

**Corporate Services, Climate Change and
Scrutiny Management Committee**

22 April 2024

Report of the Chief Finance Officer

Changes in Procurement Legislation

Summary

1. The purpose of this report is to update the Committee on the upcoming changes and how they will impact procurement across the Council.
2. 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).
3. Following the UK's exit from the EU, Government took the opportunity to develop and implement new procurement regimes to allow further flexibility and opportunities during the tender and procurement period. The Procurement Bill was introduced into parliament on 11 May 2022, and it will replace the Public Contracts Regulations 2015 (PCR's). This will bring significant and challenging changes to how public contracts are tendered and how they are managed.

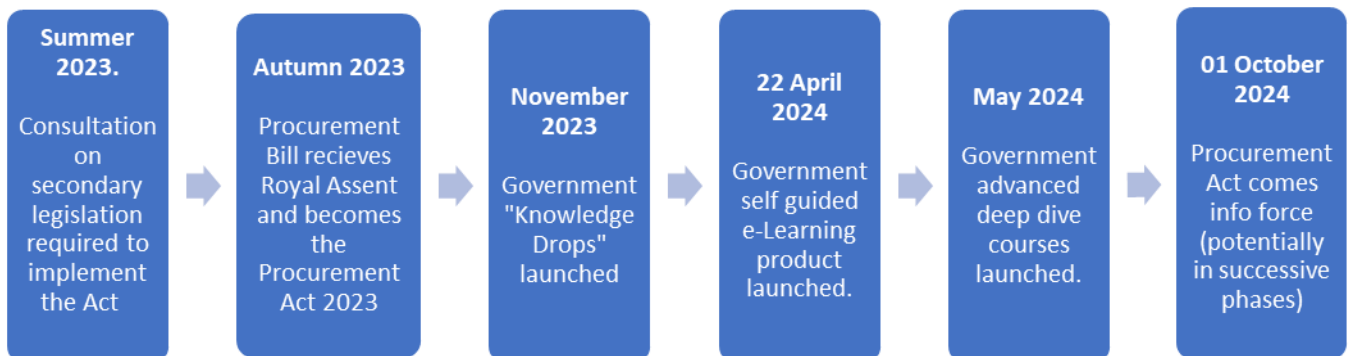
Background

4. The Procurement Act 2023 has now received Royal Assent and is expected to come into force 1 October 2024. Once implemented, the Procurement Act 2023 will replace the Public Contracts Regulations 2015, the Concessions Contracts Regulations 2016, and the Utilities Contracts Regulations 2016 to become the law that regulates procurement in England, Wales, and Northern Ireland.
5. The intention was to create a shorter, more simplified set of rules (combining the 4 sets of Regulations into 1) and offering greater flexibility in procurement governance. Some exclusions from the Act will remain, such as the contracts referred to under the Light Touch Regime, where

the full application of the legislation is not required, but at present it remains unclear which parts are relevant or not.

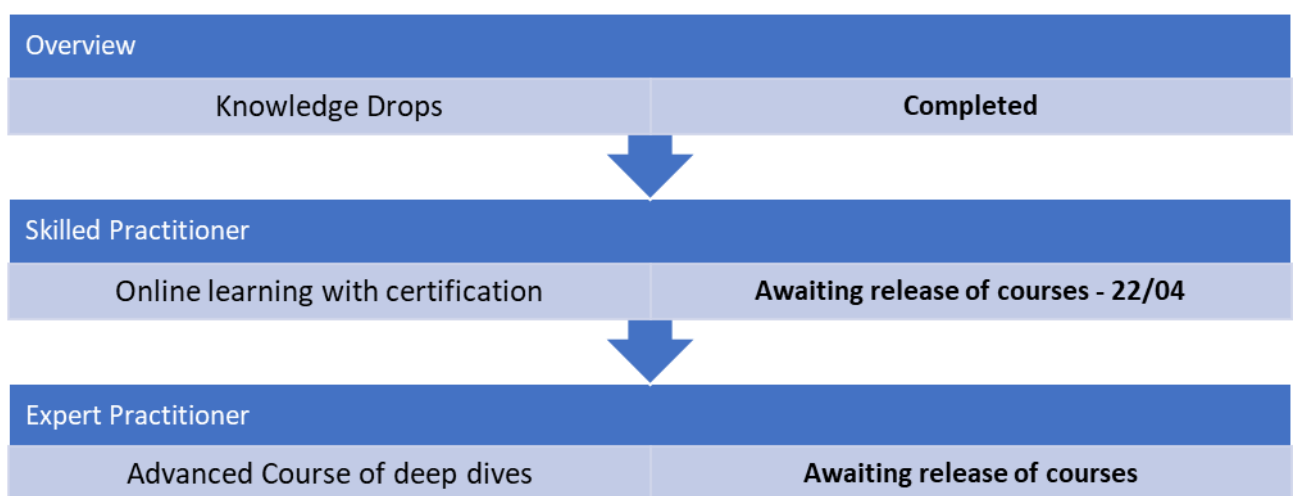
6. The Act allows for Central Government to implement secondary, supplementary legislation, and the main requirement that will sit under the Act will be the National Procurement Policy Statement (NPPS). The NPPS will set out the national strategic priorities for procurement that will need to be considered alongside any local priorities.
7. In addition to the Act, the provision of Healthcare Services is to be removed from the main Procurement regime and will be subject to their own legislation, the Health Care Services (Provider Selection Regime) Regulations 2023, referred to as PSR. These regulations came into effect on the 1 January 2024.
8. The Bill has gone through an extensive legislative process and as Royal Assent was received 26 October 2023, and implementation of the Act will officially begin on the 1 April 2024 and come in to force 1 October 2024. A Learning and Development programme taking place 6 months prior to the go live date.

Route to Implementation



Learning and Development, Upskilling the Commercial Procurement Team

9. The centrally funded Learning and Development package will be provided by Cabinet Office and is available to all councils across the UK. The packages range from an overview of the changes, through to more detailed and specific instruction on the new regime for practitioners in contracting authorities, and an intensive advanced course of 'deep dive' learning focussed on the behavioural and cultural changes required. Knowledge Drop sessions have already been completed by the Commercial Procurement team in advance of further Online Learning and the Deep Dive courses. The pathways available are shown below:



Intention of the Procurement Act 2023:

10. Government have set out their reasons for introducing the Bill and their vision for the future of procurement. The key themes have been captured below (note these are the Government's terminology):

| <u>Change</u> | <u>Reasoning</u> |
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| Taking back control of public money | Currently, the UK is still adhering to the EU PCR's 2015. This consists of four regimes for procurement. The intention for the new Act is to replace this with one single regime, which is intended to reduce administrative costs and driving up competition. |

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| Slashing red tape and driving innovation | Removing complex administration elements with the view to creating flexibility and “simpler” rules for buyers and suppliers. |
| Levelling up the UK | While value for money will be the highest priority in procurement, the Act will require buyers to take account of national strategic priorities such as job creation potential, improving supplier resilience and tackling climate change. This will be driven through social value and sustainability. |
| Taking tougher action on underperforming suppliers | The Act will put in place a new exclusions framework that will make it easier to exclude suppliers who have underperformed on other contracts. It will also create a new ‘debarment register’, accessible to all public sector organisations, which will list companies who should be excluded from contracts. |
| Creating an open and transparent system | The Act will deliver a step change in transparency and openness, with notices mandated for direct awards and publication requirements extended from planning to termination, including contract performance. |
| Effective crisis procurement | The Act will introduce new competition processes for emergency buying, reducing the reliance on direct awards and noncompliance in the council. |

Implementation

11. The Commercial Procurement Team are continuing to review and gather information and go through key criteria internally to prepare for the go live date of 1 October 2024. External training has been received to highlight key changes and to allow Commercial Procurement to build a risk profile on the risks to the council.
12. It became apparent during and after the training that whilst there will be a reduction in “red tape” for the market and for businesses, this will not be the case for the council. The changes outlined in the Act will ultimately create additional work and steps during each procurement. Consequently, the Commercial Procurement Team have identified a series of immediate changes that are currently being implemented. Additionally, work is on-going to identify what areas of the regulations will require future and further in-depth planning to allow for a successful implementation.

13. The activity being currently undertaken by the Commercial Procurement Team in preparation is as follows:
- The council's Contract Procedure Rules (CPR's) have been updated in line with the new Act. They have now been imbedded within the council's constitution following approval Audit and Governance Committee and Full Council.
 - Review and amendments to the procurement strategy.
 - The Commercial Procurement Team are assuming responsibility for social value policy and updating as necessary to link in with the new Act. Research to improve social value measures are being explored.
 - Updating of all procurement training provided at the council, bespoke training for complex departments and via MyLo.
 - Redrafting and creation of procurement documents covering all routes and options available within the Act.
 - Reviewing the council's standard Terms and Conditions.
 - 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). This will be created and maintained by the Commercial Procurement Team and replace the existing forward plan.
 - Updating of all procurement web information, including the procurement toolkit and general guidance on Colin as well as the external council website.
 - Horizon Scanning – The Commercial Procurement Team will be reviewing future projects and analysing spend to ensure the council will be adhering to the new legislation.
 - Supplier and Market Awareness – A schedule will be drafted to engage with the market through events held by the Commercial Procurement Team.
 - Stakeholder and Service Area Awareness – Starting to prepare information for all staff across the council.
 - Supply Chain analysis – The Commercial Procurement Team will identify who the councils' key suppliers are so this will allow the council to feed updates through supply chains.
14. In navigating the Act, the Commercial Procurement Team will be looking at the market with which the council engages to identify where training and guidance will be required to assist its suppliers, with a heavy focus on York's supply chain and SME's. As detailed above, there will be a

further, more in-depth engagement plan when the implementation period is live, so the council is able to confidently deliver information to the market.

15. The changes are spread across the procurement regulations, and there are over 350 rules which govern the public spending, and whilst there are opportunities for the council to drive value there are also several challenges. The Commercial Procurement Team are constantly refreshing, learning, and gathering information on the Act to ensure the council is ready for implementation on 1 October 2024 and continuously review any risks associated with the Act.

Risks and Mitigations:

16. Until the implementation phase commences the Commercial Procurement Team are not able to identify all risks that apply to each regulation, and the level of risk may change from now until the 1 October 2024. However, the following high-level risks have been identified at this stage and are being managed by the Commercial Procurement Team to mitigate wherever possible and to prepare for.

| RISK | PREPARATION TO MANAGE |
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| Failure to prepare | The Commercial Procurement Team are preparing for the Act to come into force. We are highlighting and completing work now and creating forward plans to ensure a successful transition. |
| Transparency through notices | The Act is introducing additional mandatory notices to complete before, during and after a procurement and outside of procurements. The purpose of this is to strengthen compliance across councils. This is beneficial to the council and will drive compliance throughout. However, this does increase the risk of challenges and FOIs as any non-compliant issues will be open to greater scrutiny. To minimise this, the council will strengthen its position on compliance and maintain an open, fair and transparent system. This will have an impact on the current capacity within the Commercial Procurement Team and will bring a burden on resource available. Currently, we are working with 3 notices, and this is increasing to 12+. |
| Transparency across the board | Increased transparency across any purchasing or procurement activity has been included within the Act, covering the full procurement lifecycle (planning, procurement, contract implementation and management, and |

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| | <p>finalisation / expiry). This increased transparency aims to:</p> <ul style="list-style-type: none"> - 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. <p>Whilst this is extremely positive, it will put additional pressure on service areas across the council to comply with the procurement legislation. Additional training will be given by the Commercial Procurement Team. However, there will need to be a renewed and increased focus on compliance.</p> |
| Capacity for the new Bill | <p>The implementation and application of the new Act will impact on capacity across the council and will involve more time-consuming procurement processes and contract management. This will affect both the Commercial Procurement Team and potentially Contract Managers who procure services, goods and works. The capacity to deliver successfully under the new regime will need on-going review, before, during and after the implementation period.</p> |
| Data Systems | <p>A review of the procurement systems and data reporting systems is underway to ensure it will be capable of delivering both efficiently and the new transparency requirements. This review will highlight where any constraints exist and allow planning to improve where needed.</p> |
| Exemptions within the Healthcare Services | <p>The new Provider Selection Regime (PSR) which will be a new set of rules specifically relating to the procurement of healthcare, Public Health services and are separate from the Procurement Act 2023. The PSR has three different provider selection processes to award contracts for health care and Public Health services, these are: 1. direct award, 2. most suitable provider process and 3. competitive process. Whilst this can be seen as beneficial in terms of speeding up a process, it also brings the risk to the council of the justification, rationale for the provider selection process selected, and the associated risks include not being able to evidence value for money, fully assessing the market of providers, invite and consider innovation/new ways of service</p> |

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| | <p>delivery, openness, fairness, transparency, or savings for the council. The council will need to develop strategic policies and a suite of templates to assess and record the decision route selected that evidence why a provider selection process was chosen to comply with the PSR and make informed decisions and maintain audit trails and relevant approvals.</p> |
| <p>Contract Management</p> | <p>Contract Management at the council has been identified as an area which requires improvement.</p> <p>In the Act, more detailed and onerous provisions have been included regarding contract management and performance, with the aim of improving contract management practice across the public sector.</p> <p>From 1 October 2024, there will be a requirement to publish contract change notices and a redacted copy of the modified contract. For contracts over £5m, details of 3 KPI's are to be published. During the term of the contract, there is an expectation that these KPIs are monitored and recorded, and the performance information is published annually via a new Contract Performance notice.</p> <p>New mandatory Contract Termination notices are to be introduced. These are required for all contracts irrespective of whether the contract has expired naturally, or it has been terminated early. Where a supplier has breached contract, and this has resulted in termination of the contract, the award of damages or a settlement between the supplier and contracting authority must be included in this notice. Contract Managers will need to correctly manage and oversee their contracts and complete mandatory notices to show contract management is taking place across the council.</p> |
| <p>Supplier feedback</p> | <p>In the new Act, <i>assessment summaries (rather than feedback)</i> are to be provided to each supplier along with a full copy of the successful supplier's assessment summary. Whilst this removes the requirement for the Council to produce the characteristics and relative advantages of the winning bidder, this will now be left for the unsuccessful bidder to determine themselves. This will require detailed and concise <i>assessment summaries</i> to be produced to limit the number of potential complaints / challenges that could be</p> |

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| | <p>received as a result.</p> <p>Once the <i>assessment summaries</i> have been issued, a new mandatory Contract Award Notice is required for publication, and this notice will now be what triggers the commencement of the standstill period (not the issuing of the letters as is currently the practice). In addition, the standstill period has been altered from 10 calendar days to 8 working days.</p> <p>Whilst this is a good tool to help improve businesses in the bidding process, it will require all service areas within the council to adhere to and complete the relevant documentation from the Commercial Procurement Team.</p> |
| <p>Conflict of Interest Assessment</p> | <p>This has always been an integral part of the procurement process, but the new Act seeks to strengthen this requirement. The Council will be required to demonstrate all reasonable steps have been taken to identify and manage <u>actual</u>, <u>potential</u>, and <u>perceived</u> conflicts of interest through all stages of the process.</p> <p>A conflict-of-interest assessment will need to be prepared and revised throughout the procurement and management of the contract and will be a responsibility of every individual involved in the procurement to highlight actual, potential, and perceived conflicts. This includes individuals involved in defining the requirement, drafting specification, undertaking evaluations, granting approvals etc, including political members and external consultants.</p> <p>Where it is determined that a supplier is at an advantage and this cannot be resolved, the supplier must be excluded from the procurement process.</p> |
| <p>Procurement Review Unit (PRU)</p> | <p>The key role of the PRU is to oversee a contracting authority's compliance with the Act and seeks to realise the benefits of the legislation.</p> <p>They will:</p> <ul style="list-style-type: none"> - Investigate where there are suggestions of non-compliance. - Investigate suppliers to add onto the debarment list. - Investigate poor procurement practice (i.e., poor payment practice). |

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| | <p>Following investigation, the PRU may issue improvement plans for implementation.</p> <p>This means, as noted above within compliance and transparency, the council must adhere to the procurement legislation and any breaches made by service areas across the council, must be dealt with appropriately.</p> |
| Resource within the Commercial Procurement team | <p>At present, the Commercial Procurement team is not fully resourced. With the new Act, there are risks associated with capacity levels due to the additional work, processes, notices, collating performance data, compliance requirements and implementation. A review must be in place to assess whether additional posts need to be created for the Commercial Procurement Team to deliver the best legislative requirements and outcomes for the council. A fully resourced Commercial Procurement team will be able to drive efficiency and identify savings for the council. Improved, effective procurement strategies would be developed to ensure the council achieves value for money whilst meeting all council priorities and all legislation. Strengthening the council's position on compliance, openness and transparency.</p> |

Overview of spend at the council:

17. Currently, the council has over 550 published contracts in place across all portfolios, although this figure changes daily due to the number of procurements becoming live and expiring, and purchase order commissions. This shows the level of detail and investigation that will take place by the Commercial Procurement Team to ensure that future procurements comply with the Act. The spend allocated is as follows:

| Year | Criteria | Spend |
|---------|--|---------------|
| 2022/23 | Businesses with a YO postcode | £ 17,278,989 |
| 2022/23 | Businesses in Yorkshire and Humberside | £ 135,142,585 |
| 2022/23 | Businesses with less than 10 employees | £ 1,858,771 |

| Year | Criteria | Spend |
|---------|----------------------|---------------|
| 2022/23 | Third Party – Micro | £ 17,435,416 |
| 2022/23 | Third Party – Small | £ 57,098,609 |
| 2022/23 | Third Party – Medium | £ 51,094,122 |
| 2022/23 | Third Party – Large | £ 103,255,365 |

Communication

18. Whilst the Commercial Procurement Team are working on the internal implementation plan and taking the required steps for readiness, communication is essential to all council staff and external suppliers and markets. This will be achieved in the following ways:

Internal communication:

- Statement via Ian Floyd all staff COMMS email. *This has been issued.*
- Statement via COMMS to all CYC Managers. *This has been issued.*
- Internal web pages updated with information and presentation attached. *This has been issued.*
- Agenda item on Leading Together. Due to present in May.
- Agenda item on CMT & DMT sessions. On-going.
- Information sharing in meetings consisting of all levels of staff. Ongoing.
- Invitations for 1 on 1 training, group training and service area training. On-going.

External Communication:

19. External communication has already started and will continue to be monitored and updated. To date, the actions completed are:
- Email to over 1000 suppliers to the council
 - External website has been updated with information and appropriate links to Government guidance
 - Statement in the weekly business newsletter
 - Statement on the council's social media page, LinkedIn
 - Supplier and Market Awareness – A schedule will be drafted to engage with the market through events held by the Commercial Procurement Team – **This is not yet live**

Social Value in Procurement and Opportunity for Improvement

20. Delivering Social Value is a key priority for the council and procurement is one of the key tools in achieving this. Social Value can include factors such as sustainability, job creation, fair labour practises, support of local economy, diversity and inclusion, community engagement, charity work and employment and skills.

21. Many council contracts already include Social Value, and the above measures are delivered in projects such as:
- Housing Delivery Programme
 - York Station Gateway
 - Guildhall
 - Capital projects
 - Healthwatch
 - Reablement and Rapid Response Services and;
 - Public Realm and Fleet.
22. These examples include requirements for the use of York's local supply chain for any subcontracting work; work placements for college students; reducing carbon footprints; sustainable materials and resourcing; creation of apprenticeship opportunities; and engagement with communities.
23. The new Act continues to recognise the importance of procurement in delivering social value in procurements. An opportunity of further improvement can be found with the new Act to maximise Social Value the council delivers. With the flexibilities and changes being made, there are opportunities to use procurement differently and meet the demands of policies and priorities. Whilst the council maintains a good record of Social Value, there is no tool or system in place to monitor this. To achieve maximum benefit, options of purchasing a system to observe Social Value credits should be considered so that we can increase the council's vision and drive priorities through the council's expenditure.

Contract Management Improvement

24. The Act will also provide the council with greater scope to improve the way contracts are managed. The new requirements focusing on Contract Management will ensure we adhere to legislation and meet our requirements as a contracting authority.
25. The Commercial Procurement Team have previously identified an area requiring improvement within the council is effective Contract Management. As detailed above in section 13 risks and mitigations, the Act places new demands and requirements on how Contract Management should be effectively conducted, monitored, and documented.

26. For procurements budgeted over £5M, data will be published into the public domain to demonstrate that the council is managing the contract appropriately and dealing with poor performance. Adhering to those demands will push the council to upskill staff where required, drive efficiencies throughout the contract, ensure the council is receiving a quality service for the residents of York, and is able to evidence value for money.

Conclusion

27. The Procurement Act 2023 represents a major change in regulatory environment within which the council undertakes all procurement activity. To ensure and enable a smooth transition the Commercial Procurement Team have developed and continue to update delivery plans and strategies to minimise risks and ensure the council is ready for the implementation of the Act. This approach will ensure the council is prepared and ready for when the Procurement Act 2023 comes into force in October 2024, and realise the opportunities it will provide in improving the services, social outcomes, and value for money for the residents of York.

Consultation

28. As set out in paragraphs 18 and 19 of this report there is a fully developed communication plan in place to ensure all suppliers and internal impacted officers are engaged in the implications of the changes resulting from the new Act.

Council Plan

29. The council's response to the changes in the Act are focused on how the Act can be best applied to deliver the priorities in the Council Plan. As noted, there are specific opportunities associated with Social Value that are set out in this report.

Implications

30. **Financial** - There is a significant amount of additional work required to implement the new legislation, both for the procurement team and for officers across the Council who are managing contracts. There has been no additional funding from Government to support this work. It is therefore expected that the work needed to implement the changes will be contained within existing budgets.

31. **Human Resources (HR)** – It is considered that there are no implications.
32. **Equalities** – It is considered that there are no implications.
33. **Legal** – Legal have been fully involved in interpreting the implications of the new legislation, which are set out in the report.
34. **Crime and Disorder** – It is considered that there are no implications.
35. **Information Technology (IT)** – Adhering to the Act, may require implementation of new procurement systems as noted above in the report.
36. **Property** – It is considered that there are no implications.

Risk Management

37. As set out in this report, the Commercial Procurement Team have undertaken significant actions to mitigate the risks associated with implementing the new Act. Principle amongst there are:
 - Attended Government training sessions and briefings
 - Fully understood the legislation and assessed the implications
 - Implementation plan has been created and put in place
 - Communication plan has been created to inform all effected parties of the upcoming changes and what they are required to do

This means the council is well prepared to successfully implement and comply with the new Act.

Recommendations

38. Members are asked to note the contents of the report.

Reason: To update the Committee on procurement activity

Contact Details

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Report Approved



Date 10 April 2024

Specialist Implications Officer(s)

Not applicable

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

None

Annexes

None

Abbreviations