

**To:** Council  
**Date:** 25 November 2024  
**Report of:** Monitoring Officer (Head of Law & Governance)  
**Title of Report:** Constitutional Amendments – updated Contract Rules

<b>Summary and recommendations</b>	
<b>Purpose of report:</b>	To seek approval to the updated Contract Rules and other changes consequential to them.
<b>Key decision:</b>	No
<b>Cabinet Member with responsibility:</b>	Cllr Susan Brown, Leader of the Council
<b>Corporate Priority:</b>	A Well Run Council.
<b>Policy Framework:</b>	None.
<b>Recommendation(s): That the Committee resolves to:</b>	
<p><b>1. To approve the amendments to</b></p> <ul style="list-style-type: none"> <li>a) The Contract Rules as attached at Appendix One</li> <li>b) Part 4.4 (Publication of Officer Decisions) as set out at paragraph 10;</li> <li>c) Part 15.4 (Key Decisions) as set out at paragraph 16;</li> <li>d) Part 4.5 (Decisions that must be agreed by Cabinet) as set out at paragraph 17;</li> <li>e) The Financial Rules as set out at paragraph 18.</li> </ul> <p><b>2. To delegate authority to the Monitoring Officer</b> to make any other consequential amendments to the Constitution to reflect the above changes to the extent that they have not been identified in the above, provided such changes are purely required as a direct consequence</p>	

<b>Appendices</b>	
Appendix 1	Contract Rules (amended)

### Introduction and background

1. The Procurement Act 2023, though delayed from October 2024, is due to be implemented by the Government in February 2024. Therefore, there are a number of changes that need to be made to the Contract Rules to accommodate the

legislative changes and also ensure that the Contract Rules are adaptable as procurement guidance and secondary legislation is brought forward.

2. In undertaking a review of the Contract rules consequential changes to other parts of the Constitution have been identified to ensure consistency and reduce the desperate decision-making thresholds for connected but independent matters e.g. approvals under the Financial Rules.
3. In undertaking the review, it has also been identified there are some connected provisions which either need to be amended for clarity (the Key Decision definition) or to reflect the proper legislative requirements (publication of officer decisions).
4. The full constitutional review is ongoing with Member working groups planned for the new year prior to it being brought to Council. However with the impending commencement of the Procurement Act these operational changes have been brought forward independently.

### **Amendments to the Contract Rules**

5. The contract rules have been amended in anticipation of changes coming with the Procurement Act and to streamline and simplify.
6. The changes are so wide ranging that tracked changes cannot be provided. The version attached at Appendix One is the version Council are being asked to adopt. The current version can be found at Part 19 of the Constitution.
7. The following are the main changes and points to note:
  - a. References concerning property transactions & grants (incoming and outgoing) have been removed. The vast majority of the Contract Rules do not relate to these transactions. With the Constitutional review in the New Year the proposal is to introduce their own rules. The provisions deleted from the Contract Rules remain elsewhere in the Constitution e.g. who has authority for what transactions.
  - b. The table at 19.2 now exempts from the rules specifically several services to be procured. This reflects the legal position in terms of them being exempt from the provisions in the Procurement Act 2023. For example, representation by a lawyer is now exempted from the need to procure in line with the law to enable swift appointment in litigation matters. The rules on thresholds for approval will continue to apply, but they will not be subject to e.g. a full tender process where time is of the essence.
  - c. A list of steps needed before entering in to a contract are set out at 19.6
  - d. At paragraph 19.10 - Formation of contracts – we have simplified the requirements.
  - e. At Paragraph 19.12 – Teckal – the requirement to have approval of the Director for not using a teckal has been removed. It has also been set out clearly what rules in the Contract Rules still apply to the letting of contracts to a Teckal. This removes the issue for the HRA and grant funded projects where there are legal requirements around demonstrating compliance with public procurement, value for money and housing legislation.
  - f. A Waiver process has been introduced as there are exemptions being required where the procurement rules have been followed bar something small. For example if it is a framework agreement and we cannot seal it,

has necessitated an Exemption from all the rules. A waiver will just allow some rules (not the need to procure) to be waived.

- g. Over all the thresholds have been changed so e.g. the table in 19.13. The use of one quote have increased from £10k to £29,999.99, the threshold for cabinet is now defined as key decision (to match the articles). In some cases the term “FTS” has been used, which means the threshold as published from time to time relating to when the Act applies. We have avoided uses of numbers so there is not a need to update them year on year.
- h. The tender processes have been removed in detail as Procurement will lead and advise.
- i. Areas will now be responsible for storage and retention of all contracts up to £30k, Procurement will be responsible for the remainder.

#### Section 4.4 – publication of officer decisions

- 8. This is proposed to streamline what is published and ensure we are in line with the legislative requirements. These are as follows:

Under the 2014 Regulations, a similar “written record” must be produced of any non-executive decision taken by an officer under delegated powers, provided that the decision is taken:

- Under a specific delegation contained in a council or committee resolution; or

Under a general delegation (usually the Scheme of Delegation in the Constitution) where the effect of the decision is to grant a permission or licence, affects the rights of an individual or award a contract or incur expenditure which materially affects the authority's financial position.

- 9. It is open to interpretation as to what will be material in terms of the a contract and its impact on finances. Many Councils have taken the view this is those that are already reserved to Cabinet (assuming materiality therefore is reserved for political decision making). As such the proposal is to amend to where it is delegated via a specific decision to award a contract, which will be all contracts over the key decision threshold.
- 10. The following tracked amendments are proposed:

Details of the following decisions taken by officers under delegated powers will be published on the Council website:

- Awarding a contract ~~with a value in excess of £10,000 but less than £1,000,000 when the Council is the buyer~~ where authority has been specifically delegated to officers by Cabinet or a Cabinet Member (regardless of value)
- Acquiring or disposing of freeholds or leaseholds, ~~granting new leaseholds (excluding assignments and rent reviews) where authority has been specifically delegated to officers by Cabinet or a Cabinet Member (regardless of value) where authority has been specifically delegated to officers by Cabinet or a Cabinet Member (regardless of value) with a consideration or premium in excess of £10,000~~

~~but less than £500,000~~

- ~~• Granting to new tenants or disposing of leases with a rental value in excess of £10,000 per annum but less than £125,000. This excludes assignments, holding over and rent reviews~~

~~Granting 'project approval' for projects in excess of £10,000 but less than £500,000~~

- Making a regulatory order which affects a number of people, for example a Public Space Protection Order or a Parking Place Order
- where the effect of a decision is to grant a licence or permission or it affects the rights of citizens
- Discharging any other express delegation from Cabinet or a Cabinet Member a committee or Council where there is an element of discretion to be exercised by the officer.

## Part 15.4 - Key Decisions

11. Key decisions are executive decisions are those which are likely to result in spending or savings which are "significant" in relation to the budget for the service or function in question, or in terms of the effect on communities living or working in two or more wards or electoral divisions.
12. Each LA defines what significant is.
13. Our constitution currently causes confusion and risk as sets it at:
  - a. £500k spend / income / saving
  - b. £1m contract
  - c. Property acquisition or disposal over £500,000 (including leaseholds)
  - d. Acquisition or disposal of a leasehold with a rental value over £125,000 per annum

A contract is the Council's main form of spend, followed by grants. Under a contract there will be spend, therefore it is not clear which threshold applies given this ambiguity.

14. It is proposed to create one threshold of £750k income or expenditure, removing reference to contracts from the definition of Key Decision. They will be continued to be caught as a Key Decision as the signing of a contract is a decision to commit to spend.
15. It is also proposed to amend the property thresholds to ensure that:

- a. The spend on acquisition / income from disposal in line with all other income and expenditure
- b. That leasehold is dealt with in a clearer way so that there is a threshold based on either premium or rental value
- c. market changes in rent are reflected in the threshold for rental income, which has not been amended for some years despite increases in the rental market.

16. The proposed changes are:

- a. Acquiring or disposing of freeholds ~~or leaseholds~~ with a consideration ~~or premium~~ over £500,000 in the context of the medium term financial strategy except for disposals pursuant to right to buy legislation
- b. Acquiring or disposing ~~leaseholds leases with a rental value over £125,000 each year except statutory lease renewals under Part II of the Landlord & Tenant Act 1954~~ where either the rental value is in excess of £150,000 per annum and/or the premium is £750,000 except for statutory lease renewals under Part 2 of the Landlord and Tenant Act 1954 ~~and disposals pursuant to right to buy legislation.~~
- c. ADDING as follows ~~acquiring or disposing of easements with a value over £750,000 and/or rental value over £250,000 each year.~~

#### Part 4.5 – Decisions that must be agreed by Cabinet

17. The following changes are proposed to the decisions reserved to Cabinet, with the explanation adjacent to each:

Proposed Amendments	Reasons
9. agreeing transfers between cost centres of <del>over £250,000 to £500,000 that</del> <del>provided that they</del> are consistent with the policy framework	The Council function is to set the budget. In year virements etc are an executive function subject to the
10. giving project approval for projects of £ <del>500</del> 750,000 or over ( <del>£1,000,000 for contract awards</del> )	It is proposed (see below at [xx] to amend this to accord with the legislative provisions) concerning Executive functions.
11. accepting tenders of £1,000,000 or over 11. Awarding contracts over £750,000	This has been interpreted and used in relation to the award of final tender however simplified and clearer wording is below.
12. <del>recommending to Council</del> <del>approving</del> loans and financial guarantees of over £250,000 to a company which is not wholly owned by the Council or to another external organisation <del>where they would be within the agreed budget set by Council.</del> <del>Where they are not, Cabinet recommends to Council to approve the budget allocation beforehand.</del>	The granting of a loan is an Executive function where there is available budget in the approved budget envelope and where it is in line with the Council's policy framework this this is amended to reflect that but make clear the limits. A corresponding change is made in the Financial Rules.

20. acquiring or disposing of freeholds <del>or leaseholds</del> with a consideration or premium over <del>£750,000</del> ,000 except for disposals pursuant to right to buy legislation	To reflect the key decision changes
21. acquiring or disposing of leases with <del>a rental value over £120,000 each year</del> either the rental value is in excess of £150,000 per annum and/or the premium is £750,000 except statutory lease renewals under Part II of the Landlord & Tenant Act 1954 <del>and disposals pursuant to right to buy legislation</del>	To reflect the key decision changes
22. acquiring or disposing of easements with a value over <del>£750,000</del> ,000 and/or rental value over <del>£125-250</del> ,000 each year	To reflect the key decision changes

### Financial Rules

18. The following changes are proposed to the Financial Rules, with an explanation adjacent to each:

Proposed Amendment		Reasons
<p>18.8</p> <p>Council - agreeing transfers between cost centres that <del>are over £500,000 or</del> breach the policy framework <del>or are not within the approved budget envelope.</del></p> <p>Cabinet - agreeing transfers between cost centres of &gt; £250,000 or <del>over = &lt;£500,000 that are where they are</del> in line with the Council's policy framework <del>and the approved budget envelope</del></p>		<p>This is to reflect the provisions around Executive Arrangements in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. This states that where decisions concerning the budget are within the approved budget and the policy framework then they can be the responsibility of the Executive.</p> <p>It would not allow for e.g. Cabinet to approve a virement from the HRA to the general fund or where there is not the money in the budget to be vired.</p>
18.10 – amend the table as follows:		As above
£250,000 <del>or where they are = &lt;£500,000 that</del> are	Cabinet	

<p>in line with the Council's Policy Framework <b>and within the approved budget envelope.</b></p>		
<p><del>&gt;£500,000</del> where they are not within the <del>or breach of the</del> Council's policy Framework <b>or approved budget envelope.</b></p>	<p>Council</p>	
<p>18.12 Project Approval</p> <ul style="list-style-type: none"> <li>• Less than £185,000 – Head of Service or Executive Director</li> <li>• £185,000 up to <del>£500</del><b>£750,000</b> – Executive Director or Head of Financial Services in consultation with the Head of Paid Service and Monitoring Officer (and the Head of Financial Services where the decision to approve is being made by an Executive Director)</li> <li>• <del>£500</del><b>£750,000</b> and over – Cabinet</li> </ul>		<p>To reflect the proposed changes to the key decision definition and ensure that the decision making thresholds align with the scheme of delegation from Cabinet</p>
<p>18.21</p> <p>All external funding applications for funding in excess of £100,000 must be authorised by the Head of Financial Services prior to their submission by the Authority. <b>All external funding with a value of £750,000 or more will be a key decision and require Cabinet approval in advance of acceptance.</b></p>		<p>To reflect the proposed changes to the key decision definition and ensure that the decision making thresholds align with the scheme of delegation from Cabinet</p>
<p>18.23 Loans and financial guarantees of over £250,000 to a company which is not wholly owned by the Council or other external organisation must have approval by the Cabinet and, <b>where it is not within the approved budget, there must be approval of Council to the budget allocation.</b></p>		<p>To make clear the restrictions on Cabinet's decision making power and where Council must be the decision maker.</p>

### Financial implications

19. These are covered within the report.

### Legal issues

20. These are covered within the report.

### Level of risk

21. Not applicable.

**Equalities impact**

22. Not applicable.

**Conclusion**

23. Council are asked to approve the amendments proposed to the Constitution in order that the decision making process reflects legislative provisions and to ensure clear operational direction on decision making requirements.

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<b>Background Papers: None</b>	
1	Council's Constitution
2	Procurement Act 2023
3	Local Authorities (Functions and Responsibilities) (England) Regulations 2000