been dispatched in time for it to have arrived before the closing date and time, or other exceptional circumstances apply and the other tenders have not been opened.
- 11.5 Where Tenders are expected to have a value in excess of £75,000, invitations to the opening of these tenders will be sent to the appropriate Portfolio Holder or another Cabinet Member and the appropriate Shadow Portfolio Holder or another Shadow Cabinet Member, a Procurement Officer, one Responsible Officer nominated by the relevant Service Manager and a Democratic Services Officer to undertake the completion of the Record of Receipt of Tender Document of tenders received including names and addresses and the date and time of opening. In circumstances where both Portfolio/Cabinet member and/or, both Shadow Portfolio/Cabinet members are unable to attend, opening of tenders can and

should be undertaken in presence of officers and at least one substitute Member to ensure procurement programme is maintained

11.6 The tender opening process is set out in detail at Appendix 1 to these contract standing orders.

12 Evaluation of Quotes and Tenders

12.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenders.

12.2 Tenders subject to the EU Rules shall be evaluated in accordance with the EU Rules.

12.3 Save in exceptional circumstances approved in advance by the relevant Service Manager all contracts shall be awarded on the basis of the quote or tender which represents best value for money to the Council and not on the basis of lowest price.

13 Waivers

13.1 The requirement for the Council to conduct a competitive purchasing process for contracts in excess of £10,000 may be waived in the following circumstances.

13.1.1 For contracts which are not subject to the EU Rules, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or

13.1.2 the circumstances set out in the Public Contract Regulations 2006 Regulation 14 apply (whether or not the contract is of a type which is subject to the application of the EU Rules); or

13.1.3 the contract is awarded under a Purchasing Scheme of a type where a competition has already been undertaken on behalf of the Council; or

13.1.4 at the discretion of the relevant Senior Manager who may proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.

13.2 A Responsible Officer who seeks a waiver of Contract Standing Orders, shall do so only in advance and only in exceptional circumstances. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Standing Orders is set out in the Council's Purchasing Guide.

13.3 All waivers from these Contract Standing Orders must be:

13.3.1 Fully documented

13.3.2 Subject to a written report in an approved format, available on the intranet, to be submitted **in advance** to the relevant Senior Manager which shall include reasons for the waiver which demonstrate that the waiver is genuinely required

13.3.3 Subject to **approval in advance** by the Section 151 Officer who shall record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional. Applications for waivers which are a result of poor contract planning will rarely be considered genuinely exceptional.

13.3.4 Subject to periodic report to Cabinet by Procurement and Contracts Unit and retrospective waivers will also be reported via Governance & Audit Committee

13.4 All decisions on waivers must take into account:

13.4.1 Probity

- 13.4.2 Best value/value for money principles.
- 13.5 For contracts subject to the EU Rules, any waiver from the requirement for competition must meet the conditions set out in the EU Rules in addition to the general requirements above.

14 Extensions to Existing Contracts

- 14.1 Where extensions to existing contracts are made the extensions must be determined in accordance with the contract terms, for a specified period and made in accordance with the principles set out in the Council's Purchasing Guide.
- 14.2 Any extension must be:
 - 14.2.1 Fully documented and notified to the Procurement and Contracts Unit to update Contract Register
 - 14.2.2 Subject to a written report in an approved format to be submitted to the relevant Senior Manager and Section 151 officer, which shall include reasons for the extension which demonstrate that the need for the extension is genuinely exceptional
 - 14.2.3 Subject to approval by the Senior Manager and Section 151 officer, who shall record that they have considered the reasons for the extension and that they are satisfied that the circumstances justifying the extension are genuinely exceptional
- 14.3 Any extension must take into account:
 - 14.3.1 Probity
 - 14.3.2 Best value/value for money principles.
- 14.4 For contracts subject to EU Rules, any extension must meet the conditions set out in the EU Rules in addition to the more general requirements set out above.

15 Purchasing Schemes

- 15.1 A Responsible Officer may use Purchasing Schemes subject to the following conditions and the Council's Purchasing Guide.
- 15.2 Responsible Officers must check in advance that
 - 15.2.1 The Council is legally entitled to use the Purchasing Scheme
 - 15.2.2 The purchases to be made do properly fall within the coverage of the Purchasing Scheme
 - 15.2.3 The establishment and operation of each Purchasing Scheme is in compliance with the EU Rules (where they apply) and meets the Council's own requirements.
- 15.3 A "Purchasing Scheme" may include:
 - 15.3.1 Contractor prequalification lists/select lists
 - 15.3.2 Framework arrangements (including those set up by the Government Procurement Service, Central Buying Consortium, Kent Commercial Services)
 - 15.3.3 Purchasing arrangements set up by central purchasing bodies and commercial organisations
 - 15.3.4 Consortium purchasing
 - 15.3.5 Collaborative working arrangements
 - 15.3.6 Formal agency arrangements

15.3.7 E-procurement/purchasing schemes and methods

15.3.8 Other similar arrangements such as the IDeA Marketplace

15.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council's Purchasing Guide.

16 Review and Changes to these Contract Standing Orders

16.1 These Contract Standing Orders shall be reviewed and updated on a regular basis. Save in the case of revisions to the EU Thresholds in Contract Standing Order 7, amended Contract Standing Orders shall be recommended by the Constitutional Review Working Party to Council. The ~~Procurement and Contracts Manager~~ **Strategic Procurement Manager** will make revisions to the EU Thresholds **as applicable and is permitted to undertake such non-material amendments as a result of business restructuring as required from time to time, providing that a report on amendments made is brought to the next available meeting of the Constitutional Review Working Party.**

17 Standard Clauses

17.1 Each contract shall include standard clauses, or those indicated where applicable dependant on the nature of the contract, on

17.1.1 ~~Anti-Fraud Corruption & Bribery~~ **Anti-Bribery, Fraud and Corruption**

17.1.2 ~~Prevention of Assignment~~ **Assignment and Sub-Letting**

17.1.3 ~~Equal Opportunities~~ **Opportunity**

17.1.4 Health and Safety

17.1.5 Freedom of Information Act 2000

17.1.6 Conflict of Interest

17.1.7 TUPE and workforce matters (where applicable)

17.1.8 Child Protection and Safeguarding Children (where applicable)

17.1.9 Liquidated Damages (where applicable)

17.1.10 ~~Data Quality~~ **Protocol for performance data sharing by contractors** (where applicable)

Tender opening

Instructions to opening officers

- Present: Appropriate Portfolio Holder or another Cabinet Member if available
 Appropriate Shadow Portfolio Holder or another Shadow Cabinet member
 if available
 One substitute Member if above Members are not available.
 Procurement Officer
 Responsible Officer
 Democratic Services Officer
- Requirements: Unopened tenders
 Record of Declarations of Interest and Confidentiality Undertaking
 Record of Receipt of Tenders Form - summarising tenders opened

1. General

- 1.1 Officers must avoid placing themselves in a position where there is an actual or potential conflict between their personal and/or 'outside' interests and their duties to the council. The appearance of a conflict of interest must also be avoided. Therefore, before the start of the opening of tenders process, the Democratic Services Officer will establish amongst Officers present whether there are any "known" declarations of interest. The Democratic Services Officer will also advise both Officers and Councillors present of their confidentiality obligations through the Procurement Framework and the Members Code of Conduct. The Procurement Officer, will on being advised of a declaration by an Officer of a potential conflict of interest, take a decision on whether the individual/s should continue or end their participation in the opening process, based on an assessment of the context of their declaration.**
- 1.2 Before opening the tenders the Democratic Services Officer shall check with the Service Support Supervisor that the post box was emptied and any tenders collected from Main Reception at the designated time for receipt; and that all tenders received up to that date are in his possession.
- 1.3 All tenders given to the Democratic Services Officer should be properly sealed, dated and timed on receipt and show no signs of being tampered with. Where there is evidence of tampering the tender may still be opened but the Democratic Services Officer shall make a statement to that effect on the Record of Receipt of Tenders Form. If in doubt the Democratic Services Officer should refer the matter immediately to the Service concerned.
- 1.4 The Democratic Services Officer shall ensure prior to opening that each set of tenders to be opened are identifiable as relating to the same scheme. At this stage the Democratic Services Officer should ascertain whether any late tenders have arrived (see Note 2 below).
- 1.5 Tenders should be opened as soon as possible but no earlier than 24 hours after the designated time for receipt and arrangements should be made in advance of that time with both Council Officers and Councillor to facilitate the procedure.
- 1.6 Although it is not the duty of the Democratic Services Officer to analyse the technical content of tenders the officer shall at least take note of any tender qualifications (normally in

the form of a letter) and bring them to the attention of the Service concerned. For these purposes it is best to make a brief note on the Record of Receipt of Tenders Form.

- 1.7 The Democratic Services Officer shall not destroy any of the tender envelopes but shall return them to the service who invited the tenders who shall consider their future retention. All envelopes relating to opened late tenders shall be kept.
- 1.8 If due to unusual circumstances a problem arises which is not covered by this code and cannot be resolved by the Democratic Services Officer advice should be immediately sought from the Corporate and Regulatory Services Manager.
- 1.9 One copy of the Record of Receipt of Tenders Form is to be kept by the Democratic Services Section and one copy sent to each of the following: the Client Department, Procurement Unit, Legal Services and one copy to be delivered immediately to the Financial Services Manager for budgetary purposes.

2. Late tenders (see CSO 11.4)

- 2.1 A late tender is any tender arriving after the designated time on or after the appointed day. In respect of all such tenders the envelopes shall be endorsed "late tender" and shall specify the time and date received together with the signature of the receiving officer.
- 2.2 If any late tenders are received they may only be opened with a view to acceptance if the conditions in contract standing order 11.4 are met, namely, 'no tender received after the time and date specified for its opening shall be accepted or considered by the council unless the relevant Service Manager is satisfied that there is sufficient evidence of the tender having been dispatched in time for it to have arrived before the closing date or time, or other exceptional circumstances apply and the other tenders have not been opened'.
- 2.3 In cases where late tenders are opened a note to that effect shall be made clearly on the Record of Receipt of Tender Form and the envelope in which the tender arrived shall be retained.

3. Tender opening instructions for each tender opened

Opening officer duties	Second officer duties
<p>Normally Democratic Services Officer</p> <p>Open envelope and remove tender.</p> <p>Read out name and address of contractor as shown on Form of Tender.</p> <p>Check that the Form of Tender is filled in correctly, ie:</p> <ol style="list-style-type: none"> a) Contractor's name; b) the contract for which he is tendering; c) Tender sum: words and figures agree; d) the Form of Tender is signed and dated by the contractor. <p>Read out tender sum.</p>	<p>Normally Responsible Officer or Procurement Officer</p> <p>Check that name and address agrees with RRT Form (See Note A over page)</p> <p>Write down tender sum next to relevant contractor on RRT (see Note B).</p> <p>Pass RRT to Opening Officer.</p>

Check that amount entered on RRT agrees with tender - if so, initial form of tender in bottom right hand corner and pass documents, envelope and RRT to Second Officer.

Repeat process for each tender received.

Check that tender sum agrees with that entered on RRT and, if so, initial next to Opening Officer on the Form of Tender and place tender back in envelope.

Once all tenders have been dealt with RRT will indicate those contractors (if any) from whom a tender has not been received. In such cases the RRT, shall be clearly endorsed "No Tender Received".

Once this procedure has been followed, and provided that all officers are satisfied that their duties have been carried out correctly, the RRT should be signed by each officer and endorsed with the date and time at which these procedures were completed. The Councillors present shall also sign the RRT form to confirm their satisfaction with the tender opening procedures. The tender envelopes and a copy of RRT can then be forwarded to the Client Department.

NOTE A: In the event that a tender is returned from a firm other than that invited, including a subsidiary or alternative division, the details of the firm and his tender price shall still be entered on the RRT by the Second Officer and endorsed to the effect that this tender was received in addition to those invited.

NOTE B: In those circumstances where a contractor is not requested to state a tender sum the RRT shall be endorsed "Tender Received" at stage six above and the remaining procedures amended accordingly.

NOTE C: In those cases where the tender did not require an overall price, but rates, both officers and both members shall initial all those pages of the tender on which the contractor has inserted rates or prices.



Purchasing Guide

*Supplementary guidance to the application of
Contract Standing Orders*

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FINAL DRAFT

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Purchasing Guide

Introduction – the Contract Standing Orders (CSOs) and this Purchasing Guide

- The CSOs are the starting point for good purchasing practice. They contain the core obligations for a robust purchasing framework. As they form part of the Council's Constitution, they can only be changed by resolution of full Council, unless specific powers to make amendments have been delegated to an Officer or other body. They are made under the Council's powers under section 135 of the Local Government Act 1972.
- This Purchasing Guide provides practical guidance on how the CSOs apply to purchasing decisions and processes. It explains some of the more technical and legal issues involved in procurement and provides practical working examples.
- You must use this Purchasing Guide when purchasing on behalf of the Council. You must also follow the CSOs and the other documents referred to in CSO 4.
- Purchasing can involve complex technical provisions and legal rules. Breach of those technical provisions, the legal rules, the CSOs or this Purchasing Guide can have serious consequences for the Council and for you. If you are in doubt then you must seek assistance. If you have any queries about the CSOs, this Purchasing Guide or the other documents used in or related to the Council's purchasing, then please contact the Corporate and Regulatory Services Manager.
- The structure of this Purchasing Guide follows the structure of the CSOs. In this Purchasing Guide, the CSOs are set out in shaded boxes, followed by commentary and guidance on those CSOs.

This Purchasing Guide is a "living" document which will be reviewed periodically as necessary. If you have comments or suggestions for improvements, please contact the Procurement and Contracts Unit.

PLEASE ALWAYS ENSURE YOU ARE WORKING TO THE LATEST VERSION OF THE GUIDANCE

The Purchasing Guide

1 Introduction – Purpose of the Contract Standing Orders (CSOs)

- 1.1 Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Standing Orders is to provide a structure within which purchasing decisions are made and implemented and which ensure that the Council:
 - 1.1.1 Furthers its corporate objectives
 - 1.1.2 Uses its resources efficiently
 - 1.1.3 Purchases quality goods, services and works
 - 1.1.4 Safeguards its reputation from any implication of dishonesty or corruption.
- 1.2 Purchasing by the Council, from planning to delivery, shall incorporate (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings.
- 1.3 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 1.4 These Contract Standing Orders do not provide guidelines on what is the best way to purchase works, supplies (goods) and services. They set out **minimum** requirements to be followed. Further information and guidelines are set out in the Council's Purchasing Guide that accompanies this document.

CSO 1.1

- 1 Good and effective purchasing must be embedded in the day to day practices of the Council. The key objectives of purchasing, outlined in CSO 1.1 and CSO 1.2 must be taken into account from the initial planning and conceptual stages of the purchasing process. The purchasing process is not limited to the stage when you seek a quote or tender.
- 2 Failure to consider these key issues can impact on both the quote or tender process, and also the long term delivery of the works, supplies or services which are being purchased.

Example: You need to think carefully about the quality and specification for the goods you wish to purchase. Failure to incorporate your requirements into the contract may result in substandard or poor quality goods being provided to the Council. The Council is unlikely to be able to do very much about this, if its own requirements have not been clearly specified in the tender and contract documents.

Conversely, if the Council has clearly specified the quality of the goods required and when delivered they are not up to standard, then the Council will be able to ensure that standards can be improved or, potentially, cancel the contract arrangements.

CSO 1.2

- 3 You must take into account the principles of sustainability, efficiency, whole life costing and cost savings, during the purchasing process.
- 4 **"Sustainability":** The UK Government's sustainable development strategy sets out four key priority areas for action:
 - Sustainable consumption and production
 - Climate change and energy
 - Protecting natural resources
 - Creating sustainable communities and a fairer world

Sustainable procurement is a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.

- 5 **"Efficiency"**: The Council must continuously improve all its services. This means that the Council must purchase the most appropriate best value works, supplies or services and deliver continuous improvement throughout each contract. For contracts which relate to more than just a one off purchase, the Council will need to exercise ongoing monitoring and review of the contract to ensure
- a) customer satisfaction,
 - b) continued high quality delivery,
 - c) compliance with environmental and equality standards, and
 - d) the opportunity to identify service improvements and cost savings.

This could be reflected in an efficiency and improvement clause in the contract. See further comments on standard clauses at CSO 3.

- 6 **"Whole life costing"**: requires you to ensure that the whole potential cost of the contract is taken into account.

Example: In letting an equipment supply contract, as well as the initial capital spend, you need to consider the length of the asset's useful life, the cost of ongoing maintenance, replacement of parts and servicing and consumables, so that there is true cost to the Council of the purchase being made. To buy a copier which initially costs £2,500 may be more expensive than one that initially costs £4,500, if the cheap copier uses expensive paper and toner, needs servicing every three months and is scrapped after 5 years, whilst the more expensive one uses cheaper paper and toner, needs servicing only once every 2 years and lasts for 10 years.

- 7 **"Cost savings"**: Each contract for purchase must set out the agreed price to be paid by the Council to the contractor. The Council cannot then unilaterally reduce the price but conditions relating to long term service improvement and efficiencies can be incorporated into the contract documents.

There may be ways of structuring a purchasing exercise to save costs. This might be through a joint purchasing exercise with other councils, or by re-examining the way a service is provided.

- 8 Effective contract monitoring is essential to achieve continuous improvement, especially during the implementation of long-term contracts, particularly if the contractor is under a duty to work with the Council to seek improvements in delivery and efficiency. It is usually sensible to provide for annual reviews in the contract, which can then be tied in with, for example, payments to reflect good performance and provisions allowing for inflation increases.

Example: The Council needs to demonstrate to central government each year, its compliance with the Local Government Equalities Standard. An obligation in the contract to ensure ongoing compliance with Equalities legislation is of little value if the Council fails to review and record the contractor's compliance regularly.

- 9 If the Council knows that a contractor is not complying with contract requirements, then it needs to address the matter promptly. If the Council has regularly raised and recorded issues with a contractor, made formal requests for improvements, which are not delivered, then there may be a clear basis for either an action for damages or termination.

CSO 1.3

- 10 Section 135 of the Local Government Act 1972 obliges councils to make standing orders for contracts for the supply of goods and materials and the execution of works entered into by the Council or on behalf of the Council. The Act requires that the standing orders must include provisions for securing competition for such contracts and must also regulate the way in which tenders are invited. The Act allows for exemptions from the obligation to tender out below a specified threshold and where exemptions identified in the standing orders apply.

CSO 1.4

- 11 This Purchasing Guide is the guide referred to in CSO 1.4. It provides broader guidelines on the best way to purchase works, supplies (goods) and services

2 General Principles – Application and Compliance with Contract Standing Orders

- 2.1 These Contract Standing Orders apply to the purchase by or on behalf of the Council of works, supplies (goods) and services.
- 2.2 These Contract Standing Orders apply to all contracts including all purchase orders, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are listed in 2.3.
- 2.3 These Contract Standing Orders do not apply to:
- 2.3.1 Employment contracts
 - 2.3.2 Contracts relating solely to the purchase or sale of interests in land
 - 2.3.3 Contracts for retention of legal counsel and the appointment of expert witnesses in legal proceedings
 - 2.3.4 Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies
 - 2.3.5 Post Entry Training Schemes.
 - 2.3.6 When, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the goods, services or works may be provided only by a particular service provider.

CSO 2.1

- 1 The CSOs apply to all purchasing activities by, undertaken by or on behalf of the Council. The words “works”, “supplies” and “services” are the words used in the EU Rules to define different types of contracts. Put simply, “works” cover construction, refurbishment and other building related works. “Supplies” are all types of goods - from paperclips to photocopiers and vehicles, and “services” cover the full range of services provided or purchased by the Council in its day to day activities. Some contracts can be hybrid arrangements covering works, supplies or services. If this is the case and you are not sure how to define a particular arrangement, please take advice from Legal Services or from the consultant you have employed to assist you with the tendering exercise.

CSO 2.2

- 2 **Words and terms used to describe types of arrangements which are often contracts:** Do not be misled by the label for any particular arrangement. The CSOs apply to all purchasing and contracts except where specific exemptions apply. A lot of purchasing is by way of formal contracts. However, contracts can exist even when the word “contract” is not used. So, for example, “**agreements**”, “**purchase orders**”, “**terms and conditions**” and

equipment or vehicle "**leases**" are nearly always a type of purchasing and so are contracts which are subject to the CSOs. (Leases for land or property are not covered by these CSOs – see comment on CSO 2.3.2). Sometimes a formal agreement may be preceded by a "memorandum of understanding" or "heads of terms", but take care that such preliminary documents do not themselves amount to a binding contract.

- 3 Contracts can also be created by words or actions and so it is possible to have a contract without having anything in writing.

Example: Be careful to ensure that a contract is not implied as a result of conversations which you have with potential contractors or exchanges of correspondence (including e-mails) which may be intended to be mere exchanges of views but which could amount to a formal contract.

If, for example, you invite quotes and receive a quote in response, you may create a legal contract if you then ring the contractor and say that you are happy with that quote. A contractor could then rely on the conversation to either oblige the Council to enter into a formal written contract or to sue the Council in the event that the Council decides not to go ahead on that basis, despite those assurances.

- 4 **Concessions** are a specific type of contractual arrangement under which, rather than paying the contractor to deliver a work or service, the Council will grant the contractor the right to exploit an opportunity and receive some or all of its income from third parties. A good example is the operation of catering or leisure facilities where some or all of a contractor's income can come direct from paying members of the public.
- 5 The terms "**service level agreements**" and "**grant**" are particularly problematic and their usage is inconsistent. Do not assume that a service level agreement or grant is not a contract. The term "service level agreement" can be used to describe a specification or technical requirements type document which sets out the level of service required under a contract. It is also sometimes used to describe what is, in practice, a legally binding contract. The same issues apply to arrangements classified as grants.
- 6 **Partnering arrangements:** There have been considerable moves over the last few years toward the concept of working "in partnership" with other public, voluntary and private sector organisations. When the Council is entering into a partnering type arrangement, it may need to follow a tendering process resulting in a formal contract. **Please take advice.**
- 7 Some "partnering" arrangements – particularly those with other public bodies such as the NHS – are genuine partnering (as opposed to a legal partnership (see below) involving, for example, the pooling of resources to deliver services (shared services). Other arrangements are labelled as partnering arrangements but are in reality, formal contractual arrangements. A common example is the "partnering" approach used for construction contracts.
- 8 A formal legal "Partnership" has a specific legal meaning. A legal partnership will be caught by statute and other rules. It is possible to create a legal partnership without intending to do so and this can have significant consequences, as partners usually share both profits and losses arising from the partnership. Great care must be taken when using this term, to ensure that a legal partnership is not implied. Legal Services will have a standard clause to deal with this.
- 9 **Summary:** Wherever an arrangement means that works, supplies and/or services will be provided to the Council, or on behalf of the Council, in return for some sort of "payment" (which could be a monetary payment but could also be something else of value to the recipient), then you need to consider whether or not this is a type of contract and purchasing process which is subject to the CSOs and other Regulatory Provisions listed in CSO4.
- 10 The best approach to adopt is to assume that the CSOs will apply to all of the Council's purchasing activities with only very limited exceptions. You must take advice from Legal Services if you are uncertain about whether or not the CSOs apply.

- 11 There are some specified types of contract to which the CSOs do not apply. These are listed in CSO 2.3. These are excluded, because it generally does not make practical or legal sense to require a full tendering process for these types of contract. However, these arrangements are subject to other specific requirements.

CSO 2.3

- 12 **CSO 2.3.1 Employment contracts:** employment opportunities are usually advertised and people are appointed to their posts as a result of a formal appointment process. Employees enter into individual employment contracts with the Council.
- 13 However, contracts involving the purchase of services from individuals – such as consultancy or advisory service contracts – are often not “employment contracts” for the purposes of this exception and are likely to be subject to the CSOs. Similarly, contracts with employment agencies for the provision of temporary staff will be caught by the CSOs.
- 14 **CSO 2.3.2 Contracts relating solely to the transfer of interests in land** (including existing buildings) are generally not caught. This includes the purchase or disposal of land by way of a freehold or lease. This will apply to most of the Council’s day to day conveyancing and land transactions.
- 15 Take care over development type agreements, which may, for example, involve a combination of a land transfer plus a developer providing a building for the Council. These can be caught by the EU Rules as they can be classified as “works” contracts because of the building element. This is a complex area of European law. You must seek advice from Legal Services.
- 16 **CSO 2.3.3 Contracts for the retention of legal counsel and the appointment of expert witnesses in legal proceedings:** Corporate and Regulatory Services Manager is responsible for agreeing fees with and appointing legal counsel (barristers) to work on legal issues and for the appointment of expert witnesses.
- 17 **CSO 2.3.4 Service level agreements setting out the conditions which the Council applies to its funding of particular voluntary sector bodies:** in some limited circumstances, funding arrangements for voluntary sector bodies may not be caught by the CSOs. An example of the type of arrangement, which may fall within this exception, is low value funding to a voluntary group in order to ensure the continued provision of a critical local service.
- 18 Take care because some funding arrangements may, in reality, be more like a contract than a simple funding arrangement. The Council must ensure that it obtains appropriate value in respect of all funding and that it is not contravening State Aid, EU Rules or EC Treaty Principles. You need to look carefully at each funding arrangement and consider whether it could be delivered better as a result of a competitive process. A Service Level Agreement is unlikely to be an appropriate method for large scale and/or long term funding.
- 19 **CSO 2.3.6 When, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the goods, services or works may be provided only by a particular service provider.** For procurements captured by the EU Regulations, the negotiated process will apply, as allowed for within the provisions of the Procurement legislation.

3 General Principles Applying to All Contracts

- 3.1 There should be written evidence of all purchases.
- 3.2 Standard contract clauses should be used in all contracts of a value of £10,000 or more. The standard contract clauses are issued by Legal Services and can be found on the intranet.
- 3.3 As a minimum, all contracts of a value of £10,000 or more shall include clauses which set out:
 - 3.3.1 The works, supplies (goods), services, material, matters or things to be carried out or supplied
 - 3.3.2 The time within which the contract is to be performed
 - 3.3.3 Quality requirements and/or standards which must be met
 - 3.3.4 Requirements on the contractor to hold and maintain appropriate insurance
 - 3.3.5 What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part)
 - 3.3.6 Requirements on the contractor to comply with all relevant equalities and health and safety legislation
 - 3.3.7 That the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916 or s117(2) Local Government Act 1972.
- 3.4 Written contracts shall not include non commercial terms unless these are necessary to achieve best value for the Council. In this context, “non commercial” means requirements unrelated to the actual performance of the contract.
- 3.5 All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate) and the information set out in the Council’s Purchasing Guide.
- 3.6 All contracts of a value of £10,000 or more or which involve a substantial risk to the Council must be subject to a written risk assessment, which should be kept on the contract file held with the responsible officer.

CSO 3.1

- 1 Because the Council may need to enforce the terms of an agreement, it is important that the terms of the agreement are clearly recorded, and confirmed by the other party. Accordingly, any contract will be in writing. “In writing” does not have to be a formal or lengthy paper contract. It can be a paper contract, signed by both sides, but it can equally be in the form of ordinary correspondence, including emails or faxes rather than hard copy paper letters, in which one side sets out its requirements and the other side agrees to comply with them.
- 2 A contract in writing can also be created by using the Council’s own standard terms and conditions, plus an order form, electronic purchasing where pre-terms and conditions have been pre-agreed or, for example, where a Purchasing Scheme is used so that the terms and conditions have been agreed centrally, (see commentary on CSO 15).
- 3 Please note that if the Council does not make it clear that its own terms and conditions, order forms or contracts apply, then the contractor’s terms and conditions may apply to the purchase. This may not be in the Council’s best interests.

Example: The Responsible Officer emails a contractor asking them to quote to provide some new software. The software contractor sends its quote back to the Council by post. On the back of the quote are the contractor's own legal terms and conditions. The Responsible Officer accepts the quote, over the telephone and confirms the order by e-mail. A contract has been created in writing. Unless both of the emails from the Responsible Officer made it clear that the Council's terms and conditions apply and the contractor has seen those terms and conditions, it is likely that the contractor's own terms and conditions will apply to that transaction.

CSO 3.2

- 4 To protect the Council's interests, this CSO requires you to use certain standard contract clauses in all contracts over the specified value. This means that risks are allocated appropriately and that the Council has a remedy in the event of breach of contract.

CSO 3.3

- 5 This CSO does not set out the actual clauses to be used, but points to the issues which you need to cover in contracts above the specified value (if a value is specified, or if no value is specified, to all contracts). You need to consider the value and complexity of the contract and any potential risks associated with that contract to decide what form of contract and level of detail is appropriate.
- 6 **CSO 3.3.1:** This requires you to describe clearly in the contract what is being purchased. The description may cross refer to a more detailed description of the works, supplies or services which could, for example, be attached to the contract by way of an appendix or schedule. If you do not clearly specify what is being purchased, then there is a lot of potential for dispute with contractors about the extent of their obligations to the Council.
- 7 **CSO 3.3.2:** Be clear about when and for how long the contract is to apply. For example, with the delivery of equipment it would be important to ensure that there is a clause stating when equipment will be delivered and installed. For longer term contracts, you need to be clear about when the obligation to deliver starts and ends.
- 8 **CSO 3.3.3:** Be clear about what level of quality and standards are required. Think about minimum standards required. This should involve discussion with those who are responsible for the purchase.
- 9 **CSO 3.3.4:** All contractors should hold some form of insurance to cover their business liabilities. There are different types of insurance which will apply to different types of purchase. Ensure that there is a clause in the contract stating what type and level of insurance is required. This will link directly to what is being purchased and also the size and nature of the contract. For a very high value contract, higher levels of insurance may be required than for smaller purchases. However, think about the impact of the failure of the contract. A small purchase could have a large impact on the Council and so insurance requirements may well be higher. If you are uncertain about insurance requirements, then please discuss this with the Finance Assistant Ext 7682 **Section.**
- 10 **The Responsible Officer should ask for evidence of cover before the start of the contract and during the term of the contract.**

Example: The Council may require a contractor providing a relatively low value contract for the provision of cooked meals direct to users to have higher levels of third party liability insurance than a contractor providing pencils to the Council. This is because the consequences of a faulty product being supplied are likely to be far more significant in a contract involving meals than pencils.

- 11 **CSO 3.3.5:** The contract must explain what happens if there is a failure to meet the Council's requirements under the contract. It is common to have provisions for both a partial failure and

a total failure. The implications will vary according to what is being purchased and the nature of those failures. A contract may, for example, just require the contractor to remedy a failure within a specific time period. If the contractor remedies the failure to the Council's satisfaction, then that may be the only consequence. Failure to remedy to the Council's satisfaction may result in more serious consequences, such as the right to terminate the contract partially or wholly. Think about the practical consequences of failure and the Council's interest in terms of failures and their consequences. In the context of building contracts it is quite common to retain a percentage of the total contract value pending final sign off and approval of the works so that the Council has some real leverage in the event that the work is not delivered to the required standard.

- 12 **CSO 3.3.6:** Contractors will be subject to their own statutory obligations to comply with both equalities and health & safety legislation. However, the Council may require additional compliance in order to reflect its own statutory obligations, or to pick up specific standards and compliance linked to the subject matter of the contract.
- 13 **CSO 3.3.7:** This is a standard provision entitling the Council to cancel a contract and to recover losses in the event that the contractor is guilty of an offence, such as bribery or corruption or tries to improperly influence a decision.

CSO 3.4

- 14 Ensure that the terms used in the contract are relevant to that contract. Do not include provisions in contracts, which do not relate to the subject matter of the contract. Check the proposed terms and ensure that they are relevant. For example, detailed clauses for circumstances where equipment goes wrong may not be relevant to a contract for training services.

CSO 3.5

- 15 Good quality specifications and/or technical requirements are critical for letting and monitoring a successful contract. A contract which only includes legal terms but does not, clearly describe, what standards are required is of little practical value. Identify these requirements at the start of the purchasing process, so that the standards are clearly described when quotations or tenders are invited for inclusion in the contract and ongoing contract monitoring arrangements.
- 16 Specifications and/or technical requirements need to be "proportionate". This means that for a very simple purchase, the specification could be very simple. For more complex purchases, the specification may go into quite a lot of detail. For purchases which are technically demanding, you must address detailed technical and standards compliance. These documents need to be prepared jointly with officers having specialist knowledge of the purchase who need to be involved as early as possible in the purchasing process.

CSO 3.6

- 17 Even low value contracts may have a significant impact if they go wrong, so it is important to adopt a risk analysis type approach. This is set out in the risk matrix included as "Attachment 1" at the end of this Purchasing Guide.

Example 1: A low value contract for photography services may look initially like a simple arrangement which does not require detailed contract provisions. However, in some circumstances, such a contract may need to include provisions covering the confidentiality of individuals, protection of children and copyright issues and so a fuller form of contract may be appropriate.

Example 2. A contract to set up one stage of a nationally important racing competition event in a town or city may ostensibly be of low financial value, but the difficulties arising from partnership working, reputation risks and even adverse weather, could result in major losses for the Council. The need for careful risk management in the drafting of the contract is correspondingly important.

4 Regulatory Context

- 4.1 All purchasing shall be conducted in accordance with Regulatory Provisions which are:
- 4.1.1 All relevant statutory provisions
 - 4.1.2 The relevant EU Rules and EC Treaty Principles, which are defined in the Council's Purchasing Guide
 - 4.1.3 The Council's Constitution including these Contract Standing Orders, the Council's Financial Procedure Rules and Scheme of Delegation
 - 4.1.4 The Council's Purchasing Guide and other policies and procedures of the Council as appropriate.
- 4.2 In the event of conflict between the above, **the EU Rules will take precedence**, followed by UK legislation, then the Council's Constitution, the Council's Purchasing Guide and guidelines, policies and procedures.

CSO 4.1

- 1 This CSO requires purchasing to be conducted in accordance with "Regulatory Provisions". Regulatory provisions are defined in 4.1.1 to 4.1.4 and cover EU and UK law, as well as the Council's own constitution and this Purchasing Guide. This means that when undertaking purchasing, you need to take into account a wide range of both legally binding provisions and also internal rules and guidance.
- 2 **CSO 4.1.1:** The statutory provisions applying to purchasing will vary according to the purchase being made. Key provisions include Section 17 of the Local Government Act 1988 which prohibits the application of non commercial considerations to the tender process and in particular the selection of contractors, except insofar as is necessary to secure the achievement of best value. In that context, non commercial considerations include, for example, the contractor's terms and conditions of employment, business activities and interests of contractors in the Government's defence or foreign policy and the conduct of contractors in industrial disputes. Please ask for advice on non commercial considerations for any tendered contract.
- 3 **CSO 4.1.2:** The term "EU Rules" in the context of these CSOs means the Public Contracts Regulations 2006 (Statutory Instrument 2006/5) (also referred to as the "Regulations") which implement European Directives 2004/18/EC and 89/665/EEC. The EU Rules will affect you if you are making purchases which exceed the EU Threshold Values set out in CSO 7.4. You **MUST** seek assistance in these cases.

In certain, limited, circumstances the Council may be classified as acting in the capacity of a "utility". This could occur where the Council is delivering or running certain types of water, energy, transport or telecoms services. Practical examples may include the running of an airport or operation of a tramway or the production of drinking water or, in certain circumstances, undertaking land drainage works. In this case the Utilities Contracts Regulations 2006 (Statutory Instrument 2006/6) which implements European Directives 2004/17/EC and 92/13/EC apply. These CSOs do not cover the rules applying to activities caught by the Utilities Regulations. If you are uncertain about the application of these provisions you must take advice from Legal Services.
- 4 The reference to "EC Treaty Principles" mean those principles derived from the EC Treaty 1957 which apply to all purchasing by the Council. These EC Treaty Principles require the Council to ensure that it acts in a way that is open and transparent, ensures equal treatment of all contractors, and permits appropriate competition.

Example: When you invite quotes or tenders, do not act in a way that favours local contractors over contractors from elsewhere in the European Union. All contractors must have the same opportunities and receive the same treatment.

- 5 The EU Rules do not apply to all contracts, but they do apply to most contracts above the specified EU Threshold financial values which are set out in CSO 7.5. For purchases caught by the EU Rules or where you are uncertain whether or not the EU Rules apply you must take advice from Legal Services.
- 6 **CSO 4.1.3:** You need to understand how the Council's Constitution, Financial Procedure Rules and Scheme of Delegation, as they apply to purchasing, interact with these CSOs.

CSO 4.2

- 7 If there is a conflict between the different sets of Regulatory Provisions, then there is a "hierarchy" application. EU Rules will always take precedence. Where UK legislation seems to conflict with EU Rules their interpretation will apply rather than the UK legislation. If you are uncertain about these issues then you must contact Legal Services.

5 Responsibilities of Senior Managers, Service Managers and Responsible Officers

- 5.1 Each Senior Manager shall have overall responsibility for the purchasing undertaken by his/her Department.
- 5.2 Each Service Manager shall be responsible for the purchasing undertaken by his/her Service and shall
 - 5.2.1 be accountable to the Senior Manager for the performance of his/her duties in relation to purchasing
 - 5.2.2 comply with the Council's decision-making processes including, where appropriate, implementing and operating a Scheme of Delegation
 - 5.2.3 appoint a Responsible Officer in writing who shall be an authorised signatory
 - 5.2.4 take immediate action in the event of breach of these Contract Standing Orders.
- 5.3 A Responsible Officer is an officer with responsibility for conducting purchasing processes for the purchase of works, supplies (goods) or services on behalf of the Council.

- 5.4 A Responsible Officer's duties in respect of purchasing are to ensure:
- 5.4.1 compliance with all Regulatory Provisions and integrity of the tender process
 - 5.4.2 compliance with the relevant statutory provisions and the Council's requirements relating to declarations of interest **and confidentiality undertakings of those involved in procurement procedures** affecting any purchasing process
 - 5.4.3 that there is an appropriate analysis of the requirement, timescales, procedure and documentation to be used
 - 5.4.4 the purchasing process, from planning to delivery incorporates (where appropriate) principles of sustainability, efficiency, whole life costings and cost savings
 - 5.4.5 compliance with the Council's decision-making processes
 - 5.4.6 that all contracts of a value of £75,000 or more are included on the Council's Contract Register
 - 5.4.7 that proper records of all contract award procedures, waivers, exemptions and extensions are maintained, with separate files for each purchase of a value of £75,000 or more
 - 5.4.8 that value for money is achieved
 - 5.4.9 that adequate and appropriate security (such as a bond or guarantee) is taken to protect the Council in the event of non-performance.
- 5.5 In considering how best to procure works, supplies and services Senior Managers, Service Managers and/or Responsible Officers (as appropriate in the context) shall take into account wider contractual delivery opportunities and purchasing methods including the use of Purchasing Schemes and e-procurement/purchasing methods, and the availability of local authority charging and trading powers under the Local Government Act 2003.
- 5.6 The Responsible Officer, if procuring services under the Public Contracts Regulations 2006, has obligations under the "Public Services (Social Value) Act 2012" namely, "a duty to consider" at the pre-procurement planning stage, the following considerations:**
- 5.6.1 how what is proposed to be procured might improve the economic, social and environmental well-being of the "relevant" local area.**
 - 5.6.2 how in conducting a procurement process it might act with a view to securing that improvement and whether to undertake a consultation with stakeholders on these matters.**
- 5.7 It is a disciplinary offence to fail to comply with these Contract Standing Orders and the Council's Purchasing Guide. All employees have a duty to report breaches of Contract Standing Orders to the Financial Services Manager and Deputy Section 151 Officer or the Corporate and Regulatory Services Manager **and Monitoring Officer**.
- 5.8 Any officer or Member who suspects any misconduct or corruption in relation to the purchase by or on behalf of the Council of works, supplies (goods) and services must refer to the Council's Whistleblowing Code which can be found on the Intranet and follow the guidance contained within.

CSO 5.1 and 5.2

1 The Senior Manager has overall responsibility for the purchasing processes undertaken by, or on behalf of his or her Department. Each Service Manager is responsible for ensuring compliance as set out in CSO 5.2.

2 **CSO 5.2.2:** Scheme of Delegation (please refer to the Council's Constitution on the Intranet)

3 **CSO 5.2.4:** Upon becoming aware of a breach of regulatory provisions (including the contract standing orders) a Service Manager must take immediate action. A failure to take immediate action may result in a purchasing process continuing in breach of the Regulatory Provisions, explained in CSO 4. This could have unwelcome practical, financial and legal consequences for the Council.

If an officer or Member becomes aware of a breach, or a suspected breach, of the Council's contract standing orders then he or she must report the matter immediately to the Financial Services Manager and Deputy 151 Officer or the Corporate and Regulatory Services Manager to ensure that appropriate steps are taken to address the breach or potential breach.

CSO 5.3

4 The Responsible Officer is appointed by the Service Manager. The Responsible Officer's duties are set out in **CSO 5.4**.

CSO 5.4

5 **CSO 5.4.1:** The Regulatory Provisions are explained at CSO 4. In addition to the specific Regulatory Provisions, Senior Managers must ensure that the tender process is conducted in a way which complies with all the requirements of the Contract Standing Orders and in a manner which is open and transparent and ensures equality of treatment and opportunity to all participants.

6 **CSO 5.4.2:** Due attention must be made to the requirements in respect of declarations of interests, affecting both Members and officers in respect of purchasing. In the case of Members, the requirements of the Code of Conduct would include:

- Registering any contracts which they or companies with which they are associated have with the Council for goods, services or works;
- Declaring any personal interest which they may have in any contract which is under consideration, and to withdraw from consideration of any contract in which they have a prejudicial interest;
- Not using their position as a Member improperly to seek to confer an advantage or disadvantage on any person or to compromise or seek to compromise the impartiality of any officer;
- Only authorising the use of Council resources, to act in accordance with the Council's requirements;
- Preventing Members from corruptly soliciting or accepting any gift or advantage for doing or forbearing to do anything as a Member.

In the case of officers, such requirements would include:

- To disclose to the Council any interest which they may have in any contract which the Council has entered or proposes to enter into under Section 117 of the Local Government Act 1972;
- To act in the best interests of the Council and not to participate in any matter in which they have a private interest in accordance with their contracts of employment;
- Preventing officers from corruptly soliciting or accepting any gift or advantage for doing or forbearing to do anything as an officer of the Council.

7 The council is required to ensure that any procurement exercise or contract management is undertaken in such a way that ensures:

- **Transparency – Procurement activities should be fair and open.**
- **Objectivity – Key decisions must be based on documented objective data and criteria as part of the procurement process.**
- **Non-discrimination – The procurement process must not discriminate between Tenderers or favour Tenderers in relation to others.**

In support of the above, the council requires that any individual who has an interest (financial or otherwise, either directly or through their employing organisation or members of their family or close friends) in the outcome of any tendering exercise or are involved in the management of any existing contract, declare such interest. This may result in that individual being excluded from participating in the design and development of any specification, evaluation of any Pre-Qualification Questionnaire (PQQ) or Tender submissions, presentations by tenderers for exercises involving the interested party or is involved in any decision making process relating to the service itself.

- 8 **CSO 5.4.3:** The purchasing process must be planned properly so that timescales are reasonable, all those involved know and understand what procedure and documents are to be used and the levels of resource and timescales are understood. A failure to analyse and provide for these requirements can result in poor procurement practice and a failure to deliver purchasing to meet the Council's requirements.

Example: Purchases may require approval at a Service, Executive or full Council level. This approval may require the provision of documentation in advance of that consideration and so this needs to be factored into the overall procurement timescale and project planning.

- 9 **CSO 5.4.4:** See comment on CSO 1.2.
- 10 **CSO 5.4.5:** The Council's decision making processes must be factored into the overall planning.
- 11 **CSO 5.4.6:** The Council's contracts register should include all details of the contracts let to ensure that the name of the contractor, the delivery period, the price and a brief description of the supply, service or works, including, in all cases, the CPV code (European Common Procurement Vocabulary) for the contract.

The contracts register ensures that the Council has clear records of contracts awarded and that no particular contractor has been unfairly treated or favoured. Some councils are now using on line tendering systems, which include contract register systems and information which is then made publicly available. This helps to demonstrate transparency in purchasing processes.

- 12 **CSO 5.4.7:** Proper records of contracts and award procedures must be maintained. This does not necessarily require a very detailed explanation, but it does require records to be maintained in writing and to be easily retrievable should they need to be consulted. The Council's records/data retention schedule sets out how long each record should be kept.
- 13 **CSO 5.4.8:** Value for money is a balance of quality, price and delivery and does not mean that the contract will necessarily be awarded on the basis of the lowest cost to the Council. Senior Managers and Responsible Officers should note the requirement for "active" contract monitoring. It is only by active and ongoing participation in contract monitoring that the Council can ensure that contracts continue to represent good value and meet the Council's requirements. This can help drive through efficiency savings and improvements, and ensure that poor contract performance can be addressed promptly.
- 14 **CSO 5.4.9:** Contract provisions should include arrangements for mechanisms to be employed in the event of poor performance (see commentary at CSO 3.3).

- 15 In addition to contract provisions, it may also be appropriate (depending upon the nature of the purchase), to include requirements such as provision of a parent company guarantee or some form of bond. The appropriate levels of "security" documents will depend upon the purchase being made and also the financial standing of the contractor. Advice should be sought from the Council's Risk Management Officer when considering additional forms of security, such as bonds or guarantees.

Example: if the Council is concerned about the ability of a contractor to honour its obligations in the event of poor performance and that contractor is a company falling within a larger company structure, then it may be appropriate to seek a form of parent company guarantee from the parent company. Similarly, in large services or works contracts, it is quite common to have some form of bond which provides a direct payment to the Council, in the event of failure to deliver to the contract standard.

CSO 5.5

- 16 Senior Managers, Service Managers and Responsible Officers (as appropriate) need to think carefully about the best way in which purchases are made. For example, in some circumstances it may make sense to use one of the Purchasing Schemes, identified in CSO 15. It may also prove better value for money to use e-Procurement or other e-purchasing methods.
- 17 Carry out sufficient analysis and understanding of the market to enable the Council to best select the potential contractors. For certain types of contract, for example high value and/or long term, it may be appropriate to undertake market research and pre-purchasing enquiries to establish who may be best placed to deliver the requirements and which route will best meet the Council's needs. Market sounding or pre purchasing enquiries must not result in the Council favouring a particular supplier in breach of the EU Rules or EC Treaty Principles.

CSO 5.6

- 18 The "Public Services (Social Value) Act 2012" places a "duty" on contracting authorities to have consideration of potential achievement of Social Value when pre-planning procurement approach specific to service contracts run under the Public Contracts Regulations 2006. Therefore, the Lead Officer looking to procure a service contract has a "duty to consider" as part of the planning stage prior to advertising, the following:**

How what is proposed to be procured might improve the economic, social and environmental well-being of the "relevant" local area and

Would undertaking a consultation with appropriate stakeholders serve to secure improvements

The Act does not put a "duty to act" on contracting authorities however consideration of above should inform approach and outcome of consideration should be recorded as part of the process on associated contract file.

CSO 5.7

- 19 It may be is a disciplinary offence for any officer to fail to comply with the CSOs and the Council's Purchasing Guide. All employees have a personal obligation under the CSOs to report breaches of Contract Standing Orders. Failure to report a breach may also amount to a disciplinary offence. Equally, any failure by a Member to comply with the CSOs and the Council's Purchasing Guide may amount to a breach of the Code of Conduct for Members.

CSO 5.8

- 20 Failure by an officer or a Member to report any suspected breach of the CSOs, or any suspected corruption can itself amount to a disciplinary offence for an officer, or a failure to comply with the Code of Conduct for Members.

6 Scheme of Delegation

- 6.1 Council purchasing may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Scheme of Delegation. Officers with delegated authority may only delegate to other officers who have the appropriate skills and knowledge for the task and such delegation shall be recorded in writing by the officer delegating the task and notified to the relevant Service Manager.
- 6.2 Each Service Manager shall inform officers, where appropriate, of the extent of any delegated authority and applicable financial thresholds.

CSO 6.1

- 1 Officers who make purchases may only carry out tasks that are properly delegated to them. If you act in good faith and within the powers delegated to you, any consequential liability accrues to the Council as your employer and not to you as an individual. But if you act outside the powers that have been delegated to you, you act as an individual, not as agent for the Council, and the Council is not necessarily bound by your actions. You can then incur personal liability to the Council and to the contractor for any loss which they may suffer.
- 2 The Council's Scheme of Delegation is in the Constitution on the intranet.

7 Financial Thresholds and Procedures

- 7.1 The table below sets out the general rules applying to the choice of purchasing procedure for contracts at the stated threshold values.
- 7.2 There is a general presumption in favour of competition. Wherever possible, contract opportunities should be advertised by way of a public notice and/or the Council's and South East Business Portal. The Council must consider the potential effect of a contract on interstate trade (at a European level). If a contract may be of interest to contractors from other member states then this may result in a need to advertise in a manner which ensures that potential contractors from other member states are aware of the opportunity, even for small value contracts or contracts under the EU Threshold levels outlined below.
- 7.3 The public notice referred to at 7.2 may take the form of a notice or advertisement in an electronic or paper format, on an easily accessible website or other electronic media and/or in the press, trade journals or Official Journal of the European Union ("OJEU") (as appropriate). The Responsible Officer may choose to place one or more public notices in different media.

7.4 Table setting out financial thresholds and procedures

Total value £	Type of contract	Procedure to be used
1,000 to 9,999	Works, supplies and services	At least one quote in advance. Consideration to be given to suitably qualified Thanet Supplier/s, if available
10,000 to 74,999	Works, supplies and services	At least three written quotes in advance. Consideration to be given to suitably qualified Thanet Supplier/s, if available
75,000 to 173,934**	Works, supplies and services	At least three written tenders in advance, following advertisement by public notice
173,934** plus **EU Threshold for supplies and services	Supplies and services	EU Rules apply – full competitive process following advertisement in the OJ for supplies and Part A* services. For Part B* services reduced requirements apply under the EU Rules but there is a presumption in favour of advertising and a competitive process
173,934 to 4,348,350**	Works	Full competitive process with tenders following advertisement by public notice
4,348,350** **EU Threshold for works	Works	EU Rules apply – full competitive process with tenders following OJ advertisement

** For the purposes of the EU Rules services are divided into two types and the EU Rules apply to a different degree. Responsible Officers should act cautiously and seek advice when considering the procedure to be used and application of the EU Rules to services contracts.*

**** or relevant threshold in force at the time under the EU Rules.**

- 7.5 Where contracts are of a type and value which means that they are subject to the EU Rules then there are four main types of EU procedures available. These are the open, restricted, competitive dialogue and competitive negotiated procedures. Care must be taken to ensure that the correct and most appropriate procedure is used and assistance on the choice and use of EU procedure should be sought from Legal Services and process progressed via the Procurement and Contracts Unit.

CSO 7.1

- 1 The table at CSO 7.4 sets out a number of thresholds and the purchasing procedures to be used at each of the threshold levels specified. The Council needs to ensure there is appropriate competition for its purchasing, both to comply with statutory requirements, but also in order to demonstrate that it is achieving best value. The table identifies different thresholds because it is also important to ensure that the process undertaken is proportionate to the purchase. Thus, for example, it may be inappropriate to run a more complex tender process of the type provided for by the EU Rules for a small scale, low value purchase.
- 2 As is noted in CSO 7.2, there is a general presumption in favour of competition and so wherever possible, contract opportunities should be advertised by way of some form of public notice. It should be noted that EC Treaty Principles mean that even if a contract is relatively small, if it is of potential interest to contractors from other member states (and this is possible in most situations), then the Council must consider advertising in a manner which ensures that potential contractors from other member states are aware of the opportunity and have a chance to apply to deliver these services. This requirement may be satisfied, for example, by advertising on a website, (either the Council's own website or, for example, the South East Business Portal) which ensures that contractors from other member states have a chance to search for and so be aware of contract opportunities offered by the Council.
- 3 The EU Threshold levels set out in 7.4 are fixed for 2 year periods. The current levels of £173,934 for supplies and services contracts and £4,348,350 for works contracts will apply until 31 December 2013. The EU Thresholds will then be recalculated by reference to exchange rates at that date and new EU Threshold levels will apply with effect from 1 January 2014 for the following 2 years (and so on). **If in doubt, Lead Officers must ensure they confirm the current thresholds applying at the time of the Procurement by contacting the Procurement Unit.**

CSO 7.2

- 4 Whilst there is a general presumption in favour of competition, there will be some circumstances where a competition will not be undertaken for a new contract. These are outlined in CSO 13. All of those involved in the purchasing process must bear in mind that these are genuinely exceptional circumstances and so where a competitive process is not used, then this needs to be clearly evidenced and appropriate approvals obtained in advance.

CSO 7.3

- 5 Public notices for quotes or tenders can take a number of different formats, but the general principle is that they should be easily accessible and easily understood. Whilst paper format, for example an advert in the press or trade journals, may be appropriate, increasingly it is important to ensure that opportunities are made available electronically on an easily accessible website, or other electronic media.
- 6 If an advertisement is to be placed in the Official Journal of the European Union (OJEU), then that requires a standard format to be adopted and submitted electronically. If an OJEU advertisement is being used, then an advertisement may not be placed for the same contract in any other media until the advertisement has been dispatched to the OJEU.

CSO 7.4

- 7 As explained above, the procedures to be used tie in with the estimated value of the contract. For contracts under £10,000 it is normally appropriate to award a contract following receipt of just a written quote. For purchasing at this level, it is quite likely that one of the Purchasing Schemes referred to in CSO 15 may be more appropriate and deliver better overall value to the Council. The Council's basic requirements and principles as outlined in CSO 1 must be complied with, so that even when only a single quote is sought, resources are used efficiently and principles of sustainability, efficiency, whole life costing and costs savings are incorporated, where appropriate, into the process.

- 8 For contracts up to £75,000, it is acceptable to undertake a process involving obtaining quotes, rather than formal written tenders, but serious consideration should be given to the requirement for a public advertisement (see commentary on CSO 7.1).
- 9 For contracts between £1,000 and £74,999 consideration should be given to suitably qualified Thanet Suppliers. This supports corporate regeneration objectives by optimising potential for incorporating wider social benefits in the delivery of value for money to the Thanet community.
- 10 For a contract in excess of £75,000, you are required to ensure that written tenders are provided in advance, following an advertisement by way of public notice. Written tenders will usually be submitted by contractors in response to an invitation to tender, issued by the Council. Written invitations to tender will generally include relevant specifications and briefs of the technical requirements, the contract terms to be used and instructions on the conduct of the procurement process itself, including timescales for responses.
- 11 For contracts of a type and value caught by the EU Rules, much more detailed provisions apply. The EU Threshold for supplies and services contracts and for works contracts differ significantly. The supplies and services threshold is much lower than the threshold for works contracts.
- 12 Under the EU Rules there are two types of service contracts. Part A contracts are listed in Schedule 3, Part A of the Regulations. For these type of contracts, *all* of the EU Rules will apply if the contract value is over the threshold. This includes the obligation to advertise in the OJEU, follow the detailed EU Rules relating to selection and evaluation processes including the requirement to publish the award criteria and weightings in advance, as well as the requirement to comply with statutory timescales.
- 13 Part B services are listed in Schedule 3, Part B of the Regulations. For these types of contracts, there is no obligation to advertise in the OJEU or to follow most of the detailed EU Rules, but there is a presumption in favour of advertising and a competitive process. There are also obligations under the EU Rules to ensure that specifications and technical requirements are defined in a non discriminatory way and to publish an advertisement in the OJEU, once the contract has been awarded. Please seek advice from Legal Services when dealing with any contract which may, or does, fall within the EU Rules including service contracts for Part B services.
- 14 Contracts often involve a mix of works, supplies and services i.e. hybrid contracts. Where the contract is a mixed contract and is of a value which means that it may fall within the EU Rules, then great care needs to be taken in calculating the potential value of the contract to establish whether or not the EU Rules apply. (See notes on calculating the contract value at CSO 9). If you are in any doubt as to whether or not the EU Rules apply, then seek advice from Legal Services

CSO 7.5

- 14 There are four main types of competitive procedures available for contracts which are caught by the EU Rules. These all involve advertising in the OJEU. The open and restricted procedures are the procedures which the Council will generally use for all purchasing which is caught by the EU Rules.
- 15 **Open Procedure:** This involves accepting applications and tenders from all interested parties. Full contract and specification documents are issued to all applicants and there is no opportunity to negotiate.
- 16 **Restricted Procedure:** This procedure allows the Council to restrict the number of applicants (tenderers) to whom it issues an invitation to tender. The Council is permitted to shortlist applicants responding to the OJEU advertisement using specified short-listing criteria. The Council can then issue an invitation to tender to the shortlisted tenderers. The invitation to tender will include the full contract specification and technical requirements, as well as the contract terms. The Council is not permitted to negotiate with the tenderers.

- 17 **Competitive Dialogue and Competitive Negotiated Procedures:** In exceptional circumstances, the Council may use the competitive dialogue, or competitive negotiated procedures. These procedures are only appropriate in the context of complex projects*. In practice, the competitive negotiated procedure will rarely be available for the Council to use. A decision to use a competitive dialogue or competitive negotiated procedure can only be taken after consultation with Legal Services and following approval from the relevant Senior Manager.

*The Regulations do not state whether the competitive dialogue procedure or the competitive negotiated procedure should be used of preference. However, the competitive dialogue procedure has been introduced to provide a clearly structured process for use in the context of complex projects. One of the main reasons for its introduction was to address major concerns at a European level relating to the over use of the competitive negotiated procedure – which was only intended for use in genuinely exceptional circumstances. There was a particular reservation about the extent to which authorities were negotiating with a single bidder towards the end of the procurement process. This was regarded as potentially anti competitive. These concerns led to the introduction of the competitive dialogue, which provides for structured negotiations with bidders but little room for further discussion once final tenders are submitted.

Both the European Commission and the UK's Government Procurement Service have made it clear in their notes/guidance on use of the competitive dialogue that it should be used in preference to the competitive negotiated procedure. The GPS has indicated that the competitive negotiated procedure may only be used in truly exceptional circumstances and has provided the development of the London Underground as an example. Competitive dialogue is now being used as the standard procedure in most PFI, PPP and complex outsourcing projects.

The circumstances where a contracting authority can use the competitive negotiated procedure without prior publication of a contract notice was clarified in January 2008. The Regulations now allow use of this procedure, where a competitive dialogue has been discontinued, because none of the bids received is compliant or satisfactory following evaluation.

- 18 **PIN:** The Council has the option to file a PIN (Prior Information Notice) and if it does so then in certain circumstances it may reduce some of the statutory timescales under the Rules. In respect of supplies and services contracts, a PIN should be published as soon as possible after the commencement of each financial year. The PIN should contain details of supply and services contracts for which the Council expects to seek tenders during the forthcoming 12 months.

For works contracts, a PIN should be issued as soon as possible after the decision approving the planning of a work or works which exceeds the relevant threshold.

If the Council does decide to publish a PIN then the standard PIN form should be used. Standard forms are accessible through the European Commission's website: <http://simap.eu.int/> or <http://www.bipsolutions.com/html/ecdirectives.htm>

8 Financial Thresholds and Processes Applying to Approval and Execution of Contracts

- 8.1 For contracts over the relevant EU Threshold (in force at the time), the choice of purchasing procedure to be used and the decision to proceed to advertisement must be authorised in writing by the relevant Service Manager in consultation with the Corporate and Regulatory Services Manager in advance.
- 8.2 When a decision is made to award a contract then the Responsible Officer must, in addition to complying with his/her general obligations under these Contract Standing Orders ensure, in particular, that:
- 8.2.1 the appropriate approvals have been obtained to authorise that decision; and
- 8.2.2 where appropriate, a standstill period complying with the EU Rules is incorporated into the final award process.
- 8.3 Any contracts valued at £75,000 or above shall be executed as a deed under the Council's common seal. Officers with appropriate delegated authority may sign all other contracts. £10,000 shall be the threshold for the purposes of Regulation 8 of the Local Authority (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.
- 8.4 Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of the security arrangements has been approved by the Shared Services Director for East Kent Services and Corporate and Regulatory Services Manager **and Monitoring Officer**.

CSO 8.2.2

- 1 Where contracts are subject to the specific requirement under the EU Rules to advertise in the **OJEU**, then Regulation 32 requires the Council to include a standstill period once it has decided on a successful contractor. The Council is required to write to all of the candidates and tenderers in the process notifying them of its decision and including specified information. The Council may enter into the contract with the successful contractor, only after a period of 10 days has passed and only then, if there has been no formal challenge of the Council's award decision. The provisions of Regulation 32 are quite complex. Correspondence with the candidates and tenderers and timescales must comply with the Regulations. You **MUST** take advice from Legal Services on this point.

CSO 8.3

- 2 Where a local authority contract is at or above the threshold value of £10,000 but below £75,000, the contract must be signed by the Corporate and Regulatory Services Manager, or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.
3. These CSOs require that all contracts at or over the specified threshold value of £75,000 will be under seal. The affixing of the Common Seal will be attested by a Member of the Council and the Corporate and Regulatory Services Manager or some other person authorised by him/her.

CSO 8.4

- 4 Helpful guidance on the Electronic Signature Regulations is available at www.dti.gov.uk

9 Calculating the Contract Value

- 9.1 The starting point for calculating the contract value for the purposes of these Contract Standing Orders is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (**including proposed extensions and options**).
- 9.2 There shall be no artificial splitting of a contract to avoid the application of the provisions of the EU Rules and/or these Contract Standing Orders.
- 9.3 The EU Rules can cover contracts which are below the stated EU threshold where they constitute repeat purchases and/or purchases of a similar type in a specified period. Responsible Officers should therefore seek advice on the application of the EU Rules where they envisage that they may require to make such purchases.

CSO 9.1

- 1 The estimated contract value is the entire contract value. In practice, this means you need to take into account all of the actual, or potential, payments to be made under the contract, during the whole life of the contract.

Examples:

For the purchase of equipment you should take into account the actual and likely costs of:

- The initial purchase (including cost of purchase if it is funded by way of a lease);
- Installation;
- Servicing for the entire contract period;
- Training and other support for the entire contract period; and
- Consumables for the entire contract period.

For the carrying out of cleaning services you should take into account the actual and likely costs of

- The annual cost of providing the service multiplied by the number of years of the contract **INCLUDING** possible extensions allowed for in the contract;
- Possible inflation uplifts during the contract period.

- 2 You must take into account the entire contract period. If the contract is for an initial period of, for example, 3 years but there is an option to extend for a further 2 years, then the value of the contract should be the total potential 5 year period and not just the initial 3 year period. Similarly, if the contract relates to an initial purchase but there are options to make additional purchases in the future, then the total potential value, including the value of potential additional purchases, must be taken into account, in calculating the value of the contract.
- 3 You should also take into account, using your best genuine estimates, the impact of any inflation value or uplift on the contract. Thus, for example, if the contract allows for a 3% increase each year and the contract is for up to a 5-year period, then you need to allow for the total value of the contract, including the likely inflation provisions.
- 4 Where there is uncertainty surrounding the potential total contract value, for example, the inflation provisions have not been finally agreed or there are a number of options, then you need to use your best estimate and act cautiously and assume that the higher potential value will apply.

CSO 9.2

- 5 It is very important to ensure there is no artificial splitting of a contract to avoid either the application of the EU Rules, or the CSOs. Whilst there may be genuine reasons why the Council's requirements may be split into various contracts, under the EU Rules there are specific provisions which prevent this being done with the intention of avoiding those EU Rules. In this context, it is also important to understand that if the Council requires repeat purchases of same or similar items, services or works, then you may have to take into account all of those potential requirements for all Council departments in order to establish whether or not the EU Procurement Rules apply

Example: The Council knows that it is going to purchase a number of PCs in the next 12 months. It is clear what its requirement is immediately, but it has also budgeted for ongoing purchases over the next 12 months, which take the potential value of the contract over the EU threshold for supplies. In these circumstances, the Council will need to ensure that the purchase is advertised in the OJEU and follow the EU Rules.

- 6 The detailed EU Rules on calculating the value of the contract are in place to ensure that the EU Rules are not avoided, due to the inappropriate splitting of contracts. If it is possible that the Council as a whole may have repeated requirements for the same or similar items, services or works, then you must discuss this with Legal Services.
- 7 Where there is a requirement for repeated purchases, it may well be that a Purchasing Scheme is a better approach for the Council to adopt. Purchasing Schemes such as a centrally organised framework arrangement run by a central purchasing body should ensure that the EU Rules have already been satisfied, so there is no ongoing obligation to advertise in the OJEU or elsewhere each time a requirement arises. This may well represent better overall value to the Council.
- 8 Where there is a requirement for repeated purchases with total values below the EU thresholds appropriate procedures for lower value purchasing must be applied as contained at CSO7.4

10 Principles Underlying Tendering Processes and Tender Evaluation

- 10.1 All tendering procedures (including obtaining quotes), from planning to contract award and signature, shall be undertaken in a manner so as to ensure:
- 10.1.1 Sufficient time is given to plan and run the process
 - 10.1.2 Equal opportunity and equal treatment
 - 10.1.3 Openness and transparency
 - 10.1.4 Probity
 - 10.1.5 Outcomes that deliver sustainability, efficiency and cost savings (where appropriate).

CSO 10

- 1 **CSO 10.1.1** - Pre-planning is critical for all purchasing. All purchasing procedures (both through quotes and more formal tendering) must be undertaken in a manner which ensures integrity of the process and within appropriate timescales.
- 2 For purchasing processes subject to the EU Rules, there are statutory timescales which must be followed. These are minimum timescales and should be used as a starting point for planning an appropriate timetable.
- 3 In considering how much time is required, you should allow for preparation time, the amount of time and resources required to draft the relevant technical and legal documents. You also need to take account of internal procedural requirements such as approvals and despatch processes as well as appropriate timescales to allow contractors to fully prepare their responses. Different timescales will apply according to the nature and complexity of the purchase being made.
- 4 **CSO 10.1.2:** The EC Treaty Principles apply to **all** purchasing by the Council. This means that all contracts must be let fairly. Councils must not do anything that might prejudice fair and open competition for a contract. The principles require the Council to ensure that there is equal opportunity and equal treatment of all potential contractors through any purchasing exercise. The Council must not unduly favour contractors or applicants from a particular country including favouring applicants from the UK.
- 5 **CSO 10.1.3:** The EC Treaty Principles also require all purchasing processes to be run in an open and transparent manner. This means that the documents being used in the purchasing process should make it clear to all parties participating in the process, what is happening, when and why. All potential contractors should be given an equal opportunity to clarify the Council's requirements and processes.
- 6 **CSO 10.1.4:** Probity means that each purchasing exercise transparently secures the best value for the Council in the public interest, untainted by conflicts of interest, collusion or private advantage.
- 7 **CSO 10.1.5:** See comment above at CSO 1.

11 Submission and Opening of Tenders

- 11.1 An Invitation to Tender shall be issued by the Council for all contracts over £75,000 and tenders shall be submitted in accordance with the requirements of the Invitation to Tender.
- 11.2 Any tenders received (other than those received electronically, to which 11.3 shall apply) shall be:
- 11.2.1 addressed to the Democratic Services **and Scrutiny** Manager
 - 11.2.2 in a sealed envelope marked "Tender" followed by the subject matter to which it relates
 - 11.2.3 kept in a locked cabinet by Democratic Services
 - 11.2.4 retained unopened until the date and time specified for its opening.
- 11.3 Where the Council has indicated in the Invitation to Tender that a tender can or must be submitted electronically, then those tenders shall be:
- 11.3.1 addressed to the e-mail address as notified in the Invitation to Tender
 - 11.3.2 in the format specified in the Invitation to Tender
 - 11.3.3 stored in a secure mailbox, which requires a code or other appropriate security measure, to open it
 - 11.3.4 retained unopened until the date and time specified for its opening.
- 11.4 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the relevant Service Manager is satisfied that there is sufficient evidence of the tender having been dispatched in time for it to have arrived before the closing date and time, or other exceptional circumstances apply, and the other tenders have not been opened.
- 11.5 Where Tenders are expected to have a value in excess of £75,000, invitations to the opening of these tenders will be sent to the appropriate Portfolio Holder or another Cabinet Member, and the appropriate Shadow Portfolio Holder or another Shadow Cabinet Member, a Procurement Officer, one responsible officer nominated by the relevant Service Manager and a Democratic Services Officer to undertake the completion of the Record of Receipt of Tender Document of tenders received including names and addresses and the date and time of opening. In circumstances where both Portfolio/Cabinet member and/or, both Shadow Portfolio/Cabinet members are unable to attend, opening of tenders can and should be undertaken in presence of officers and at least one substitute Member to ensure procurement programme is maintained
- 11.6 The tender opening process is set out in detail at Appendix 1 to these contract standing orders.

CSO 11

- 1 Tender processes must be undertaken in an open and transparent way and explained to tenderers so that they understand what you are doing, why and when.
- 2 **CSO.11.1** - All contracts over £75,000 must involve a formal advertisement and invitation to tender process. All contracts above the EU Rules thresholds must also comply with the detailed EU Rules applying to the conduct of the tender process. These may differ according to the type of process used.
- 3 The invitation to tender should, as a minimum, include:

- Instructions to tenderers which set out when and how tenders must be submitted, in what format and where queries should be addressed to at the Council.
- The specification/technical details of the subject matter of the contract.
- The contract terms and conditions which will apply.
- The tender evaluation criteria.
- The process for awarding the contract.

4 Invitations to tender should be written in plain language and avoid the overuse of unnecessary technical terms.

5 **CSO 11.2:** All tenderers must be treated in the same way; hence the requirements that the tenders are all presented in a similar manner when submitted to the Council by the tender return date. Tenders are to remain unopened until the date and time specified for opening so that, for example, there is no potential for an early tender to influence the process.

6 **CSO 11.3:** The same reasoning as for CSO 11.2 underlines the provisions relating to electronic submission of tenders.

7 **CSO 11.4:** Late tenders should normally be rejected unless (1) late delivery is a result of actions outside the control of the tenderer or (2) other exceptional circumstances exist which the Council, in exercising reasonable discretion, deems sufficient to allow acceptance. Where a decision is made to accept a late tender, then it is sensible to document the time of receipt of that tender and the reasons why the tender has been accepted.

Practical examples of the sort of circumstances where late tenders may on occasion be accepted include:

- Where the Council's offices were unexpectedly closed at the date specified for receipt of tenders so that tenders could not be delivered on time.
- Particularly severe weather which may have delayed the arrival of a tender sent by courier but where there is clear evidence of dispatch with sufficient time allowed for delivery to comply with the tender return time and date.
- Where a tender has not been received at all but there is genuine and persuasive evidence that the tender was prepared and dispatched on time.

8 **CSO 11.5:** There needs to be a clear audit trail of all tenders received, from whom and when they are opened, to ensure that there is no preferential or unfair treatment. The tender opening process is set out in detail at Appendix 1 to these contract standing orders.

9 What happens if tender processes do not go as planned or if there is technical non compliance? The Council's standard "Invitation to Tender" document should include provisions stating that tenders can be rejected if they are not compliant with the requirements of the Council, including compliance with submission dates, times and format. Where a tender is received which is non compliant because, for example, the envelope is not marked as required, then, subject to any limitations in the Scheme of Delegation, the Responsible Officer (or Senior Manager where appropriate), may exercise some discretion in terms of whether or not that tender is accepted. Similarly, where there is provision for this in the Invitation to Tender, if after undertaking an initial review of the tender documents, the Responsible Officer is of the view that a genuine mistake, such as a mathematical error has been made in the tender, then the Responsible Officer (or Senior Manager where appropriate) may wish to exercise discretion and go back to the affected tenderer to clarify the submission made. If you wish to exercise this type of discretion, you should ensure that this falls within your delegated powers and you should take advice from Legal Services. All exercises of discretion should be carefully recorded in writing, including reasons why the discretion was exercised.

- 10 Where tenders are submitted electronically or by other digital media, then the Council should have in place, appropriate systems to ensure that receipt can be clearly recorded to ensure that tender timescales are complied with. Again, the Responsible Officer (or Senior Manager where appropriate) may exercise discretion as to whether or not to receive and accept tenders which are not submitted strictly in accordance with these requirements, although exercise of that discretion, should be exceptional and you should take advice from Legal Services.

12 Evaluation of Quotes and Tenders

- 12.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenders.
- 12.2 Tenders subject to the EU Rules shall be evaluated in accordance with the EU Rules.
- 12.3 Save in exceptional circumstances approved in advance by the relevant Service Manager all contracts shall be awarded on the basis of the quote or tender which represents best value for money to the Council and not on the basis of lowest price.

CSO 12.1

- 1 The Council is under a general obligation to ensure that it is open and transparent about its purchasing procedures. This includes how you select the best tender or quote. This general obligation under the EC Treaty Principles applies to all purchasing and contracts – both those subject to the EU Rules and those not caught by those EU Rules.
- 2 “Evaluation criteria” are the criteria which you will use to assess a quote or tender in order to come to a decision on which quote or tender best meets the Council’s requirements and so who should be awarded a contract. It is important that you are clear and open with tenderers about what criteria you will use and that both they and you know, in advance, how the Council will assess/mark against the criteria. Where the EU Rules apply to the contract, then you are obliged by law to disclose the tender evaluation criteria in advance (see CSO 12.2).
- 3 This means that for all purchasing, the evaluation criteria must be set out in advance and be provided to the tenderers together with any scoring or assessment scheme which will be used. The criteria and scoring or assessment scheme cannot be changed after they have been provided to the tenderers, so you must be certain that the criteria are robust and the scoring or assessment scheme is appropriate for the particular contract and purchasing process.
- 4 Notification of the criteria and scoring or assessment scheme can be done in a number of ways – depending upon the type of process which you are using. For simple quotes, the evaluation could just be set out in a list in the letter inviting contractors to quote. For more formal processes, it would generally be more appropriate to include this information in the Invitation to Tender document and this may involve a more complex presentation style.
- 5 Specific provisions relating to tender evaluation criteria apply to contracts which are subject to the EU Rules (see commentary on CSO 12.2)

CSO 12.2

- 6 The EU Rules have specific provisions applying to tender evaluation criteria. The main legal provisions are at Regulation 30. This section now goes on to explain some of the key provisions of Regulation 30.
- 7 The Council is required to award contracts on the basis of an offer which is either (1) the lowest price or (2) the “most economically advantageous” – which means that other factors, in addition to price, can be taken into account such as quality, timing and delivery. In

practice, the Council is extremely unlikely to opt to award a contract on the basis of lowest price only and CSO 12.3 reflects this.

- 8 Regulation 30 provides examples of the sort of evaluation criteria which can be used to assess what amounts to the “most economically advantageous tender”. This includes factors such as quality, price, technical merit and after sales service. The list is not exhaustive and so other evaluation criteria can be used. All evaluation criteria used by the Council in evaluating a tender must be linked to the subject matter of the contract. This means that the criteria must be related to the works, supplies or services which are actually being purchased. We have given two examples of evaluation criteria below. There is more guidance in the Office of Government Commerce papers “Social Issues in Purchasing” and “Fair and Ethical Trading”.

Example 1. Environmental Considerations

The Community of Helsinki decided to put their bus services out to tender. They used award criteria such as overall price, quality of the bus fleet and operational quality. Under one award criterion, companies could score extra points if they could comply with certain emission and noise levels. On the basis of these extra points, the contract was awarded to the municipal transport company.

A losing tenderer opposed this decision, arguing that emission and noise levels could not be used as an award criteria.

The European Court of Justice ruled that the criteria could be used as (1) there was a sufficient link to the subject matter of the contract, (2) the criteria were specific and objectively quantifiable, (3) use of these criteria were notified in advance and (4) it was in accordance with basic Treaty principles.

Example 2. Social considerations -the social issue must be relevant to the purchase

Buying coffee/Fairtrade principles

The Council may specify organic coffee because the production process relates to the production of the coffee in terms of chemical content and the way it is grown. However, they cannot specify **only** fair trade coffee because this relates to the standard of living of the coffee growers and not the product. The Council can say in its contract documents that it would welcome fair trade coffee options such as Fairtrade or equivalent as part of a coffee supply contract. The bids should be evaluated on a value for money basis using the organic criteria and others directly related to the subject of the contract. Where the winning tenderer can supply fair-trade coffee, then the contract documentation may say that it should be made available at civic meetings.

- 9 The evaluation criteria which the Council will use must be stated in advance either in the **OJEU** advertisement or in the tender documents. (The Regulations refer to the “contract documents” but in this context this means the Invitation to Tender (or equivalent documents if the open or restricted procedures are not being used).
- 10 In addition to setting out in advance what the evaluation criteria are, the Council is also required to state what “weighting” will be applied to assessing each of the criteria. The weightings must be listed together with the criteria – either in the **OJEU** notice or in the tender documents. This requires the Council to give careful thought well in advance as to how tenders will be evaluated. Either the Procurement and contracts unit or a specialist consultant should be able to give you advice on formulating evaluation matrices.
- 11 It is only in very exceptional circumstances, that the Council will be able to avoid the requirement to list the weightings in advance. You should start with the assumption that weightings must be provided. If you consider that it is not possible to do this, then you must discuss this with Legal Services. If weightings cannot be provided, then Council is still required to list the criteria and must list them in descending order of importance.

13 Waivers

- 13.1 The requirement for the Council to conduct a competitive purchasing process for contracts in excess of £10,000 may be waived in the following circumstances.
- 13.1.1 For contracts which are not subject to the EU Rules, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or
 - 13.1.2 the circumstances set out in the Public Contract Regulations 2006 Regulation 14 apply (whether or not the contract is of a type which is subject to the application of the EU Rules); or
 - 13.1.3 the contract is awarded under a Purchasing Scheme of a type where a competition has already been undertaken on behalf of the Council; or
 - 13.1.4 at the discretion of the relevant Senior Manager who may proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.
- 13.2 A Responsible Officer who seeks a waiver of Contract Standing Orders, shall do so only in advance and only in exceptional circumstances. Further guidance on what may constitute exceptional circumstances permitting waiver of these Contract Standing Orders is set out in the Council's Purchasing Guide.
- 13.3 All waivers from these Contract Standing Orders must be:
- 13.3.1 Fully documented
 - 13.3.2 Subject to a written report in an approved format, available on the intranet, to be submitted **in advance** to the relevant Senior Manager which shall include reasons for the waiver which demonstrate that the waiver is genuinely required
 - 13.3.3 Subject to **approval in advance** by the Section 151 Officer who shall record that they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional. Applications for waivers which are a result of poor contract planning will rarely be considered genuinely exceptional.
 - 13.3.4 Subject to periodic report to Cabinet by Procurement and Contracts Unit and retrospective waivers will also be reported via Governance & Audit Committee
- 13.4 All decisions on waivers must take into account:
- 13.4.1 Probity
 - 13.4.2 Best value/value for money principles.
- 13.5 For contracts subject to the EU Rules, any waiver from the requirement for competition must meet the conditions set out in the EU Rules in addition to the general requirements above.

CSO 13

- 1 The requirements of the CSOs can only be waived in very exceptional circumstances and in advance. If a waiver is made to these CSOs, then the provisions of CSO 13 must be complied with to ensure it is clear why the decision has been made and by whom. All the relevant circumstances must be taken into account.

- 2 These provisions should not be used merely where to go out to tender would, for example, result in additional administrative or procedural burdens or a short period of delay. The waiver provisions should not be used as an excuse for poor procurement practice or for a lack of advanced planning (see CSO 13.3). The general presumption is that contracts will be put out to competitive tender so as to ensure that the Council uses its resources efficiently, purchases quality goods, services and works, safeguards its reputation from any implication of dishonesty or corruption and is able to demonstrate principles of sustainability, efficiency, whole life costings and cost savings.
- 3 It is very important to note that if the contract is of a type and value which means that it is subject to the EU Rules then there are only very limited circumstances in which a contract can be awarded without competition and the permitted circumstances are extremely narrowly interpreted. If you are seeking to exclude an EU contract from the requirement to go out to competition then you must seek advice in advance from Legal Services.
- 4 For contracts which are not subject to the EU Rules there are still obligations in terms of ensuring appropriate levels of competition (see comment at CSO 4.1.2 and CSO 7.1).

CSO 13.1

- 5 **CSO 13.1.1:** This CSO sets out the circumstances where it may be permissible due to a matter of urgency for the Council to purchase works, supplies or services without going through a competitive process.

Example: For a contract not subject to the EU Rules, a waiver from the requirement of competition may be appropriate using CSO 13.1.1 where, due to unforeseen circumstances, there is an urgent requirement for the provision of domiciliary care services and failure to deliver those services as speedily as possible may lead to health and safety issues for users.

- 6 **CSO 13.1.2:** Regulation 14 of the Public Contracts Regulations 2006 sets out certain, narrowly constrained circumstances where contracts which are subject to the EU Rules can be awarded without following a competitive purchasing process. These EU Rules also provide a good steer for the sort of circumstances where it may be acceptable to waive the requirement for competition for contracts which are not subject to the EU Rules. These include the following types of situation:

Examples:

- Where the Council has already gone out to an open and competitive tender, but only non compliant tenders have been received. It therefore decides to terminate the procurement process and negotiate the contract with those bidders who submitted a tender as part of the previous process.
- Where the Council went out to open competition and received no responses at all, in which case it decides to approach a single contractor and negotiate a deal on the basis of the original terms included in the public tender process.
- Where the Council already has a contract under which goods have been supplied to it and it then requires additional goods which could not be provided by another supplier and obtaining goods from another supplier would result in genuine incompatibility between the existing goods and those to be purchased or genuine and disproportionate technical difficulties in procuring the goods from elsewhere. Under the EU Rules, the additional requirements must also be purchased within 3 years of the original contract.
- Where there is a closing down sale so that goods can be purchased on a particularly advantageous basis.

These examples are not an exhaustive list but they do give an indication of the sort of circumstances where the purchase of additional goods, works or services without competition may be permissible. Where the Council wishes to extend a contract then CSO 14 will also apply.

- 7 **CSO 13.1.3:** Where a contract is awarded using a Purchasing Scheme (where appropriate, one which is compliant with the EU Rules) then provided that the Council is satisfied that the conditions set out in CSO 15 are met then there will be no further need to run a competition as that has already been undertaken on behalf of the Council.
- 8 **CSO 13.1.4:** In exercising discretion as to the award of the contract without the competitive process, the individual making that decision must pay due regard to the requirements of the CSOs and this purchasing guide. If the EU Rules apply then they must seek advice from Legal Services prior to proceeding.

Examples of where a waiver may be justified include:

- Requiring two rather than three written quotes for a contract between the value of £10,000 - £75,000 where there is clear evidence that the number of potential contractors is extremely limited
- A decision to go down a written quotation route rather than the requirement to obtain three written tenders in advance (for contracts below the EU threshold) and where the Council is satisfied that (1) there is no obligation to advertise that opportunity to comply with the general requirements of the EC Treaty Principles and (2) the general underlying requirements of the procurement process will still be satisfied.

NB Waivers should not be used for reasons of poor planning. It should not be the case that a contract is due to expire and has not been properly planned for. Appropriate tender lead cycles need to be factored into the planning process to avoid avoidance of best practice procedures.

14 Extensions to Existing Contracts

- 14.1 Where extensions to existing contracts are made, the extensions must be determined in accordance with the contract terms, for a specified period and made in accordance with the principles set out in the Council's Purchasing Guide.
- 14.2 Any extension must be:
- 14.2.1 Fully documented and notified to the Procurement and Contracts Unit to update Contract Register
 - 14.2.2 Subject to a written report in an approved format to be submitted to the relevant Senior Manager and Section 151 officer, which shall include reasons for the extension which demonstrate that the need for the extension is genuinely exceptional
 - 14.2.3 Subject to approval by the Senior Manager and Section 151 officer, who shall record that they have considered the reasons for the extension and that they are satisfied that the circumstances justifying the extension are genuinely exceptional.
- 14.3 Any extension must take into account:
- 14.3.1 Probity
 - 14.3.2 Best value/value for money principles
- 14.4 For contracts subject to EU Rules, any extension must meet the conditions set out in the EU Rules in addition to the more general requirements set out above.

CS0 14

- 1 This CSO is primarily aimed at addressing the issue of when and how a contract period may be extended. There is a general presumption against the extension of contracts. Contracts may only be extended beyond their original term in genuinely exceptional circumstances. Any extension must be for a limited and specified period. Where the contract is caught by the EU Rules then the contract period may only be extended in limited circumstances and you must seek advice from Legal Services.
- 2 Clarity and certainty are key factors in establishing whether or not an extension is permissible. A well drawn up contract will set out in advance the clear basis upon which that contract may be extended.

Example: When the contract for IT support services was advertised, it was made clear in the advertisement that the contract would be:

- for an initial period of five years
- with an option to extend for up to a further two years

The provisions of the original contract explained how the extension is to be exercised together with the costs. The Council is now proposing to exercise the option to extend. There will be no renegotiation of either the legal terms, scope of the contract or the payment arrangements (except for the price inflation provisions specifically allowed for within the contract and clearly defined in advance). This extension is permissible.

- 3 The problems with contract extensions arises where either there is no provision for extension within the contract or the potential for extension was not made clear at the outset or where the arrangements for the contract extension result in renegotiations. In these circumstances, there are specific provisions which apply in the context of contracts subject to the EU Rules and you must seek advice from Legal Services.
- 4 For contracts not subject to the EU Rules then the basic principle is that any period of extension should be limited, for a specified period and the effect of the extension should not be such as to create a disproportionate expansion in the coverage either in terms of value, time period or subject matter of the contract. This is because it may well be regarded as anti-competitive to agree an extension of the contract which effectively awards a valuable opportunity to the existing supplier without having exposed that opportunity to competition and providing other providers with the opportunity to deliver those additional requirements.
- 5 Any extension of the subject matter (as opposed to the contract period) of a contract can generally only be permitted in accordance with the provisions of the contract or in very exceptional circumstances covered by the EU Rules. For longer term or major contracts, there are often provisions that allow for the evolution of the contract to meet the Council's needs, for example, by way of continuous efficiency and improvements clauses. Most of these contracts also incorporate mechanisms to allow for a certain degree of variation or change to reflect the practical issues associated with implementation and ongoing service delivery. Contracts must not be drafted in such a way as to be so flexible that they are in breach of the basic requirement that the contract terms must be clear and certain or to allow for changes which are so significant as to be potentially anti competitive because, for example, they effectively amount to the award of a new contract.
- 6 Particular caution should be exercised in terms of the practical effect of an extension on the contract value. In no circumstances should an extension be made to a contract that has the effect of increasing the contract to a value over the EU Rules thresholds in force at that time.

15 Purchasing Schemes

- 15.1 A Responsible Officer may use Purchasing Schemes subject to the following conditions and the Council's Purchasing Guide.
- 15.2 Responsible Officers must check in advance that
 - 15.2.1 The Council is legally entitled to use the Purchasing Scheme
 - 15.2.2 The purchases to be made do properly fall within the coverage of the Purchasing Scheme
 - 15.2.3 The establishment and operation of each Purchasing Scheme is in compliance with the EU Rules (where they apply) and meets the Council's own requirements.

CS0 15

- 1 **CS0.15.1** - There are an increasing number of Purchasing Schemes which the Council may choose to participate in which assist in terms of purchasing efficiencies and value for money. An illustrative list is set out in CS0 15.3 and these types of schemes are discussed in further detail below.
- 2 **CS0 15.2:** Responsible Officers must check three key factors in advance, prior to using a Purchasing scheme:
- 3 **CS0 15.2.1:** Responsible Officers must check that the Council is legally entitled to use the Purchasing Scheme.

- 4 **CSO 15.2.2:** Responsible Officers need to check that the Purchasing Scheme covers the purchases to be made. All Purchasing Schemes should clearly specify what can be purchased under the scheme. This is to ensure that contractors participating in the scheme know what they are providing and purchasers are clear about the coverage and limitations of the scheme. It is therefore important to check that particular schemes do cover all your requirements.
- 5 **CSO 15.2.3:** Responsible Officers should ensure that the Purchasing Scheme has been established and is operated in accordance with the detailed EU Rules (where they apply). Purchasing Schemes can be a very efficient way of ensuring compliance with the EU Rules without having to undertake further separate EU procurement processes. The Council cannot discharge itself from its obligations to ensure compliance with the EU Rules.

Example: In the context of framework arrangements it is important to ensure that types of potential purchases to be made by the Council are clearly identified in the original OJEU notice, that the framework is established for the permissible four year period and that any direct call off or mini competitions are operated in accordance to the terms of the framework and the provisions of the EU Rules

15.3 A "Purchasing Scheme" may include:

- 15.3.1 Contractor prequalification lists/select lists
- 15.3.2 Framework arrangements (including those set up by the Government Procurement Service, Central Buying Consortium, Kent Commercial Services)
- 15.3.3 Purchasing arrangements set up by central purchasing bodies and commercial organisations
- 15.3.4 Consortium purchasing
- 15.3.5 Collaborative working arrangements
- 15.3.6 Formal agency arrangements
- 15.3.7 E-procurement/purchasing schemes and methods
- 15.3.8 Other similar arrangements such as the IDeA Marketplace

CSO 15.3

- 6 The term "Purchasing Scheme" is used to describe a range of different purchasing practices and the list is not intended to be exhaustive.
- 7 **CSO 15.3.1: Contractor pre-qualification lists/select lists** are occasionally operated by councils to produce a list of contractors who are appropriately pre qualified to deliver the requirements of the Council. Whilst this can streamline purchasing as it means that a contractor's suitability does not have to be assessed every time a contract award is contemplated, the list and those contractors contained must be subject to periodic (annual) pre-qualification to ensure their status has not changed. Care does need to be taken to ensure that these arrangements do not fall into the trap of being caught by the EU Rules, because they amount to a repeated requirement for the same or similar provision (see comment at CSO 9). Pre qualification and select lists are not permitted for purchasing caught by the EU Rules.
- 8 **CSO 15.3.2: Framework Arrangements:** care needs to be taken to ensure that you understand what is intended by this term and whether or not the Purchasing Scheme is a framework arrangement subject to the EU Rules. The EU Rules define framework arrangements as a very specific type of arrangement. Where the EU Rules apply, frameworks are subject to controls including a limit of 4 years on the life of the framework and

the conduct of mini competitions within a framework. However, the term "framework" is used more generally and so you need to be clear about what type of framework you are participating in and whether or not it complies with EU Rules.

- 9 **CSO 15.3.3: Purchasing arrangements: set up by central purchasing bodies and commercial organisations** (including arrangements established by the Government Procurement Service) are frequently forms of framework arrangements set up to comply with the EU Rules. However, you will need to check that you understand what format the purchasing arrangements comprise and whether or not EU Rules have been taken into account and, where appropriate, complied with in their award.
- 10 **CSO 15.3.4: Consortium purchasing** may refer to purchasing by groups of authorities together or as one authority on behalf of others, in which case, it is more likely that technically this amounts to a central purchasing arrangement.
- 11 **CSO 15.3.5: Collaborative working** arrangements may involve different levels of formality. Some collaborative working is merely a loose agreement between different organisations to work together in their purchasing. Collaborative working is also used to refer to arrangements, which may in practice, involve the pooling of resources. It is important to clarify which sort of collaborative working arrangement is proposed, so as to identify the rules, which may apply.
- 12 **CSO 15.3.6:** In some circumstances, a **formal legal agency** arrangement may apply in which case you need to ensure that you understand the legal terms which the Council will be required to contract on.
- 13 **CSO 15.3.7:** All of the above types of Purchasing Schemes may include some form of EU procurement, but there are also other forms of electronic Purchasing Schemes and methods including the use of the electronic purchasing cards, online listings and information sharing

15.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Standing Orders in respect of the choice and conduct of procedures to the extent permitted and indicated in the Council's Purchasing Guide.

CSO 15.4

- 14 Where a Purchasing Scheme is used then, as a main driver behind many of these Purchasing Schemes is to simplify procurement, some or all of the CSOs may not apply. In practice, the CSOs less likely to apply are those that relate to the tendering procedures, as many of these procedures will often be undertaken as part of the Purchasing Scheme process. The extent of the application of the CSOs and the exemptions from those standing orders will vary according to the type of scheme being used.
- 15 In general, the provisions of the following CSOs will continue to apply when a Purchasing Scheme is used:
 - CSO 1 – Purpose of the contract standing orders**
 - CSO 2 – General principles**
 - CSO 3 – General principles applying to all contracts – contracts in writing/standard clauses**
 - CSO 4 – Regulatory context**
 - CSO 5 – Responsibilities of Directors, Service Managers and Responsible Officers**
 - CSO 6 – Schemes of Delegation**
- 16 **CSO 7: Financial Thresholds and Procedures**

CSO 7.1: Will apply where a Purchasing Scheme is used.

CSO 7.2: Will apply where a Purchasing Scheme is used.

CSO 7.3: Will apply where a Purchasing Scheme is used where the Responsible Officer is required to make a decision as to the choice of advertising media.

CSO 7.4: This CSO will apply only to the extent that it is relevant for a particular Purchasing Scheme. Quotes or written tenders may be procured by way of the Purchasing Scheme. In some circumstances, for example where a framework arrangement for supplies has been established, then the Council can purchase direct from contractors on the framework without the need for a further quote or tender process.

CSO 7.5: Will apply where a Purchasing Scheme is used.

17 **CSO 8: Financial Thresholds and processes applying to approval and execution of contracts.**

CSO 8.1: For contracts over the relevant EU threshold, the choice of purchasing procedure – including choice of the Purchasing Scheme (and thus procedure) should still be authorised in writing in advance.

CSO 8.2, CSO 8.3 and CSO 8.4: Responsible Officers still need to ensure that if a Purchasing Scheme is used, then these requirements are complied with.

18 **CSO 9: Calculating the contract value.** These principles still apply in calculating the contract value of purchases to be made under Purchasing Schemes.

19 **CSO 10: Principles underlying tendering processes and tender evaluation.** The extent to which this CSO will apply will depend upon the nature of the Purchasing Scheme. Some Purchasing Schemes will involve the undertaking of tender evaluation entirely by another organisation. In these circumstances, the Council still needs to be satisfied that the process to be undertaken by that other organisation meets its basic requirements but for example, less attention will need to be paid to ensuring sufficiency of time in planning and running the process as this has been done on behalf of the Council.

20 Basic EC Treaty principles of equal opportunities and equal treatment, openness and transparency as well as the need to ensure probity and that the outcomes deliver sustainability, efficiency and cost savings will still apply irrespective of the type of procurement process used, including the use of Purchasing Schemes.

21 **CSO 11: Submission and opening tenders:** For certain types of Purchasing Schemes, the Council will not need to issue Invitations to Tender and comply with the other requirements of this CSO as the process itself may be run by another organisation. Again, this will be dependant on the type of Purchasing Scheme used.

22 **CSO 12: Evaluation of quotes and tenders:** Irrespective of the Purchasing Scheme used, the Council should be satisfied that the criteria used to select contractors meets its requirements and ensure that best value is obtained. However, for certain types of Purchasing Schemes such as centrally organised framework arrangements and those undertaken by central purchasing bodies, the evaluation criteria and processes will be run by another organisation.

23 **CSO 13: Waivers:** These provisions still apply to the extent that they are relevant under Purchasing Schemes.

24 **CSO 14: Extension to existing contracts:** These provisions will continue to apply and any extensions to contracts awarded under Purchasing Schemes will also need to meet the requirements of those Purchasing Schemes and be carried out in accordance with those arrangements.

25 **CSO 16: Review and change of these CSOs:** These provisions apply. It should be noted that the list at CSO 15.3 of permissible Purchasing Schemes allows for a range of

Purchasing Schemes to apply. These are not identified specifically but generically and so new Purchasing Schemes may well fall within the permitted type of Purchasing Scheme without a requirement for a change in the CSOs themselves.

16 Review and Changes to these Contract Standing Orders

16.1 These Contract Standing Orders shall be reviewed and updated on a regular basis. Save in the case of revisions to the EU Thresholds in Contract Standing Order 7, amended Contract Standing Orders shall be recommended by the Constitutional Review Working Party to Council. The ~~Procurement and Contracts Manager~~ **Strategic Procurement Manager** will make revisions to the EU Thresholds, **as applicable and is permitted to undertake such non-material amendments as a result of business restructuring as required from time to time, providing that a report on amendments made is brought to the next available meeting of the Constitutional Review Working Party.**

CSO 16

- 1 The CSOs themselves can only be updated in accordance with the provisions set out in the Council's Constitution.
- 2 The EU Thresholds are set by the EU every two years and apply to all member states. There is no discretion available in terms of the threshold at which the EU Rules will apply. It is therefore more appropriate to arrange for amendment of CSO 7 to reflect the new EU Threshold under a scheme of delegation.
- 3 The provisions of this Purchasing Guide can be updated and amended more easily than the CSOs themselves. If you have comments, suggestions or proposals for amendments or improvements to this Purchasing Guide then please contact the ~~Procurement and Contracts~~ Unit.

17 Standard Clauses

17.1 Each contract shall include standard clauses, or those indicated where applicable dependant on the nature of the contract, on

17.1.1 ~~Anti-Fraud, Corruption & Bribery~~ **Anti-Bribery, Fraud and Corruption**

17.1.2 ~~Prevention of Assignment~~ **Assignment and Sub-Letting**

17.1.3 ~~Equal Opportunities~~ **Opportunity**

17.1.4 Health and Safety

17.1.5 Freedom of Information Act 2000

17.1.6 Conflict of Interest

17.1.7 TUPE and workforce matters (where applicable)

17.1.8 Child Protection and Safeguarding Children (where applicable)

17.1.9 Liquidated Damages (where applicable)

17.1.10 ~~Data Quality~~ **Protocol for performance data sharing by contractors**(where applicable).

CSO 17

- 1 These standard clauses are reviewed regularly and are available from the council's Legal Department

FINAL DRAFT

Attachment 1 – Risk Assessment

Thanet District Council’s form of assessment is the 4 x 4 matrix. The colours red, amber, yellow and green reflect differing levels of overall risk with green and yellow being acceptable, amber being of cause for caution and concern and red being of grave concern with a report required to Governance and Audit committee.

The tables at Appendix 1 set out the suggested criteria for assessing the probability and impact to produce an overall score.

Ideally, scoring should be undertaken by more than one person to allow for different perceptions of risk; one person’s high risk can be another’s low to medium.

Where the scoring differs across the criteria for impact and probability, it is suggested that a cautious approach is to use the score, which is highest for any of the criteria rather than an average. However, be prepared to apply a common sense approach and score accordingly.

For further information please refer to the ~~Risk Management – Friend or Foe? Strategy and the Risk Management Strategy and the Risk Management Process~~ or contact the ~~Corporate Governance Officer~~ **Business Support and Compliance Manager on Ext 7625.**

Risk Matrix

Probability	Very likely (4)	Medium-Low (4)	Medium-High (8)	High (12)	High (16)
	Likely (3)	Medium-Low (3)	Medium-High (6)	Medium-High (9)	High (12)
	Unlikely (2)	Low (2)	Medium-Low (4)	Medium-High (6)	Medium-High (8)
	Remote (1)	Low (1)	Low (2)	Medium -Low (3)	Medium-Low (4)
	Minor (1)	Significant (2)	Serious (3)	Major (4)	
	Impact				

Appendix 1

Risk Matrix - Probability

Rating	Score	Indicative Guidelines – provided as examples	
		Threat	Opportunity
Very likely	4	<ul style="list-style-type: none"> • More than a 75% chance of occurrence. • Regular occurrence. • Circumstances frequently encountered. 	<ul style="list-style-type: none"> • Favourable outcome is likely to be achieved in one year. • Better than 75% chance of occurrence.
Likely	3	<ul style="list-style-type: none"> • 41% - 75% chance of occurrence. • Likely to happen at some point in the next 3 years. • Circumstances occasionally encountered. 	<ul style="list-style-type: none"> • Reasonable prospects of favourable results in one year. • 41% - 75% chance of occurrence.
Unlikely	2	<ul style="list-style-type: none"> • 10% - 40% chance of occurrence. • Only likely to happen once every 3 or more years. • Circumstances rarely encountered. 	<ul style="list-style-type: none"> • Some chance of favourable outcome in medium term. • 10% - 40% chance of occurrence.
Remote	1	<ul style="list-style-type: none"> • Less than a 10% chance of occurrence. • Has never happened before. • Circumstance never encountered. 	<ul style="list-style-type: none"> • Less than a 10% chance of occurrence.

Risk Matrix - Impact

Rating	Score	Indicative Guidelines – provided as examples	
		Threat	Opportunity
Major	4	<ul style="list-style-type: none"> • Major loss of service for more than 5 days. • One or more fatalities. • Major financial variation of more than £200k. • Major national news item. • Major impact on time / costs / resources. • Affect the whole Council. 	<ul style="list-style-type: none"> • Major improvement to services, generally or across a broad range. • Major improvement to health, welfare and safety. • Positive national press, national award or recognition, elevated status by national government. • Producing more than £50,000
Serious	3	<ul style="list-style-type: none"> • Loss of service for 3 to 5 days. • Major injury to an individual / several people. • Financial variation between £100k and £200k. • Major local news / professional press item. • Serious impact on time / costs / resources. • Affect many service areas of the Council. 	<ul style="list-style-type: none"> • Major improvement to critical service area. • Serious improvement to health, welfare and safety. • Recognition of successful initiative. • Sustained positive recognition and support from local press. • Producing up to £50,000.
Significant	2	<ul style="list-style-type: none"> • Loss of service for 2 to 3 days. • Severe injury to an individual / several people. • Financial variation of £50k to £100k. • Local news / minor professional press items. • Controllable impact on time / costs / resources. • Affect 1 or few service areas of the Council. 	<ul style="list-style-type: none"> • Significant improvement to service area. • Significant improvement to health, welfare and safety. • Recognition of successful initiative. • Positive recognition and support from local press.
Minor	1	<ul style="list-style-type: none"> • Brief disruption to service for less than 1 day. • Minor injury to an individual. • Financial variation of less than £50k. • Minimal news / press impact. • Minimal impact on time / costs / resources. • Affect Project Team only. 	<ul style="list-style-type: none"> • Improvement to a process within a service area.

REVISION TO FINANCIAL PROCEDURE RULES RE THE REPORTING OF BALANCE SHEET DEBT

To: **Standards Committee – 21 November 2013**

Main Portfolio Area: **Financial Services**

By: **Sarah Martin, Financial Services Manager**

Classification: **Unrestricted**

Ward: **All**

Summary: **For the Standards Committee to approve a revision of the Financial Procedure Rules to require the reporting of aged debts over £150,000 to Council.**

For Decision

1.0 Introduction

1.1. The level of outstanding debt is an important indicator of the financial risk being carried by the Council. It was therefore recommended by Cabinet at its meeting on 1 August 2013 that the Constitutional Review Working Party approve a revision to the Financial Procedure Rules to require the reporting to Council of any debt owed by an organisation, or its subsidiaries, where it exceeds £150,000. It is proposed that the report will also include details of the debt recovery measures in place and that the debt will only be reported where it becomes 'aged', i.e. where the standard payment terms have been exceeded and payment remains outstanding after the normal reminder letters have been sent. Such debts will be reported to the next available ordinary council meeting.

2.0 Background

2.1 There is currently no requirement within the Financial Procedure Rules for large outstanding debts to be reported to Council. The effective management and collection of debt is an essential contributor to Local Authority financial resources and maximises income available to provide services. As such, the level of outstanding debt is a key indicator of the financial risk being carried by the Council and it is therefore important that Members are aware of any large outstanding debts and the recovery action being taken to pursue them.

2.2 The standard payment terms for our debtors is 0 days (immediate payment), with 30 days for our larger debtors, although individual contracts with debtors may vary these terms. There are a few of our largest debtors who have agreed payment terms of 60 days.

2.3 The Council's recovery process is that a first reminder is sent if payment, or an arrangement for payment, is not made within 10 days of the payment terms being exceeded. A second reminder notice will be issued after a further 10 days. If payment is not received within the stated terms of the invoice and subsequent reminder notices, EK Services will commence recovery procedures beginning with the issue of

a more formal reminder notice, giving the customer a further 7 days to make full payment. If full payment is not made within 7 days of this reminder notice being issued, EK Services will send a final notice requiring payment to be made in full within 7 days. If this doesn't result in payment, EK Services will contact the debtor to negotiate settlement of the arrears. If payment is still not made, then a final notice is sent and further recovery action is progressed.

- 2.4 This report proposes that when a debt over £150,000 becomes 'aged' it will be reported to the next available ordinary council meeting. It is proposed that for those debts over £150,000 with payment terms of 0 or 30 days, they are reported to Council at day 60. At this stage the debt has been passed to EK Services and the first formal reminder letter has been sent. For those few debtors where the payment terms are 60 days, they will be reported to Council if the debt exceeds £150,000 at day 90.
- 2.5 Debts that exceed £150,000 on day 60 or day 90 will be reported to the next available Council meeting regardless of whether the debt has been paid in part or in full in the period between day 60 and day 90 and the next available ordinary Council meeting.

3.0 Options

- 3.1 Members agree the revision to the Financial Procedure Rules requiring the reporting of aged debts over £150,000 to the next ordinary council meeting in accordance with the timelines proposed above.
- 3.2 Members agree the revision to the Financial Procedure Rules requiring the reporting of aged debts over £150,000 to the next ordinary council meeting but propose alternative timelines for such reporting.
- 3.3 Members do not agree the revision to the Financial Procedure Rules requiring the reporting of aged debts over £150,000 to the next ordinary council meeting.

4.0 Corporate Implications

4.1 Financial and VAT

- 4.1.1 This report does not result in any additional costs or VAT implications to the authority but does ensure that Council is aware of the financial risk associated with large outstanding debts and the action being taken to recover these debts.

4.2 Legal

- 4.2.1 All outstanding debts will continue to be pursued in accordance with the appropriate legal powers.

4.3 Corporate

- 4.3.1 Corporate priorities can only be delivered with robust finances. The effective monitoring and collection of debts is essential to protect the income coming in to the authority.

4.4 Equity and Equalities

- 4.4.1 There are no equity or equality issues arising directly from this report.

5.0 Recommendations

- 5.1. That the Standards Committee approves and recommends to Council the amendment to the Financial Procedure Rules to require the reporting of all aged debt over £150,000 to the next available ordinary council meeting.
- 5.2. That the Standards Committee approves and recommends to Council that the timeline for reporting debts shall be 60 days for those debts with standard payment terms of 0 or 30 days and 90 days for those debts with payment terms of 60 days regardless of whether or not the debt has been paid in full or in part between the expiry of the 60 or 90 day period (whatever the case may be) and the date of the next available ordinary Council meeting.
- 5.3. That the Standards Committees recommends for Council approval the amendments to Financial Procedure Rule (Regulation D: Systems and Procedures), as set out at Annex 1.

Future Meetings: Governance & Audit Full Council	Date: 25 September 2013 3 October 2013
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Contact Officer:	Sarah Martin, Financial Services Manager
Reporting to:	Sue McGonigal, Chief Executive and S151 Officer

Annex List

Annex 1	Proposed amendments to Financial Procedure Rules (Regulation D: Systems and Procedures)
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Corporate Consultation Undertaken

Finance	n/a
Legal	Harvey Patterson, Monitoring Officer and Corporate & Regulatory Services Manager

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Regulation D: Systems and Procedures

Introduction

- D.1 Sound systems and procedures are essential to an effective framework of accountability and control.

General

- D.2 The Section 151 Officer is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. Any changes made by Directors of Services to the existing financial systems or the establishment of new systems must be approved in advance by the Section 151 Officer. Directors of Services however are responsible for the proper operation of financial processes in their individual departments.
- D.3 Any changes to agreed procedures by Directors of Services to meet their own specific service needs must be agreed in advance with the Section 151 Officer.
- D.4 Directors of Services must ensure that their staff receive relevant financial training that has been approved by the Section 151 Officer.
- D.5 Directors of Services must ensure that, where appropriate, computer and other systems are registered in accordance with data protection legislation. Directors of Services must also ensure that their staff are aware of their responsibilities under Data Protection and Freedom of Information legislation.

Income and Expenditure

- D.6 It is the responsibility of Directors of Services to ensure that a proper scheme of delegation has been established within their department and that it is operating effectively. The scheme of delegation must identify staff authorised to act on the Directors of Services' behalf, or on behalf of the Cabinet, in respect of payments, income collection and placing orders, together with the limits of their authority.

It is the responsibility of the Section 151 Officer to develop, administer and keep under review procedures for writing off debts and to seek approval of these by full Council as part of the overall control framework of accountability and control.

It is the responsibility of the Section 151 Officer to report all aged debts over £150,000 to the next available ordinary Council meeting, the timelines for reporting being as follows:

- a) **60 days for those debts with standard payment terms of 0 or 30 days;**
- b) **90 days for those debts with payment terms of 60 days.**

regardless of whether or not the debt had been paid in full or in part between the expiry of the 60 or 90 day period (whatever the case may be) and the date of the next available ordinary Council meeting.

Payments to Employees and Members

- D.7 The Section 151 Officer is responsible for making all payments of salaries, wages and allowances to all staff, and for making payments of allowances to Members.

Taxation

- D.8 The Section 151 Officer is responsible for advising Directors of Services, in the light of guidance issued by appropriate bodies and relevant legislation, on all taxation issues that affect the Council.
- D.9 The Section 151 Officer is responsible for maintaining the Council's tax records, making all tax payments, receiving any tax credits and submitting tax returns by their due date.

Trading Accounts/Business Units

- D.10 It is the responsibility of the Section 151 Officer to advise on the establishment and operation of any trading accounts and business units within the Council.

Procedure Note

- D.11 A Procedure Note in relation to Regulation D is attached as Appendix D and forms part of the Rules.

FILMING OF COUNCIL MEETINGS

To: **Standards Committee – 4 September 2013**

Main Portfolio Area: **Business, Corporate and Regulatory Services**

By: **Democratic Services Manager**

Classification: **Unrestricted**

Wards: **All Wards**

Summary: **This report sets out future options for the recording of meetings.**

For Decision

1.0 Introduction and Background

1.1 As part of the report “Review of Policies and Procedures – Probitly and Reputation - recommendations from Cabinet and request by the Standards Committee to re-establish the Standards Working Party” that was considered by Council at its meeting on the 11 July 2013 it was agreed to look again at the issue of the filming of meetings and the definition of accredited media organisations. The following resolution was adopted by Council:

THAT the Constitutional Review Working Party be requested to review the rules concerning the audio and visual recording of Council meetings;

1.2 In addition to the report considered by Council, the Department for Communities and Local Government recently published a document titled: “Your Council’s Cabinet – going to its meetings, seeing how it works - guidance” (the Guidance Document’) which, amongst other things, sets out the Secretary of State’s views on the recording of Council meetings. That document is attached at Annex 1 to this report.

1.3 As these two documents relate closely to the same issue and have direct implications on each other, it was viewed as appropriate for them to be considered together within one report.

1.4 This report and the Guidance Document were both considered by the Constitutional Review Working Party at its meeting on 21 August 2013. Their views are shown at paragraph 6.1 of this report.

2.0 The Guidance Document

2.1 The Guidance Document was published on 14 June 2013 and relates to the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 published last year (‘the 2012 Regulations’). Consequently, the main purport of the document is a guide to the public on how the Cabinet system operates in the light of the 2012 Regulations. However it also includes a section on the filming of Council meetings which is as follows:-

'The rules require councils to provide reasonable facilities for any member of the public to report on meetings. Councils should thus allow the filming of councillors and officers at meetings that are open to the public.'

- 2.2 However, no attempt is made to reconcile this advice with the corresponding provisions of the 2012 Regulations (which the Guidance Document is meant to explain), which at Regulation 20(4) provides:-

'Nothing in these Regulations requires a decision-making body to permit the taking of any photographs of any proceedings or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place'.

- 2.3 Consequently, the Guidance Document substantially misrepresents what the statutory Regulations actually say in relation to the recording and filming of Council meetings - which is that the Council has a complete legal discretion in this regard.

3.0 Current Constitution

- 3.1 The Council's Constitutional requirements on the recording of Council meetings by members of the public is contained within the Council Procedure Rules and is set out below:-

"34.0 Use of mobile telephones during public meetings

- 34.1 Council Members, Officers and accredited journalists must ensure that their mobile communications devices are switched to silent during all public meetings of the Council.
- 34.2 No audio or visual recordings shall be made at meetings except for official recordings by the clerk or recordings agreed by the Chairman to be made by accredited media organisations.
- 34.3 That members of the public must switch their mobile communication devices to silent during all public meetings."

- 3.2 The current procedure for recording meetings of the Council is that all Council meetings are recorded using the Council's own recording equipment; they are then published on the Council's website for a two week period as soon as possible after the date of the meeting.

4.0 The Options

4.1 Option One

- 4.1.1 One of the options available to the Council is to relax the Council's current rules on the filming of meetings. Instead of only allowing accredited media organisations to film the Council's meetings with the permission of the Chairman, the Council could allow anyone to film the meeting providing they did not cause a disturbance to the meeting.
- 4.1.2 This would be a significant departure from the Council's existing constitution although the adoption of this option would be closest to the spirit of the Guidance Document. Adopting a more laissez-faire approach to the filming of meetings would also make

administering the rules on recording easier to manage as the only decision that would need to be made would be to stop filming in the event that anyone recording was causing a disturbance.

- 4.1.3 However it would increase the possibility of those people who have recorded a meeting using that recording in any way they saw fit. A recording could then be edited and published in such a way as to portray a different impression of what occurred and there would not be any redress for the Council as there would be if only accredited media organisations were permitted to film.
- 4.1.4 The Guidance Document also suggests that if a member of the public is present to speak at a meeting, they should be asked whether they give their consent to be filmed as part of the meeting. If permission were not given by the individual, then there could potentially be an issue if anyone were allowed to film, in that ensuring that everyone had switched off their recording device could be difficult to enforce. However, this issue could be adequately addressed by prohibiting the recording or filming of meetings of the regulatory committees (Licensing, Planning, Governance & Audit and Standards) whilst permitting the recording or filming of all other meetings to which the press and public have a right of access.

4.2 Option Two

- 4.2.1 Another option that could be considered is an amended version of the existing rules on the filming of meetings. Firstly for the purposes of clarity, what the Council means by an 'accredited media organisation' could be expressly defined and added to the Constitution. Secondly, consideration could be given to reserving the decision on whether to permit the filming of a meeting by an accredited media organisation to the meeting as a whole instead of the Chairman.
- 4.2.2 It is suggested that the definition of an accredited media organisation that is included within the Council's Constitution is: "a media organisation or individual that holds a National Press Card and is registered with the Press Complaints Commission (or its successor) or a similar regulated body with a code of conduct and associated complaints process through which the Council could take recourse".
- 4.2.3 This definition retains the Council's right to take recourse with a journalist or body if it thinks that it has been misrepresented in order to protect the Council's interests.
- 4.2.4 Currently the decision as to whether to allow filming by an accredited media organisation rests with the chair of the meeting in question. In practice, some chairs have made the decision whether or not to permit filming without reference to their committee members whereas others have adopted a more collegiate approach and sought the views of committee, either in advance of the meeting or at the beginning of the meeting itself. Although one possibility would be to recommend that the decision is taken by the meeting as a whole as this would allow for a more representative decision, one of the advantages of the decision remaining with the chair is that accredited media organisations can seek permission in advance via the corporate communications team and this gives the chair time to consider his or her decision and seek the advice of officers if required.
- 4.2.5 It is important to note that this approach would still retain the element of Option one in that the recording or filming of meetings of the regulatory committees (Licensing, Planning, Governance & Audit and Standards) would still remain prohibited.
- 4.2.6 On balance therefore, if this option is preferred it is recommended that the revised definition of accredited media organisations set out in paragraph 4.2.2 above is

adopted but that the decision whether or not to permit filming remains with the chair of the meeting.

4.3 Option Three

- 4.3.1 A third option would be to prohibit all filming of all meetings on the grounds that the Council would routinely record and publish on the Council's web site the open part of all meetings of full Council, the Cabinet and the Overview & Scrutiny Panel
- 4.3.2 These recordings would remain as original as possible; the only editing of them would be to remove any recording from before the meeting started and after it closed, to remove any recordings of when there is an adjournment or to remove any potentially defamatory remarks which may not be protected by qualified privilege.
- 4.3.3 If the Council were to pursue this option then there would be additional resource requirements and it could incur costs as a result. Currently a Communications Officer will condense the video and check for the items outlined in paragraph 4.3.2. This takes the officer approximately half a day to complete for the Council meetings that are currently published. If the Council increased the number of meetings that it displayed on its website to include all Cabinet and Overview and Scrutiny Panel meetings this would mean an additional 14 meetings and approximately an additional week's work for a Communications Officer. There would obviously be an "opportunity cost" for the Communications team if more meetings were to be put on the Council's website in the sense that this additional work would prevent them from doing other things.
- 4.3.4 In addition to the need for additional Officer time, there could also be a need for additional bandwidth (i.e. the maximum amount of data that can be transferred from the council's website to another computer) for the Council's website. By including more recordings on the Council's website, bandwidth usage will increase; this will particularly be the case if the Council posts a recording that is particularly popular. This is entirely feasible as the Council is currently dealing with a number of controversial issues. The council's current bandwidth allowance is 800GB per month and it currently uses approx. 200GB per month. This could potentially increase significantly with the addition of more large files to the website and an increased number of viewers. However on current estimates there would be enough bandwidth for approximately 6000 additional views of a three hour meeting before the Council would exceed its bandwidth. Over the past year (3 June 2012 – 3 June 2013) there have been 589 unique page views of Council meetings and the average time spent on the page has been 2.3 minutes.
- 4.3.5 This gives the Council two options; it could either buy additional bandwidth, which given the estimates would probably be inappropriate in the short term or it could maintain the current level of bandwidth. The risk of maintaining the current level of bandwidth is penalty costs from its broadband supplier if the Council exceeds its limit. These costs would grow for each visitor to the website, the Council would effectively be writing a blank cheque to its broadband supplier, however this would be low risk due to the excess bandwidth the Council currently has. However it would be very important to monitor the level of bandwidth the Council uses going forward in order to ensure that it is not fined.
- 4.3.6 If the Council exceeds the monthly bandwidth limit in its current contract, the charges are as follows:
- Additional usage 0 GB – 999 GB = £0.35 / GB
 - Additional usage 1000 GB – 1999GB = £0.33 / GB

- Additional usage 2000 GB – 2999 GB = £0.30 / GB
- Additional usage 3000 GB – 3999 GB = £0.28 / GB
- Additional usage 4000 GB + = £0.25 / GB

4.3.7 To avoid “excess” charges, the Council could change the current contract in order to offer a higher fixed allowance each month. The costs of this would be as follows:

- Bandwidth increase from your inclusive amount 800GB to 1200GB (increase of 400GB) would be an extra £140.00 per month (.35 per GB)
- Increase to 1600GB (increase of 800GB) would be an extra £280.00 per month (.35 per GB)
- Increase to 2000GB (increase of 1200GB) would be and extra £396.00 per month (.33 per GB)

4.3.8 One on reading, this option may seem some way off the spirit of the Guidance Document. However, the Guidance Document is about the proper functioning of the Cabinet and this option does propose the routine recording and publishing of all the open parts of every Cabinet meeting. It will therefore be very difficult to argue the Cabinet is not conducting its business in an open transparent an accountable manner; ditto full Council and the Overview & Scrutiny Panel.

4.4 Option Four

A fourth option would be to amend the existing constitution as the Standards Committee see fit; this could be amendments to an option outlined above or an entirely new option. If there were costs associated with the new option then an assessment by Financial Services would have to be included when the recommendation was forwarded on to Council.

5.0 The View of Senior Management Team

5.1 The issue of filming Council meetings was discussed at Senior Management Team where the options contained within this report were formulated. Option 2 as set out in this report, with the Chairman of the Committee deciding in advance on whether a meeting should be recorded, was their preferred option. A protocol on how Option 2 would work in practice has been included at Annex 2 to the report for the Working Party’s information. If the Working Party decide on either Option one or Option three then an amended protocol can be created.

6.0 View of the Constitutional Review Working Party

6.1 When this report was considered by the Constitutional Review Working Party at its meeting on 21 August 2013, the working party recommended Option 2 and concurred with the view of the Senior Management Team that the Chairman of the Committee should decide in advance on whether a meeting should be recorded.

7.0 Options

7.1 The Standards Committee can choose any of the four options outlined within the report, or it could choose not to make a recommendation.

8.0 Corporate Implications

8.1 Financial and VAT

- 8.1.1 As outlined above, possible financial implications include additional officer time if more meetings are to be broadcast on the Council's web site. However, it is suggested that this cost could be contained within existing budgets by redirecting some of the work undertaken within the communications team.
- 8.1.2 Although upon the basis of current and projected usage this option does not seem necessary, the costs of increasing the fixed bandwidth limit of the Council's web site are set out in section 4.3.7 above.
- 8.1.3 Again, it seems unlikely that the Council would exceed the current bandwidth of its web site of 800GB, but should it do so, the potential costs are outlined in section 4.3.6 above.

8.2 Legal

- 8.2.1 The Council is not required to permit the filming or recording of any of its meetings nor is the Guidance Document statutory guidance to which the Council is required to have regard.
- 8.2.2 The Council's constitution sets out the rules governing the Council's business, only full Council has the right to amend the constitution.

8.3 Corporate

- 8.3.1 Enabling the public to view the proceedings of Council meetings encourages transparency and makes the Council more open and accountable to the local community.

8.4 Equity and Equalities

- 8.4.1 There are no equity and equalities issues.

9.0 Recommendation(s)

- 9.1 That the Standards Committee recommend to Council:
 - a) That the Protocol for the Filming of Council meetings as attached at Annex 2 of the report be agreed and included at Part 5 of the Councils' Constitution.
 - b) That Paragraph 34.2 "No audio or visual recordings shall be made at meetings except for official recordings by the clerk or recordings agreed by the Chairman to be made by accredited media organisations." be removed from the Council's constitution to be replaced by a new Paragraph 35.0 as shown:

"35.0 Audio and Visual recordings of Council Meetings

- 35.1 No audio or visual recordings shall be made at meetings except for official recordings by the clerk or recordings agreed by the Chairman in advance in accordance with the "Protocol for Filming of Council Committee meetings" which is included at Part 5 of this constitution."

10.0 Decision Making Process

10.1 Any recommendations by the Standards Committee will be referred to full Council for final decision.

Future Meeting if applicable: Council:	Date: 3 October 2013
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Contact Officer:	Nick Hughes, Democratic Services Manager, ext. 7208
Reporting to:	Glenn Back, Democratic Services and Scrutiny Manager, ext 7187

Annex List

Annex 1	Department for Communities and Local Government (DCLG) – “Your council’s cabinet – going to its meetings, seeing how it works – A guide for local people”
Annex 2	Protocol for the Filming of Council meetings based on Option two.

Background Papers

Title	Details of where to access copy
<i>None</i>	

Corporate Consultation Undertaken

Finance	Sarah Martin, Financial Services Manager & Deputy S151
Legal	Harvey Patterson, Corporate & Regulatory Services Manager

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Department for
Communities and
Local Government

Your council's cabinet – going to its meetings, seeing how it works

A guide for local people

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Your council's cabinet – going to its meetings, seeing how it works

About this guide

This Guide¹ gives practical information about the public attending meetings of a council's executive (i.e. the council's cabinet – its main decision making body – consisting of an elected mayor or leader and a number of councillors) and obtaining council documents. This Guide is designed to help the public know when they can attend such meetings and what documents and information are available to them, now that there are new national rules² to make councils more transparent and accountable to their local communities. It should also help councillors and officers to comply with these rules which are based on a presumption in favour of openness.

The national rules

Why are there new national rules?

The Government believes that the earlier rules³ made by the last government did not provide maximum transparency because an executive was only required to hold meetings in public in certain limited circumstances. A cabinet could largely choose which of its meetings should be held in public thus hindering effective local accountability and scrutiny. The new rules have been produced to address this by introducing greater transparency and openness into meetings of the executive (i.e. the council's cabinet), its committees and sub-committees. The new rules have also strengthened the rights of local authority councillors to access information about items to be discussed at a public or private meeting.

Who do these rules help?

These rules help any members of the public who want to know about the work of a council's executive. The national rules also help members of any council with an executive governance arrangement⁴ to know what their executive is doing.

¹ The Guide should not be taken as providing any definitive interpretation of the statutory requirements on councils, members, officers, or of the public's rights: those wishing to address such issues should seek their own legal advice.

² [The new rules are in The Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012 \(S.I. 2012/2089\) \("the Regulations"\)](#).

³ Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (S.I.2000/3272).

⁴ This means a district, unitary, county or London local authority that has a leader and cabinet or mayor, and cabinet governance arrangement.

Who can make an executive decision in my council?

The rules⁵ of your council define who can make a decision. The decision maker can be the executive, its committees and sub-committees, joint committees, joint sub-committees, individual councillors, and officers who have delegated responsibility from the executive to make executive decisions.

Going to meetings of your council's executive

Can a council executive choose to meet in private?

No. All meetings of an executive including meetings of its committees or sub-committees must be open to the public, except in limited defined circumstances where the national rules require or allow the meeting to be closed to the public.

When do the national rules say that a meeting must be closed to the public?

The rules require a meeting to be closed to the public in two circumstances:

- If the presence of the public is likely to result in the council breaching a legal obligation to third parties about the keeping of confidential information; or
- a lawful power is used to exclude the public in order to maintain orderly conduct or prevent misbehaviour at a meeting.

What is confidential information?

Confidential information⁶ means:

- information provided to the council by a Government department on terms which forbid the disclosure of the information to the public; and
- information which is prohibited from being disclosed by any enactment or by a court order.

Do the national rules allow a meeting to be closed in any other circumstances?

Yes. A meeting can also be closed to the public where the executive so decides (by passing a resolution) because exempt information would otherwise be likely to be disclosed. It is open to the executive, if it chooses, to consider in public matters involving exempt information.

⁵ Each council has its own rules for doing business - its constitution and standing orders- which must be in line with any national rules

⁶ Regulation 2 of the Regulations.

What is exempt information?

The descriptions of exempt information are set out in the Schedule 12A to the Local Government Act 1972. The descriptions are listed at **Annex A** of this Guide.

Can I film the meeting?

Council meetings are public meetings. Elected representatives and council officers acting in the public sphere should expect to be held to account for their comments and votes in such meetings. The rules require councils to provide reasonable facilities for any member of the public to report on meetings. Councils should thus allow the filming of councillors and officers at meetings that are open to the public.

The Data Protection Act does not prohibit such overt filming of public meetings. Councils may reasonably ask for the filming to be undertaken in such a way that it is not disruptive or distracting to the good order and conduct of the meeting. As a courtesy, attendees should be informed at the start of the meeting that it is being filmed; we recommend that those wanting to film liaise with council staff before the start of the meeting.

The council should consider adopting a policy on the filming of members of the public speaking at a meeting, such as allowing those who actively object to being filmed not to be filmed, without undermining the broader transparency of the meeting.

Will I be able to tweet or blog council meetings?

Similarly under the new rules there can be social media reporting of meetings. Thus bloggers, tweeters, facebook and YouTube users, and individuals with their own website, should be able to report meetings. You should ask your council for details of the facilities they are providing for citizen journalists.

How will I know about a public meeting?

Your council must give the public a notice of the meeting at least five clear days before it takes place. The details of the meeting must be published on your local authority's website and at its offices. Any background papers must also be published with the agenda. No item can be considered if the item is not available for inspection by the public with five clear days notice.

Where an item is added to the agenda within five clear days before the meeting is scheduled to take place, a revised agenda, public report and background papers must be published as soon as the item is added to the agenda. In some circumstances, the whole or part of a report may not be available for public inspection because it contains either confidential or exempt information. In this case, the report should bear the phrase 'not for publication' and state that it contains confidential information or set out the description of the exempt information.

In addition, councils must provide a copy of the agenda, public reports and other relevant papers to a member of the public or a person representing a newspaper upon payment of postage or copying charge.

Can I be asked to leave the meeting?

Yes. As a member of the public you can be asked to leave the meeting so that the executive, its committees or sub-committees can discuss matters in private, but only in the limited circumstances where the national rules allow this.

Will I know if it is proposed to hold a meeting in private?

Prior to holding a private meeting, your council must have published on its website and at its offices at least 28 clear days notice of its intention to consider a matter in private and the reasons for the private meeting. This is to ensure that members of the public have reasonable opportunity to make representations as to why the proposed private meeting should not be held in private.

At least five clear days before the meeting, your council must confirm its intention to go ahead with the private meeting through another notice on its website and at its offices. This second notice has to include details of any representations received and the council's response to them.

Can a private meeting be held if 28 days notice is not given to the public?

A private meeting can only be held without 28 days notice after the agreement of the Chairman of the Overview and Scrutiny Committee has been obtained that the meeting is urgent and cannot reasonably be delayed. In the absence of the Overview and Scrutiny Committee Chairman, the permission of the Council Chairman (or, in their absence, the Vice Chairman) must be obtained. If this agreement is granted the council must publish a notice about why the meeting is urgent and cannot be deferred. This notice must be available at its offices and on their website. If agreement is not given then the meeting must either be held in public, or the council must comply with the 28 day notice requirements.

Can I attend an executive's pre-briefing meeting with local authority officers?

No. The rules apply only to when councillors meet as a decision making body to exercise their statutory executive responsibilities. The rules do not apply to political groups' meetings or to informal briefing meetings for councillors.

Available information about executive decisions

What happens if I am not at the meeting, how will I know of any decisions made?

The fact that you are unable to attend a public meeting of your council executive, its committees or sub-committees does not mean you cannot find out about the executive decisions⁷ made. The national rules require such decisions to be recorded. A written

⁷ [An "executive decision" means a decision made or to be made by a decision maker in connection with the discharge of a function which is the responsibility of the executive of a local authority.](#)

statement must be produced, which reflects the decision along with the following information:

- details of the decision and the date it was made;
- reasons for the decision;
- any other options considered and why those options were rejected;
- details of any conflict of interest of an executive member of the decision-making body; and
- a note of dispensation granted by the Head of Paid Service in respect of any declared conflict of interest.

You can then inspect these records and any reports considered at the meeting at your council's offices and on the council's website.

Apart from information about meetings, are there other means of knowing about decisions likely to be made by a decision maker?

Yes. The new national rules require a council to publish its intention to make a key decision⁸ in a document at least 28 clear days prior to when the decision is intended to be made. The notice has to include details of the individual or executive body who will make the decision, the matter that is subject to a decision, other documents to be considered, and where these other documents are available. This notice document must be available at the council's offices and on the website before the decision is made.

This allows you to have sufficient knowledge in advance of those decisions that will be of genuine concern to you and your local communities.

Can a key decision be made without giving the 28 days notice?

Yes, provided the following requirements are met:-

- the relevant Overview and Scrutiny Committee Chairman is informed in advance and in writing (or all the members of the Overview and Scrutiny Committee) about what the decision is concerning;
- a notice about the key decision to be made is made available for inspection at the council's offices and published on the website; and
- 5 clear days elapse following the day a notice is published about the key decision to be made.

⁸ ["key decision" means an executive decision which, is likely—](#)

- [to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or](#)
- [to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.](#)

If there is a case of special urgency, for example an urgent decision on a negotiation, expenditure or contract, the decision must only be made if the agreement of the Overview and Scrutiny Committee Chairman is received. In the absence of the Overview and Scrutiny Committee Chairman, the permission of the Council Chairman (or in their absence the Vice Chairman) must be obtained. If agreement is given, a notice explaining why the decision is urgent and cannot reasonably be deferred, must be published and should be available at the council's offices and on its website as soon as reasonably practicable.

Can 28 days notice of a key decision also provide 28 days notice required for a private meeting?

It is up to your council to decide whether the 28 day key decision document should contain the details required for a private meeting notice. Where there is an intention to make a key decision at a private meeting, your council must comply fully with all the national rules.

Can my council make key decisions and not follow the national rules?

No. Councils must comply with all the national rules. Should a decision be made without applying the key decision rules because the council thinks that the decision is not a key decision, but subsequently the Overview and Scrutiny Committee decides the decision is a key decision, the executive may be asked to submit a report⁹ to the full council.

Can an individual member of a council's executive, or an officer, take decisions on matters that are the executive's responsibility?

Yes, where the council's rules allow this.

What record has to be made of such a decision by a member or officer?

When a member or officer takes a decision on matters that are the responsibility of the council's executive, this must be recorded in writing. The form of the written record is for the council to decide, but the following should be included:

- details of the decision and the date it was made;
- reasons for the decision;
- any other options considered and why those options were rejected;
- details of any conflict of interest declared by any executive member consulted in relation to the decision; and
- a note of dispensation granted in respect of any declared conflict of interest.

⁹ [The report must include details of:](#)

[\(1\) the decision and the reasons for the decision;](#)

[\(2\) the individual executive member or officer by whom the decision was made; and](#)

[\(3\) if the executive of the relevant local authority are of the opinion that the decision was not a key decision, the reasons for that opinion.](#)

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. Such decisions might include the following examples:

- decisions to allocate social carers to particular individuals, or for example, provide walking aids;
- decisions to allocate a social housing unit to an applicant or to send someone to carry out repairs;
- decisions to give business relief to individual traders;
- decisions to review the benefit claims of an individual applicant;
- decisions to allocate market stalls to individual traders;
- a decision to instruct certain staff within the council to appear in court in connection with proceedings relating environmental issues.

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/total values;
- decisions to exercise powers of Compulsory Purchase;
- decisions on disposal of and/or provision of allotment land and green spaces;
- decision to purchase new ICT systems;
- the opening hours of local libraries;
- the holding of car boot sales/markets on council-owned land;
- the operating hours of off-street car parks;
- a decision to close a school;
- a decision to carry out major road works.

This is not intended to be an exhaustive list, rather a series of examples to illustrate that, in the interests of maximum transparency, the new 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.

Can I see the records of executive decisions?

Yes. You can see records of any executive decision, made by the executive, its committee or sub-committee or individual councillors or officers along with any report considered and other background papers. They have to be available for inspection at your council's offices and on its website as soon as is reasonably practicable after the decisions are made.

Can I ask for a copy of any records of executive decisions?

Yes. You can ask for a copy of any documents relating executive decisions and your council should supply the information once you have paid for the postage, copying or any other necessary charge for transmission which will be determined by your council.

What are the rights of councillors to access meeting documents?

As a councillor, you can inspect any document that contains material to be discussed at least 5 days before a public meeting is held. In case of a private meeting or decision made by an individual executive member or officer, you can inspect the document within 24 hours of the conclusion of the meeting or the decision being made.

In addition, if you are a member of an overview and scrutiny committee, you can ask for any document that contains business transacted at a meeting of the executive, its committees or sub-committees or officer of the authority. The executive must provide the document within 10 days after it (the executive) receives the request. In an instance where the executive cannot release the whole or part of the document, the executive must provide you with a written explanation.

What other rights do councillors have to inspect documents of their councils?

In addition to the rights conferred on councillors by these Regulations in relation to executive decision making, councillors also have statutory rights to inspect documents of the council and its committees under Part 5A of the Local Government Act 1972. Councillors may also request information held by their council under the Freedom of Information Act 2000 (or the Environmental Information Regulations 2004 in relation to environmental information). Councillors may have rights under the common law to inspect such documents held by their council as are reasonably necessary for them to perform their duties.

What happens if documents relating to executive decisions are not made public?

It is a criminal offence if, without a reasonable excuse, a person who has in his or her custody a document¹⁰, which the national rules require to be made available to the public, refuses to supply the whole or part of the document or intentionally obstructs any other person/s from disclosing such a document.

If a person is found guilty of such a criminal offence, he/she can be fined up to £200.

¹⁰ A document can be the agenda and connected reports for public meetings, documents relating to executive decisions made by an individual member or officer, or any other background papers.

Your rights of access to meetings and information

Are there other rights I can exercise?

Yes. You can inspect a council's detailed financial accounts, ledgers and records. The Accounts and Audit Regulations 2011 cover checking not just the accounts, but also "all books, deeds, contracts, bills, vouchers and receipts related to them". More information on this right is available at: <https://www.gov.uk/government/policies/making-local-councils-more-transparent-and-accountable-to-local-people/supporting-pages/peoples-rights-to-see-council-accounts>

You can see your council's spending transactions valued over £500, senior salaries, organisational charts, contracts and the location of public land and assets. This information is among the minimum datasets that your council should publish in accordance with the Code of Recommended Practice for Local Authorities on Data Transparency. You can obtain further information on this from: <https://www.gov.uk/government/publications/local-authority-data-transparency-code>

Also, you have the right to request information held by your council by submitting Freedom of Information Act requests to your council (a similar regime exists in relation to environmental information under the Environmental Information Regulations 2004). Information on Freedom of Information Act is available on the Information Commissioner's Office website at: <http://ico.org.uk/>

You have certain rights to re-use for your own purposes documents held by the council under the Re-use of Public Sector Information Regulations 2005. These Regulations provide that any request for re-use must be in writing, and where possible and appropriate the council must make the document concerned available for re-use by electronic means. More information is available at: <http://www.legislation.gov.uk/ukxi/2005/1515/introduction/made>

Where can I find the legislation relating to access to council's executive meetings and information?

The relevant legislation relating to access to information regarding decisions made by council executives, and their committees/subcommittees and joint committees is Part 1A of the Local Government Act 2000 – see sections 9G and 9GA. It was inserted as a result of amendments made by the Localism Act 2011 and the relevant provisions are available at the following link:

<http://www.legislation.gov.uk/ukpga/2011/20/schedule/2/part/1>

The detailed provisions are contained in the secondary legislation made under the 2000 Act, that is the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which can be found at:

<http://www.legislation.gov.uk/ukxi/2012/2089/contents/made>

Annex A – Descriptions of Exempt Information

The exempt information set out at Schedule 12A to the Local Government Act 1972 Act is as follows:

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

The qualifications to the list of exempt information are as follows:

- A.** Information falling within number 3 above is not exempt information by virtue of that paragraph if it is required to be registered under--
the Companies Acts as defined in section 2 of the Companies Act 2006;
the Friendly Societies Act 1974;
the Friendly Societies Act 1992;
the Co-operative and Community Benefit Societies and Credit Unions Acts 1965 to 1978;
the Building Societies Act 1986; or
[(f) the Charities Act 2011.
- B.** Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
- C.** Information which—
falls within any of numbers 1 to 7 above; and
is not prevented from being exempt by virtue of number A or B above,

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

1.0 Filming of Council Committee Meetings Media Protocol

- 1.1 Filming of Council Committee meetings will be permitted in accordance with the following media protocol.

2.0 Rules for filming of Council meetings

- 2.1 Requests to film Council Committee meetings will only be granted to accredited media representatives.

The definition of an accredited media organisation is as follows:

“a media organisation or individual that holds a National Press Card and is registered with the Press Complaints Commission (or its successor) or a similar regulated body with a code of conduct and associated complaints process through which the Council could take recourse”.

- 2.2 This media protocol applies to the following Council Committee Meetings – Full Council, Cabinet and Overview and Scrutiny.
- 2.3 This protocol does not include meetings of Regulatory Committees such as Planning, Licensing and the Licensing sub-committee, or of Governance & Audit Committee, at which filming will not be permitted.
- 2.4 No audio or visual recordings will be permitted except for official agreed recordings.

3.0 Requesting permission

- 3.1 Requests to film a council meeting must be submitted to the council’s Corporate Communications team.

They should be submitted electronically to press.office@thanet.gov.uk

- 3.3 All requests must be submitted **at least five working days prior to the meeting**. Requests received after this time will have no guarantee of being considered.
- 3.4 The request must clearly state the name of the journalist or broadcaster who will be filming at the meeting, along with proof of accreditation.
- 3.5 Media outlets must identify clearly whether they are seeking permission for a single broadcaster with a hand held device or if this will involve an additional cameraman and/or sound technician.

4.0 Granting permission

- 4.1 The decision on whether to grant permission to film will be made by the Chairman of the Committee in advance of the meeting taking place.
- 4.2 It will be for the Chairman to determine whether to consult or involve the rest of the Committee in the decision to grant permission. However, if the Chairman makes a decision to allow filming, the consent of relevant committee members to such filming will be presumed to have been given, by virtue of the existence of this protocol in the constitution.

- 4.3 The Corporate Communications team will confirm to the journalist whether permission has been granted.
- 4.4 Permission to film will be granted on the basis that the journalist agrees in advance of the meeting to adhere to the media protocol.
- 4.5 The decision of the Chairman of the Committee is final and there will be no avenue of appeal.
- 5.0 **Protocol during filming**
- 5.1 Once granted, permission will apply to film the meeting in full for all items that are open for press and public.
- 5.2 Filming any items which are identified as 'excluded from press or public' will not be permitted.
- 5.3 Members of the media will be permitted to film or record the meeting on a hand-held mobile device or tablet, standard video recorder or free-standing camera.
- 5.4 Permission to film will only be granted on the basis that filming does not interrupt or disturb proceedings.
- 5.5 While filming, journalists will be asked to remain in one designated media area and will not have permission to move around while the meeting is underway.
- 5.6 This permission does not extend to filming or recording any members of the public in attendance without seeking prior and independent consent.

REVIEW OF DECISIONS MADE IN PRIVATE SESSION

To: **Standards Committee - 4 September 2013**

Main Portfolio Area: **Business, Corporate and Regulatory Services**

By: **Democratic Services Manager**

Classification: **Unrestricted**

Ward: **All Wards**

Summary: **This paper reviews the Council's policies on decisions made in private**

For Decision

1.0 Introduction and Background

1.1 As part of the report: "Review of Policies & Procedures - Probity and Reputation - recommendations from Cabinet and request by Standards Committee" that was considered at Full Council on 11 July, it was a recommendation that a review of decisions made in private session be undertaken.

1.2 Council agreed the following:

THAT the Constitutional Review Working Party be requested to consider the options for revisiting a decision made in private session after one year to determine if the report or information on which the decision was made can be published

1.3 This report was considered by Constitutional Review Working Party at its meeting on 21 August 2013.

2.0 The Current Situation

2.1 Under the relevant legislation, the Council can only exclude the press and public from Council meetings when confidential or "exempt" information is discussed.

2.2 Under section 100A of the Local Government Act 1972, a resolution needs to be passed in order to exclude the press and public when exempt information is to be considered.

2.3 Under section 100B of the Local Government Act 1972, the Proper Officer may exclude from public agenda packs any item which he/she believes will not be considered in public session (i.e. which he/she thinks should or will be regarded as exempt).

2.4 Confidential information is information which has been given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by court order. Confidential information must not

be considered in public session and no resolution is needed in order to exclude the press and public when such information is to be considered.

2.5 The definition of exempt information is contained in Schedule 12A of the Local Government Act 1972 (as amended), as follows:

Category	Condition
1. Information relating to any individual.	Information is exempt if and so long as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests.
2. Information that is likely to reveal the identity of an individual.	Information is exempt if and so long as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	a) Information is exempt if and so long as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests; b) Information is not exempt if it is required to be registered under: <ul style="list-style-type: none"> • Companies Act 1985; • Friendly Societies Acts 1974 and 1992; • Industrial and Provident Societies Acts 1965 to 1978; • Building Societies Act 1986; • Charities Act 1993. c) The rights of access by Members are contained in Section 1007 of the 1972 Act.
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the Authority.	Information is exempt if and so long as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	Information is exempt if and so long as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests.
6. Information which reveals that the authority proposes a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or b) to make an order or direction under any	Information is exempt if and so long as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests.

Category	Condition
enactment.	
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	Information is exempt if and so long as in all the circumstances of the case, the public interests in maintaining the exemption outweighs the public interest in disclosing the interests.

- 2.6 It should be noted that the test for excluding the press and public is two-stage: the first being more a matter of fact (does the information fall within one of the descriptions) and the second more one of judgement (at a particular point in time, what best serves the public interest).
- 2.7 Once regarded as exempt, such information has historically never been published. However it is open to anyone to submit a Freedom of Information Act (FOIA) requesting the disclosure of exempt information and any such request would be dealt with in the same way as any other FOIA request, namely the relevant manager would make the decision on disclosure having first obtained the approval of his or her director. If the decision of the Manager was to still withhold the exempt information and the requestor applied to the Council for an internal review, the Corporate & Regulatory Services Manager would conduct a review and make the final decision for the Council - although if the decision was still to withhold the exempt information, the requestor would have a further right of appeal to the Information Commissioner.
- 2.8 At the risk of generalisation, any request to disclose exempt information will be determined in accordance with the overall public interest at the time the request is made. Thus, if with the passage of time information contained in e.g. an exempt Cabinet report is no longer sensitive (say a valuation report relating to the intended purchase of a property that the Council has since purchased) it is likely that the decision on the request will be to publish the exempt information. .
- 2.9 Confidential information, in this case having the limited meaning of information received from central government on terms that it remains confidential, will always remain confidential and can never be published.
- 2.10 To provide a context for considering the issue, the following table shows the number of decisions that were regarded as exempt in 2012/13:

Decision type or body	No. of items regarded as exempt
Council	0
Cabinet	3
Delegated Executive	0
Officer	0
Overview & Scrutiny Panel	1
Planning Committee	0
Licensing Board	16
General Purposes	2
TOTAL	22

NOTE: Standards Committee is not included in the table and is referred to below.

3.0 Views of the Constitutional Review Working Party

- 3.1 The Constitutional Review Working Party considered this report at its meeting of 21 August 2013. The Working Party felt that not only should there be a review one year after an exempt decision was taken, but that a further review should take place three years later where the outcome of the first review was that the information should remain exempt. This is covered in more detail at paragraph 4.4.4 of this report.
- 3.2 The Working Party also felt that a report on decisions reviewed should be brought to full council on an annual basis; this is covered in more detail in paragraph 4.5 of the report.
- 3.3 The recommendations of the Working Party to Standards Committee, as summarised at paragraph 6.0 of this report, embrace those views.

4.0 Options

4.1 Definition of a year since a confidential / exempt report was considered

- 4.1.1 The first issue is how the Council determines the “year” since a decision was made in private.
- 4.1.2 Where the report was only submitted to one meeting, it is reasonably easy to determine when a year has elapsed. But if the report was considered to be exempt at Cabinet and then at Council, then from which point is the year calculated?
- 4.1.3 It is suggested that the definition of the year’s anniversary should be from the point the report was considered by the ultimate decision taker.
- 4.1.4 **Recommendation** – that a confidential / exempt report is reviewed a year after the ultimate decision taking body has considered it.

4.2 Which decisions are covered?

- 4.2.1 The recommendation taken by Cabinet did not specify the types of decisions that would be covered by a one-year review. The following table suggests where this rule would be applied, but it is open to the Working Party to suggest a different approach.

Decision type or body	Does a review of exempt status apply?
Council	Yes
Cabinet (or delegated executive)	Yes
Officer (decisions requiring a decision notice to be published)	Yes
Other committees (e.g. Overview and Scrutiny Panel)	Yes
Regulatory (e.g. Planning, Licensing Board)	Yes
General Purposes	Yes
Standards Committee or its sub-committees	No

- 4.2.2 **Recommendation** – that reviews of the status of exempt information relate to all decisions other than those taken by the Standards Committee or its sub-committees.

4.2.3 **Recommendation** – that only exempt decisions taken after the constitution has been updated are affected by this process – in other words, it is not retrospective.

4.3 **Who decides whether the information is still confidential / exempt or can be published?**

4.3.1 Paragraph 2.0 notes that it requires a resolution of a Committee to determine that information is exempt and thus cannot be published. It also notes that the Corporate & Regulatory Services Manager currently takes the final decision for the Council in relation to information requests including requests for the disclosure of exempt information. It is therefore proposed that the simplest and most consistent means of undertaking the annual review of whether exempt reports should be published is delegated to the Corporate & Regulatory Services Manager.

4.3.3 Such a delegation could include the requirement for the Corporate & Regulatory Services Manager to publish his decisions with reasons.

4.3.4 Where the Corporate & Regulatory Services Manager determines that the information can now be published, it would be published through the Council's committee document management system (modern.gov).

4.3.5 Where the Corporate & Regulatory Services Manager determines that the information should still not be published, any one wishing to see the information could submit an FOIA request as outlined above and appeal to the Information Commissioner if the Council did not disclose the exempt information in response to the request.

4.3.6 **Recommendation** – That the list of officer delegations in the constitution be amended to include a delegation to the Corporate & Regulatory Services Manager to conduct reviews of exempt information and determine whether it should be published.

4.3.7 **Recommendation** - that the Corporate & Regulatory Services Manager publishes his decision on each review giving reasons for such decision.

4.3.8 **Recommendation** – That Democratic Services uses the modern.gov system to publish reports that are no longer deemed to be exempt.

4.4 **Ensuring that confidential / exempt reports are reviewed after a year.**

4.4.1 Democratic Services will be able to use the modern.gov system to flag up any exempt reports that are due for annual review.

4.4.2 Another issue that emerges is whether there is only one review after a year, or further reviews. The Cabinet decision was that there ought to be one review after one year, but the Working Party may wish to consider whether there should be any further review(s) at a later stage. It could be suggested, for example, that the longer the time that has elapsed since the original decision was taken, the less likely it is that the public interest test will still favour withholding the information.

4.4.3 On the other hand, adding multiple reviews for every exempt decision would significantly add to the workload involved.

4.4.4 When this issue was discussed at the Constitutional Review Working Party, Members of the Working Party strongly supported the principle of a further review three years after the first review (i.e. after the fourth year). This would then allow for a significant period of time to elapse before another review took place and, as referenced above,

such a period of time could significantly affect the result of the public interest test regarding continued withholding of the information.

- 4.4.5 **Recommendation:** If, after the first year review, a report is still treated as exempt, that report should then be the subject of a further similar review on the third anniversary of the decision having been first reviewed.

4.5 Annual reporting of reviews

- 4.5.1 The Constitutional Review Working Party felt that to increase transparency there should be an annual report to Full Council that showed the number of decisions that had been reviewed by the Corporate & Regulatory Services Manager, together with a brief summary of each report reviewed, including an explanation of the reasons wherever it was not possible make the report public.
- 4.5.2 **Recommendation:** That full Council receives a report on the decisions reviewed by the Corporate and Regulatory Services Manager on an annual basis; such a report to include the reasons wherever it is considered not possible to release the report/information to the public.

4.6 Access to Information Rules

- 4.6.1 In order to facilitate these changes additional paragraphs need to be added to the Access to Information Rules. Attached at Annex 1 to this report are the additional paragraphs needed.
- 4.6.2 **Recommendation:** To agree to add the additional paragraphs as shown in Annex 1 to the report to the Council's Access to Information Rules.

5.0 Corporate Implications

5.1 Financial and VAT

- 5.1.1 The measures outlined in the report would not mean that the Council would incur any additional expenditure.

5.2 Legal

- 5.2.1 The legal implications are outlined in the report itself.

5.3 Corporate

- 5.3.1 The Council has indicated through the report "Review of Policies & Procedures - Probity and Reputation - recommendations from Cabinet and request by Standards Committee" that it is committed to investigating ways that it can become more transparent. This report addresses some of those issues.

5.4 Equity and Equalities

- 5.4.1 There are no equity and equalities implications apparent within the report.

6.0 Summary of Recommendations

4.1.4	Recommendation – that a confidential / exempt report is reviewed a year after the ultimate decision taking body has considered it.
4.2.2	Recommendation – that the reviews of the status of exempt information relate to all decisions other than those taken by the Standards Committee or its sub-committees.
4.2.3	Recommendation – that only exempt decisions taken after the constitution has been updated are affected by this process – in other words, it is not retrospective.
4.3.6	Recommendation – that the list of officer delegations in the constitution be amended to include a delegation to the Corporate & Regulatory Services Manager to conduct reviews of exempt information and determine whether it should be published.
4.3.7	Recommendation – that the Corporate & Regulatory Services Manager publishes his decision on each review giving reasons for such decision.
4.3.8	Recommendation – that Democratic Services uses the modern.gov system to publish reports that are no longer deemed to be exempt.
4.4.5	Recommendation: If after the first year review a report is still treated as exempt, that report should then be the subject of a further similar review on the third anniversary of the decision having been first reviewed.
4.5.2	Recommendation: That full Council receives a report on the decisions reviewed by the Corporate and Regulatory Services Manager on an annual basis; such a report to include the reasons wherever it is considered not possible to release the report/information to the public.
4.6.2	Recommendation: To agree to add the additional paragraphs as shown in Annex 1 to the report to the Council's Access to Information Rules.

6.0 Decision Making Process

6.1 Any recommendation by the Standards Committee will be referred to full Council for final decision.

Future Meeting if applicable: Council	Date: 3 October 2013
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Contact Officer:	Nick Hughes, Democratic Services Manager
Reporting to:	Glenn Back, Democratic Services and Scrutiny Manager

Annex List

Annex 1	Amendment to Access to Information Rules – New clause 13
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Background Papers

Title	Details of where to access copy
None	

Corporate Consultation Undertaken

Finance	N/A
Legal	Harvey Patterson, Corporate and Regulatory Services Manager

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Access to Information Procedure Rules

12.0 Exclusion of Access by the Public to Reports

If the proper officer thinks fit, the Council may exclude access by the public to a report or a part of a report which in his or her opinion relates to an item during which, in accordance with Rule 11, the meeting is likely not to be open to the public. Every copy of such report, or part of report, as the case may be, must be marked, "not for publication" and there must be stated on every copy of the whole or the part of the report:

- (a) that it contains confidential information; or
- (b) by reference to the descriptions in Schedule 12A to the Local Government Act 1972, the description of exempt information by virtue of which the decision-making body discharging the executive function are likely to exclude the public during the item to which the report relates.

13.0 Review of confidential / exempt information

13.1 A confidential / exempt report or part of report will be reviewed by the Corporate and Regulatory Services Manager one year after the ultimate decision-taking body has considered it. If, upon that review, a report or part of report is still treated as exempt, the report or part of report will be subject to a further similar review on the third anniversary of the first review.

13.2 The reviews referred to in paragraph 13.1 above do not apply to decisions taken by the Standards Committee or its sub-committees.

13.4 The Corporate and Regulatory Services Manager will publish his decision on each review, giving reasons for such decision.

13.4 The Corporate and Regulatory Services Manager will submit to the Council an annual report containing details of decisions reviewed, such report to include the reasons wherever it is considered not possible to release the report/information to the public.

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