

**Committee Name and Date of Committee Meeting**

Audit Committee – 11 March 2025

**Report Title**

Update on implementation of changes in Procurement Legislation

**Is this a Key Decision and has it been included on the Forward Plan?**

No

**Strategic Director Approving Submission of the Report**

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**Ward(s) Affected**

Borough-Wide

**Report Summary**

This report details the progress made towards the Council's implementation of the Procurement Act 2023, that came into force February 2025.

This report will outline some of the key changes that form the new legislation along with the Council's progress to ensure a smooth transition to operating within the new legislation takes place. The key areas that the Council has needed to focus on have been around core procurement and legal staff training on the new legislation, preparatory work to ensure that the Council's procurement and contract documentation is updated as required, raising awareness of new requirements around contract management performance reporting, raising awareness across the Council of the changes and impacts and assessing training needs to ensure that moving forwards the Council can continue to operate within procurement legislation in an efficient a way as possible.

To support the transition to the new procurement legislation and minimise the level of work undertaken under the new rules, in the early part of the implementation process, procurement officers working with services have ensured the vast majority of open tenders in process have been published prior to the change over in legislation. In addition, it is worth noting that procurement framework arrangements remain within the previous legislative regime (Public Contracts Regulations 2015) and as such are largely unimpacted and will remain this way for a number of years.

## **Recommendations**

1. Note the progress made to implement the Procurement Act 2023 into Council procedures.

## **List of Appendices Included**

N/A

## **Background Papers**

N/A

## **Consideration by any other Council Committee, Scrutiny or Advisory Panel**

N/A

## **Council Approval Required**

No

## **Exempt from the Press and Public**

No

## Update on implementation of changes in Procurement Legislation

### 1. Background

1.1 The UK spend c£300bn on public procurement activity, accounting for almost a third of public spending. Prior to the UK's exit from the European Union, procurement was bound by EU Directives that governed the way public procurement was undertaken. This was detailed in 4 separate sets of Regulations (Public Contracts Regulations 2015, Utilities Contracts Regulations 2016, Defence and Security Public Contracts Regulations 2011 and the Concessions Contracts Regulations 2016).

1.2 Following the UK's exit, Central Government took the decision to reform public procurement, whilst still maintaining compliance with our international obligations under the World Trade Organisation (WTO) on public procurement to allow UK businesses access to overseas procurement opportunities.

1.3 The intention was to create a shorter more simplified set of rules (combining the 4 sets of Regulations referred to above into 1) and offering greater flexibilities. In October 2023 the Procurement Act 2023 received Royal Assent and will act as the new regime for the Council to adhere to where procurement activity is above the relevant threshold. Some exclusions still remain for contracts such as those referred to under the Light Touch Regime, where the full application of the legislation is not required (predominantly exclusions around publication of information). The new Act came into effect on 24 February 2025.

1.4 New objectives for public procurement have been included within the Procurement Act 2023, that must be at the forefront when Services are considering procurement requirements ensuring their proper consideration:

1. Delivering value for money
2. Maximising public benefits – this could include collaboration and social value benefits.
3. Sharing of information, acting with transparency by default
4. Acting and being seen to act with Integrity.
5. Treating suppliers the same (equal treatment)
6. Ensuring no unfair advantage or disadvantage – providing more of an emphasis on conflicts of interest
7. Duty to regard Small, Medium sized Enterprises (SMEs).

1.5 In addition, the Procurement Act 2023 allows for Central Government to implement secondary, supplementary legislation under the Act. The main requirement that will sit under the Act will be the National Procurement Policy Statement (NPPS). The NPPS will set out the national strategic priorities for procurement that will need to be considered alongside any local priorities and this was published on 13 February 2025.

## 2. Key Issues

2.1 This report details the progress made towards the Council's implementation of the Procurement Act 2023, that came into force on 24 February 2025.

2.2 The Procurement Act 2023 moves procurement activity away from what can be considered as a transactional function into a strategic space, with focus now being given across the entire procurement lifecycle rather than just the procurement stage. There are key changes that form the new legislation;

- Early Supplier Engagement - Whilst early supplier engagement has always been considered as best practice, this will now be heavily encouraged as ways to seek innovative approaches, develop procurement procedures, influence evaluation criteria and seek the markets view on envisaged timelines for participation in activity. A new procurement notice will be introduced (the Preliminary Market Engagement Notice).
- Pipeline Publishing Requirements - As the Council spends over £100m per annum, there will be a new requirement to publish pipelines of future procurement opportunities (minimum 18 months – ideally 3-5 years) at the start of each financial year (as a minimum).
- Central Digital Platform - Through the Act, there is an aspiration for procurement related information to be contained in one central digital platform. The aim to reduce duplication, making it easier for buyers and suppliers. The intention is that suppliers will only need to register and upload their key business information once.
- Open Frameworks and Dynamic Markets - At present frameworks can only be for a maximum 4-year term and are closed so no new suppliers are able to join. The Act creates a mechanism for Open Frameworks which will allow for new suppliers to be added via a scheme of frameworks with a maximum duration of 8 years. This will ensure that suppliers have the opportunity to apply at key stages and the list of suppliers is refreshed.
- Debarment List - The introduction of a centrally held supplier debarment list is a new provision to the legislation. This list will be held and managed centrally by the Procurement Review Unit (PRU) (see below) and the list will set out which suppliers must or may be excluded.
- New Requirements Prior to Awarding Contracts - Significant changes are to be introduced in the way feedback is provided to supplier. Under the current regime feedback is provided to unsuccessful bidders by providing the supplier with an assessment of their bid, the scores of the winning bidder and then the Council's assessment of the characteristics and relative advantages of the winning bidder.

- Transparency - As has been detailed throughout this report, increased transparency has been included within the Act, covering the full procurement lifecycle (planning, procurement, contract implementation and management, and finalisation/expiry). This increased transparency aims to:
  - Ensure integrity in public procurement.
  - Ensure effective competition.
  - Provides opportunities for collaboration.
  - Prevent fraud.
  - Captures data on the whole life of public contracts from spend through to performance, modification and termination.
  - Make it easier to access data to improve procurement decisions on routes to market.
- The introduction of pipeline notices will support and assist suppliers adequately plan their resources to participate in procurement activity.

2.3 The Council's has made strong progress to ensure a smooth transition to operating within the new legislation takes place. The key areas that the Council has needed to focus on have been around;

- core procurement and legal staff training on the new legislation,
- preparatory work to ensure that the Council's procurement and contract documentation is updated as required,
- raising awareness of new requirements around contract management performance reporting,
- raising awareness across the Council of the changes and impacts,
- assessing training needs to ensure that moving forwards the Council can continue to operate within procurement legislation in an efficient a way as possible.

2.4 To support the transition to the new procurement legislation and minimise the level of work undertaken under the new rules in the early part of the implementation process, procurement officers working with services have ensured the vast majority of open tender projects in process have been published prior to the change over in legislation. This has created significant additional pressure on the procurement service but will provide time and space to effectively implement and embed the new Procurement Act 2023. It is also a picture that has been reflected at a national level with a huge volume of tenders published in the period leading up to the change in legislation. This is important as it will mean that the Council has further time to settle into the new Procurement Act 2023 before having to carry out a full open tender procurement process.

2.5 In addition, it is worth noting that procurement framework arrangements and contracts procured under the previous legislation (PCR15) are largely unimpacted as the previous legislation will continue to apply.

## **Core procurement and legal staff training on the new legislation**

2.6

In order to understand and implement the new Procurement Act 2023 it is vital that the Council's Procurement and Legal Services receive significant training on the act, its changes and expectations around its implementation. Since the Procurement Act 2023 received Royal Assent the Council's Procurement Team have been familiarising themselves with the Act, the proposed changes and building and understanding of how the Council might implement those changes. All senior Procurement Officers have carried out training on the Procurement Act 2023 across a number of webinars, face to face training sessions and knowledge tests. This included ten, one hour long e-learning modules, all officers passed the assessments linked to these modules. In total this was around 130 hours worth on training, equating to 17.5 working days, officers undertook this training without it any significant impact on procurements underway. The Head of Procurement has done a 3 day deep dive training sessions and since then has run 4 x 3 hour workshops with the team to cover the content of those sessions and will continue with those.

### **Preparatory work to ensure that the Council's procurement and contract documentation is updated as required.**

2.7 Alongside the training that Procurement Officers have carried out, the team have completed a full review of the internal and published documentation that is used as part of the procurement process and incorporating the new requirements needed. There has also been the requirement to create several new documents and templates to ensure the new requirements of the Procurement Act 2023 can be delivered upon.

2.8 Legal Services colleagues are supporting with the development of new contract terms and conditions templates and clear contract clauses that meet the new Procurement Act.

### **Raising awareness of new requirements around contract management performance reporting.**

2.9 A key change in the new Procurement Act 2023 is the raising the profile of public sector contract management and reporting. As a result, the Council will be required to publicise all contracts with a gross value of £5m (inc. VAT), along with the contracts top three key performance indicators (KPI's) and performance against them.

2.10 In readiness for the introduction of this requirement the Council has created an internal contract management dashboard, that shows the information that will be required to be made public from March 2025 for those contracts procured under the Act. This contract management dashboard is being updated on a quarterly basis, reported to Directorate Leadership Teams (DLT's), Strategic Directors and the Strategic Leadership Team (SLT). This has helped the Council to not only create the data but also to ensure it is robust and where there are issues with the contract management data or performance, begin to address them.

## **Raising awareness across the Council of the changes and impacts.**

- 2.11 In order to raise awareness of the changes in procurement legislation the Head of Procurement has given several presentations on the implications of the new legislation, timeframes and impacts to key forums across the Council. At present these presentations have been provided to the Council's SLT, DLT's and the Wider Leadership Team as well as within some services that are heavily involved in Procurement activity. Moving forwards consideration needs to be given as to how this information is shared with the wider Council officers, though it is believed officers with responsibility for the greatest volume of procurement are aware of the changes.

## **Assessing training needs to ensure that moving forwards the Council can continue to operate within procurement legislation in an efficient a way as possible.**

- 2.12 Outside of the training referenced above, the Council needs to consider how it trains contract managers and service officers who may need to carry out procurement moving forwards. Whilst there are significant changes overall in the Procurement Act 2023, it is felt that the current procurement training programme that is delivered internally will largely remain sufficient for the requirements of contract management and service managers. This is something that will need to be held under constant review in the early part of the implementation process.

## **3. Options considered and recommended proposal**

- 3.1 The Council has to implement the new Procurement Act 2023 from the end of February 2025. As such all focus has been on delivering the implementation of the new legislation.

## **4. Consultation on proposal**

- 4.1 The Council has not carried out any formal consultation process on the implementation of the Procurement Act 2023 as the Council has to implement it, however, the Council has consulted with Government and third parties on the impacts of the new legislation.

## **5. Timetable and Accountability for Implementing this Decision**

- 5.1 The implications of the new Procurement Act 2023 are being implemented into the Council's Procurement procedures and practices and in terms of wider work around contract management, embedded into wider Council practices.

## **6. Financial and Procurement Advice and Implications**

- 6.1 There are no direct financial implications from this report and the financial implications of this report are detailed within it.

## **7. Legal Advice and Implications**

- 7.1 The legal implications of the Procurement Act 2023 are set out within the body of the report. As stated in the report relevant Legal Services officers have undertaken extensive training on the requirements of the new Act and are supporting the implementation of the new regime. Further, all contractual documentation to be used in procurement processes under the Procurement Act 2023 has been reviewed and updated to ensure compliance with the new legislation.

## **8. Human Resources Advice and Implications**

- 8.1 There are no HR implications from this report.

## **9. Implications for Children and Young People and Vulnerable Adults**

- 9.1 There are no direct implications from this report for Children and Young People and Vulnerable Adults.

## **10. Equalities and Human Rights Advice and Implications**

- 10.1 There are no implications arising from this report to Equalities and Human Rights.

## **11. Implications for CO<sub>2</sub> Emissions and Climate Change**

- 11.1 No direct implications.

## **12. Implications for Partners**

- 12.1 No direct implications.

## **13. Risks and Mitigation**

- 13.1 The main risk to the Council of failing to adhere to the new Procurement Act 2023 is that the Council may incur non-compliant expenditure, which will not only have a negative reputational impact on the Council but also could lead to contracts being held whilst legal challenges to them take place. This risk will be mitigated significantly by the Council's plans to implement and adhere to the new legislation as set out within this report.