

Procedural Note – Exemptions

NOTE: This Procedural Note forms part of the Procedures and shall be read in conjunction with the Procedures and any associated Procedural Notes

Background

1. This Procedural Note outlines the steps to be undertaken where the **Procedures** are not able to be followed for a specific reason.
2. Where this is the case, this Exemption Procedural Note is intended as a means of providing formal authorisation for “exemption” from specific elements of the Procedures.
3. The approval of an Exemption does not remove the requirement for procurements to follow the Council’s formal decision making processes.
4. Any Exemption granted over the **OEJEU GPA Threshold** approves only the anticipated non-compliance with the Council’s Procedures. It does not mitigate the risks associated with non-compliance with the UK Public Contract Regulations **or the EU Procurement Directive as applicable-2015**.

Overview of the process

General

5. This Procedural Note shall:
 - i. Help to mitigate risks of challenge from third parties in how the Council procures Supplies, Works and Services.
 - ii. Improve transparency and probity in how decisions are made.
 - iii. Help to manage, control and mitigate other risks.
6. Having relevant contract management arrangements and/or forward plans in place identifying future needs will help to minimise the need for Exemptions.
7. In the majority of cases, Exemptions shall only be considered for periods of 12 months or less. If arrangements are required beyond 12 months this shall be justified in the Exemption Form for consideration and will be subject to an annual review should the Exemption be approved.
8. In all cases Exemptions shall be completed in advance of committing spend. Where this is not the case then the Service Lead - Commercial and Procurement shall be informed.
9. Where the Exemption relates to a significant and serious failure to comply with the Procedures then a breach of the Procedures shall be considered.
10. Every effort shall be taken to ensure that the details included and signed off within the Exemption are accurate and sufficient for the intended purposes. If during the Exemption period there is any change, this should be updated as part of the recording process.

11. Exemptions shall be completed using the most recent template which is available on the Intranet page.
12. Exemptions should not be used to overcome poor planning of activities leading to the procurement.
13. Exemptions shall only be granted on the following grounds:
 - i. **Increased cost / loss of income:** The Council will incur unforeseen, significant and avoidable costs or lose significant income that cannot be mitigated in compliance with the Procedures.
 - ii. **Limited markets:** The market is a monopoly or no competition is likely to be stimulated through a formal procurement process. There is a requirement to demonstrate that the market is limited and not able to be suitably stimulated to create competition within the Regulations. Justification may include market intelligence including soft market consultation although risk related to over OJEU contract values is significantly reduced where open competition has been sought and a Voluntary Transparency Notice (VTN) has been published. Further guidance is available in the Pre-Procurement Market Consultation Guidance.
 - iii. **Reputational damage:** Failure to act promptly would have a serious, damaging and long term impact on the reputation of the Council, that from a time perspective the Council cannot afford to be mitigated through a formal tendering process
 - iv. **Compliant Direct Award via a framework:** Where an appropriate framework is available with the mechanism for a direct award the exemption procedure should be used to record the rationale for the direct award and to ensure that the Council maintains a record of where direct awards have been made

Procedure and Approval

14. The Responsible Officer within the Service shall be required to explore the suitability of the use of an Exemption, giving due consideration to:
 - i. Options and alternatives
 - ii. Risks, and associated mitigating actions
 - iii. The rationale for the Exemption and what will happen to avoid the need to seek further Exemptions on expiry
15. The Responsible Officer shall complete the relevant up to date Exemption Form **template** and will send it to the Procurement Team for review and comment.
16. In completing the Exemption Form, the Responsible Officer shall be responsible for providing the relevant factual and supporting information.
17. On completion of the Exemption Form, the Responsible Officer seeks the appropriate authorisation sign off dependent on the value of the Exemption as explained below.

Exemption value	Required Service approval signed in this order;
£10k and under	No formal Exemption Form required (although Responsible Officer will be required to have suitable evidence to justify decision for audit / transparency purposes).
Over £10k up to £50k	Responsible Officer Service Lead and Corporate Manager / SMB representative for the Service area.
Over £50k up to OJEU GPA threshold value for Services*	Corporate Manager / SMB member for the Service area, and Service Lead – Commercial and Procurement.
Over OJEU GPA threshold value for Services*	Director / SMB member for the Service area, Portfolio Holder and Service Lead – Commercial and Procurement.

*For the purpose of Exemptions this ~~OJEU~~ **GPA** threshold also applies to Supplies and Works

18. If the Service Lead – Commercial and Procurement considers the grounds for the Exemption not suitable then they shall seek to resolve this directly with the Responsible Officer, clearly stating what steps they consider necessary to either make the sign off appropriate or what alternative actions would need to be undertaken.
19. Where this cannot be resolved then the matter shall refer the matter to the Section 151 Officer to determine an agreed position.
20. Once signed off and approved all Exemption forms shall be forwarded to Procurement Team for retention and registration of relevant details on the Exemption Register.
21. Following approval of the Exemption by all required parties the Responsible Officer shall ensure that the resulting Contractual arrangements are put in place, this may include but not limited to:
 - i. Signed / sealed contract
 - ii. Contract management arrangements
 - iii. Specification
 - iv. Intention to award communications
 - v. Contract Variation
 - vi. Key performance indicators

Reporting

22. Exemptions (including those that are retrospective), are reported to Senior Management Board, the Portfolio Holders, Section 151 and Monitoring Officer on a quarterly basis.

Appendix 1 Roles and responsibilities

Table 1 below highlights the respective roles and responsibilities of the signatories to the Exemption Approval Form.

SIGNATORIES	ROLES AND RESPONSIBILITIES
Corporate Manager/ Director	<ul style="list-style-type: none"> • Acknowledgement and acceptance of the existence and details as set out in the Exemption form. • Understanding the position as set out within the Exemption form and being satisfied that the recommendation is appropriate and that suitable due diligence has taken place in the development of the Exemption (and any supporting information). Where relevant this may also include challenging the position as outlined. • Taking ultimate accountability and ownership of the recommended course of action outlined in the Exemption.
Service Lead – Commercial and Procurement	<ul style="list-style-type: none"> • Providing relevant and proportional scrutiny and due diligence around the procedural matters. • Providing relevant, proportional and constructive challenge with respect to commercial matters related to the Exemption. • Providing relevant support and advice to the Responsible Officer to ensure the process and recommendation is appropriate and that risks are highlighted as part of the overall considerations. • Signing off the Exemption form alongside the other identified parties and in doing so enabling the recommended course of action to be implemented. • Considering whether the Exemption is appropriate and whether suitable due diligence has taken place in the development of the Exemption (and any supporting information). Where relevant this may also include challenging the position as outlined. • Ensuring that the Exemption is in line with this Procedural Note and if not, highlighting this to the Section 151 Officer and Monitoring Officer including the reasons, value, and why this is the case.
Portfolio Holder	<ul style="list-style-type: none"> • Maintaining a strategic overview of Exemptions which have been signed off within their Portfolio. • Reviewing approved Exemptions on a quarterly basis to ensure they are satisfied that suitable due diligence has taken place in the development of the Exemptions. Where relevant this may also include challenging the position, and setting out recommendations to improve the overall process in the future. • Signatory on the Exemption Approval Form for contracts over the applicable OJEU Threshold

SIGNATORIES	ROLES AND RESPONSIBILITIES
<p>Procurement Team</p>	<ul style="list-style-type: none"> • Scanning and storing the signed Exemption Forms electronically in a central file and sending a link to that file for the relevant Commercial Manager to attach any supporting information. • Recording the Exemption and relevant details on the central register. • Issuing 6 month reminders prior to expiry of signed off Exemptions to the Responsible officer(s) around ensuring any necessary plans are in place (or being progressed) in time for the expiry (so as not to risk service failure or continuity of service). • Compiling and distributing of the Quarterly reports under the direction of the Service Lead – Commercial and Procurement.
<p>Responsible Officer</p>	<ul style="list-style-type: none"> • Ensuring the Exemption process is complied with and adhered to. • Obtaining and completing the latest version of the Exemption form and providing any necessary supporting evidence and information. • Clearly and concisely outlining the “what, why, when, who” in completing the Exemption form. • Taking ownership that the details put forward are relevant, accurate and factual. • Ensuring risks are identified, considered and any necessary mitigation measures put in place. • Openly considering and documenting the advantages / disadvantages of all relevant options and confirming that the recommendation put forward is the most appropriate way forward (considering all relevant information and advice sought). • Ensuring timely due diligence discussions have taken place and relevant advice has been sought with key stakeholders (e.g. the Procurement Team, Finance, Legal, Health and Safety, etc.) prior to seeking signatures of other key parties. • For over £50k exemptions ensuring that the Procurement Team is involved prior to obtaining signatories. • Ensuring plans are in place both to implement and adhere to the intended outcomes of the recommendation (this will include ensuring suitable plans are in place to formalise contractual matters arising from the Exemption sign off, plus plans outlined for the period following the Exemption expiry) at the point when any Exemption forms are ‘Signed Off’ • Ensuring that all signed off Exemptions are provided to Procurement Team for formal registration.

SIGNATORIES	ROLES AND RESPONSIBILITIES
Section 151	<ul style="list-style-type: none">• Reviewing any matters referred to them by the Service Lead – Commercial and Procurement with regards to Exemptions considered outside of the recognised procedures and taking what actions they consider necessary within their role as Section 151 Officer.• On occasions acting as arbiter when exemptions are referred to them by Service Lead – Commercial and Procurement.