



**OPEN REPORT
COUNCIL**

Council – 29 September 2022

**PROPOSED AMENDMENTS TO THE CONSTITUTION – CONTRACT
STANDING ORDERS AND FINANCIAL REGULATIONS**

**Joint Report of the Director of Corporate and Customer Services and the
Director of Resources**

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Wards Affected

District-wide

Report Summary

To recommend the adoption of revised Contract Standing Orders (attached at Appendix 1) and Financial Regulations (attached at Appendix 2) following a review to ensure that the rules comply with current legislative and best practice requirements. These two technical parts of the Constitution have multiple links and the Council is required to consider them every two years with the previous review taking place in July 2020.

Recommendations

1. That the draft Contract Standing Orders be approved and adopted as Part 8 of the Council's Constitution.
2. That the draft Financial Regulations be approved and adopted as Part 9 of the Council's Constitution.
3. That authority be delegated to the Monitoring Officer to make consequential changes to the Constitution to reflect the provisions of the Financial Regulations

List of Appendices

Appendix 1 Draft Contract Standing Orders
Appendix 2 Draft Financial Regulations

Background Papers

None

Consideration of report by Council or other committee

N/A

Council Approval Required

Yes

Exempt from Press or Public

No

Proposed Amendments to the Constitution – Contract Standing Orders and Financial Regulations

1. Background

- 1.1 Section 135 of the Local Government Act 1972 requires Local Authorities “to make standing orders with respect to the making by them or on their behalf of contracts for the supply of goods or materials or for the execution of works”. The Standing Orders must include provisions for securing competition and for regulating the manner in which tenders are to be invited. They may exempt contracts for a price below that specified in the Standing Orders and may authorise the Council to exempt any contract from the relevant order when it is satisfied that the exemption is justified by special circumstances.
- 1.2 The Council has adopted Contract Standing Orders as part of the Constitution which have been amended from time to time as required to meet the Council’s operational needs. The Contract Standing Orders were last reviewed in 2020.
- 1.3 Section 151 of the Local Government Act 1972 requires the Council to make arrangements for the proper administration of its financial affairs. It is required to conduct its business efficiently and to ensure that it has sound financial management policies in place and that they are strictly adhered to. Financial regulations, which set out the financial policies of the Council, are the means by which the Council meets that requirement.
- 1.4 The Council has adopted Financial Regulations as part of the Constitution which have been amended from time to time as required to meet the Council’s operational needs. The Financial Regulations were last reviewed in 2020.

2. Key Issues

Contract Standing Orders

- 2.1 Since the UK left the European Union in 2019, there have been a number of developments which have affected the Council’s approach to procurement, including new Procurement Policy Notes which provide guidance on best practice within public sector procurements. A summary of the material changes is set out in the following paragraphs.
- 2.2 The Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2021 and PPN 10/21, require the total value of all public contracts to be calculated including VAT, although the Council is generally able to recover the VAT element of a contract payment.
- 2.3 Updating the advertising requirements for contract opportunities and Find a Tender system which replaces the OJEU TED system. For contract awards, updating Cabinet Office PPN09/21 which requires Officers to publish a Contract Award Notice for all contracts with a value of, or greater than, £25,000 (inclusive of VAT) regardless of how the contract was procured and whether or not a contract opportunity was advertised.

- 2.4 The proposed Contract Standing Orders will make procurement process for low risk contracts for services the same as the existing process for goods. Given the increase in costs associated with the provision of services it is recommended that the same process be adopted in the case of goods and services to avoid unnecessary delay.
- 2.5 In making this change, it is also proposed to increase the threshold for budget holder (senior manager) authorisation for direct awards for contracts up to the value of £2,500. The current arrangements for contracts for services between £0.01 and £1,000 require the Contracting Officer to seek three quotes in writing. This is considerably lower than the thresholds at other local authorities in Derbyshire and is creating additional work and incurring time delays for relatively low levels of procurement, at a time when resources across the organisation are stretched and officer capacity is limited.
- 2.6 The proposed revisions provide further clarification in respect of the responsibilities of officers in both procurement and contract management activities on behalf of the Council. This will provide greater confidence amongst officers and in officers and provides further assurance in respect of the governance underpinning procurement and contract management activities.

Financial Regulations

- 2.7 Financial Regulations are an essential part of good corporate governance. They set out a clear regulatory framework for managing the Council's financial affairs, and they define those accountable for the use of the Council's resources. They state not only what has to be done, but who is responsible for it. They apply to every Member and employee of the Council and anyone acting on its behalf, including partnerships which are subject to formal partnership arrangements.
- 2.8 Financial Regulations should be used in conjunction with the Constitution, and other internal regulatory frameworks such as Contract Standing Orders, Codes of Conduct and Scheme of Delegation.
- 2.9 The Director of Resources has carried out a review of Financial Regulations and a revised version is shown in Appendix 2. The key changes proposed in this report:
- bring the Financial Regulations into line with CIPFA's recommended framework;
 - set out more clearly where responsibilities lie e.g. full Council, Policy Committees, Chief Executive, Monitoring Officer, Director of Resources, other Directors;
 - reflect the proposed changes to Contract Standing Orders;
 - detail the requirement to comply with the Local Government Transparency Code in respect of the publication of financial data and information.
- 2.10 These Financial Regulations will be kept under review and when necessary amendments will be considered and recommendations made to Full

Council. Changes will be required to support the introduction of new regulations, technologies, inconsistencies in the current regulations and minor drafting amendments.

3. Options Considered and Recommended Proposal

- 3.1 This report recommends that the Council replaces its existing Contract Standing Orders with the version set out at Appendix 1 and its existing Financial Regulations with the version set out in Appendix 2.
- 3.2 The Sustainable Procurement Policy is also submitted for consideration at this meeting. This policy, which builds on the provisions within the proposed Contract Standing Orders, will set out how Derbyshire Dales District Council will achieve value for money and deliver environmental, social and economic benefits through its procurement and commissioning of goods, works and services.
- 3.3 In preparing this report and the proposed changes consideration was given by the Director of Resources to recommended practice from CIPFA, as well as reviewing where improvements can be made to existing provisions. In view of this, it is recommended that the updated financial regulations be approved.

4. Consultation

- 4.1 The review of Contract Standing Orders was undertaken by an external legal firm on behalf of the Council and their proposals were then refined to fit the existing governance framework of the authority. The draft Contract Standing Orders have been subject to consultation with the Chief Executive and Directors of Service. The Procurement Team at Derbyshire County Council have also been consulted on the proposed changes in view of the service that they provide to the District Council and they are supportive of the proposed increase in the threshold for direct awards up to £2,500.
- 4.2 The proposed changes to Financial Regulations have been subject to consultation with the Head of Paid Service (Chief Executive) and Monitoring Officer as statutory officers. Other Directors of Service also had the opportunity to comment on the proposed changes. As a set of procedures that act as internal controls for the authority, the proposed changes have not been subject to external consultation.

5. Timetable for Implementation

- 5.1 The revised Contract Standing Orders will take immediate effect subject to the agreement of Council. Once approved, the Council proposes to recommence Contract Standing Order training to Officers ensuring consistency in procurement processes throughout the Council.
- 5.2 The revised financial regulations will come into force immediately following their approval by full Council. A copy of the new Financial Regulations will be placed on the staff intranet and brought to the attention of employees.

6. Policy Implications

- 6.1 Good governance is the cornerstone for all the Council's corporate priorities and the adoption of revised Contract Standing Orders and Financial Regulations will provide further assurance to Members, officers and the electors of the Derbyshire Dales that the Council is operating to the highest standards in respect of its financial management, procurement and contract management functions.

7. Financial and Resource Implications

- 7.1 There are no direct financial risks arising from this report's recommendations. Should the Council's contract standing orders not reflect current legislation, there could be a possibility of a legal challenge that could be a medium to high financial risk.
- 7.2 It is hoped that these revised Financial Regulations will mitigate the risks associated with poor financial management. Should the Council's financial regulations be inadequate, it could lead to a financial loss that could be a medium to high financial risk and could result in reputational damage.

8. Legal Advice and Implications

- 8.1 The purpose of Contract Standing Orders is to set clear rules for the procurement of goods, works and services for the Council. The rules should ensure that the Council is fair and accountable in its dealings with contractors and suppliers. They are also intended to ensure that the Council obtains value for money and that it is taking good care of public funds. These are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 8.2 The Contract Standing Orders are kept under review and when necessary amendments are for consideration and recommendations to Full Council. Additional changes are required to support the introduction of new regulations, technologies, inconsistencies in the current Contract Standing Orders and minor drafting amendments.
- 8.3 The report proposes effective financial regulations, which are to be read in conjunction with revised contract standing orders. Whilst not all risks can be mitigated, the measures currently in place provide for low legal risk.
- 8.4 The Council must prepare and keep up to date a constitution in accordance with s37 of the Local Government Act 2000. The minimum requirements for the content are set out in The Local Government Act 2000 (Constitutions) (England) Direction 2000 which includes a description of the rules and procedures for the management of the council's financial affairs including: procedures for auditing and financial rules. The finance regulations meet the requirements of the Local Government Act (Constitutions) (England) Direction 2000 and are the rules that officers follow in the day-to-day operation of the council as set out within this council's budget and statutory framework.

8.5 There are no legal reasons preventing Members from approving the recommendations in the report and therefore the legal risk is assessed as low.

9. Equalities Implications

9.1 When considering its approach to contracting, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). Officers are expected to continuously consider, at every stage, the way in which procurements conducted and contracts awarded satisfy the requirements of the public-sector equality duty.

10. Climate Change Implications

10.1 A Climate Change Impact Assessment has been undertaken and has indicated a neutral impact associated with the recommendations in this report.

11. Risk Management

11.1 The review of Contract Standing Orders and recommended amendments are a mitigation against the risks that the Council faces. A regular review of these important rules ensures that the Council continues to act in a legally compliant way in how it buys and sells and enters into contractual arrangements.

11.2 Financial regulations are designed to provide good corporate governance and to mitigate risks of poor financial management. The current regulations are out of date, in some places, and this creates potential for confusion, errors and misunderstandings. Updating the regulations will address these issues and problems and ensure that the council continues to have sound financial management policies in place.

Report Authorisation

Approvals obtained from:-

	Named Officer	Date
Chief Executive	Paul Wilson	21/09/2022
Director of Resources/ S.151 Officer (or Financial Services Manager)	Karen Henriksen	21/09/2022
Monitoring Officer (or Legal Services Manager)	James McLaughlin	22/09/2022