

CONTRACT STANDING ORDERS - PROCUREMENT ACT UPDATE

Head of Service:	Andrew Bircher, Interim Director of Corporate Services
Report writer:	Will Mace, Business Assurance Manager
Wards affected:	(All Wards)
Appendices (attached):	Appendix 1 – Updated CSOs (inc. track changes) Appendix 2 - Thresholds Comparison Table

Summary

On 24 February 2025, the biggest changes to public sector procurement for over a decade will take effect with the issue of the Procurement Act 2023. The legislation, brought in after Brexit, has a significant impact on how the council undertakes its procurement.

As a result of these changes the Contract Standing Orders ('CSOs'), which form part of the council's Constitution, have been reviewed and updated to ensure that the council will comply with the latest legislation.

This report provides background information to the CSOs and the new Act, their purpose and the key changes.

The report also recommends updates identified through the review which do not directly relate to the new Act.

Recommendation (s)

Council is asked to:

- (1) Approve the revisions to the Contract Standing Orders, with respect to the Procurement Act 2023 and document formatting, attached at Appendix 1 to this report.**
- (2) Approve the revisions to the Contract Standing Orders, with respect to those not mandated by the Procurement Act 2023, attached at Appendix 1 to this report.**

1 Reason for Recommendation

Council

10 December 2024

- 1.1 Legislation requires that the council has clear rules about how it conducts procurement. The CSOs have been updated to reflect forthcoming changes in legislation. The updated CSOs need approval by Full Council so that they can be incorporated into the council's [Operating Framework](#). A summary of these updates is provided below.
- 1.2 Updates in addition to those mandated by the Procurement Act have also been included in Appendix 1. These are based on officer recommendations, which would be put forward as part of the annual review of the CSOs. They have been included in the report to provide an opportunity for Full Council to adopt them at this meeting, rather than receiving only the Procurement Act 2023 related revisions, and then receiving the additional recommendations at another meeting over the next 12 months.

2 Background

- 2.1 The [Contract Standing Orders](#) ('CSOs') set out the council's rules on how it procures (purchases) goods, services and works.¹ The current version was drafted and maintained to follow the Public Contracts Regulations 2015.
- 2.2 The CSOs have undergone several minor changes over time, and procurement has changed significantly since the Public Contracts Regulations 2015 were instated. The changes relate to the importance of procurement in assisting the council with savings, dealing with increased material and wage costs, implementing local policies and ensuring that in a time when we are increasingly scrutinised for our spending, that we have open and transparent procedures in place.
- 2.3 On 24 February 2025, the most significant changes to public procurement will take place with the implementation of the Procurement Act 2023. The Legislation is a direct response to the withdrawal of the United Kingdom from Europe and therefore has more focus on alignment with national UK policy.
- 2.4 The new legislation has a focus on increased Public Sector transparency through the publication of more notices during a procurement process, more tendering opportunities for Small Businesses (SMEs), better contract management, streamlined procurement processes, and providing clarity on case law decisions.

¹ The link provided in text here will take readers to the current version of the CSOs, which is hosted on the Council's Operating Framework webpage.

Council

10 December 2024

- 2.5 As a result of these changes, the CSOs have been reviewed to ensure full compliance with the new legislation. During the update of the CSOs, changes have been incorporated to simplify and improve processes wherever it is permitted to do so. All the updates are visible in Appendix 1, and it is intended that any formatting issues in Appendix 1 – caused by track changes - will be addressed following Full Council’s consideration of the report.
- 2.6 The council is aware of the [Cabinet Office’s](#) announcement that the Procurement Act 2023 will now commence on 24 February 2025, which is a delay of four months from the original date of 28 October 2024. The postponement has been made to allow time for the Government to produce a new National Procurement Policy Statement (NPPS). Therefore, Full Council approval in December 2024 will ensure the council is fully prepared for the February 2025 go-live date.
- 2.7 This report was considered by Strategy and Resources Committee on the 12th November 2024.² The Committee resolved to recommend that both of the report’s recommendations are submitted to this meeting of Full Council for approval.

3 The Purpose of the CSOs

- 3.1 The purpose of the CSOs is to establish clear rules for the procurement of all the council’s goods, works and services and assist in ensuring that there is a system of openness, integrity and accountability as required by the Local Government Act 1972 and the new Procurement Act 2023. The CSOs form part of the council’s [Operating Framework](#), which sits alongside the [Constitution](#), and as such they require approval by Full Council.
- 3.2 Procurement can be complex, particularly when undertaking Above Threshold procurement processes.³ The CSOs set out legislation and rules that need to be followed, which covers all potential procurements. As many aspects of the CSOs will not apply to all procurement projects, it is recommended that officers undertaking a procurement exercise seek advice from the Procurement team to clarify what does apply to their specific requirement.

² See Section 10 for the reference and link to the Strategy & Resources Committee Agenda/Minutes for the 12th November 2024.

³ For more detail on ‘Above Threshold’ see ‘Threshold 4’ in the table in “Section 6 – Procurement Thresholds and Procedures” in Appendix 1.

Council

10 December 2024

- 3.3 The current CSOs are supported by the [Procurement Strategy 2021 - 2024](#) which outlines the direction and deliverables of strategic procurement, covering areas such as supporting sustainable procurement, small / local businesses, modern slavery, and innovation. The Strategy will therefore require updating with the approval on the new CSOs and Procurement Act 2023. This task has intentionally been arranged to follow the updating of the CSOs, as the CSOs are the critical document that ensures the council conducts compliant procurements. It is therefore essential that the council focuses on approving up-to-date CSOs to ensure it is fully prepared for the implementation of the new Act in February 2025.

4 Overview of the updates to the CSOs

4.1 Recommendation 1:

- 4.2 The key principles of the CSOs remain the same. However, the most fundamental changes related to the Procurement Act 2023 are:

- Changes to the Above Threshold procurement processes, meaning that there are now three processes as opposed to five, with the aim of making the processes easier and more accessible for SMEs.
- Publication of more notices throughout the procurement process, to enable more transparency.
- Change to the definition of contract value to provide further clarity from previous European rules, and the inclusion of VAT for the statutory procurement Thresholds.
- Addition of Contract Management requirements into processes.
- Legal obligation to ensure accessibility of the council's tenders to SMEs to ensure opportunities for smaller businesses.
- New rules regarding advertising opportunities on a central government portal, aimed at streamlining the processes for businesses wanting to do business with the council, to be launched later by the UK Government.
- Changing of Most Economically Advantageous Tender (MEAT) to Most Advantageous Tender (MAT), reaffirming the importance of assessing quality as well as price when assessing submissions.
- Addition of Conflicts of Interest Assessments which must be undertaken for all Above Threshold procurements and best practice for lower value contracts.

Council

10 December 2024

- Changes of rules around contract variations and modifications. The regulations set new rules about varying a contract and when it is permissible.
 - Change in feedback given to suppliers which are now through an Assessment Summary, and a notice is placed before the standstill period is commenced.
- 4.3 Updates related to the Procurement Act 2023 are highlighted in yellow in Appendix 1.
- 4.4 This Recommendation also includes general formatting issues, updates to role titles and changes in internal reporting, and typos identified through the review of the CSOs.
- 4.5 Recommendation 2:**
- 4.6 The key changes related to Recommendation 2 are:
- The proposal to include a new Threshold 1 which would cover spend between £0 - £9,999. The current CSOs stipulate that three quotes must be sought between £0 - £25,000. The majority of neighbouring Borough councils – see Appendix 2 - make provision for low value spend to be covered by one quote. When purchasing low value items (e.g. a ladder, attendance on a course, a particular service), it is often not practical nor cost effective to seek three quotations. This point has been made by officers who regularly purchase low value items and are unable to fulfil the requirements of the CSOs. The ambition behind the CSOs is to ensure value for money, but they also need to be able to facilitate quick and easy purchasing where officers believe that value for money has been obtained. This does not preclude shopping around for value for money for items up to £9,999, the council would expect that, but sometimes three quotes cannot reasonably be obtained. Further, the risk related to the spend would in many cases be outweighed by the cost in officer time to seek the quotes and run the process according to the current Threshold 1. The proposal still requires an audit trail for this spend.
- 4.7 The provision for Works contracts to procure within the Threshold of £10,000 - £24,999 with one quote when sourcing three is not practicable. Works contracts fall into the following categories for the council: urgent engineering works, decorating, urgent electrical works, regulatory works – fire safety, water safety, asbestos, specialist restoration, structural investigations, urgent Health & Safety works.
- 4.8 Works contracts have been treated separately to goods and services in the preceding legislation, and are still in the Procurement Act 2023. Hence, some borough councils do provide additional financial limits for their Works spends (see Appendix 2).

Council

10 December 2024

- 4.9 The rationale for this relates to the nature of Works contracts. Firstly, the Works market is busy, contractors charge to quote for Works, and will often not spend the time quoting for Works if they do not feel they have a high chance of winning the contract, as demand is very high for Works at present. Secondly, materials, labour and inflation costs have increased substantially, and as such the general value of these contracts has increased, and thus obtaining three quotes in all circumstances can lead to risks around the pricing of materials, and holding prices is therefore not desirable for suppliers.
- 4.10 Given these circumstances, and the urgent nature of some Works contracts, such as health and safety and regulatory works, mandating that three quotes must always be sought, does not always present Best Value to the council and its customers. In addition, audit trails and appropriate sign-off for financial spend within this Threshold would remain in place.
- 4.11 Section 4 – Scope of the CSOs: this has been reviewed and updated to reflect current legislation, however not all of the revisions are directly related to the new Act.
- 4.12 Section 5 – Roles and responsibilities: this has been updated to reflect current and best practice.
- 4.13 Section 7 – The text related to guidance on the use of purchase cards has been removed and replaced with a reference to the Financial Regulations, which is a more appropriate place for this information.
- 4.14 Section 8 – The text related to guidance on sourcing temporary agency staff has been removed and replaced with a reference to the Employment of Agency Workers Policy, which is a more appropriate source to contain the information and rules on appointing temporary staff.
- 4.15 Further detail has been added to the final bullet point in Section 24 – Conflicts of interest.
- 4.16 Section 32 – The text related to the limits for writing-off items has been removed and replaced with a reference to the Financial Regulations, which is a more appropriate place for this information.
- 4.17 Annex 1 contains guidance on the procedures officers should follow in a flowchart format. These will be updated following the consideration of Appendix 1 at this meeting of Full Council.
- 4.18 Annex 2 – Statutory thresholds: the table has been removed and link to the relevant Government webpage included in its place. The web link will take readers to the most up to date Thresholds, whereas the table may become out of date if the Thresholds are changed before the next Full Council review of the CSOs.

5 Next Steps

5.1 Following the adoption of the CSOs, the following next steps will be taken:

- Officer procurement training, covering the implications of the new Act and updates to the CSOs.
- Review and update of the Procurement Strategy.
- Update procurement documentation (e.g. templates).
- Update the procurement page of the council's website.
- Monitor and implement any secondary legislation.

6 Risk Assessment

Legal or other duties

6.1 Equality Impact Assessment

6.1.1 Equality considerations are included within the Procurement Act and the CSOs. The updates to both should add further mitigation to equality related risks, such as related to the increased transparency and focus on small and medium sized enterprises, social value, and modern day slavery. Note, that the Procurement Act is national legislation which the council must comply with. Therefore, the council will incorporate the Act's equality elements within its own practices.

6.2 Crime & Disorder

6.2.1 No direct risks.

6.3 Safeguarding

6.3.1 No direct risks.

6.4 Dependencies

6.4.1 The council needs clear and compliant CSOs in place in order to purchase goods, services and works. Delays to procurements can negatively impact on service delivery and health and safety.

6.5 Other

6.5.1 Financial and legal risks as noted in sections 7 and 8 below.

6.5.2 If Members have a detailed question(s) on particular elements of the report, it is requested that these be submitted in advance where possible, to enable officers the time to prepare full and complete answers.

7 Financial Implications

- 7.1 Financial risk: if the updated CSOs are not approved the council could face legal action related to its procurements, and if procurements are delayed due to not having compliant CSOs in place, then it is unlikely that best value procurements will be achieved.
- 7.2 While the Threshold proposals under Recommendation 2 may present a financial risk, there are mitigations in place to provide sufficient controls and an audit trail. In addition, it is considered that not enacting the amendments under Recommendation 2 would present the council with a financial risk, due to excessive officer resource having to be spent on the procurement of low value contracts and use of waivers. Furthermore, onerous tender requirements for relatively low value contracts can present a significant deterrent to some suppliers that could prevent them from bidding, which itself can reduce the competitiveness of a tender process and ultimately the council's ability to secure best value.
- 7.3 **Section 151 Officer's comments:** Financial risks and administrative benefits are set-out in the body of the report.

8 Legal Implications

- 8.1 Legal risk: If the updated CSOs are not approved then it is highly likely that the council's procurements will cease to be compliant with legislation. If this were to happen, then the council may be subject to legal action.
- 8.2 **Legal Officer's comments:** The report summarises the most fundamental changes related to the Procurement Act 2023 and sets out within Recommendation 1 those updates that are mandated by the Procurement Act 2023.

9 Policies, Plans & Partnerships

- 9.1 **Council's Key Priorities:** The following Key Priorities are engaged:
- Effective Council: Engaging, responsive and resilient Council.
- 9.2 **Service Plans:** The matter is included within the current Service Delivery Plan.
- 9.3 **Climate & Environmental Impact of recommendations:** Sustainability, from a climate and environmental perspective is considered within the CSOs (see Appendix 1). No additional risks have been identified.
- 9.4 **Sustainability Policy & Community Safety Implications:** No direct implications.
- 9.5 **Partnerships:** Partnerships are covered within the CSOs, see Appendix 1. No additional risks have been identified.

10 Background papers

10.1 The documents referred to in compiling this report are as follows:

Previous reports:

- Epsom & Ewell Borough Council (2024) *Contract Standing Orders – Procurement Act Update*, Strategy & Resources Committee, 12th November 2024. Online available: <https://democracy.epsom-ewell.gov.uk/ieListDocuments.aspx?CId=132&MIId=1681> [last accessed 13/11/2024].
- Epsom & Ewell Borough Council (2024) *Epsom and Ewell Borough Council's Constitution*, Full Council, 14th May 2024. Online available: <https://democracy.epsom-ewell.gov.uk/ieListDocuments.aspx?CId=146&MIId=1526&Ver=4> [last accessed 16/08/2024].

Other papers:

- Epsom & Ewell Borough Council (2024) *Contract Standing Orders*, 14th May 2024. Online available: https://www.epsom-ewell.gov.uk/sites/default/files/documents/council/about-council/governance/Annex%205-2%20-%20Contract%20Standing%20Orders_2.pdf [last accessed 16/08/2024].