

CONSTITUTION COMMITTEE AGENDA



Friday 25 March 2011

At 12 noon

in Committee Room 'C', Civic Centre, Hartlepool

MEMBERS: CONSTITUTION COMMITTEE:

The Mayor, Stuart Drummond

Councillors: Aiken, C Akers-Belcher, Cook, Gibbon, Griffin, James, Morris, Preece, Richardson, Simmons.

1. APOLOGIES FOR ABSENCE

2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS

3. MINUTES

3.1 Minutes of the Constitution Committee held on 20 January 2011.

3.2 Minutes of the Constitution Committee Task and Finish Group held on 2 February 2011.

4. ITEMS FOR CONSIDERATION

4.1 Business Report – *Chief Solicitor*

4.2 Proposed Amendments to Contract Procedure Rules – *Assistant Director (Resources) and Chief Solicitor*

5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

20 January 2011

The meeting commenced at 1.00 pm in the Civic Centre, Hartlepool

Present:

Councillor: Carl Richardson (In the Chair)

Councillors: Martyn Aiken, Christopher Akers-Belcher, Rob Cook, Steve Gibbon, Sheila Griffin, Marjorie James, Arthur Preece and Chris Simmons.

In accordance with Council Procedure Rule 4.2 (ii), Councillor Ray Wells was in attendance as substitute for Councillor George Morris.

Officers: Alyson Caman, Legal Services Manager
Joanne Machers, Chief Customer and Workforce Services Officer
Amanda Whitaker, Democratic Services Team Manager
Angela Hunter, Principal Democratic Services Officer

30. Apologies for Absence

Apologies for absence were received from The Mayor, Stuart Drummond and Councillor George Morris.

31. Declarations of interest by Members

None.

32. Minutes of the meeting held on 19 November 2010

Confirmed subject to the addition of Councillor Christopher Akers-Belcher's apologies being submitted.

33. Business Report – Suspension of Constitution Working Group *(Chief Solicitor)*

The Legal Services Manager referred Members to the meeting of the Constitution Working Group on 24 September 2010 and the decision to suspend the operation of the Working Group for at least two Council meeting cycles (minute 23 refers). At this timescale had elapsed Members views were sought on this arrangement and whether it should continue.

Members discussed the merits of holding Task and Finish Groups to

discuss time specific issues outside of Constitution Committee and considered that it was a sensible way forward.

Decision

- (i) That the Constitution Working Group cease to exist and the appropriate amendments to the Constitution be undertaken.
- (ii) That the Constitution Committee arrange ad hoc Task and Finish Groups consisting of the full membership of the Committee to consider time specific issues and feedback its findings back to the Constitution Committee.

34. Business Report – Petition Scheme *(Chief Solicitor)*

The Legal Services Manager presented a report to Members which provided an update on the withdrawal of the statutory guidance on the duty to respond to petitions. In response to a question from a Member, the Legal Services Manager confirmed that having a petition scheme in place was still a statutory requirement and the Council still had a duty to respond to petitions. However, the statutory guidance that had been in place to assist with petitions had now been removed.

Members raised a number of queries in relation to the Petition Scheme and the process for dealing with any received. It was suggested that the scheme be circulated to Members of the Committee for their information.

Decision

- (i) The report was noted.
- (ii) A copy of the petition scheme to be circulated to Members of the Committee for their information.

35. Business Report – Referendum re Mayoral Arrangements *(Chief Solicitor)*

At the meeting of Constitution Committee on 8 October 2010, the Chairman requested clarification around the protocol for mayoral referendums (minute 23 refers). The Legal Services Manager presented a report which provided the background to the different forms of governance arrangements available to local authorities. Members were asked to note that where a local authority had mayoral arrangements in place that had been decided by referendum, it was mandatory to hold a further referendum to decide on any change in those governance arrangements in place.

A discussion ensued on the timescales before a referendum could be held to reconsider the governance arrangements in place. In particular, the timescale and lead in time to submit a resolution to council to consider the

holding of a referendum was questioned. The Legal Services Manager indicated that she would need to get exact confirmation of all the dates requested and report back to Members. In addition to this, Members also requested clarification on the estimated costs of holding such a referendum.

Members were informed that the Decentralisation and Localism Bill should receive royal assent by the end of 2011. Members discussed possible timescales for holding a referendum and considered that the local elections in May 2012 might be appropriate.

It was suggested that further discussion on this item might be appropriate in a Task and Finish Group of the Committee and it was agreed that this would be held on Wednesday 2 February at 4.00 pm.

Decision

- (i) The report was noted and the Legal Services Manager to provide further clarification on:
 - the timeframe and lead in process for a resolution to Council to hold a referendum on the governance arrangements of the local authority;
 - the estimated costs of holding such a referendum.
- (ii) A Task and Finish Group of the Committee be arranged to discuss this issue further on Wednesday 2 February 2011 at 4.00pm, venue to be confirmed.

36. Business Report – Officer Employment Procedure Rules *(Author)*

At the meeting of the Constitution Committee on 19 November 2010 (minute 28 refers) Members had requested that the current wording in the Constitution referring to competitive recruitment situations for posts covered by Officer Employment Procedures Rules be reviewed and submitted to the Committee for further consideration.

The Chief Customer and Workforce Services Officer presented a report which provided the current wording in the Constitution and the proposed wording for Members' consideration. Clarification was provided on situations where Chief Officers would be 'slotted-in' and where a competitive interview process would be undertaken. In response to a question from a Member, the Chief Customer and Workforce Services Officer confirmed there was no-one currently in a Chief Officer role who had been 'slotted into' a Chief Officer role from a Green Book post as part of a reorganisation process.

In response to a question from a Member the Chief Customer and Workforce Services Officer confirmed that changes in job titles from Heads of Services to Assistant Director did not necessarily result in changes to the

terms and conditions of those officers. Recently only one Chief Officer post had been regraded as a result of reallocating the responsibilities of four chief officer posts that were being deleted from the establishment. Members were asked to note that when Appointments Panels approved an appointment, there was no guarantee that the duties of the post would remain the same and an element of flexibility was required to allow for the duties of that post to change as appropriate over time. In such cases, the LGE would reassess the grading of that post in relation to duties and responsibilities.

During the meeting of the Constitution Committee on 19 November 2010, Members had requested an updated departmental structure and clarification was sought on when this would be circulated. The Chief Customer and Workforce Services Officer confirmed that once confirmation of the budget changes and departmental structures were known this would enable structures to be circulated.

A Member sought clarification on the difference in grading of Assistant Directors. The Chief Customer and Workforce Services Officer confirmed that there was a Chief Executive grade, a Director grade and three different grades for Chief Officers which covers all Assistant Directors and the Chief Executive Management Team and all were subject to chief officers terms and conditions.

The Chief Customer and Workforce Services Officer indicated that the recent changes in Chief Officer appointments were in line with the Council's reorganisation policy and the responsibility for approving changes to departmental structures and Chief Officers lies with Cabinet.

One of the main concerns highlighted by Members was that departmental structural changes had occurred without Members being kept informed of which chief officers were responsible for which areas. Members were also beginning to feel disenfranchised from being involved as employers and it was suggested that the wording in the Constitution needed to be amended to safeguard the role of Members in the appointment of Chief Officers. The Chief Customer and Workforce Services Officer commented that should a post be identified as suitable for 'slotting-in' and the procedure indicated they should be 'interviewed' by Members, this may then suggest that the post-holder may be placed in a redundancy situation should they not satisfy Members that they were capable of undertaking the role they were being interviewed for. A Member suggested that should the above scenario occur, a courtesy meeting be held as opposed to an interview to give Members the opportunity to discuss the remit of the new position that person was being 'slotted' into with the employee and for the employee to demonstrate that they would be competent in that new role. The Chief Customer and Workforce Services Officer confirmed that it was not in the interests of the Chief Executive and Directors to appoint people who they were not totally confident could undertake the role fully.

A Member commented that the reorganisation of the Council departments

was happening very quickly and some officers may be put in difficult situations that they were not totally capable of dealing with, for example forceful questioning at public Committee meetings.

Due to the length and content of the discussions, the Chair suggested that this topic be considered further at the Task and Finish Group to be scheduled for 2 February 2010 (minute 35 refers).

Decision

That the issue of Officer Employment Procedure Rules be considered further at the Task and Finish Group to be scheduled for 2 February 2010 at 4.00 pm.

The meeting concluded at 2.32 pm

CHAIR

CONSTITUTION COMMITTEE TASK AND FINISH GROUP

2 February 2011

The meeting commenced at 4.00 pm in the Civic Centre, Hartlepool

Present:

Councillor: Carl Richardson (In the Chair)

Councillors: Rob Cook, Marjorie James, Arthur Preece and Chris Simmons.

In accordance with Council Procedure Rule 4.2 (ii), Councillor Ray Wells was in attendance as substitute for Councillor George Morris.

Officers: Alyson Caman, Legal Services Manager
Joanne Machers, Chief Customer and Workforce Services Officer
Amanda Whitaker, Democratic Services Team Manager
Angela Hunter, Principal Democratic Services Officer

1. APOLOGIES FOR ABSENCE

Apologies for absence were received from The Mayor, Stuart Drummond and Councillors Christopher Akers-Belcher, Steve Gibbon, Sheila Griffin and George Morris.

2. REFERENDUM RE MAYORAL ARRANGEMENTS

As requested at the meeting of the Constitution Committee on 20 January 2011, the Legal Services Manager provided Members with the background to the governance arrangements for local authorities required by the Local Government Act 2000 and as amended by the Local Government and Public Involvement in Health Act 2007. Reference was made to the 3 model arrangements set out in the 2000 Act and the amendments to a 2 model form of executive arrangement namely the Mayor and Cabinet and Leader and Cabinet Executive by the 2007 Act. The timetable for change was detailed in the report along with the legislative framework for changing a Council's governance model. Members were informed that there were still some issues awaiting clarification from the Department for Communities and Local Government and once this was received the Legal Services Manager would report back to Committee.

A discussion ensued on the resolution period required to resolve a referendum on governance arrangements. Some clarity around the "permitted

resolution periods” in the 2007 Act was given. These were the permitted dates for a resolution to be made for those authorities to adopt one of the two executive model arrangements set out in the 2007 Act. As Hartlepool already operated one of the models, ie a Mayor and Cabinet executive model, it would not be necessary to make any change and as such the permitted resolution periods did not apply to Hartlepool Borough Council.

Reference was made to the moratorium period between governance referendums and that in Hartlepool’s case as a referendum was held which resulted in the adoption of a Mayor and cabinet executive, then the 2007 act provided that a referendum cannot be held until a 10 year period had elapsed. In Hartlepool’s case the moratorium period runs from 18 October 2001 until 18 October 2011.

A discussion around the way a referendum could be held was discussed and two ways were identified; either that of a Council resolution or by way of a valid petition. It was explained that if a petition was received within the moratorium period it would be invalid. The Legal Services Manager had contacted the Communities and Local Government Department for clarity on whether a Council resolution to hold a referendum on governance arrangements could be made during the moratorium period and would report back to Committee once this clarification was received. A discussion on the benefits of making a resolution before the end of the moratorium period and on the existing petition process followed.

If a resolution was to be sought through the submission of a report to Council requesting that a referendum on the governance arrangements be held as soon as practicable after 18 October 2011, then in the event that Council approve such a resolution by a two-thirds majority, the appropriate level of consultation and preparation of detailed proposals, including ‘fallback’ proposals would need to be undertaken to enable a referendum to take place co-terminus with the local elections to be held in May 2012. It was noted that should a referendum result in a vote for an alternative model of governance arrangements, the current arrangements would cease at the end of the existing mayoral term, which was May 2013.

A discussion around the petition process took place. The Legal Services Manager explained that when a Council received a valid petition, it must hold a governance referendum the results of which were binding. Such petitions and duties to hold a governance referendum were separate to local petitions and the new duty on Councils to respond to them as set out in the Local Democracy Economic Development and Construction Act. A Member queried whether a petition under the petition scheme that triggered a Council debate, could be debated at Council if it related to a referendum on governance arrangements. The Legal Services Manager made reference to Hartlepool Borough Council’s Petition Scheme which expressly stated that where a petition applied to a statutory process (for example requesting a referendum on mayoral arrangements or change of governance) then other procedures apply.

In relation to costs the Legal Services Manager provided the following estimated costs for holding a referendum either in isolation to other elections or co-terminus with local elections:

In isolation - £85,000

Co-terminus with local elections £35,000

Members were informed that the above costs were a very rough estimate at the current time.

Members discussed the importance of any prospective organiser of a petition being aware of the electorate verification number which would affect the number of signatories required to ensure a petition was valid. The Legal Services Manager confirmed that the e-petition scheme was implemented in December 2010 and could also be utilised for the submission of a petition.

RECOMMENDATION

That the report was noted.

3. OFFICER EMPLOYMENT RULES

The Chief Customer and Workforce Services Officer referred to the report previously submitted to the Constitution Committee on 20 January 2011 where Members had suggested further discussion on this issue be referred to a Task and Finish Group of the Committee. It was confirmed that whenever a competitive situation arose for a Chief Officer post, Appointments Panels were always arranged although there may be ring-fencing in place if this was appropriate.

It was noted that the Council's policy on reorganisation provided protection for employees affected by change and this needed to reflect that in some cases when the criteria in that policy was satisfied, employees may have their job changed and be slotted into a particular post. This situation could arise due to the modernisation of their post, the inclusion of new duties and responsibilities or changes to the grading of that post.

Whilst it was recognised that the wording contained within the Constitution could be made clearer, Members were reminded that any changes to the policy which affected employees would necessitate negotiations with Trades Unions and the employees affected by that change.

One of Members' main concerns was that they were not always kept informed of any structural changes affecting senior or chief officers posts and on occasions only found out that an officer had left the authority when they had telephoned to speak to them. Members also felt very strongly that they should be informed of any proposed 'slotting-in' arrangements to allow an opportunity for comments or questions on that arrangement.

The Chief Customer and Workforce Services Officer clarified that in the last few months there had been agreement to delete two chief officer posts from the Regeneration and Neighbourhoods Departmental structure with effect from 1 April 2011. The result of this was that the duties were shared across three other chief officers within that Department with one of them being re-graded as a result of the Local Government Employers (LGE) re-evaluation process. Within the Child and Adult Services Department, one chief officer post had been deleted and the duties of that post shared across three other chief officers with no re-grading necessary. In the Chief Executive's Department, one chief officer post had been removed from the structure due to the majority of the work associated with that post disappearing, with some duties and responsibilities either shared upwards or undertaken in different ways. The Chief Customer and Workforce Services Officer confirmed that none of the above changes to posts or duties had invoked a competitive situation and all the chief officers involved had accepted the additional duties voluntarily therefore enabling the required departmental savings to be achieved. Members felt that on occasions such as the slotting in of chief officers detailed above, an opportunity for Members to engage with the chief officers concerned would be beneficial.

A Member did have concerns that officers could receive additional duties and responsibilities and be slotted into slightly higher graded posts on several occasions which could result in some officers achieving a chief officer post without any interview or engagement with Members if none of the vacancies arising presented a competitive situation. There was also an anxiety that this may result in an officer securing a post with responsibilities above their capability. However, it was noted that any slotting-in of posts was agreed by the Director of the Department who had the responsibility for ensuring the duties of that post were conducted effectively and efficiently. The Chief Customer and Workforce Services Officer recognised the concerns but reassured Members that all posts were assessed as part of an evaluation undertaken by the LGE and compared to similar posts in other local authorities. As part of any restructuring process, Cabinet determined the level of responsibility and duty of posts around the particular structure being considered in conjunction with the advice provided by the Chief Executive or Director of the Department.

In summary it was noted that changes to the practice and procedure be proposed to ensure all Members were notified of any changes to roles and responsibilities of chief officers and allow the chief officers taking on any new responsibility to engage with Members on their new service areas, with an explanation of the service plan for that new area. It was suggested that the relevant Scrutiny Forum may be an appropriate arena for this.

RECOMMENDATION

That a report outlining arrangements for keeping Members informed of changes to chief officer posts and postholders be submitted to the next meeting of the Constitution Committee together with revised wording of the Constitution to clarify that chief officer appointments should always be subject

to an Appointments Panel decision other than when 'slotting in' provisions within the Council's Reorganisation, Redundancy and Redeployment Policy applied.

4. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT

None.

The meeting concluded at 5.23 pm

CHAIR

CONSTITUTION COMMITTEE

25 MARCH 2011



Report of: Chief Solicitor

Subject: BUSINESS REPORT

1. RECORDED VOTES AT COUNCIL

At the meeting of Council on 24 February 2011 (minute 132 refers) Members discussed the option of having recorded votes for all decisions taken at Council. Following the discussion, Council referred the issue to Constitution Committee for further consideration and to enable legal clarification to be provided.

Members were reminded that amendments to the Council Procedure Rules would need to stand adjourned without discussion to the next ordinary meeting of the Council.

General considerations

All decisions to be made and coming before a local authority are required to be decided by a majority of the members present and voting thereon (para 17.1 of the Council Procedure rules). In the case of principal councils the method of voting is not prescribed by statute and the current position is that any member may on request require that the voting be recorded so as to show whether each member present and voting give a vote for or against a question. Currently paragraph 17.4 (ii) of the Council Procedure rules provides that a recorded vote will be taken if one third of the Council so decide..

Meaning of present and voting

Members present at a meeting who do not vote or are prohibited from voting are nevertheless present for purposes of forming the necessary quorum and a bare majority of those who in fact vote is sufficient to pass a resolution even if that number is less than the quorum.

Methods of voting

Most local authorities proceed by taking most votes by show of hands. There is no reason, however, why a vote should not be taking some other

way. A nod of the head for example or by a mechanical device which has been installed in order to expedite the taking of votes

The relevant provisions in the Constitution relating to voting are set out below:-

17 VOTING

17.1 Majority

Unless the Council's Constitution provides otherwise, any matter will be decided by a simple majority of those Members voting and present in the room at the time the question was put.

17.2 Chair's casting vote

If there are equal numbers of votes for and against, the Chair will have a second or casting vote. There will be no restriction on how the Chair chooses to exercise a casting vote.

17.3 Show of hands

Unless it is decided by the Council that a ballot shall be taken under rule 17.4 or rule 17.6(ii)(a), or that a recorded vote shall be taken under rule 17.4, the Chair will take the vote by show of hands, or if there is no dissent, by the affirmation of the meeting.

17.4 Ballot or Recorded vote

i) A ballot shall be taken, if the Council decides, before the vote is taken on any question. The Chair will announce the numerical result of the ballot immediately the result is known.

ii) A recorded vote shall be taken if one third of the Council so decide before the vote is taken on any question. The names of the Members of the Council voting for and against the motion or amendment, or abstaining from voting will be taken down in writing and entered into the minutes.

17.5 Right to require individual vote to be recorded

Where any Member requests it immediately after the vote is taken, there shall be recorded in the minutes whether that Member voted for or against the motion or abstained from voting. When making the request the Member must indicate whether s/he voted for or against the motion or abstained from voting.

17.6 Voting on appointments

i) In a case where a single position is to be filled, the matter shall be determined according to the number of votes cast for each person nominated. If there are more than two people nominated for any position and the majority of votes cast is not in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

ii) In a case where there is more than one identical position to be filled, if there are more nominations than the number of positions to be filled, the Council shall determine to apply either one of the following processes:-

(a) that each appointments be dealt with separately, in which case rule 17.6(i) shall apply,

or

(b) that the appointment shall be dealt with together, in which case the matter shall be determined by ballot, each member being entitled to vote for the same number of nominees as there are appointments to be made. At the conclusion of the ballot, the nominees shall be ranked according to the total votes cast in their favour, there being appointed such number of the highest ranking nominees as equal the number of the appointments to be made

RECOMMENDATION

Members' views are sought.

2. ANNUAL PROPORTIONALITY AND ALLOCATION OF POSITIONS TO INDEPENDENT MEMBERS

At the meeting of Council on 10 February 2011 (minute 124 refers), clarification was sought on the procedure in relation to Independent Members in the nomination process for Council committees and outside body appointments.

As a general rule, all Independent Members who are not part of a political group are approached individually to ascertain if they have any preferences for positions on Council committees or Outside Bodies. Where Independent Members are part of a political group, all requests are submitted through the Group Leader/Co-ordinator. All nominations for positions on Committee seats and outside bodies are co-ordinated by the Democratic Services Team and submitted for consideration by Council. Should any position become available during the year, the same procedure would be followed.

In addition to the above, when nominations are submitted to Council, Members also have the opportunity to submit nominations at the meeting.

RECOMMENDATION

Members give consideration to the above process.

3. OFFICER EMPLOYMENT PROCEDURE RULES

At the Constitution Committee's Task and Finish Group on 20 January 2011 revised wording to the Constitution was considered and discussed in respect to the particular procedure rules relating to the appointment of chief officers.

Two key issues were identified:

- when reorganisation occurs and posts, and their postholders, are allocated additional duties and responsibilities which may result in a change to the grade of the post, and;
- when a vacant post is to be recruited to that a competitive recruitment process takes place as directed by an Appointment Panel determined by Council.

Proposed wording for the Constitution for member consideration is given below.

“Where Council proposes to recruit internally only or internally/externally to a vacant post of Chief Executive, Director or other Chief Officer the Council will establish an Appointments Panel. This will not apply when the role, responsibilities, terms and conditions of an officer covered by the Officer Employment Procedure Rule are revised as a result of organisational change in accordance with the Council’s reorganisation procedures”. [The paragraph would go on to set out the current Appointments Panel procedure.]

Additionally, to address concerns of Members regarding the first key issue above, it is proposed that arrangements will be made for all Elected Members to be briefed on new service arrangements whenever there are revisions to an occupied post which is covered by the Officer Employment Procedure Rule as a result of organisational change in accordance with the Council’s reorganisation procedures.

RECOMMENDATION

Members consider the proposed wording.

4. AMENDMENT TO OUTSIDE BODY APPOINTMENTS – SAFER HARTLEPOOL PARTNERSHIP

The Safer Hartlepool Partnership is listed under Schedule B1 ‘Leadership Bodies and Partnerships’ where the Executive can appoint any Member to the body.

In May 2010 the Executive appointed The Mayor and Councillor Payne and the Council appointed Councillors Ingham and Thomas to the Partnership with the Mayor being appointed to the Partnership Executive.

Changes have been made to the statutory operation of the Partnership and it now operates effectively only as an executive arrangement requiring only the executive appointment of the Mayor. However, this does not mean that back bench Members are excluded from the Partnership’s operation. The Partnership operates a consultative group, known as the Community Safety Forum, to which ALL Members of Council are invited together with representatives from a wide range of stakeholder and partner groups.

Members are then through the Forum involved in the development of the Community Safety Strategy.

The Constitution Committee is therefore requested to note the change to the operation of the Partnership and the consequent change to the Outside Body Appointment under Schedule B1.

RECOMMENDATION

Members note the change.

5. LOCALISM BILL UPDATE

At the Cabinet meeting on 21 March 2011 a briefing on the Bill and its potential impact on the Council was provided by the Assistant Chief Executive. The report is attached at Appendix A.

RECOMMENDATION

To note and discuss

CABINET REPORT

21 March 2011



Report of: Assistant Chief Executive

Subject: LOCALISM BILL

SUMMARY

1. PURPOSE OF REPORT

- 1.1 To brief Cabinet on the content of the Localism Bill and its potential impact on Hartlepool Borough Council.

2. SUMMARY OF CONTENTS

- 2.1 The report provides a breakdown of the following parts, chapters and schedules of the Localism Bill and summarises its potential impact on Hartlepool Borough Council:-

Part 1: General Powers of Local Authorities:

- The General Power of Authorities
- Governance
- Rules on Predetermination
- Abolition of the Standards Board
- Pay Accountability.

Parts 2 and 3: EU Fines and Non Domestic Rates:

- Payment of EU fines
- Amendment of regulations concerning Non Domestic Rates

Part 4: Community Empowerment:

- Referendums
- Council Tax Referendum
- Community Right to Challenge

- Assets of Community Value / Community Right to Bid

Part 5: Planning

- Regional Spatial Strategies
- Infrastructure Planning Commission and power Secretary of State takes the final decision on major infrastructure proposals of national importance
- Community Infrastructure Levy
- Neighbourhood Plans
- Neighbourhood Development Orders

Part 6: Housing

- Abolish the Home Improvement Pack
- Housing Revenue Account system
- Tenure arrangements for social housing tenants
- Meeting needs of homeless people
- Allocation of social housing and ability to move
- Responsibilities of the Tenant Services Authority and the Homes and Communities Agency
- Complaint process for social tenants

2.2 With much of the detail of the Localism Bill will be provided through regulations, order making powers, statutory guidance and requirements on local authorities there is uncertainty about its real impact on the Council. It is, however, clear from the detail of the Bill as it stands that its implementation would potentially require a wide reaching review of the Council's strategies / policies, governance / democratic structures and overall operational practices.

2.3 These changes will include:-

- i) A review of the Council's Constitution if necessary to reflect changes to democratic processes (i.e. the abolition of the Standards Board) -;
- ii) A review of the Council's buildings and land holdings as part of the formulation of a list of 'assets of community value' - (Sections 3.19.9 and 3.22 in the main report);
- iii) A review of the way in which the Council interacts/operates with the community and voluntary sector in the provision of services (i.e. to accommodate the 'community right to bid and challenge') - (Sections 3.19.6 and 3.21 in the main report);
- iv) At an appropriate time establish Council policy in relation to a number of proposals in the Bill such as housing allocations, and Neighbourhood Areas

3. RELEVANCE TO CABINET

- 3.1 The Government has indicated that the content of the Bill will be the way forward for the provision of services. Consideration of the content of the Bill, and the potential impact of the requirements contained within, will better equip the Council in preparing for enactment of the Act in late 2011.

4. TYPE OF DECISION

- 4.1 Non Key

5. DECISION MAKING ROUTE

- 5.1 Cabinet on the 21 March 2011.

6. DECISION(S) REQUIRED

- 6.1 Cabinet are asked to note the report and make comments as they consider appropriate.

Report of: Assistant Chief Executive

Subject: LOCALISM BILL

1. PURPOSE OF REPORT

- 1.1 To brief Cabinet on the content of the Localism Bill and its potential impact on Hartlepool Borough Council.

2. BACKGROUND

- 2.1 The Bill was presented to Parliament on 13 December 2010. On 17 January 2011 the House of Commons debated the main principles of the Bill. The Commons decided that the Bill should be given its Second Reading and sent it to a Public Bill Committee for scrutiny. The Localism Bill Committee is now accepting written evidence. It heard oral evidence on Tuesday 25 January on the first sitting and second sitting and on Thursday 27 January on the third sitting and fourth sitting. It is currently expected to be enacted towards the end of 2011.

- 2.2 The Bill consists of 405 pages, divided into 8 parts, 208 clauses and 24 schedules. Much of the detail of the Bill will be provided through regulations, order making powers, statutory guidance and requirements on local authorities. The Local Government Association has counted 142 such powers. This places considerable power in the hands of the Secretary of State and creates uncertainty about the impact on the Council.

- 2.3 Actions will be mainly reporting on passage of bill and amendments. Full explanatory notes and other documentation can be found here:

<http://www.publications.parliament.uk/pa/cm201011/cmbills/126/en/2011126en.htm>

- 2.4 Section 3 of the report below provides a summary of the Bill's clauses and their potential impact for Hartlepool and the Council.

3. ANALYSIS OF LOCALISM BILL

- 3.1 The sections below summarise the main parts of the Bill providing a brief summary of what each part covers, the main changes that potentially have the greatest impact in Hartlepool and finally a description of other changes that are judged to be of mainly a technical nature.

Part 1: General Powers of Local Authorities

- 3.2 Local government plays a crucial role in the life of the nation. The Government has expressed a commitment to passing new powers, freedoms and flexibility to town halls, with the intention of them being exercised at the lowest practical level, close to the people who are affected by decisions. On this basis, the Localism Bill contains a number of proposals in relation to the general powers of local authorities.

Major Changes

- 3.3 Areas of major change proposed within Part 1 of the Bill are:-

- 3.3.1 The General Power of Authorities: Currently, local authority powers and responsibilities are clearly defined by legislation. The Bill proposes the removal of this definition in order to offer greater flexibility for local authorities through a new “general power of competence” (*Clause 1*). The “general power of competence” will enable local authorities to:-

- i) Operate freely, providing of course that they do not break other laws;
- ii) Legally do anything that an individual can do that is not specifically banned by other laws: they will not, for example, be able to impose new taxes, as other laws make clear they cannot; and
- iii) Work with others in new ways to identify creative/innovative ways of reducing costs and meeting local people’s needs.

- 3.4 Governance: The Bill proposes three permitted forms of governance for local authorities, these being executive arrangements, a committee system or prescribed arrangements (*Clause 10-12, Schedule 2 (9B)*). As part of this:-

- i) Local authorities would be able to move away from a Leader / Cabinet model and return to a committee system, if it is deemed to be an improvement (*Clause 12, Section 9JA*);
- ii) More cities would be given the opportunity to decide whether they want a Mayor (*Clause 12, Section 9NA*). It is intended that council leaders in 12 cities would be made “shadow mayors”, giving local people an insight into what it is like to be governed by a Mayor. Each city will then hold a referendum on local Election Day in May 2012 to decide whether to have an elected Mayor for the long term. People in other areas of the country will be able to use existing laws to call for their own referendum on whether to have an elected mayor; and
- iii) Local authorities where Executive governance arrangements are in place would be able to discharge Executive functions to area committees (the intention of this being to bring decision making to a more local level).

- 3.5 Rules on Predetermination: In parallel with the abolition of the Standards Board, the Government intends to use the Bill to clarify the rules on “predetermination.” In light of concerns that existing rules have reduced the quality of local debate and stifled valid discussion, the Bill indicates that it is

proper for councillors to play an active part in local discussions and should not be liable to legal challenge as a result (*Clause 13*). The intentions of this being to help Councillors better represent their constituents and enrich local democratic debate.

- 3.6 Abolition of the Standards Board: Currently, all local authorities must, by law, have a Standards Committee to oversee the behaviour of their councillors and receive complaints. In light of concerns regarding the effectiveness of this mechanism, the Bill would abolish the Standards Board regime and remove legislation such as the model code of conduct for local authority councillors (*Clause 14*). Each local authority may adopt a voluntary code of conduct for members and it would become a criminal offence for councillors to deliberately withhold or misrepresent a personal interest (*Clauses 16 and 18*).
- 3.7 Pay Accountability: The Bill requires local authorities to publish an annual statement on their pay policy for senior council officers, including the highest salaries, which must be approved by the Council (*Clauses 21-26*).

Other Technical Changes

- 3.8 A number of other changes within the Bill will have an impact on the Council. In relation to 'General Powers of Authorities' (*Clause 2*) a clear boundary will be set for local authorities to act in accordance with statutory limitations or restrictions. Limitations that apply to existing powers that are overlapped by the general power will be applied to the general power (i.e. if an existing power requires a particular procedure to be followed, the same procedure will apply to the use of the general power to do the same thing). In addition to this, restrictions would be put on local authorities in relation to:-
- i) The ability to charge for the provision of a service to a person using the general power, or where they are using an overlapped power (*Clause 4*); and
 - ii) The ability to do things for a commercial purpose using the general power (*Clause 4*). A local authority would not be authorised to trade in a service with a person to whom they are already statutorily obligated to provide and must only trade commercially through a company.
- 3.9 In relation to 'Governance Arrangements' the majority of the Bill's requirements will have little effect on the existing system in Hartlepool, however, the Electoral Commission's ruling that the number of Councillors should be reduced will require changes to be made. *Clauses 10-12, Section 9J* of the Bill will, as previously indicated, allow a local authority to choose to revert back to committee system. Should this be the outcome of any potential referendum, governance arrangements in Hartlepool, and its Constitution, would require a full and extensive review. As part of this consideration would need to be given to the potential appointment of one or more committees to act as overview and scrutiny committee(s). There is, however, no statutory requirement for such authorities to appoint an

overview and scrutiny committee, unlike those authorities that operate Executive arrangements.

- 3.10 On a general basis, in relation to Scrutiny requirements for authorities with executive arrangements, the Bill replaces the relevant provisions in the 2000 Act in full with no changes (although provisions relating to crime and disorder remain in the Police and Justice Act 2006, and health provisions remain in the NHS Act 2006).
- 3.11 In a number of instances, provisions have been made within the Bill to give the Secretary of State specific powers / control mechanisms, of particular interest are:-
- i) The power to prescribe additional permitted governance arrangements and direct a local authority to hold a referendum on whether they should adopt particular governance arrangements (*Clause 10-12, Schedule 2 (9BA)*) ;
 - ii) The power to remove / change statutory provisions that prevent or restrict the use of the 'general power' (*Clause 5*);
 - iii) The power to transfer to the Mayor any function of the public body (*Clause 12, Sections 9HF and 9HG*); and
 - iv) The power to confer by resolution a head of paid service function on an elected mayor (*Clause 12, Section 9HH*).
- 3.12 In addition to the technical changes outlined above, the Bill also repeals the requirement / powers for local authorities to promote democracy (i.e. provide information on how local governance systems work and how people can get involved) (*Clause 27*); make, publish and comply with a scheme for the handling of petitions made to the authority (*Clause 28*) and pilot charge and review waste reduction schemes (*Clause 29*).

Parts 2 and 3: EU Fines and Non Domestic Rates

- 3.13 Part 2 creates a power to recover funds from local authorities and other public authorities in England in order to pay all, or part of, a European Court of Justice ("ECJ") financial sanction imposed for a failure of the United Kingdom to comply with an obligation under the EU treaties. Part 3 contains four provisions in relation to business rates including changes to business rate supplements and non-domestic rates. Most of these changes are relatively minor with limited impact.

Major changes

- 3.14 The major changes include a discretionary power (Clauses 30-34) for a Minister of the Crown to require a local or public authority to pay all, or part of, any financial sanction imposed on the UK by the Court of Justice of the European Union. This requirement is imposed by a Minister issuing an EU

financial sanction notice to a local or public authority, having previously issued a warning notice. The Secretary of State is required to publish a statement of policy which will set out the general principles on how the power will be exercised and amounts determined to which a Minister must have regard. It is impossible to say what impact this will have locally but it clearly imposes an additional financial risk.

Other technical changes

- 3.15 Part 3 introduces various amendments to previous legislation. The Business Rate Supplements Act 2009 is amended (Clause 35). The Business Rate Supplements Act 2009 introduced a mechanism to secure a financial contribution from the business sector to the cost of large scale regeneration / development projects on the basis that local businesses would benefit from the project. The amendment requires all proposals for the imposition of a Business Rate Supplement ("BRS") to be approved by a ballot of all persons and organisations liable to pay the BRS. It is not anticipated that BRS would be used in Hartlepool. These supplements are likely to be used to part fund such projects as the cross London rail link scheme.
- 3.16 The Local Government Finance Act 1988 is to be amended. The limited circumstances in which local authorities can currently give discretionary relief to the payment of nondomestic rates is replaced (Clause 36) with a power to grant relief in any circumstances subject to the condition that, except in the limited circumstances specified, the local authority may only grant relief if it would be reasonable to do so having regard to the interests of council tax payers. Under the current arrangements typically 75% of the cost of discretionary business rate relief awards is borne by central government. There is a financial risk that the government may under these proposals seek to shift the burden of the cost of discretionary relief to the local authority. Such would only become clearer when the detailed statutory regulations to support the new Bill were subsequently laid down.
- 3.17 The Bill also enables the Secretary of State (Clause 37) to make provision for a new small business rate relief scheme which does not require ratepayers to apply for small business rate relief in some or all cases. Finally the Bill provides a power for the Secretary of State to prescribe by regulations conditions for the cancellation of certain backdated non-domestic rates (Clause 38), but only where a property is shown in a local non-domestic rating list compiled on 1st April 2005 as the result of an alteration of the list made after the list was compiled. The regulations are subject to the negative procedure. Under current arrangements businesses must apply for SBRR to the council, however under the new proposals the help would be awarded in accordance with any new national scheme automatically without application. This is to be welcomed by reducing the administrative burden on businesses but adjustments would probably need to be made to the council's IT systems to cope with the change and this may result in some costs being borne by the council. Previously the rates liability for ports was the responsibility of Port Authorities. The government changed the arrangements to bill individual occupiers of port sites and was seeking to

backdate rates charges. After criticism the government is now proposing not to backdate the rates charges. In Hartlepool there is only one small property occupier that is affected by the proposal and this will save them about £2,000. As business rates is billed and collected for the national pool this change will have no financial impact on the council.

Part 4: Community Empowerment

- 3.18 The Localism Bill includes provisions for greater freedom and flexibilities for local government (as detailed earlier in the report). The Bill also emphasises the need to encourage the involvement of voluntary and community groups in the provision of services. In order to achieve this, the Bill aims to pass significant new rights direct to communities and individuals.

Major Changes

- 3.19 Areas of mayor change proposed within Part 1 of the Bill are:-

- 3.19.1 Referendums: Currently, communities can only trigger a local referendum in limited circumstances and on a very limited range of questions. The Localism Bill gives local people the right to bring forward local referendums on particular topics or issues (*Clauses 39-52*). Broadly the conditions under which a local authority must hold a referendum are:-

- i) If a petition is signed by 5% of the electorate (approximately 3,250) within 6 months (*Clause 41*). However, under *Clause 40* an authority may hold a referendum even if the threshold is not met;
- ii) A request from one or more members of an authority (*Clause 42*) subject to a resolution of the authority approving the request (*Clause 43*); or
- iii) If an authority passes a resolution (*Clause 47*).

- 3.19.2 Topics can relate to the 'economic, social or environmental well-being of an area' and whilst the results would not be binding on local authorities, and other public bodies, will be required to take the outcome into account as they make their decisions (*Clause 52*).

- 3.19.3 In relation to the requirement to hold a referendum, the Bill (*Clause 44*) stipulates that it will not be considered inappropriate to hold a local referendum in response to a petition (*Clause 41*) or request from one or more members of an authority (*Clause 41*), on the grounds that the:-

- i) Action taken to promote or oppose the referendum question is likely to lead to contravention of an enactment or a rule of law;
- ii) Matter to which the referendum question relates is not a local matter over which the authority (or its partner authorities) have an influence on, or which affects the authority's area or inhabitants;
- iii) Referendum question relates to a matter specified by order by the Secretary of State; and
- iv) Petition or request is vexatious or abusive.

- 3.19.4 Council Tax Referendum: (*Clause 56, Section 52Z*): The Secretary of State and the House of Commons will agree on a “ceiling” for Council Tax rises. Local authorities (and precepting authorities) that increase their Council Tax levels beyond that ceiling would automatically face a referendum of all registered voters. The outcome of a referendum must be reported to the Secretary of State and where the increase is rejected the authority’s substitute calculations are applied for the financial year (*Section 52ZO*).
- 3.19.5 Where it appears that an authority would be unable to discharge its functions in an effective manner, or meet its financial obligations, unless it sets a council tax increase in excess of the ceiling, the Secretary of State would be able to direct that the referendum provision do not apply for a financial year (*Clause 56, Sections 52ZR to 52ZW*).
- 3.19.6 Community Right to Challenge: The Localism Bill will give voluntary / community groups, charities, parish councils or employees of the authority the right to express an interest in taking over the running of a local service (*Clauses 66 to 70, Section 52Z*).
- 3.19.7 In considering whether to accept or reject an expression of interest (*Clause 69*), consideration would need to be given to whether the social, economic or environmental well-being of the authority’s area would be promoted or improved by the proposal, or the potential procurement exercise which would have to the undertaken should an expression of interest be accepted (*Clause 69*). An authority may, with the agreement of the relevant body, modify an expression of interest in cases where it is felt that it would not otherwise be capable of acceptance (*Clause 69*). An expression of interest could only be rejected on one or more grounds to be specified by the Secretary of State by regulations (*Clause 69*). Details of the grounds for refusal are not yet known.
- 3.19.8 A time period can be set for the submission of expressions of interest. However, where no period is specified an expression of interest may be submitted at any time (*Clause 67*).
- 3.19.9 Assets of Community Value / Community Right to Bid: Proposals within the Localism Bill will require local authorities to maintain and publish a list of buildings / land in its area that is of community value (*Clause 71 and 78*). This list will be the equivalent of ‘listed building’ status.
- 3.19.10 In addition to the land / buildings included by the Council (as specified in appropriate regulations) individuals, parish councils and community groups will be able to nominate assets of important to them for inclusion as an ‘asset of community value’ (*Clause 73*). These assets would be listed for up to 5 years (although this could be amended by the Secretary of State) with the option for the owner of the asset to ask for its inclusion to be reviewed at any time (*Clause 75*).
- 3.19.11 An implication of being included as an ‘asset of community value’ would be that Council approval would be needed before they could be disposed of by

their owner (*Clauses 79 to 81*). In addition to this, in instances where assets of community value come up for sale, or change ownership, community groups would be given the opportunity to develop a bid and raise the money to buy the asset when it came on the open market (*Clause 79*).

Other Technical Changes

- 3.20 In addition to the main changes identified above, the proposals contained within the Bill will raise a number of technical questions / implications. In terms of 'local referendums', the role of the Overview and Scrutiny function would probably be limited, however, there could be a role in investigating issues that could be subject to referenda, or where a referendum is planned. There could also be scope to link up issues of particular public concern which might be subject to referenda through the use of Councillor Call's for Action, or Call-In's where they relate to proposed council decisions.
- 3.21 In relation to the 'community right to challenge', there is the potential for significant Scrutiny. While scrutiny cannot become involved in detailed contract management, an investigation of these issues could be a part of a wider review of council procurement. Scrutiny could also help the authority to develop the criteria, based on social, economic and environmental considerations, used to come to a judgment on accepting expressions of interest.
- 3.22 In terms of the 'community right to bid', work has been undertaken with community groups in relation to how they use buildings, favourable lease arrangements and sale / transfers and the Government's Community Asset Transfer initiative has been embraced (e.g. Transfer of People's Centre / Hartlepool Carer's Premises). There has, however, so far been mixed success with the transfer of assets, i.e. the People's Centre and Phoenix Centre. In implementing this element of the Bill, consideration will need to be given to the:-
- i) Importance of viable / sustainable business cases in the decision to transfer buildings (including surplus Community Centres);
 - ii) Need to consider how the Councils maintenance liabilities in relation to any buildings it may transfer could be dealt with;
 - iii) Need for a robust consultation in relation to the bid / transfer policy in order to clearly identify the required outcomes, evaluate bids and monitor delivery;
 - iv) Potential for delays, and a possible advantage for the private sector or a well geared voluntary and community sector (VCS), as part of the bid process, given that it will take longer for Community Groups to 'gear up' for the provision of business cases;
 - v) Practical, legal and financial issues for the Community and the Council to ensure that both parties mitigate risk and engage in sustainable solutions. A draft Community Asset Transfer Policy is already in the process of being developed in order to respond to the expressions of interest already received from the VCS in relation to Community Centres that could potentially be "surplus";

- vi) Need where assets / services are linked for procurement exercises, development of commissioning / capability monitoring models and a clear definition of accountability and responsibilities; and
 - vii) Need to take in to consideration the “Village Green” and “Open Space” policies already in place and the lessons learned in their development / implementation.
- 3.23 In relation to ‘assets of community value’, the Council is already in the process of starting a list, including a request for nominations from the Community. In enacting this section of the Bill, potential issues could include:-
- i) Potential tensions between groups and individuals in the Community who have differing views on assets. Whilst it will be relatively easy to generate nominations, the establishment / implementation of a clear criteria based protocol for inclusion on the list will be essential;
 - ii) The potential risks to the Council’s regeneration programme in that it could slow / stop some schemes, especially if part of an asset backed vehicle;
 - iii) The need to clearly identify how both Council and non-Council assets are dealt with
 - iv) The need to include in planning, development and disposal policies mechanisms (including consultations) to deal with potential proposals for the disposal / change of ownership or use of buildings / properties on the ‘assets of community value’ list; and
 - v) The potential effect of the inclusion of properties / land on the ‘assets of community value’ list in delaying or stopping future regeneration / development / capital receipts.

Part 5: Planning

- 3.24 Part 5 of the Bill deals with planning matters. A wide range of measures are being introduced many of which are of a technical nature. In some cases the full local impact will only become clearer when detailed guidance and regulations are issued. A number of measures appear more relevant to the South than the North east.

Major changes

- 3.25 The major changes include abolition of Regional Spatial Strategies (Clause 89) and a new duty to cooperate on council and other key partners (Clause 90). From a purely local perspective, this places greater emphasis on the local planning policy process, the Local Development Framework, (LDF) empowering local authorities and giving them greater control when setting local planning policies. Arguably the Council already undertakes the duty to cooperate especially through the development of the Core Strategy, however, as it is the intention of the Secretary of State to issue guidance on this duty, it may be either more prescriptive or perhaps be targeted towards newly created sub-regional Local Economic Partnerships (LEPs).

- 3.26 The Bill allows for areas to become designated as ‘Neighbourhood Areas’ (Clauses 96-101) where a request is submitted via a qualifying body such as a Parish Council or a Neighbourhood Forum. These bodies can initiate the process to create Neighbourhood Development Orders for their area which may relate to specific proposed developments, or they can create Neighbourhood Development Plans. Neighbourhood Development Plans would become the development plan document for that qualifying body area, e.g. Parish Council or Neighbourhood Forum area. It is difficult to guess what the impact might be in Hartlepool, but it could be a tool which could be used to extend neighbourhood planning out into the rural areas to the west of the town. On the negative side, this could lead to significant challenges to the emerging Core Strategy and it is an area the Council will need to keep an eye on as the Council will be required to support areas initiating the ‘right’ which may bring with it financial and staffing burdens, not least because this could involve staging and resourcing local referenda and/or the resourcing of processes to develop Neighbourhood Development Plans.

Other technical changes

- 3.27 More technical changes include amendments of requirements to the process of producing the Local Development Scheme (Clause 91), the adoption and withdrawal of planning documents (Clause 92), the reporting of monitoring information (Clause 93) and the administration of the administration of the Community Infrastructure Levy (Clauses 94,95). A requirement on developers to engage in pre application consultation on major schemes is included (Clause 102).
- 3.28 The Bill strengthens planning enforcement powers (Clauses 103-106) in a number of respects, most notably allowing planning authorities to remove display structures in their area (Clause 106) which, in their opinion, are used for the display of illegal advertisements. These powers could assist the Council in dealing with persistent fly posting, graffiti, hoardings, etc.
- 3.29 Finally the Bill amends arrangements for dealing with nationally significant infrastructure projects. The Bill (Clauses S107-118) provides for the abolition of the Infrastructure Planning Commission (IPC) and the transfer of its functions to the Secretary of State. The IPC is the body that has provided a ‘fast-track’ process for major infrastructure projects and ensures the Parliamentary approval of National Policy Statements (NPS) before they can be designated. The Government has taken the view that the current process allows for an unaccountable body to make decisions of national significance and that in future, these decisions should be taken by Minister. In addition, to avoid the need for Judicial Review, the Government wishes to ensure that NPS are as robust as possible and is seeking that they be ratified by Parliament giving them democratic legitimacy. The impact at a local level remains unclear, though potential projects related to the port and the nuclear power station may have fallen to the IPC and therefore may be dealt with under the new system.

Part 6 Housing

- 3.30 Part 6 of the Bill deals with housing matters. A number of changes are being proposed and in a number of cases the full impact for Hartlepool will only become clearer when more detailed guidance is issued. As the Council has transferred its council housing stock to Housing Hartlepool some of the changes will have no impact on the authority.

Major changes

- 3.31 The major changes include making reforms to legislation on the allocation of social housing, giving greater freedoms to local authorities to determine the classes of persons qualifying to be allocated housing (Clauses 121-123). Whilst these changes have the potential to have a significant impact on Hartlepool this will only be the case if the Council chose to change the current arrangements.
- 3.32 The other major change will enable the Council to fully discharge the main homelessness duty to secure accommodation with an offer of suitable accommodation from a private landlord, without requiring the applicant's agreement (Clauses 124 and 125).
- 3.33 Other changes that could have had major implications, such as the abolition of the Housing Revenue Account (Clauses 140-147) will have no impact for the Council, as previously stated, due to the fact that the Council's housing stock has previously been transferred to Housing Hartlepool.

Other technical changes

- 3.34 There are a number of other changes that will not have such a significant impact on the Council. These changes include a duty on every housing authority to publish a tenancy strategy (Clauses 126-129), giving local authorities the powers to offer flexible tenancies to new social tenants (Clauses 130-131), and changes relating to affordable rents, such as mutual exchanges (Clauses 132-139) but this is legally aimed at the issue of affordability in the South East of England so the impact could be limited for the authority.
- 3.35 The bill also makes provisions for the transfer of functions from the Office for Tenants and Social Landlords (TSA) to the Homes and Community Agency (HCA) (Clauses 150-151) and makes changes to how tenants can make complaints (Clauses 153-155) by stating that all future complaints will be dealt with via the Housing Ombudsman. The former may have implications for the Council via a new Strategic Policy on Tenancies and included in the Housing Strategy for the Council. The latter will have little, or no, impact on the Council.
- 3.36 The bill (Clause 156) confirms the abolition of Home Information Packs (HIPs) although again there would be little or no impact on the authority.

4. IMPLEMENTATION ON THE REQUIREMENTS OF THE BILL LOCALLY

- 4.1 4.1 While much of the detail of the Localism Bill will be provided through regulations, order making powers, statutory guidance and requirements on local authorities there is uncertainty about its real impact on the Council. It is, however, clear from the detail of the Bill as it stands that its implementation would potentially require a wide reaching review of the Councils strategies / policies, governance / democratic structures and overall operational practices.
- 4.2 Details of technical changes / the impact of implementation if each part of the Bill can be found in Section 3 of the Bill. These changes will include:-
- i) A review of the Councils Constitution to reflect changes to democratic processes (i.e. a potential return to a Committee system and abolition of the Standards Board) - (Sections 3.4 and 3.9 above);
 - ii) A review of the Councils buildings and land holdings as part of the formulation of a list of 'assets of community value' - (Sections 3.19.9 and 3.22 above);
 - iii) A review of the way in which the Council interacts/operates with the community and voluntary sector in the provision of services (i.e. to accommodate the 'community right to bid and challenge') - (Sections 3.19.6 and 3.21 above);
 - iv) At an appropriate time establish Council policy in relation to a number of proposals in the Bill such as housing allocations, and Neighbourhood Areas

5. CONCLUSION

- 5.1 In summary, the Government has indicated that the intention of the Bill will be to provide:-

New freedoms and flexibilities for local government

- i) Give local authorities the formal legal ability and greater confidence to get on with the job of responding to what local people want;
- ii) Cut red tape to enable councillors everywhere to play a full and active part in local life without fear of legal challenge;
- iii) Encourage a new generation of powerful leaders with the potential to raise the profile of English cities, strengthen local democracy and boost economic growth; and
- iv) Reform the governance of London so that more power lies in the hands of elected representatives who are democratically accountable to London's citizens.

New rights and powers for local communities

- i) Make it easier for local people to take over the amenities they love and keep them part of local life;
- ii) Ensure that local social enterprises, volunteers and community groups with a bright idea for improving local services get a chance to change how things are done;
- iii) Give people a new way to voice their opinions on any local issue close to their heart; and
- iv) Enable local residents to call local authorities to account for the careful management of taxpayers' money.

Reform to make the planning system clearer, more democratic and more effective

- i) Place significantly more influence in the hands of local people over issues that make a big difference to their lives;
- ii) Provide appropriate support and recognition to communities who welcome new development;
- iii) Reduce red tape, making it easier for authorities to get on with the job of working with local people to draw up a vision for their area's future; and
- iv) Reinforce the democratic nature of the planning system – passing power from bodies not directly answerable to the public, to democratically accountable Ministers.

Reform to ensure that decisions about housing are taken locally

- i) Enable local authorities to make their own decisions to adapt housing provision to local needs, and make the system fairer and more effective;
- ii) Give local authorities more control over the funding of social housing, helping them to plan for the long term; and
- iii) Give people who live in social housing new ways of holding their landlords to account, and make it easier for them to move.

5.2 The Localism Bill starts to set out the Coalition Government's view of the future shape and direction for local government. The range of issues addressed is wide and they range from the strategic, for example the "general power of competence" to the very technical, for example changes to local government finance regulations. For Hartlepool the proposals of most immediate interest are likely to be from Part 1 which addresses council governance and Part 4, the proposals on community empowerment. The Bill's likely longer term impact and significance needs to be assessed alongside Coalition Government policy to address the deficit and other policy initiatives relating to the public sector. Much of the Council's and local government's focus in recent months has been on dealing with the immediate budget decisions for 2011/12 and now increasingly preparations for the budget setting for the 3 further years in the Spending Review. In parallel the Coalition Government is developing its strategy and policies in relation to local government and the public sector generally.

5.3 The level of detail and range of issues addressed in the Bill make its longer term significance difficult to discern particularly as much of the detail will be

created by powers given to ministers to create regulation and guidance. In addition the proposals need to be viewed alongside other legislation and policy initiatives of the Coalition Government. These include:

- The Big Society approach
- The White Paper on Public Service Reform expected to be published shortly and which could include an automatic right for the private sector to bid for the bulk of public work (the White Paper will draw on the Green Paper Modernising Commissioning: Increasing the role of charities, social enterprises, mutuals and cooperatives in public service delivery published in December 2010)
- The review of local Government finance scheduled for later this year
- Consideration of further reform of public sector pensions and protection of employee terms and conditions on transfer to the private sector
- The Health and Social Care Bill, in particular the transfer of public health function to local government and new performance frameworks for adult social care and public health

5.4 In this broader context many aspects of the Localism Bill may not on their own prove particularly significant. However taken together the Localism Bill and other policy developments underway are likely to mean that in 3 to 4 years time Hartlepool Council and local government in general will look very different from its current shape although much of the need it seeks to address will remain. Effective political and managerial leadership of the Council will be essential during what is likely to be a period of rapid and unprecedented change.

6. RECOMMENDATIONS

5.1 Cabinet are asked to note the report and make comments as they consider appropriate.

6. BACKGROUND PAPERS

The following background papers were used in preparation of this report:-

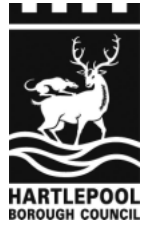
- i) The Localism Bill - Volume I and Volume II;
- ii) Decentralisation and the Localism Bill: an essential guide – HM Government; and
- iii) A Plain English Guide to the Localism Bill – Department for Communities and Local Government.

7. CONTACT OFFICER

Andrew Atkin, Assistant Chief Executive

CONSTITUTION COMMITTEE

25 MARCH 2011



Report of: Assistant Director (Resources) and Chief Solicitor

Subject: PROPOSED AMENDMENTS TO CONTRACT
PROCEDURE RULES

1. PURPOSE OF REPORT

- 1.1 To seek Constitution Committee endorsement of proposed changes to the Contract Procedure Rules (CPRs) and submission of those changes to Council for approval and implementation.

2. BACKGROUND

- 2.1 The Council's current Commissioning and Procurement Strategy contains a number of initiatives which are designed to improve the Council's procurement practices for both internal practitioners as well as the Council's supply base.
- 2.2 Successful implementation of these initiatives will only be possible if appropriate changes can be made to the Council's CPR's. Details of what these required changes are and the initiatives they are designed to support are provided in this report.
- 2.3 The following paragraphs outline the initiatives which require support through amendments to the CPR's:
- i) **Changes to the current quotation/tender thresholds** – There has been work carried out on a regional basis to harmonise, as far as possible, the quotation/tender thresholds used by the various north-east councils. The benefits and risks of increasing quotation thresholds are provided later in this report.
 - ii) **Supporting local businesses** – The planned introduction of IT based quotation solutions provides the opportunity to support local businesses more effectively than can be achieved currently. The adoption of a requirement to offer opportunities to local businesses in the CPR's will ensure that quotation processes are configured in such a way as to ensure that this occurs.

- iii) **Quotation gathering processes** - To support the raising of tender thresholds as described in paragraph i) above, it will be necessary to introduce robust processes to support the quotation gathering activity which occurs for any sub-tender level procurement. IT based solutions are available however the introduction of these will require that certain activities are mandated. The inclusion of such mandates will be hugely important in ensuring that all procurement activities are carried out in an appropriate and proportional manner.
- iv) **Collaborative procurement** – The current CPR's refer to the use of existing collaborative contracts, however the wording is such that it doesn't allow procurers to easily make use of the wide range of collaborative procurement arrangements which currently exist and which have been developed to provide efficient options in terms of process and value for money.
- v) **Completion/review of contract documents** – There are a number of contract documents developed by Council staff which have not been issued to the Legal Department for review and completion. In order to ensure that all supply, service and works contracts to which Hartlepool Borough Council are a party are appropriately drafted and executed it is essential that this documentation is routed through the appropriate department. There is currently no requirement in the CPR's that such a referral take place and as a result this is an ideal opportunity to implement such a requirement.
- vi) **Various clarification issues** – Provide confirmation of and changes to procedures to improve procurement processes.

3. THE CONSULTATION PROCESS

- 3.1 These proposals have been drawn up in conjunction with a CPR subgroup, formed from members of all Council Departments. Following this the proposals were documented and presented to a number of committee's and groups for comment and debate.
- 3.2 The following committees/groups have been consulted on these changes and their comments taken into account as part of this final drafting process:

Contract Procedure Rules subgroup
 Corporate Procurement Group
 Corporate Management Team Support Group
 Corporate Management Team
 Senior Management Teams
 Contract Scrutiny Committee
 Portfolio Holder

4. THE PROPOSED CHANGES

The finalised CPRs are attached for information, with all additions underlined and all deletions struck out.

As the CPRs are “Contract Standing Orders” within the Constitution, they are a non-executive function and therefore need to be considered by the Constitution Committee. Constitution Committee’s views are welcomed and if the proposals are acceptable they would then go to the next meeting of Council for endorsement with the Committees views incorporated.

5. RECOMMENDATIONS

- 5.1 That the Constitution Committee considers the proposed amendments to the Contract Procedure Rules.
- 5.2 That the Constitution Committee endorses the submission of the draft Contract Procedure Rules with the Committee’s views incorporated, to Council for final approval and implementation.

Part 4 - Rules of Procedure

Rules of Procedure

Access to Information Procedure Rules.....	5
Budget and Policy Framework Procedure Rules.....	19

Contract Procedure Rules.....	27
-------------------------------	----

Proposed changes relate to the Contract Procedure Rules only – no changes are proposed to any other section of the Rules of Procedure

Council Procedure Rules	53
Executive Procedure Rules.....	87
Financial Procedure Rules	93
Officer Employment Procedure Rules.....	123
Overview and Scrutiny Procedure Rules.....	129

Contract Procedure Rules

CONTENTS

Rules

Introduction	29
Part A – Scope of Contract Procedure Rules	35
1. Application of Contract Procedure Rules	
Part B – Selected Tenderers Lists	36
2. Compilation of Selected Tenderers Lists	
Part C – Informal / Quotations Procedures	37
3. Informal Procedure - Contracts under £5000 <u>£2,000</u> Informal Quotations Procedure – Works contracts £5,000 – £20,000	
4. Formal Quotations Procedure - Works Contracts £5,000 <u>£2,000</u> - £50,000 <u>£100,000</u> Goods, Materials or Services Contracts £5,000 <u>£2,000</u> - £25,000 <u>£60,000</u> (In-House bid contracts £5,000 <u>£2,000</u> - £100,000).	
Part D – Best Price Procedures	38
5. Works Contracts over £50,000 <u>£100,000</u> Goods, Materials or Services Contracts over £25,000 <u>£60,000</u> (In-House bid contracts over £100,000).	
6. Public Notice provisions	
7. Selected tenderers provisions	
8. Acceptance of tender	
Part E – Price/Performance Procedures	40
10. Price/Performance Contracts Provisions	
Part F – Partnering Contracts Procedures	41
11. Partnering Contracts Provisions	
Part G – General Provisions	42
12. Opening of Tenders	
13. Tenders to be returned in sealed envelopes	
14. Agreed Marking Mechanism	
15. Contracts to be in writing	

- 16. Liquidated Damages and Performance Bonds
- 17. Other remedies for breach
- 18. British Standards
- 19. Prevention of Corruption
- 20. Vetting and Signature of contracts
- 21. Tenderers withdrawal
- 22. Post contract variations and negotiations
- 23. Nominated sub-contractors

Part H – Glossary 49

- 24. Interpretation

CONTRACT PROCEDURE RULES

INTRODUCTION

Contracts covered by the rules

The following procedure rules apply to contracts entered into by the Council whether under authority exercised by the Executive (in respect of executive functions), Full Council (in respect of non-executive functions), a committee of either the Executive or the Council or an officer. The contracts to which they are applicable are contracts for the acquisition of goods, materials or services or for the execution of works, with certain exceptions set out in the rules.

The rules do not represent a total procedure package – rather they stipulate a number of requirements that must be complied with within any contract letting procedures adopted. For further details of the procedures to be followed in the procurement of goods and services, reference should be made to the Procurement Guidance (*Officers Guide to Procurement*), which gives a wider explanation of the Council's procurement policies and practices. Where significant expenditure is contemplated, the rules establish requirements in the context of 3 contract-letting concepts –

- Best Price basis - lowest price where price to be paid by Council; highest price where price to be received by Council;
- Price/Performance – contractor to be selected on basis of combination of price and quality, buyer of goods/services to be selected on basis of combination of price and benefits to Hartlepool residents
- Partnering – contract includes:
 - establishment of partnering team
 - pricing policy
 - open-book policy
 - savings/benefits sharing formula.

Central Purchasing Contracts

Where goods or services are to be acquired of a nature in respect of which a central contract has been established by the North East Purchasing Organisation (NEPO), the Council's Procurement Unit, or is a contract designated as the Council's preferred channel, such goods and services will be purchased through that contract unless the Chief Officer, following consultation with the Head of Procurement, Assistant Director (Resources), Regeneration and Neighbourhoods Department considers a special exemption can be made. Goods or services for which the Council has; accepted a tender submitted to NEPO or the Council's Procurement Unit or, where they can be secured through a contract which has been designated as the Council's preferred channel, are outside the scope of the Contract

See
Note 1

Procedure Rules and will be obtained from the relevant supplier in accordance with the ~~NEPO~~ applicable procedures.

Select Lists

Where goods, services or works are to be acquired of a nature in respect of which a select list has been established or adopted by the Council, such goods, services or works will be purchased through that arrangement unless the Chief Officer, following consultation with the Head of Procurement, Assistant Director (Resources), Regeneration and Neighbourhoods Department considers a special exemption can be made. Goods or services for which the Council has accepted a tender submitted via a Select list are outside the scope of the Contract Procedure Rules and will be obtained from the relevant supplier in accordance with the procedures defined for using the Select List.

Strategic Partnerships

Where goods or services are to be acquired of a nature in respect of which the Council has established a Strategic Partnership with another provider, such goods and services will be purchased through that Strategic Partnership. Only in exceptional circumstances and following consultation with the Head of Procurement, Assistant Director (Resources), Regeneration and Neighbourhoods Department and the Chief Solicitor, will exemptions be made.

The rules and an In-house Provider

These rules do not apply when a decision is taken to have work executed by an in-house provider such as Neighbourhood Services, without competitive process. In such circumstances, the provider being a department or division of the Council, there is no contract as it is a fundamental principle of contract law that a party cannot contract with itself. Even where a competitive process has taken place and the work is awarded to the in-house provider on the basis of their bid, there is no contract.

This has the consequence that, when it is necessary for the in-house provider to have some part of the work done by an outside contractor, the contract with the outside contractor is a 'contract', rather than a 'sub-contract' (requiring specific contract provision regulating the relationship between the in-house provider and the external contractor which is outside the scope of this commentary). For the purposes of their bid as part of a competitive process, the in-house provider may wish to include elements of cost for an external contractor and provision is made for a higher limit for informal/quotation procedures to be followed in such circumstances. Costs established through these informal/quotation/tender procedures can then be used as the basis of the contract with the external contractor without further tendering procedures being followed. In these rules, such contracts are referred to as "In-house Bid Contracts".

Criteria for selection of Price/Performance and Partnering Contracts

Contracts will be of the Best Price type unless a decision has been taken that either a Price/performance contract or a Partnering contract is to be established. Considerations which will inform such a decision are likely to include: -

- Value of contract
- Nature of project - e.g. is the work involved of a specialist nature where the contractor's techniques, design talents, contacts with government departments, national agencies etc are likely to be material to any choice
- Frequency of need for services/work
- Importance of adherence to budget
- Client input throughout the project

Roles and Responsibilities

Responsibility for decision making and action under contract letting procedures and for monitoring of the application of the contract procedures will be spread over the Council, in the interests of both efficiency and probity. Statutory guidance indicates that there should be delegated to officers greater responsibility for discharge of executive functions.

The role of Members

The Executive or the Council

Most contracts will relate to executive functions and regulations provided that those functions may only be discharged by the Executive (either full Cabinet or an individual Portfolio Holder, as the case may be). In respect of contracts relating to their executive functions, the Executive will have the responsibility:

- To determine the project including general aims of the construction, or service to be acquired
- To establish the level of expenditure for the project
- To approve lists of selected tenderers prepared under Rule 2
- To determine the nature of the contract – best price, price/performance or partnering
- To determine the Price/Quality ratio in respect of a price/performance Contract or a Partnering Contract or other basis of assessment
- To determine the Budget Price in respect of a Partnering Contract

- To waive any element of the Contract Procedure Rules in the case of an individual contract or class or group of contracts

Occasionally, the necessity for a contract may arise in connection with non-executive functions. In such a case the roles set out above, to the extent that they may be relevant, will be discharged by the Council.

In preparing a report inviting a decision to enter into a contract, the responsible officer should structure the report so as to cover the matters which require decision as set out above thus ensuring that the nature of the action to be taken by officers following the decision is clear.

The Contract Scrutiny Committee

In order to ensure probity and transparency in the award of contracts, the Contract Scrutiny Committee will participate in the letting of contracts by monitoring their compliance with the Contract Procedure Rules at a number of stages, both during and after the completion of the contract procedure. In respect of any contract the Panel will have the responsibility:

- To receive and examine tenderers lists
- To open tenders
- To receive and examine reports on the outcome of price/performance and partnering contracts letting procedures

The role of Officers - The Chief Officer/Officer Team

The Chief Officer/Officer Team will have the responsibility:

- To prepare the specification
- To approve use of selected tendering list or, if none available, to determine the tendering list for the contract
- To advertise/issue invitations for expressions of interest
- To determine a marking mechanism for each contract or for categories of contracts
- To select contractors for participation in Price/performance and Partnering contracts procedures
- To interview contractors
- To evaluate proposals & contractors and allocate scores
- To approve the successful contractor

It is presumed that officers responsible for procuring goods, works and services under these rules are familiar with the powers delegated to officers under the Council's delegation scheme, at least to the extent that those powers enable an officer to take action without a specific authority from Members. Where an officer is given power to take action (e.g. to incur expenditure for which budgetary provision has been made), that power includes the power to enter into any contract necessary to secure the goods, works or services involved. In the interests of transparency, the requirement for tenders to be opened by the Contract Scrutiny Committee applies to contracts undertaken by an officer under delegated powers, but the responsible officer, rather than the Chief Solicitor would sign such a contract.

Electronic Procurement (e-Procurement)

The Council's E-procurement Strategy requires that whenever possible procurement shall be carried out electronically. All procurement carried out, on any e-procurement system approved by the Chief Solicitor and the Head of Procurement, Assistant Director (Resources), Regeneration and Neighbourhoods, is subject to these Rules.

General

In the event of conflict between this Introduction and the following Contract Procedure Rules, the latter shall prevail

These rules are made in pursuance of Section 135 of the Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.

PART A - SCOPE OF CONTRACT PROCEDURE RULES

1 Application of Contract Procedure Rules

- i) These rules apply to every contract for the supply of goods, materials or services or for the execution of works, so far as they are relevant to a contract of the type determined by the Executive or the Council (as the case may be), except as provided in (ii) below.
- ii) With the exception of (vii) below, these rules do not apply to contracts with professional persons or contractors for the execution of works or the provision of services in which the professional knowledge and skill of these persons or contractors is of the primary importance or where the contract is for the provision of caring services to children or vulnerable persons.
- iii) No exception from any of the rules shall be made otherwise than by direction of the Executive or the Council or in any case of urgency, the Chief Officer after consultation with the Monitoring

Officer. A record of any exception from any of the provisions of these procedure rules shall be reported to the Contract Scrutiny Committee at their next meeting, and shall specify the case or urgency by which the exception shall have been justified.

- iv) For the purposes of any financial limit referred to in the rules, if the application of the rules to a particular contract cannot be identified until after opening of any tender, the value of the contract shall be as estimated by the Chief Officer.
- v) Reference in these rules to any decision, authority or action of the Council, the Executive, the Contract Scrutiny Committee or an officer shall be deemed to include reference to a decision approval or action of the responsible body or officer prior to as well as after the adoption of these rules.
- vi) The letting of any contract shall also comply with any legislation or regulations relevant to the contract, Health and Safety Regulations, the European Directive on public procurement, the Council's Financial Regulations and the Council's Commissioning and Procurement Strategy.
- vii) In respect of any contract to which, for whatever reason, the procedures set out in these rules do not apply, there shall be followed a procedure which:
 - has been determined and recorded prior to its commencement
 - ensures a level of competition consistent with the nature and value of the contract
 - is transparent and auditable
 - provides value for money, and
 - records the reasons for choosing the successful contractor

PART B - SELECTED TENDERERS LISTS

2 Compilation of Selected Tenderers Lists

- i) This rule applies where a decision has been made that a list shall be kept of persons to be invited to tender for contracts for the supply of goods, materials or services of specified categories, values or amounts, or for the execution of specified categories of work and such a list is not to be compiled in accordance with the Construction line procedure formulated by or on behalf of the Department of Trade and Industry

- ii) The list shall include at least eight wherever possible persons and shall:
 - be approved by the Executive and (subject to paragraph iv below) be maintained on behalf of the Executive by the Chief Officer;
 - contain the names of all persons who wish to be included in it and are approved by the Executive or Chief Officer/Head of Department, subject to no persons being included until the appropriate technical officer is satisfied that they have the capacity to undertake the contracts envisaged, the Chief Customer and Workforce Services Officer is satisfied that they have adequate Health and Safety arrangements and the Chief Finance Officer is satisfied that they are financially sound; and
 - indicate whether a person whose name is included in it is approved for contracts for all or only some of the specified values or amounts of categories.
- iii) At least six weeks before the list is first compiled, notices inviting applications for inclusion in it shall be published:
 - in one or more local newspapers circulating in the district,
 - on the procurement pages of the Council's website,
 - on the Government Opportunities Portal - Supply2.gov.uk.
 - and in one or more newspapers or journals circulating among such persons as undertake contracts of the specified values or amounts or categories.
- iv) The list may be amended by the appropriate Chief Officer as required from time to time and shall be reviewed as follows:
 - Review to be carried out at intervals not exceeding 4 years, where an update of the list is carried out and notices inviting applications for inclusion in the list shall be published in the manner provided by paragraph (iii) of this standing order.
 - Update to be carried out at intervals not exceeding 2 years, where each person whose name appears in the list shall be asked whether s/he wishes his/her name to remain therein.

Any such amendment or update shall be reported to the Executive. Any such review shall be presented to the Executive for approval and then reported to the Contract Scrutiny Committee.

PART C - INFORMAL / QUOTATION PROCEDURES

NOTE: All quotations referred to in sections 3 and 4 below are to be sought from pre-determined frameworks, where such arrangements exist. Where such arrangements do not exist, a minimum of two local suppliers (where available) must be invited to submit a quotation.

See
Note 2

3 Informal Procedure - Contracts under ~~£5,000~~ £2,000

For a contract for less than ~~£5,000~~ £2,000, reasonable enquiries shall be made to determine that the price is fair and reasonable.

See
Note 3

~~Informal Quotations Procedure – Works contracts £5,000 – £20,000~~

~~For a contract for the execution of work over £5,000 and up to £20,000 three quotations shall wherever possible be obtained.~~

4 Formal Quotations Procedure – Works contracts ~~£5,000 £2,000~~ - ~~£50,000~~ £100,000 Goods materials or Services Contracts ~~£5,000~~ £2,000 - ~~£25,000~~ £60,000 (In-house bid contracts ~~£5,000~~ £2,000 - £100,000)

In respect of contracts:

- ~ for the execution of work over £2,000 and up to £100,000 (for In-house bid contracts see Introduction to these Contract Procedure Rules); or
- for the supply of goods materials or services over £2000 and up to ~~£25,000~~ £60,000 (£100,000 for In-house bid contracts)

at least three ~~written~~ documented quotations shall wherever possible be obtained. All quotations are to be secured using the Council's prescribed system and process of quotation gathering, specific details of which are provided in the Council document 'Officer's Guide to Procurement'.

See
Note 4

PART D - BEST PRICE PROCEDURES

5 Works contracts over ~~£50,000~~ £100,000 Goods materials or Services Contracts over ~~£25,000~~ £60,000 (In-house bid contracts over £100,000)

See
Note 3

- i) Except for contracts described in Rule 6(ii), no contracts which exceed ~~£50,000~~ £100,000 (~~£100,000 in the case of an in-house bid contract~~) in value or amount for the execution of any work, or ~~£25,000~~ £60,000 (£100,000 in the case of an In-house bid contract) in value or amount for the supply of goods, materials or services shall be made unless public notice has been given in accordance with the Public Notice provisions (see Rule7).

- ii) Rule 6(i) does not apply to contracts which have been determined should be let under the Selected Tenderer provisions (see Rule8) or which relate to the following matters: -

(a) Purchase by auction;

(b) Work to be executed, or goods materials or services to be purchased, which are a matter of urgency;

(c) The work to be executed or the goods, materials or services to be supplied consist of repairs to or parts for existing machinery or plant;

(d) The goods, materials or services to be purchased are such that a substantial proportion of the price is likely to be attributable to haulage;

(e) The purchase of goods, materials or services which are obtainable only from a limited number of contractors, but in such case a reasonable number of contractors shall be invited to submit tenders.

(f) Purchase or repair of patented or proprietary article or articles sold only at fixed price;

(g) The goods, materials or services to be purchased are such that effective competition is prevented by government control;

(h) The prices of the goods, materials or services to be purchased are controlled by a trade organisation or for other reasons there would be no genuine competition.

7 Public Notice provisions

- i) At least twenty eight days public notice shall be given
- in one or more local newspapers circulating in the district, and/or
 - on the procurement pages of the Council's website, and/or
 - on the Council's chosen procurement portal

See Note 5

and

- on the Government Opportunities Portal - Supply2.gov.uk or any subsequent version of the same.

and

- also, wherever the value or amount of the contract exceeds £100,000 in the case of execution of any works or exceeds ~~£40,000~~ £60,000 in the case of supply of goods, materials or services, and where deemed appropriate, in one or more newspapers or journals circulating among such persons as undertake such contracts,

expressing the nature and purpose of the contract, inviting tenders for its execution and stating the last date (not less than 28 days after appearance of the public notice) when tenders will be received.

- ii) After the date specified in the public notice, invitations to tender for the contract shall be sent to not less than four of the persons who applied for permission to tender, selected by the Chief Officer in the approved manner, either generally or in relation to a particular contract or category of contract or, if fewer than four persons have applied and are considered suitable, to all such persons.

8 Selected tenderers provisions

This rule applies where it has been determined that the invitation to tender for a contract is to be limited to persons whose names appear on a Selected Tenderers list compiled under Rule 2. An invitation to tender for that contract shall be sent to at least four of those persons included in the list as being approved for a contract for that value or amount or of that category, or, if there are fewer than four such persons, to all such persons. If there are four or more such persons, the persons to whom invitations are sent shall be selected by the Chief Officer in the manner approved, either generally or in relation to a particular contract or to a category of contracts.

9 Acceptance of tender

A tender –

- ~ other than the lowest tender if payment is to be made by the Council or
- ~ other than the highest tender if payment is to be received by the Council,

shall not be accepted without the fact of and reason for the acceptance being recorded and notified to the Contracts Scrutiny Committee at their next meeting.

PART E - PRICE/PERFORMANCE CONTRACTS

10 Price/performance Contracts Provisions

This rule applies when it has been determined by the Executive, that the contractor shall be chosen on the basis of a combination of price and performance and for which a price/performance ratio has been determined.

- i) (a) Where there is a relevant Select List of Contractors for the nature of work or service involved in the project, the Chief Officer shall invite such number of contractors from the list as s/he considers appropriate to indicate whether they are interested in undertaking the proposed works and, if so, to provide a list of all clients for whom they have worked in the 2 years prior to the invitation.
- (b) Where there is no Select List of Contractors public notice requesting expressions of interest from contractors must given in accordance with the Public Notice provisions (see Rule7).
- ii) The Chief Officer shall select from the contractors who confirm their interest and provide relevant details those contractors who will be invited to submit tenders (minimum number four – see Rule7 ii) and shall compile a list of those contractors for examination by the Contracts Scrutiny Panel.
- iii) Contractors invited to submit tenders will be required to provide method statements relevant to the contract.
- iv) Not fewer than 4 of the contractor's former clients will be requested to complete a Referee's Questionnaire (see Rule 24) except in the case of a contractor for whom Referee's Questionnaires have been obtained during the previous 6 months.
- v) An Agreed Marking Mechanism (see Rule 14) shall be applied to calculate the Price/performance Score of each contractor.
- vi) The contractor with the highest Price/performance Score will usually be awarded the contract.
- vii) The Price/performance Score of each contractor shall be entered into a Price/performance Score Matrix (see Rule 24) which shall be submitted to the Contracts Scrutiny Committee without any indication of the identity of the Contractor to which each Price/performance Score relates at their next meeting.
- viii) No notification of the identity of the successful contractor shall be given to the successful or any other contractor or otherwise

made public prior to the meeting of the Contracts Scrutiny Committee to which the Price/performance Score Matrix has been submitted.

PART F - PARTNERING CONTRACTS

11 Partnering Contracts Provisions

This rule applies when it has been determined by the Executive that there shall be a Partnering Contract, namely a contract which includes all of the following provisions: -

- the establishment of a partnering team
 - the stipulation of a Pricing Policy, being a statement of the prices to be charged by the contractor for the purchase of the materials and items set out in the statement
 - a facility for the Council to examine all aspects of the contractors accounts for the contract and
 - a Savings Sharing Formula being a formula for the sharing between the contractor and the Council of savings achieved within a Partnering Contract
- i) (a) Where there is a relevant Select List of Contractors, the Chief Officer shall invite such number of contractors from the list as s/he shall consider appropriate to indicate whether they are interested in undertaking the proposed works under a partnering contract and, if so, to provide a list of all clients for whom they have worked in the 2 years prior to the invitation.
- (b) Where there is no Select List of Contractors public notice requesting expressions of interest from contractors must given in accordance with the Public Notice provisions (see Rule7).
- ii) The Chief Officer shall select from the contractors who confirm their interest and provide relevant details those contractors who will be given further consideration (minimum number four – see Rule7 ii) and shall compile a list of those contractors for examination by the Contract Scrutiny Committee.
- iii) In respect of each of the contractors so selected not less than 4 of the contractor's former clients shall be requested to complete a Referee's Questionnaire except in the case of a contractor in respect of whom Referee's Questionnaires have been obtained during the previous 6 months.

- iv) Responses to the Referee's Questionnaires shall be evaluated according to an Agreed Marking Mechanism and each of the 4 highest scoring contractors (or such greater number as may be determined by the Chief Officer) shall be invited to confirm their ability to complete the project for the project budget.
- v) Contractors who so confirm will be invited to-
 - provide details of the contractor's proposed overhead costs, profit element, contractors net project cost, and preliminaries costs, and
 - to attend interview by an Interview Panel who will allocate an interview score for each contractor.
- vi) The Partnering Score of each Contractor will be calculated by reference to an Agreed Marking Mechanism and entered into a Partnering Score Matrix which shall be submitted to the Contract Scrutiny Committee without any indication of the identity of the Contractor to which each Partnering Score relates.
- vii) The proposal of the contractor with the highest Partnering Score will usually be accepted.

G - GENERAL PROVISIONS

12 Opening of tenders

- i) **Tenders must be issued with a Friday return day and a submission deadline of 12 noon.**

 See
Note 6

Tenders shall be opened at one time and only in the presence of: -

- at least three members of the Contract Scrutiny Committee; and
 - the Chief Executive or an official of the Council designated by him/her.
- ii) Paragraph (i) of this Order shall not apply to tenders obtained for the In-house Provider for the purpose of compiling a bid as tender for submission by the In-house Provider, which tenders shall be opened by the Head of Procurement, Assistant Director (Resources), Regeneration and Neighbourhoods Department and the relevant Head of Service or their nominated Officers.

13 **Tenders to be returned in sealed envelopes (except in the event of the Council's approved e-procurement system being used)**

- i) Every notice of invitation to tender shall state that no tender will be received except in a plain sealed envelope which shall bear the word "Tender" - followed by the subject to which it relates - but shall not bear any name or mark indicating the identity of the sender. Envelopes shall be returned to the Chief Executive and once received shall remain in the custody of the Chief Executive or his/her nominee until the time appointed for their openings.
- ii) The Chief Executive or the Head of Service of the In-house Provider (as the case may be) shall keep a record of all tenders received.
- iii) (a) A Schedule of all tenders received (except tenders to which Rule12(ii) applies) shall be circulated to the Contract Scrutiny Committee or shall be tabled by the Chief Executive at the Contract Scrutiny Committee meeting at which they are under consideration;
- (b) No information shall be included in such schedule or given to the Committee by which any tenderer may be identified.

14 Agreed Marking Mechanism

No Price/performance procedure or Partnering procedure shall be commenced unless there has been agreed between the Chief Officer and the Council's Head of Audit and Governance, in respect of the particular contract, or in respect of contracts of the nature of the contract in general, an Agreed Marking Mechanism complying with Rule 24. The contractors shall be informed of the elements to be marked and of the comparative importance of each element as a percentage of the available marks.

15 Contracts to be in writing

Every contract, other than those involving the use of Procurement Cards and having a value or amount of £2000 or less, shall be the subject of a Council purchase order or quotation or other formal contract and shall specify

- (a) the work, materials, matters or things to be furnished, had or done;
- (b) the price to be paid, with statement of discounts or other deductions; and
- (c) the time or times within which the contract is to be performed.

Where the value of the contract exceeds the financial limits which require a tender process to take place (see Rule6) the contract must be the subject of a formal written contract signed in accordance with Rule20.

16 Liquidated Damages and Performance bonds

Every contract which exceeds £100,000 in value or amount and is either for the execution of works or for the supply of goods, materials or services, shall, unless the Chief Officer otherwise decides after consultation with the Chief Solicitor, provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed, and the Council shall also require and take sufficient security for the due performance of any such contract. In the case of any such contract for the execution of works such security shall be provided by requiring the retention of a proportion of the contract sums payable until the work has been satisfactorily completed and maintained and, unless the Chief Officer, after consultation with the Chief Solicitor considers it unnecessary in any particular case, additional provision of a bond for due performance.

17 Other remedies for breach

In every contract for the supply of goods, materials or services which exceeds £2,000 in value or amount a clause shall be inserted to secure that, should the contractor fail to deliver the goods, materials or services or any portion thereof within the time or times specified in the contract, the Council, without prejudice to any other remedy for breach of contract, shall be at liberty to determine the contract either wholly or to the extent of such default and to purchase other goods, or materials of the same or similar description to make good (a) such default or (b) in the event of the contract being wholly determined the goods, materials or services remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods, materials or services exceeds the amount which would have been payable to the contractor in respect of the goods, materials or services replaced by such purchase if they had been delivered in accordance with the contract shall be recoverable from the contractor.

18 British Standards

Where an appropriate British Standards Specification or British Standard Code of Practice, issued by the British Standards Institution or Euronorm Standard, is current at the date of the tender, every contract shall require that all goods and materials used or supplied and all workmanship shall be in accordance with that Standard.

19 Prevention of Corruption

- i) There shall be inserted in every written contract a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, in any of the following circumstances: -

(a) if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward –

- for doing or forbearing to do, or for having done or forborne to do, anything in relation to the obtaining or execution of the contract or any other contract with the council or
- for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council; or

(b) if the like acts shall have been done by any person employed by him/her or acting on his/her behalf (whether with or without the knowledge of the contractor) or

if in relation to any contract with the Council the contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 Local Government Act 1972.

ii) The form of invitation to tender shall include an assurance in writing from the tenderer that s/he will not follow, or has not followed, in relation to that tender, the under mentioned practices: -

- (a) communicating to a person other than the person calling for tenders for the execution of the work, the amount of any proposed tender in accordance with any agreement or arrangement so to communicate.
- (b) adjusting the amount of any proposed tender for the execution of the work in accordance with any agreement or arrangement by the proposed tenderer, and any person other than the person calling for tenders for the execution of such work.

20 **Vetting and Signature of contracts**

Contract Vetting

- i) Contracts which are subject to the requirements of Part D – BEST PRICE PROCEDURES are to be referred to the Corporate Procurement Unit for vetting.
- ii) The Corporate Procurement Unit must refer all contracts which are subject to the requirements of Part D – BEST PRICE

See Note 7

PROCEDURES and which incorporate additional terms and conditions to those contained in the Council's approved standard contractual documentation to the Council's Legal Services Department for vetting.

Contract Signature

- i) Except for contracts entered into by an officer in exercise of delegated powers, the Chief Solicitor shall be the agent of the Council to sign on behalf of the Council all contracts agreed to be entered into by or on behalf of the Executive or the Council.
- ii) Contracts which are for a value of £100,000 or more shall be either-
 - executed by the Chief Officer and the Chief Solicitor or the Chief Finance Officer or
 - executed under the Council's seal (to be affixed in the presence of the Chief Solicitor (or in his/her absence, some other person authorised by him/her)).

21 Tenderers withdrawal

In the event of any person or firm withdrawing a tender, or declining to sign a form of contract upon being called on to do so after his/her or their tender has been accepted (whether accepted subject to the Council's approval or not) no further tender from such a person or firm shall, unless the Executive or the Council otherwise resolve, be considered for a period of three years.

22 Post contract variations and negotiations

- i) Except for a variation –
 - (a) which does not substantially affect the nature of the works services goods, materials or services to be supplied to the Council and does not increase the payment to be made by the Council, or
 - (b) is made in accordance with paragraph (ii)

a contract shall not without the authority of the Executive or the Council depart from the description of the works, goods, materials or services for which the quotation or tender was received.

- ii) This paragraph applies where all of the tenders received exceed the budget allocated for the project and the Chief Officer and the Head of Service relevant to the contract consider that

amendments may be made to the specification which would result in a price in accordance with the budget. The lowest tenderer and the next 2 lowest tenderers (if any) whose prices are not more than 125% of the price of the lowest tenderer shall each be provided with a schedule of variations and invited to submit a statement of the reductions to their tender which would apply to the variations.

iii) Apart from discussions with contractors for the purpose of clarification of any element of a tender, or for the correction of arithmetic or other details, negotiations following receipt of tenders shall only take place in the following circumstances: -

- (a) where a single tender has been received and the Chief Officer considers that negotiation may lead to more favourable terms to the Council, or
- (b) when tenders cannot readily be evaluated and compared without discussion with the tenderers or
- (c) with the approval of the Chief Finance Officer and the Chief Solicitor and the Monitoring Officer (if different) and any negotiations shall be conducted in accordance with paragraph (iv)

iv) Discussion with tenderers for the purpose of negotiations under paragraph (iii) shall

➤ ~~take place only on Council premises~~

➤ take place only with the knowledge of all tenderers

➤ be attended by not less than 2 Council officers

➤ be at a pre-determined time during normal office hours

➤ be the subject of a comprehensive written record, signed by the Council officers in attendance and submitted to the Chief Financial Officer, the Chief Solicitor or the Monitoring Officer (if different) for approval

See Note 8

23 Nominated sub-contractors

This rule applies where a sub-contractor or supplier is to be nominated to a main contractor and the selection of the sub-contractor has not been undertaken in accordance with the Price/performance Contracts provisions (Rule 10) nor within the context of a project undertaken under the Partnering Contracts provisions (Rule 11).

- i) Where the estimated amount of the sub-contract or the estimated value of goods to be supplied by the nominated supplier does not exceed £5,000 then unless the Chief Officer is of the opinion in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders: -
 - (a) The Chief Officer shall invite not fewer than three tenders for the nomination. The terms of the invitation shall require an undertaking by the tenderer that if s/he is selected s/he will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his/her own obligations under the main contract in relation to the work or goods included in the sub-contract;
 - (b) The tenders shall be opened at one time and only in the presence of the Chief Executive or an officer designated by him/her;
 - (c) The Chief Executive shall maintain a record of all such tenders received;
 - (d) The Chief Officer or an officer designated by him/her shall nominate to the main contractor the person whose tender is, in his/her opinion, the most satisfactory one, provided that, where the tender is other than the lowest received, the circumstances shall be reported to the next meeting of the Contract Scrutiny Committee.
- ii) Where the estimated amount of the sub-contract or the estimated value of goods to be supplied by a nominated supplier exceeds £5,000 then unless the Chief Officer (for reasons to be reported to the Contract Scrutiny Committee at their next meeting) determines in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders: -
 - (a) Tenders for the nomination shall be invited in accordance with Rules 4, 5, 6, 7 or 8 as the case may be, and Rule 13(i) shall apply as if the tender were for a contract with the Council. The terms of the invitation shall require an undertaking by the tenderer that if s/he is selected s/he will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his/her own obligations under the main contract in relation to the work or goods included in the sub-contract;
 - (b) The tenders shall be opened at one time and only in the presence of the Chief Executive or an officer designated by him/her and the Chief Officer or an officer designated by him/her.

- (c) The Chief Executive or an officer designated by him/her shall maintain a record of all such tenders received.
 - (d) The Chief Officer or an officer designated by him/her shall nominate to the main contractor a person whose tender is in his/her opinion the most satisfactory, provided that where the tender is other than the lowest received, the circumstances shall be reported to the next meeting of the Contract Scrutiny Committee.
- iii) It shall be a condition of the employment by the Council of any person (not being an officer of the council) to supervise a contract that in relation to such contract s/he shall comply with the requirements of paragraphs (i) and (ii) of this Rule 23 as if s/he were a Chief Officer of the Council.
 - iv) Lists of tenders and quotations received in accordance with this Rule 23 shall be retained by the Chief Officer concerned and shall be available for inspection by the Members of Contract Scrutiny Committee and the Chief Executive and the Chief Finance Officer.

PART H - GLOSSARY

24 Interpretation

Unless the context otherwise indicates, the following terms used in these rules have the meanings stated: -

“Agreed Marking Mechanism” is the mechanism which (before the issue of any invitation to tender or attend interview) has been agreed between the Chief Officer and the Council’s Chief Internal Auditor for the allocation of marks making up the Price/performance Score. The Agreed Marking Mechanism shall include the composition of an evaluation team being a panel of officers who shall allocate marks according to the Agreed Marking Mechanism. (see also Rule 14)

“Chief Officer” is the Chief Officer of the Council who is responsible for letting and supervising the completion of a contract or of contracts of a particular nature.

“Contractor’s Net Project Cost” is the balance of the budget price after deduction of the aggregate of the contractors expected profit and overheads or any other element of the contract which is identified by the Agreed Marking Mechanism as being deductible for the purpose of assessment of the Contractors Net Project Cost.

“Electronic Procurement (e-Procurement)” is a fully electronic procure-to pay process from initial requisition and ordering through to

invoicing and payment, and can include e-Auctions, e-Purchasing, e-Tendering and Procurement Cards.

“e-Auctions” is the means of carrying out purchasing negotiations via the Internet. A real time event that occurs online allowing multiple suppliers in different geographic locations to place and modify bids simultaneously.

“e-Purchasing” is a system to automate and extend manual buying processes from the creation of a requisition through to the payment of suppliers. It encompasses back office systems, e-marketplaces and portals and supplier websites.

“e-Tendering” is systems or solutions to enable the tendering process to be conducted via the Internet. Including advertisement of requirement, documentation production, supplier registration, electronic exchange of documents between supplier and buyer, opening of tenders, evaluation of submissions, contract award and publication.

“Executive” is the executive members of the Council acting together as the Cabinet or individually in accordance with the Executive Delegation Scheme currently applicable.

“Interview Panel” is a panel comprising:

- 2 officers appointed by the Chief Officer
- 2 officers appointed by the Client Department, and
- a representative(s) of any other relevant body or department

and who, when meeting, shall be accompanied by an observer appointed by the Chief Officer.

“Partnering Contract” is a contract which includes all the following provisions: -

- i) the establishment of a partnering team
- ii) the stipulation of a Pricing Policy, being a statement of the prices to be charged by the contractor for the purchase of the materials and items set out in the statement
- iii) a facility for the Council to examine all aspects of the contractors accounts for the contract and
- iv) a Savings Sharing Formula being a formula for the sharing between the contractor and the Council of savings achieved within a Partnering Contract

“Partnering Score Matrix” is a matrix showing in respect of all contractors each element of their Partnership Score and their total scores.

“Price/performance Score Matrix” is a matrix showing in respect of all contractors each element of their Price/performance Score and their total scores.

“Price/performance Contract” is a contract for which the contractor is to be chosen on the basis of a combination of price and performance.

“Price/performance Ratio” is the comparative importance of price and performance of the product or service expressed as a percentage ratio.

“Procurement Cards” are charge cards which work in a similar way to credit cards and can be used to purchase goods and services. Can be open to use by any suppliers or have controls placed upon them by the issuer to limit their use to certain suppliers and/or commodities. They are usually used to process low-value, high-volume transactions.

“Project information” comprises: -

- i) Drawings, if any, showing outline of the construction works required
- ii) A cost plan, if available, indicating the total budget for the project
- iii) A specification of materials from which the cost plan has been prepared
- iv) The timescale for the construction works
- v) The substantial form of the contract
- vi) Any other information necessary to enable the contractor to assess the nature and likely cost of the project

“Referee’s Questionnaire” is a questionnaire addressing the following aspects of a contract, namely:

- performance;
- quality;
- adherence to timetable;
- health and safety issues; and
- any other matters considered by the Chief Officer to be relevant to assessment of the service provided by the contractor.

Briefing Notes on Considerations and Reasons for Proposed Changes to Contract Procedure Rules (CPRs)

Numbered Notes are cross referenced on Draft CPRs

Note 1

Widening use of Central Purchasing Contracts

The current CPRs only enable officers to use collaborative contracts put in place by the North East Purchasing Organisation (NEPO).

The use of any other collaborative contracts currently needs to be sanctioned through an exemption to the CPRs which can only be arranged through the drafting of a request to the Head of Procurement and Portfolio Holder, followed up by paper to Contract Scrutiny Committee to explain what has taken place.

Collaborative procurement contracts are now a widely used procurement tool across the public sector and many are available to the Council, offering good value for money (achieved through economies of scale), reduced procurement costs (the work has already been done by another organisation) and reduced risk (the award of the contract has already been completed and any challenges to that award would be aimed at the contract instigator, not the Council).

The Council is able to make use of a vast range of collaborative contracts from NEPO, the Office for Government Commerce Buying Solutions (OGCBS), fellow Councils in the Tees Valley sub-region as well as others put in place by the Homes and Communities Agency (HCA), Eastern Shires Purchasing Organisation (ESPO), Yorkshire Purchasing Organisation (YPO), the list goes on.

In order to streamline the use of these contracts whilst still maintaining control over which contracts may be used it is proposed that the CPR's are amended to widen the scope of contracts permissible to include '*contracts designated as the Council's preferred channel*'.

This change will enable a range of approved non-NEPO collaborative contracts to be available for use by Officers without the need to produce reports for submission to Head of Procurement, Portfolio Holder and Contract Scrutiny Committee.

Note 2

Mandatory invitation for local suppliers to bid on any request for a quotation

In order to support and to be seen to support the Council's local supplier base an amendment has been proposed that requires all Council Officers to invite a minimum of two local suppliers (where available) to submit a quotation.

This proposal conforms to a requirement articulated by the Executive Member for Procurement and has hitherto only been included as guidance to procurers. This applies in the cases that quotations are sought and that local suppliers are available for the goods, services or works being procured.

This requirement does not apply where existing pre-determined framework agreements cover the goods, services or works being procured.

This proposal suggests a minimum of two local suppliers (where available) to be invited to bid, however this is a minimum and the wording of the proposed amendment will allow the Council to increase this number (if deemed appropriate). More details will be provided in the 'Officer's Guide to Procurement'.

Note 3

Increases to the various quotation and tender thresholds

The North East Regional Improvement and Efficiency Programme (NERIEP) have carried out an evaluation of quotation and tender threshold levels across the 12 Local Authorities in the region and proposals were made to harmonise minimum quotation/tender thresholds.

Following on from this work by the RIEP, a minimum tender threshold of £50,000 was proposed for across the region. The RIEP research demonstrated that whilst some Council's (including Hartlepool) had thresholds below this figure, others, such as Darlington and Sunderland have thresholds well in excess of this figure, i.e. £75,000.

The harmonisation of tender thresholds is designed to provide a consistent marketplace for suppliers in the region. In addition, the tender process has been identified as problematic for many local businesses, particularly SME's, and third sector with claims that it is overly bureaucratic, time consuming and expensive to operate.

Following the consultation process it is proposed to increase the existing levels to £60,000 for goods and services and to £100,000 for Works related tenders.

This increase in the tender threshold will effectively reduce the number of tenders the Council undertakes and increase the volume of the less bureaucratic quotation process, which will go some way to address some of the concerns expressed by the supplier base as mentioned above.

Clearly there is an element of concern that raising the thresholds in this way could potentially reduce the amount of control the Council exerts over a significant volume of its expenditure, however, the Corporate Procurement Team is in the process of introducing an e-quotation tool which will have a phased introduction across the whole Council. As already agreed with the Portfolio Holder for Finance & Procurement, use of this system will be mandated (with only a few justifiable exceptions expected).

Use of this tool will introduce specific working practices providing consistency and compliance with the CPR's in relation to all sub-tender level procurement activities as well as providing a comprehensive audit trail of all quotation related procurement activity.

So, whilst we are proposing making less use of the rigorous tender process we are, at the same time, introducing a system to vastly improve the current quotation gathering processes used across the Council thereby ensuring increased compliance with the CPR's and an easier procurement process for our suppliers particularly our local SME's and third sector.

As well as changing these upper limits, it is also proposed to change the lower level limit for quotations from £5,000 to £2,000.

Currently, for any expenditure below £5,000, only 'reasonable enquiries' are required. In practice this could result in business being placed on the basis of verbal quotes or just one quote, and, due to the lack of control over this level of expenditure, it is quite common for purchase orders not to be raised to cover the requirement, with orders being placed verbally or by e-mail.

Neither of these methods are compliant with the CPR's which state that all expenditure over £2,000 should be executed in writing, which could mean anything from a purchase order up to a full, complex contract.

By requiring the collection of quotations for expenditure above £2,000, as opposed to the current level of £5,000, Officers will have to secure 3 written quotes and it will continue to be a requirement that, as a minimum, purchase orders will be placed to cover expenditure over £2,000.

Note 4

Reference to mandatory adherence of the Council's requirement for Officers to use the prescribed quotation gathering processes and systems

As referred to in Note 3 above, we are currently introducing an e-quotation system, the use of which the Portfolio Holder for Finance and Procurement has stated must be mandatory (barring a few notable exceptions). This proposed amendment to the CPR's seeks to reflect this requirement whilst providing enough flexibility to allow future changes to the process and/or system. More details will be provided in the 'Officer's Guide to Procurement'.

Note 5

Advertising requirements for tenders

The proposed amendments to the public notice provisions are designed to reflect the increasing use of internet communications. For its tender activity, the Council now makes use of the regional procurement portal provided through our membership of NEPO and this channel provides access to a wide range of suppliers across the region, in addition, all tender opportunities are advertised on the Council's own website.

The requirement to publish on the Government's opportunities portal will still remain however discretion will be allowed in selecting whether or not to advertise in specialist trade press.

By amending the CPR's in the manner proposed we will have the option to choose from publishing in local and/or specialist trade press, advertising on the Council's own web site and/or advertising on the Council's chosen procurement portal. The discretion this allows will enable us to avoid having to place expensive press advertisements where it is believed that web-based publicity will be sufficient to generate an appropriate level of competition.

Note 6**Standard time and day for the submission on tenders**

Although previously instructed by Contract Scrutiny Committee, the requirement that all tenders have a closing time of 12 noon on a Friday has not been committed to the Council's CPR's.

There has been occasional confusion about this requirement so in order to ensure that full compliance is achieved it is proposed that the requirement is documented in the Council's CPR's.

Note 7**Vetting and Signature of contract**

There appears to have been a degree of confusion regarding the form and execution of contracts in the past and there have been some examples where contracts have been executed by officers the content of which has not been fit for purpose.

In order to address this shortcoming, it is proposed that the CPR's are amended to require that all contracts which have been developed through a tender process be referred to the Corporate Procurement Unit for vetting. For any contracts which deviate from the Council's standard contractual documentation (e.g. through the inclusion of additional terms and conditions) it is proposed that these be passed to the Council's Legal Services Department for vetting.

The purpose of this two-tier approach is that it will avoid the Legal Services Department being swamped by the requirement to vet straightforward, uncomplicated contracts which can be handled by the Corporate Procurement Unit whilst still providing a more appropriate level of scrutiny on contractual documentation the Council intends to utilise.

Note 8**Rules around contract negotiations**

It is proposed that the requirement for all negotiations to take place on Council premises be removed. Adherence to this could be problematic when dealing

with tenderers from further afield and where the value of the tender is relatively low.

The other requirements would remain and would provide the necessary level of rigour in terms of undertaking and recording negotiations with potential suppliers.