

Procedural Note: Exemptions

NOTE: This Procedural Note provides support to the Contract Standing Orders and shall be read in conjunction with the Contract Standing Orders and any associated Procedural Notes.

Background

- 1) This Procedural Note outlines the steps to be undertaken where the Contract Standing Orders (CSOs) are not able to be followed for a specific reason. In accordance with Section 10 of the CSO's.
- 2) Where this is the case, this Procedural Note is intended as a means of providing formal authorisation for "exemption" from specific elements of the CSOs.
- 3) The approval of an Exemption does not remove the requirement to follow the Council's formal decision making processes or any related formalisation of contractual matters.

Overview of the process

General

- 4) This Procedural Note shall:
 - i. Help to mitigate risks of challenge from third parties in how the Council procures Works, Service and Supplies;
 - ii. Improve transparency and probity in how decisions are made;
 - iii. Help to manage, control and mitigate other risks.
- 5) Having relevant contract management arrangements and / or forward plans in place identifying future needs will help to minimise the need for Exemptions.
- 6) 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.
- 7) In all cases Exemptions shall be completed in advance of committing spend.
- 8) 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.
- 9) Exemptions shall be completed using the most recent template which is available on the Plymouth City Council Intranet page.
- 10) Exemptions should not be used to overcome poor planning of activities leading to the procurement.

11) Exemptions shall only be granted on the following grounds:

- i. **Breach or Conflict of Statutory Duties** if CSOs were applied resulting in **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 market:** 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. Further guidance is available in the Pre-Procurement Market Consultation Guidance.
- iii. **Unavoidable / Time Critical** leading to **Reputational damage:** Failure to act promptly would have a serious, damaging and long term impact on the reputation of the Council, which from a time perspective the Council cannot afford to be mitigated through a formal tendering process.
- iv. **Personal Welfare of Service users:** There is a likelihood that vulnerable services user(s) would be placed in unnecessary or inappropriate risks if the proposed actions within the Exemption application are not undertaken.

Procedure and Approval

12) 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 upon expiry.

13) The Responsible Officer shall look to engage early with the Procurement Service and Legal Services.

14) In completing the Exemption Form, the Responsible Officer shall be responsible for providing the relevant factual and supporting information.

15) On completion of the Exemption Form, the Responsible Officer seeks the appropriate authorisation sign off dependent on the value of the Exemption as explained in the table below, in the following order:

- i. Departmental
- ii. Head of Legal
- iii. Procurement Service

Exemption value	Required Service approval signed in this order;
£5k and under	<ul style="list-style-type: none"> - No formal Exemption Form required.
Over £5k up to £25k	<ul style="list-style-type: none"> - Head of Service for the Service Area - Head of Legal - Head of Procurement or Product Portfolio Manager in the case of Commissioning / Social Care
Over £25k up to OJEU Threshold	<ul style="list-style-type: none"> - Service Director for the Service Area - Head of Legal - Head of Procurement or Product Portfolio Manager in the case of Commissioning / Social Care

- 16) If the Procurement Service / Product Portfolio Holder 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. Where this cannot be resolved the matter to be referred onwards to the Head of Procurement.
- 17) When approval cannot be obtained by all appropriate parties, the matter shall be referred to the monitoring officer for a ruling.
- 18) When an exemption has been approved it shall be given a unique reference number and recorded in a corporate Exemption register by the Procurement Service for retention and registration.
- 19) Following approval of the Exemption by all required parties the Responsible Officer shall ensure that the Procurement Gateway & Contract Procedure is followed.

Reporting

- 20) Exemptions are reported to Corporate Management Team, Section 151 and Monitoring Officer on a quarterly basis.

Appendix I Roles and responsibilities

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

SIGNATORIES	ROLES AND RESPONSIBILITIES
Category Lead – (or Product Portfolio Manager in the case of Strategic Co-operative Commissioning)	<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 wider commercial advice to either aide or suitably scrutinize the exception submission. Consider wider commercial activity and co-op partners in ongoing procurement service provision. • 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. • 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 Head of Procurement including the reasons, value, and why this is the case.
Head of Procurement – Procurement Services / Appointed Legal Services representative	<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 other identified parties 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.
Monitoring Officer	<ul style="list-style-type: none"> • Reviewing any matters referred to them by the Head of Procurement with regards to Exemptions considered outside of the recognised procedures and taking what actions they consider necessary within their role as Monitoring Officer. • On occasions acting as arbiter when exemptions are referred to

SIGNATORIES	ROLES AND RESPONSIBILITIES
	them by Head of Procurement.
Procurement Service	<ul style="list-style-type: none"> • Scanning and storing the signed Exemption Approval Forms electronically in a central file and sending a link to that file for the relevant Responsible Officer 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 Head of Procurement.

SIGNATORIES	ROLES AND RESPONSIBILITIES
Responsible Officer	<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 at start and during the approval process. • Clearly and concisely outlining the “what, why, when, who” in completing the Exemption form. • Taking ownership that at the time of submission the details put forward are relevant, accurate and factual. • Ensuring that if any changes to the details put forward upon submission of the Exception Form are communicated to the procurement service whilst approval is being undertaken. In this instance; resubmission of the exception form may be required. • 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 £25k exemptions ensuring that the Procurement Service 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 Service for formal registration.
Service / Strategic Director	<ul style="list-style-type: none"> • Acknowledgement and acceptance of the existence and details as set out in the Exemption Approval 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.