

Title of meeting:	Governance & Audit & Standards Committee
Subject:	Procurement Act 2023 and Contract Procedure Rules
Date of meeting:	2 nd October 2024
Report by:	Richard Lock - Assistant Director, Procurement
Wards affected:	N/A
Key decision:	No
Full Council decision:	No

1. Purpose of the report

To provide the Committee with an overview of the significant upcoming changes to public sector procurement that will arise when the Procurement Act comes into force on 24th February 2025, along with a summary of the direct impacts this will have on the council.

Provide the Committee with an overview of the Council's preparations for these changes, including for the planned revisions that will need to be made to the Council's Contract Procedure Rules (CPRs) and associated procurement governance processes.

To seek the approval of the Committee to commence drafting the required revisions to the Council's CPRs to enable presentation of the revised rules for subsequent review by the Committee at the 5th February 2025 Committee meeting. This date is subject to there being no further delays to the introduction of the act announced by central government.

Provide the Committee with a summary of the reasons why it has not been viable to effectively commence the detailed drafting required to update the Council's CPRs until this point, including for details of the note issued on 12th September 2024 by Georgia Gould - Parliamentary Secretary for the Cabinet Office which put the go live date back from 28th October 2024 to 24th February 2025.

Provide details of the mitigation measures that will be applied to protect the Council from non-compliance risks during the interim period when the new regulations come into force but the Council's corresponding revised CPRs have not yet been formally adopted within the constitution.

2. Recommendations

That the Committee gives approval to the City Solicitor, with support from the Council's Procurement Service, to draft the revisions required to bring the Council's CPRs into compliance with the new legal requirements set out within the Procurement Act.

That - subject to no further delays to the introduction of the act being announced by central government - the revised CPRs are scheduled for review and endorsement at the 5th February 2025 Committee meeting.

That, subject to no further government delays to commencement of the act and endorsement by the Committee, the revised CPRs are scheduled for approval at the 18th March 2025 Full Council meeting.

That subject to no further government delays to commencement of the act and approval at Full Council that the revised rules are formally adopted into the constitution from 1st April 2025.

3. Background

Transforming Public Procurement Aims

Following 'Brexit' and the UK's subsequent withdrawal from the European Union (EU) the government has prioritised a fundamental review of public sector procurement regulations and processes which up until now have been based upon Directives issued by the EU. This review has been completed and public procurement will be subject to significant changes when the Procurement Act 2023 (supported by the additional 'Procurement Regulations 2024') comes into force on the recently announced revised go live date of 24th February 2025.

The changes to the procurement regulations are being treated by government as a major project programme. Nationally, spending on public sector procurement was £393 billion in 2022/23 across the UK. Locally the Council has an average spend of over £250 million annually with third party suppliers.

The Procurement Act will consolidate existing multiple procurement regulations into a single regime. The Transforming Public Procurement programme led by the Cabinet office aims to improve the way public procurement is regulated, in order to:

- create a simpler and more flexible, commercial system that better meets our country's needs while remaining compliant with our international obligations
- open up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts
- embed transparency throughout the commercial lifecycle so that the spending of taxpayers' money can be properly scrutinised.

Development of Legislation & Timescales

Following consultation via publication of a Green Paper in December 2020, and subsequent repeated delays, the Procurement Bill received Royal Assent in October 2023. In March 2024, the Procurement Regulations 2024 were laid in Parliament to bring some elements of the Bill and the wider regime into effect. The Procurement Act 2023 (Commencement No.3 and Transitional and Saving Provisions) Regulations 2024 were signed on 23rd May and legislatively set out the original go-live date of 28th October 2024.

Following assent of the Procurement Bill the government has taken a phased approach to implementation, issuing secondary legislation, training, support, guidance notes, templates, tools, systems, etc. on a frequent basis over the last few months. A significant amount of detailed guidance, support, tools - including for governments new Central Digital Platform system - and some secondary legislation is still yet to be made available.

A lot of this further information was due to be issued closer to the original 28th October go live date, but a significant amount was due to be issued as part of a second post go live phase of implementation and there is still not full clarity from government on how this will be managed. This had made it extremely challenging for the Council and the wider public sector to begin to make the required changes to local rules and governance until now and makes the position of effectively updating the Council's rules to go live in parallel with, or shortly after, the Act unviable.

On 12th September Georgia Gould - Parliamentary Secretary for the Cabinet Office, issued communications stating that it was the government's intention to delay the act going live and providing a revised date of 24th February 2025.

The government's position for delaying the act is a need to review the current National Procurement Policy Statement (NPPS) issued by the previous administration - and which all contracting authorities must give regard to under the act - which the government feels does not go far enough to meet the challenge of delivering 'value for money, economic growth and social value'.

The current NPPS dated 13th May 2024 is a brief summary document which sets out strategic priorities for public procurement, being:

- Value for Money
- Social Value
- Small & Medium Sized Enterprises (SME inclusion)
- Commercial & Procurement Delivery
- Skills & Capability for Procurement

The full current NPPS is freely available online and can be accessed online via the following link:

[https://assets.publishing.service.gov.uk/media/663c9bbd1834d96a0aa6d314/E03126162 - Un Act - National Procurement Policy Statement V2 Elay.pdf](https://assets.publishing.service.gov.uk/media/663c9bbd1834d96a0aa6d314/E03126162_-_Un_Act_-_National_Procurement_Policy_Statement_V2_Elay.pdf)

The government is proposing to develop a new NPPS that sets out their priorities and missions. The communication also mention that the revised date will also provide more time to enable a seamless transition which may indicate that the delay will allow for the promised further guidance and tools to be issued in advance of the act going live. An online link to the governments communications is included below.

<https://questions-statements.parliament.uk/written-statements/detail/2024-09-12/hcws90>

I've included a link to Georgia's full statement below which mentions the new date of 24th February 2025 that will be, or may already have been, issued to both Houses, the Welsh Government and North Irish Executive. The general consensus is that there are aspects of the NPPS that Labour wishes to amend as their peers and MPs did put forward amendments which were blocked when they were in opposition but that this is also down to technical guidance, IT systems, etc. not being ready for 28th October.

[Written statements - Written questions, answers and statements - UK Parliament](#)

The government has not provided any details of what it is specifically proposing to change when they develop their own NPPS and the level of flexibility vs enforcement that will be given to contracting authorities in terms of adopting the new NPPS requirements, although it can reasonably assumed that the changes will be significant.

The government is not proposing to change any other aspects of the act at this point so whilst the council will need to be mindful of the impacts of the new NPPS work to commence the revisions to the council's CPRs can still be approached with a good level of confidence.

Scope

The changes under the Act and additional regulations will impact all new formal procurement activity which formally commences after the go live date. Current contracts, including for compliant extension of current contracts, will continue to be subject to the existing regulatory framework. This will also be the case with active procurement processes and the resulting contract where the contract has not yet been awarded, as long as the procurement process in question was formally commenced prior to the revised 24th February 2025 go live date.

The changes will mainly impact higher value procurements where the contract has a total lifetime contract value which exceeds the relevant statutory threshold levels set out below. These thresholds are set by the World Trade Organisation and the UK is legally required to implement them via its membership of the WTO Agreement on Government Procurement (GPA). These thresholds are updated biannually, and the current thresholds are in place until 31 December 2025. For non-central contracting authorities, which includes the Council, these are:

- Supplies and Services: £214,904 (incl. VAT)
- Light Touch Regime Services (care, education, law, etc.): £663,540 (incl. VAT)
- Works: £5,372,609 (incl. VAT)
- Concession Contracts: £5,372,609 (incl. VAT)

Principles & Key Changes

The current principles set out within the Public Contracts Regulations (2015) which must be applied to all above threshold procurement and, on a proportionate basis, to below threshold procurements are as follows:

- Transparency
- Non-discrimination

- Equal treatment
- Proportionality

The new expanded principles that will apply to public procurement when the Procurement Act (2023) comes into force, along with summary examples in italics of how the act seeks to implement these principles, are:

- Delivering value for money
 - *Emphasis on transparent pre-procurement engagement with market to discuss requirements and options*
 - *Greater flexibility to design procurement processes which address objectives and extract maximum value from specific markets*
 - *Greater transparency requirements and accountability for driving on-going value for money through evidenced effective contract management*
- Maximising public benefit
 - *Ability to lawfully consider wider criteria for award of public contracts including for environmental and social objectives*
- Sharing information about policies & decision making
 - *Consistent application of National Procurement Strategy principles and local policies*
 - *Higher levels of transparency and accountability to suppliers and the public on decision making throughout every step of the procurement cycle - from pre-procurement options appraisal through to assessment of proposals and subsequent award and management of contract*
 - *Publication of redacted contracts, contract performance information, contract payments*
- Acting, and being seen to act, with integrity
 - *Higher levels of transparency and scrutiny of conflicts of interest assessment and mitigation including for both actual and perceived conflicts*
 - *Barring of suppliers convicted of serious offences and proportionate exclusion of suppliers who have failed to deliver contract requirements and have been placed on a central publicly accessible debarment list*
 - *Establishment of central government Procurement Review Unit which will investigate and take action against poorly performing public sector bodies and suppliers*
- Treating suppliers the same, unless a difference justifies otherwise, and avoiding unfair advantage or disadvantage
 - *Ensuring that incumbent suppliers are not inadvertently advantaged*
 - *Greater focus on use of open specifications*
- Removing and reducing barriers to SMEs (Small & Medium Sized Enterprises)

- *Alternative means of demonstrating financial standing for start-ups and small businesses*
- *Simplifying access to public sector contracts through central digital platform for publication of pre-procurement soft market testing activities, planned procurement pipelines, bidding opportunities, contract details*
- *Providing opportunities to bid for smaller scale contracts and pilots*

4. Reasons for Recommendations

Implementation Plan

The Council's Procurement Service is leading on implementation of the Procurement Act 2023. The implementation plan and actions summarised below are all based upon the original go live date of 28th October 2024. The implementation plan and approach will be reviewed in light of the new go live date of 24th February 2025 so that the Council can benefit from the additional time, support, guidance and tools which will be made available over the coming months.

Over the summer period senior officers within the team have delivered a series of presentations to directors and senior management teams across the Council. Additionally, corporate communications have been issued at both a manager and all staff level alerting them to the forthcoming changes and signposting to support.

An implementation plan has been produced which is being used to both direct and monitor key activity. The Implementation plan which is accurate in respect of current position as of 17th September 2024 is included as Appendix A. Implementation activities include for:

- Project management activities
- Multi-level internal and external communications
- Training and support
- Updating of rules, governance and templates
- Updating of systems and processes

The implementation plan also addresses identified opportunities, challenges and risks in respect of factors such as increased transparency, publication of contract performance, increasing access to SMEs and start-ups, increased process flexibility, etc. and how they are likely to impact the council in view of its current strengths and weaknesses.

Often these impacts have both positive and negative elements, for example having the ability to design bespoke procurement processes should lead to better value outcomes but could also increase risk of legal challenges to contract awards through the use of new untested methods. Increased accountability for contract management should help improve delivery but may also increase risk of supplier disputes if not carefully managed.

Training & Support

Officers in the Procurement Service have undertaken extensive training over the past few months, completing the extensive Transforming Public Procurement modular e-learning training, attending Chartered Institute of Public Finance & Administration (CIPFA) training courses and webinars.

Officers have also attended 'Communities of Practice' and 'South East Super User' topic focused workshop events which provide a platform for further peer engagement and sharing of best practice. The senior officers within the Procurement Service are also attending 'Deep Dive' training targeted at experienced practitioners and which explore some of the more complex areas of the new regulations in a collaborative workshop environment.

The Procurement Service also holds internal fortnightly discussion groups to ensure that the whole team keeps pace with the training programme, topic areas are collaboratively explored and detailed workstream activities are assigned to focus groups for completion.

Next Steps & Future Government Support

To support preparation for the Procurement Act 2023, the Cabinet Office are publishing a suite of technical guidance documents addressing all aspects of the new regime. As summarised earlier, the guidance is being published in batches and prior to the announcement of the new go live date a significant amount of guidance and tools was still yet to be published.

The government's key next steps are the development and adoption of a new NPPS which will be subject to a 40-day review period within the House of Commons. Government will also continue to issue further guidance, templates and tools over the coming weeks and months as well although the schedule may be subject to revision.

Under the previous go live date of 28th October 2024 some elements of the act had already been put back for roll out in a second phase. These include for reporting requirements and processes that occur following the award of a contract such as contract performance, contract variations, payments, etc. which would not go live until April 2025. This will also apply to the new obligation on larger contracting authorities, which will include the Council, to issue an annual pipeline of potential upcoming procurement opportunities which won't be required until after April 2025.

Government has not announced any details in respect of impacts to the elements which were due to be phased so it may be that they are implemented on the same timescales or delayed by approx. 4 months as per the approx. delay to the revised go live date for the act.

Current CPRs

In order to ensure long term compliance with the new regulations the Council will need to revise its CPRs. The CPRs are a legislative requirement under the Local Government Act 1972 and enables the Council to meet its best value obligations and procure lawfully. The CPRs are 'owned' for constitutional purposes by the City Solicitor.

In July 2023, the Council published new CPRs which were written to provide a more coherent, legally correct and practical document. The new CPRs also removed a number of obsolete or no longer necessary locally imposed rules and rules in order to allow the Council to procure in a more flexible basis in preparation for the incoming changes to the regulations. The CPRs were structured so that the required revisions could be simply made.

Required Changes & Timescales

A number of key revisions and additions will be required to be made to the CPRs, covering areas of change such as:

- Methods for estimating contract values
- Overarching legislative changes
- Incorporation of new procurement principles
- Conflict and risk assessment
- Increased transparency requirements
- Procurement procedures and steps
- Contract management, variation, payment and publication
- Consideration of SMEs and Lotting
- Pre-procurement market notification and testing activities
- New systems and changes to existing
- Debarment list and Procurement Review Unit

Senior officers within procurement and legal services are leading on the revising the Council's CPRs and are engaging with peer authorities, support organisations and subject matter experts to undertake this work.

Top-level timescales and activity milestones for review, updating and implementation of the new CPRs are as follows:

- August - September 2024: Review existing CPRs, make preliminary changes and identify new content.
- October 2024: Provide an update on the work being undertaken to revise the CPRs to Committee on 2 October 2024.
- October 2024 - January 2025: Prepare an updated version of the CPRs.
- February 2025: Present the revised CPRs to Committee for endorsement on 5 February 2025.
- March 2025: Ratification by Full Council on 18 March.
- 1st April 2025: The revised CPRs go live.

In addition to updating the CPRs Procurement will also need to review and update the following:

- Procurement Gateway governance process
- Procurement documents and templates
- Contract management processes and reporting structures
- In-tend e-sourcing system
- Procurement web pages
- Guidance, support and training materials

Interim Period Risk Mitigation

The Council is in a similar position to the majority of other local authorities whereby it will not have revised CPRs in place by the new go live date of 24th February 2025. This is largely due to delays in publishing technical guidance, the phasing of the new notices, and continued delivery of the learning and development offer.

As the Council is not sighted on the government's detailed plans for development of a new NPPS and is yet to see the further guidance, tools and templates that have been previously promised it is widely supported that a prudent approach would be to delay issuing new CPRs until early next year, subject to government not applying any further delays.

It is envisaged that the additional time that the delay to the act has provided will enable the Council to confidently proceed with revising its CPRs and further limit the period of time in which the Council's new CPRs are not in place after the act goes live on 24th February 2025. However, this will depend upon the extent of changes which the government makes to the NPPS and other elements of the act in the coming weeks and months.

In the interim period between go live and the revised CPRs coming into effect the Council will ensure compliance with the new regulations through:

- Development and monitoring of a forward pipeline of procurement activity through systems reporting and engagement with services
- Continuing application of Procurement Gateway process which starts at pre-procurement business case stage and captures all procurements for contracts exceeding £150,000, providing a buffer below the lowest statutory threshold of approx. £214k
- Continuing allocation of experienced procurement officers who have been trained on the new regulations to all higher value above £150,000 procurement processes

Procurement activity that will be subject to the new regulations has been identified over an 18-month period from the Act going live. There are only a low number (less than 10) of identified above threshold procurements which will be captured by the new regulations in the first 6-12 months of the new regulations coming into force.

5. Integrated Impact Assessment

If an assessment is required this will be brought to the Committee when the paper for adoption of the revised CPRs along with a draft of the new CPRs is brought on 2nd February 2025.

6. Legal Implications

- 6.1 The body of this report sets out the legislative background to the making by Parliament, and the anticipated timetable for national commencement, of the Procurement Act 2023 and the Regulations made under that Act.
- 6.2 The Council has a statutory duty under section 135 of the Local Government Act 1972 to make standing orders in relation to the making of contracts by it or on its behalf and the Council's Contracts Procedure Rules fulfil the function of such standing orders.
- 6.3 The Council must ensure that the standing orders (CPRs) which it adopts pursuant to such statutory duty are consistent with the substance and requirements of the applicable primary and secondary legislation relating to public procurement.

7. Director of Finance's Comments

The activities proposed within this report are expected to be funded from the existing service portfolio budgets, as approved by Full Council. Where there are any activities which have additional financial requirements, funding will need to be identified prior to their commencement.

Appendices: Appendix A - Implementation Plan - September 24

Background list of documents: Section 100D of the Local Government Act 1972

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Signed by Richard Lock - Assistant Director, Procurement