

Wiltshire Council

Standards Committee

2 July 2024

Recommendations from the Constitution Focus Group on Proposed Changes to the Constitution

Purpose of Report

1. This report asks the Standards Committee to consider proposed changes to the following section of the Constitution:
 - Part 10 – Contract and Procurement Rules
2. The Standards Committee is asked to make recommendations as it considers appropriate to Full Council.

Background

3. The Standards Committee has responsibility for oversight of the Council's constitution and making recommendations to Council.
4. The Standards Committee has established the Constitution Focus Group to review sections of the Constitution and present it with proposals to consider.
5. The Focus Group met on 10 June, and 24 June 2024 to consider the above sections of the Constitution.

Relevance to the Council's Business Plan

6. Changes are required to be made to Part 10 of the Council's Constitution (Procurement and Contract Rules) to comply with incoming UK procurement legislation and the proposed changes support the Council's business plan in various ways set out below.
7. **Section 1 - Empowered People and Section 2 – Resilient Society.** Much of the support, advice, accommodation and services etc used by the residents of Wiltshire is obtained through contracts that have been awarded as result of a procurement process. In order that those processes are of good quality and compliant to relevant UK procurement legislation and policy, there is a need to ensure that Part 10 is current and reflective of relevant changes. Failure to do so could mean that our procurement and contracting processes are not compliant which could open the Council to costly and time-consuming challenges. Dealing with such challenges could create a risk of disruption to service delivery. Ensuring that the right changes happen at the right time would support sections 1 and 2 of the business plan.
8. **Section 3 – Thriving Economy.** New UK procurement law sets out clear expectations around engagement with Small to Medium Enterprises (SMEs) and how procurement activity can improve their participation in bidding for contracts when advertised. The proposed changes to Part 10 seek to ensure the Council will be supporting SMEs to

participate in procurement processes which in turn should support local workforce development and associated benefits.

9. **Section 4 – Sustainable Environment.** The proposed changes to Part 10 seek to support the outcomes associated with a sustainable environment. Contracts awarded as part of procurement processes need to be conducted in accordance with the relevant UK procurement legislation to ensure that the Council is free to commence such processes and reduces the risk of challenge. Failure to do so could impact the speed at which the Council can award contracts that support the outcomes of achieving a sustainable environment.
10. **Section 5 – Wiltshire Council.** The proposed changes to Part 10 seek to ensure that our procurement activity aligns with the relevant UK procurement law, updated policies and ambitions in respect of value for money, social value, support of small and medium-sized enterprises, commercial and procurement delivery and skills and capability for procurement, which are set out in the National Procurement Policy Statement (currently under consultation). Doing so will seek to ensure that the Council's ambitions to continue to be a healthy organisation that is forward thinking and embracing change as well as helping to achieve expectations set out in respect of social value and tackling the climate emergency are supported.

Main Considerations

11. Part 10 was last updated in May 2019 to reflect practice and UK and European procurement law in force at that time.
12. When the UK exited from the European Union this triggered the need to review and implement new procurement legislation, which is due to come into force on the 28 October 2024.
13. As part of the creation of the new legislation, the Government set out its expectations in respect of transparency ambitions in public sector procurement and contract management. This is at the heart of the new legislation. The Council has, and is continuing to, update its processes and policies so that we are compliant with UK procurement law which brought about the need to review Part 10.
14. In addition to the need to review Part 10 to ensure compliance with the Procurement Act 2024, there was a need to consider updates to reflect current practice, to remove contradictions, and ensure that it did not contain unnecessary operational 'process' information and to ensure that it was future-proof as far as is reasonably practicable.
15. The Focus Group considered the changes at two meetings, and agreed a number of small changes subject to further circulation. The final document will be published in an agenda supplement.

Overview and Scrutiny Engagement

16. The Constitution Focus Group includes a representative from Overview and Scrutiny, and changes to all parts have been reviewed by its members.

Safeguarding Implications

17. There are no safeguarding implications.

Public Health Implications

18. There are no public health implications.

Procurement Implications

19. Ensuring that Part 10 represents UK procurement law will support the Procurement Team to deliver good quality, compliant procurement processes.

20. Failure to adopt the changes to Part 10 could see the Council either act outside of the Constitution or UK procurement law making the Council open to challenge.

Equalities Impact of the Proposal

21. There are no equalities implications.

Environmental and Climate Change Considerations

22. There are no environmental implications.

Workforce Implications

23. There are no workforce implications.

Risks that may arise if the proposed decision and related work is not taken

24. Failure to amend Part 10 of the Council's Constitution as recommended will mean:

- It references outdated UK and European law and policy therefore it will not be aligned with new and changing UK procurement legislation.
- The content is not reflective of current processes and good practice.
- The Council will not be acting in line with what it has set out in the Constitution in conducting its procurement activity in accordance with new and updated UK procurement legislation.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

25. No risks have been identified if the proposed actions are taken.

Financial Implications

26. There are no financial implications.

Legal Implications

27. Legal Services has collaborated with the Procurement Team in re-drafting Part 10 of the Council's Constitution, taking into consideration the current processes and those required by the imminent change in law.

28. Legal Services confirms that the decision being sought is in line with the Council's Constitution including budget and policy framework, the Financial Regulations and the incoming UK Legislation and guidance as it is drafted to date.

29. Failure to change our policies and processes in response to changes to the law could give rise to challenges which will present a cost and time pressure to the Council.
30. An increased risk of challenge is likely to cause disruption to service delivery while matters are concluded.
31. By adopting the proposed changes to Part 10 this will seek to ensure that the Council remains compliant with UK procurement law and sets out the expectations for officers when they are seeking to undertake procurement activity.

Options Considered

32. No other options were considered in respect of Part 10. The change in UK procurement law means that it is necessary to review and amend Part 10 of the Council's Constitution.

Proposals

33. To recommend Full Council approve changes to the following sections of the Constitution:
- Part 10 – Contract and Procurement Rules

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Appendices:

Appendix 1a – Proposed Part 10 (clean version)

Appendix 1b – Proposed Part 10 (tracked changes)

Background Papers

None