

SURREY COUNTY COUNCIL**CABINET****DATE: 25 FEBRUARY 2025****REPORT OF CABINET MEMBER: DAVID LEWIS, CABINET MEMBER FOR FINANCE AND RESOURCES****LEAD OFFICER: ANDY BROWN, DEPUTY CHIEF EXECUTIVE & EXECUTIVE DIRECTOR FOR RESOURCES (S.151 OFFICER)****SUBJECT: PROPOSED AMENDMENTS TO PROCUREMENT AND CONTRACT STANDING ORDERS****ORGANISATION STRATEGY PRIORITY AREA: NO ONE LEFT BEHIND / GROWING A SUSTAINABLE ECONOMY SO EVERYONE CAN BENEFIT / TACKLING HEALTH INEQUALITY / ENABLING A GREENER FUTURE / EMPOWERED AND THRIVING COMMUNITIES / HIGH PERFORMING COUNCIL****Purpose of the Report:**

This piece of work helps Surrey County Council meet, indirectly, all of the priority objectives and No One Left Behind because a significant proportion of services required to meet these objectives are delivered via third parties, and ensuing the constitution is aligned to procurement legislation is a key facilitator to this.

The Procurement and Contract Standing Orders (PCSOs) set out how the Council authorises and manages expenditure and resulting commercial contracts with other organisations. New Procurement Legislation – the Procurement Act 2023 (PA23) and associated regulations – come into force on the 24th February 2025. The PCSOs are written into the Council's Constitution, and an update is therefore required to ensure our procurement and contracts activity remains compliant with all prevailing legislation.

Whilst updating the PCSOs a further review has been carried out, and amendments made to improve the overall effectiveness and provide further clarity of the PCSOs.

Recommendations:

It is recommended that Cabinet:

1. Notes the proposed changes to the Procurement and Contract Standing Orders (PCSOs) and commends them to County Council for final approval.

Reason for Recommendations:

The current PCSOs require updating to reflect the impending legislative changes and improve the overall effectiveness of the PCSOs.

Executive Summary:

Introduction

1. The Procurement Act 2023 (PA23) and associated regulations go live on 24th Feb 2025 and will replace the current Public Contracts Regulations 2015 (PCR 2015). For a transition period the PCR 2015 will remain applicable for managing, extending or modifying contracts awarded under it.
2. Separately, the legislation governing the procurement of certain health care services has also changed, with the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR) coming into force on 1st January 2024.
3. PCSOs are written into the Council's Constitution and an update is therefore required to ensure our procurement and contracts activity remains compliant with all prevailing legislation.
4. Highlights of the PA23 that will affect areas of the Council beyond procurement are:
 - **Transparency Notices:** There are 16 under the PA23 up from 4 under PCR 2015, noting not all are mandatory and/or applicable to all procurements.
 - **Contract Management:** Significantly increased focus on contract management, governance, and supplier performance. Notices and records are required in all these areas. This will impact services, finance and Contract Managers.
 - **Procedures:** There are 3 Procedures in the new regulations down from 7.
 - **Most Advantageous Tender:** PA23 changes Most Economically Advantageous Tender (M.E.A.T.) to Most Advantageous Tender (M.A.T.).

Summary of Legislative Changes

5. Some of the legislative changes in the PA23 which require updates to the Council's PCSOs are:
 - Greater focus on opening up opportunities to small and medium enterprises (SMEs) and the voluntary, community and social enterprise sector (VCSEs);
 - Heightening the importance placed on contract management, given the significantly increased focus on contract management, governance, and supplier performance;
 - Embedding of transparency right through the contract lifecycle with a change in the number of procurement and contract management and performance transparency notices from six under the PCR 2015 to 16 under the PA23;
 - Change in the number and nature of procurement procedures or "routes to market" from seven in the PCR2015 to three in the PA23;

- A requirement to publish a procurement pipeline of opportunities over £2M with a minimum of 18 months forward look; and
- Note the need for public bodies to have regard to the National Procurement Policy Statement.

Proposed PCSO Changes and Objectives

6. The key proposed amendments to the PCSOs and the objectives of them can be summarised as follows:

- Incorporate requirements of prevailing procurement legislation (PCR 2015, PA 2023 and the PSR);
- Revision of thresholds to reflect legislative updates and the change to quote inclusive of VAT;
- Minimise the requirements for future updates to go through Full Council approval in respect of legislative changes, threshold changes, job roles and title, i.e. elements where Council is not empowered to refuse such changes;
- Reflect current local policies and procedures;
- Removal of details of specific legislative requirements in the main body, instead referring to prevailing procurement legislation (moving any relevant specifics to a separate appendix) to account for a range of applicable legislation;
- Provide flow charts to identify which piece of procurement legislation applies depending on nature of activity;
- Simple reference to Procurement, not different teams within Procurement;
- Refinement to the forward planning process to satisfy the new legal requirement to publish a pipeline;
- Simplification of thresholds and approvals; and
- Reflect current policies, procedures, job titles etc.

Implementation

7. Following approval by full Council Procurement Officers will:

- Arrange communications on the Council's intranet including key messages highlighting what Council Officers need to know.
- Update and present content to Directorate Management Teams with options for them to subsequently:
 - Disseminate information provided through Directorates themselves; and/or

- Invite Procurement representation to existing forums to repeat the presentation of information.

Consultation:

8. The proposed new PCSOs have been developed in collaboration with Officers from the Procurement Service and related stakeholders.
9. The documents and associated briefing papers have been approved by the Head of Procurement and Director of Procurement.
10. Senior and Chief Officers have been engaged and consulted as per the process of submitting the proposed PCSOs to Cabinet and onwards.

Risk Management and Implications:

Risk of breach of current PCSOs due to approval and publication post PA23 go-live

11. Noting that Full Council is not due to consider the proposed changes to PCSOs until the Council meeting on 18th March 2025, the following points mitigate the potential risk associated with approval occurring after the new regulations go-live on 24th February 2025:
 - The current [and future] PCSOs state “*Where there is a difference between current legislation governing procurement and these Orders, the legislation prevails*”, therefore running a PA23 compliant procurement will not in itself constitute a breach of current PCSOs.
 - Variations to existing contracts would be to contacts let under the PCR 2015 and could therefore be conducted in line with existing PCSOs.
 - Additional governance will be in place to oversee procurement activity during the implementation period as follows:
 - The procurement pipeline will flag those projects to be run under PA23, and commencement of work will be subject to the approval of Procurement Project Review Board.
 - That approval will consider if there is any risk of breach of the PCSOs by the proposed activity and oversee completion of a waiver if required.

Financial and Value for Money Implications:

12. There are no direct financial implications arising from the proposed action. However, the proposed changes to PCSOs are important for maintaining compliance with the new regulations and therefore for minimising the risk of potential legal challenges or fines which can result in significant financial loss and/or resource implications, for example, needing to re-run a complex procurement process following legal challenge.

Section 151 Officer Commentary:

13. The Council continues to operate in a very challenging financial environment. Local authorities across the country are experiencing significant budgetary pressures. Surrey County Council has made significant progress in recent years to improve the Council's financial resilience and whilst this has built a stronger financial base from which to deliver our services, the cost of service delivery, increasing demand, financial uncertainty and government policy changes mean we continue to face challenges to our financial position. This requires an increased focus on financial management to protect service delivery, a continuation of the need to deliver financial efficiencies and reduce spending in order to achieve a balanced budget position each year.
14. In addition to these immediate challenges, the medium-term financial outlook beyond 2024/25 remains uncertain. With no clarity on central government funding in the medium term, our working assumption is that financial resources will continue to be constrained, as they have been for the majority of the past decade. This places an onus on the Council to continue to consider issues of financial sustainability as a priority, in order to ensure the stable provision of services in the medium term.
15. The proposed changes to Procurement Contract Standing Orders ensure compliance and that robust controls are in place. There is no associated cost of implementation and as such the recommendation is deliverable within the Medium Term Financial Strategy.

Legal Implications – Monitoring Officer:

16. The new Procurement Act and associated Regulations, when in force, will substantially change the procurement processes and procedures which the Council must follow. The Council's own rules relating to the management of procurements and contracts must therefore be updated to reflect the new legislative framework. Full Council is the body with ultimate responsibility for approving the PCSOs.
17. The new PCSOs (which are made under S135 of the Local Government Act 1972) will replace the existing PCSOs which can be found in Part 5(4) of the Constitution.
18. Legal Services/Democratic Services recognise that there are areas of the Council's Constitution that will need to be updated and amended so a full review will be undertaken to ensure that the resultant changes required to the Constitution are made.

Equalities and Diversity:

19. There are no equality impacts arising directly from this report. However, the council's equality duty and equality impacts are considered in relation to each individual procurement undertaken.

Other Implications:

20. The potential implications for the following council priorities and policy areas have been considered.
21. For all policy areas, there are no significant policy implications as a direct result of implementing new PCSOs. However, policy considerations and outcomes in contracts can be better implemented and managed as a result of the changes, especially those around contract management.

Area assessed:	Direct Implications:
Corporate Parenting/Looked After Children	none
Safeguarding responsibilities for vulnerable children and adults	none
Environmental sustainability	none
Compliance against net-zero emissions target and future climate compatibility/resilience	none
Public Health	none

What Happens Next:

22. The matter is due to be heard at Cabinet on 25th February 2025 and subsequently at Full Council on 18th Mar 2025.
23. Once approved, the implementation plan in para. 9 will be followed.
24. Relevant Officers will work with Legal Services/Democratic Services to make the resultant changes to the Constitution.

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Consulted:

- Procurement Stakeholders
- Head and Director of Procurement
- Corporate Leadership Team
- Member for Procurement

Annexes:

Annex 1 – Surrey County Council – Proposed New PCSOs

Annex 2 - Surrey County Council – Proposed New PCSOs – Appendix