

Meeting: Council **Date:** 19 July 2024

Wards affected: All Wards

Report Title: Constitution Amendment – Officer Scheme of Delegation

When does the decision need to be implemented? July 2024

Cabinet Member Contact Details: Jacqueline Thomas – jackie.thomas@torbay.gov.uk / Alan Tyerman – alan.tyerman@torbay.gov.uk

Director Contact Details: Matthew Fairclough-Kay – matthew.fairclough-kay@torbay.gov.uk / Malcolm Coe – malcolm.coe@torbay.gov.uk

1. Purpose of Report

- 1.1 This report sets out proposed amendments to the Officer Scheme of Delegation to align delegation levels with the revised Contract Procedures (approved in February 2024) and the Procurement Act 2023 which comes into force on 28 October 2024. Together with the introduction of a specific Procurement Approval Report for tender processes requiring Cabinet or Council approval.
- 1.2 The proposed changes will enable external contracts to be procured in a more timely and efficient manner.

2. Reason for Proposal and its benefits

- 2.1 The proposals in this report help us to deliver our vision of a healthy, happy and prosperous Torbay by
- reducing barriers to participation in procurement processes for local suppliers and increasing their opportunities to bid for council contracts
 - ensuring best value is achieved from every £ spent by improving the efficiency and effectiveness of our procurement processes
 - supporting the achievement of social value and additional community benefits within our contracts
- 2.2 The reasons for the proposal and need for the decision are to:
- remove one of the main barriers to efficient and effective procurement, as identified by colleagues during a recent review of procurement processes and procedures
 - ensure procurement is fit for purpose, as simple as possible, able to deliver corporate priorities of the organisation and facilitate the business of the council
 - enable increased innovation and flexibility in commercial activity to empower our services and subsidiary companies to better understand and respond to the needs of residents and what the local marketplace has to offer
 - ensure when Cabinet or Council approval is sought to undertake a procurement the information provided relates to the direct and indirect benefits that will be achieved through the contract, including preliminary market engagement to understand the local supply base and increase opportunities for local businesses to bid.
- 2.3 The benefits of the proposal are:
- creation of a simpler and more flexible commercial system that better meets the council's needs while remaining compliant with national and international obligations;
 - opening up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts;
 - transform and improve our commercial practices to deliver the best value and outcomes

3. Recommendation(s) / Proposed Decision

1. That the amended delegation levels for officers to award contracts (as set out at Appendix 1) be approved, alongside the introduction a specific Procurement Approval Report for Cabinet and Council decisions.

Appendices

Appendix 1: Officer Scheme of Delegation

Appendix 2: Procurement Approval Report Template

Background Documents

None

Supporting Information

1. Introduction

- 1.1 The Procurement Act 2023 is due to come into force on 28 October 2024, to ensure the Council has the necessary commercial systems, policies and process in place to support implementation of the new legislation Contract Procedures have been revised. The upcoming legislation and new Contract Procedures will enable the Council to take a more flexible, agile and proactive approach to procurement and contract management, with the aim of increasing spend with local suppliers and improving the value and community benefits achieved through external contracts.
- 1.2 At present the Chief Executive, all Directors, Divisional Directors and Heads of Service can award a contract as long as the total contract does not exceed £50,000 or the aggregate contract total does not exceed £50,000, with the exception being contracts pursuant to the Council's approved Capital Programme. Therefore, contracts outside the Capital Programme, over £50,000, have to be approved by Cabinet and are subject to call-in.
- 1.3 Cabinet have been receiving a regular number of contracts over the last couple of years that have been predominantly linked to the day-to-day operational business of the Council. Furthermore, the budget for the contracts has been allocated and approved by the Council, as part of the budget setting process, thereby Council has already committed its support for such spend.
- 1.4 The current Cabinet requirement to approve these contracts, is hindering effective operations, due to consequential delays in the commencement of tender processes and the award of contracts as a 'stand still' period is having to be incorporated into the procurement process to accommodate call-in. This impact on the effective procurement of contracts will increase when the Procurement Act 2023 comes into force
- 1.5 This will be further exacerbated when the Procurement Act 2023 comes into force, as we will need to meet a number of new obligations at the outset of any procurement, which will inevitably result in longer procurement planning phases. We will be obliged to consider:
 - Preliminary market engagement
 - Procurement objectives
 - Transparency requirements
 - Contract scope drafting
 - Award criteria and Key Performance Indicator drafting
 - Consideration of the priorities set out in the National Procurement Policy Statement
 - Joining forces with other contracting authorities to deliver requirements
 - Delivering value for money objectives
- 1.6 Procurement planning time will be further increased by the introduction of the new competitive flexible procedure, which is tailored individually to the contract being put in place and is expected to be the primary procurement process for most tenders.
- 1.7 There has never been an occasion when a contract that has been approved by Cabinet has been called-in, however a provision in the process, is required nor has there been an occasion when Cabinet has chosen not to award a contract and gone against an officer recommendation. If Cabinet decided not to award the contract to the Preferred Bidder, the Council would be unable to run a similar procurement again and would need robust justification for not awarding the contract to the Preferred Bidder. Additionally, the significant time and effort invested in the process by officers and bidders would be wasted, causing damage to the Council's reputation with bidders and discouraging them from participating in future procurements. Failure to comply in full with the requirements of the Public Contracts Regulations 2015, Procurement Act 2023 or the Health Services (Provider Selection

Regime) Regulations 2023 can result in the Council becoming subject to Court action and / or enforcement action.

- 1.8 The process for awarding contracts will change when the Procurement Act comes into force. Currently all bidders are notified of the outcome of a tender and a 10 day standstill period is observed before the contract can be entered into and a contract notice published. Under the Procurement Act a Contract Award Notice must be published setting out our intention to award the contract and signals the initiation of the stand-still period. At the end of the standstill period a Contract Details Notice is published to confirm the award of the contract. The current requirement to seek approval to award the contract will add additional time to the award stage.
- 1.9 The changes being introduced through the Procurement Act 2023 will extend the length of time necessary to run a tender process, the current Officer Scheme of Delegation and approval process will further increase the duration of the majority of our procurement processes, hampering our ability to tender in the most agile, efficient and effective manner possible.
- 1.10 The Procurement Act 2023 introduces the principle of transparency of by default, with increased reporting and information publishing requirements at all stages of the procurement and contract management lifecycle. This will improve the quality and accessibility of our commercial data, enabling our residents and suppliers to be better able to hold us to account.

2. Options under consideration

- 2.1 To adopt or not to adopt the proposed amendments to the Officer Scheme of Delegation.

3. Financial Opportunities and Implications

- 3.1 The changes will support the new more flexible routes to market agreed through the changes to Contract Procedures, enabling use of procurement routes which consider best value as part of the contract award.

4. Legal Implications

- 4.1 None

5. Engagement and Consultation

- 5.1 Consultation was undertaken with colleagues from across the Council and its wholly companies in relation to the current officer scheme of delegation as part of the procurement transformation work that is currently underway.
- 5.2 The feedback from the consultation identified the current approval limits as being one of the most significant barriers to effective procurement and is preventing officers from being able to put contracts in place in the most efficient and timely manner.

- 5.3 The proposed threshold changes were developed in consultation with the Cabinet Member for Tourism, Culture & Events and Corporate Services and the Cabinet Member for Housing and Finance.

6. Procurement Implications

- 6.1 The proposals will support a more efficient and effective approach to the procurement of goods, services and works, facilitating improved social value and community benefits and an increase in opportunity for local businesses to bid for council contracts.
- 6.2 Implications in relation to individual procurements will be addressed within the Procurement Approval Reports.

7. Protecting our naturally inspiring Bay and tackling Climate Change

- 7.1 This will be addressed within the Procurement Approval Report for individual contracts.

8. Associated Risks

- 8.1 Not adopting the proposals.
- 8.2

9. Equality Impact Assessment

Protected characteristics under the Equality Act and groups with increased vulnerability	Data and insight	Equality considerations (including any adverse impacts)	Mitigation activities	Responsible department and timeframe for implementing mitigation activities
Age	<p>18 per cent of Torbay residents are under 18 years old.</p> <p>55 per cent of Torbay residents are aged between 18 to 64 years old.</p> <p>27 per cent of Torbay residents are aged 65 and older.</p>	There is no differential impact.		
Carers	At the time of the 2021 census there were 14,900 unpaid carers in Torbay. 5,185 of these provided 50 hours or more of care.	There is no differential impact.		
Disability	In the 2021 Census, 23.8% of Torbay residents answered that their day-to-day activities were limited a little or a lot by a physical or mental health condition or illness.	There is no differential impact.		
Gender reassignment	In the 2021 Census, 0.4% of Torbay's community	There is no differential impact.		

	<p>answered that their gender identity was not the same as their sex registered at birth. This proportion is similar to the Southwest and is lower than England.</p>			
Marriage and civil partnership	<p>Of those Torbay residents aged 16 and over at the time of 2021 Census, 44.2% of people were married or in a registered civil partnership.</p>	<p>There is no differential impact.</p>		
Pregnancy and maternity	<p>Over the period 2010 to 2021, the rate of live births (as a proportion of females aged 15 to 44) has been slightly but significantly higher in Torbay (average of 63.7 per 1,000) than England (60.2) and the South West (58.4). There has been a notable fall in the numbers of live births since the middle of the last decade across all geographical areas.</p>	<p>There is no differential impact.</p>		
Race	<p>In the 2021 Census, 96.1% of Torbay residents described their ethnicity as white. This is a higher proportion than the South West and England. Black, Asian and minority ethnic individuals are more likely to live in areas of Torbay classified as being amongst the 20% most deprived areas in England.</p>	<p>There is no differential impact.</p>		

Religion and belief	64.8% of Torbay residents who stated that they have a religion in the 2021 census.	There is no differential impact.		
Sex	51.3% of Torbay's population are female and 48.7% are male	There is no differential impact.		
Sexual orientation	In the 2021 Census, 3.4% of those in Torbay aged over 16 identified their sexuality as either Lesbian, Gay, Bisexual or, used another term to describe their sexual orientation.	There is no differential impact.		
Veterans	In 2021, 3.8% of residents in England reported that they had previously served in the UK armed forces. In Torbay, 5.9 per cent of the population have previously serviced in the UK armed forces.	There is no differential impact.		
Additional considerations				
Socio-economic impacts (Including impacts on child poverty and deprivation)		There is no differential impact.		
Public Health impacts (Including impacts on the general health of		There is no differential impact.		

the population of Torbay)				
Human Rights impacts		There is no differential impact.		
Child Friendly	Torbay Council is a Child Friendly Council and all staff and Councillors are Corporate Parents and have a responsibility towards cared for and care experienced children and young people.	There is no differential impact.		

10. Cumulative Council Impact

10.1 None

11. Cumulative Community Impacts

11.1 None