

TITLE OF REPORT: Implementation of Procurement Protocols

REPORT OF: Mike Barker, Strategic Director, Corporate Services and Governance

Purpose of the Report

1. To seek approval for the adoption of two new procurement protocols for Off Payroll Working (IR35) and Trade Union Commissioning and Procurement and request Cabinet to recommend that Council approve an amendment to the Constitution to reflect this change.

Background

2. Off Payroll Working legislation came into effect from 6 April 2017 to ensure that individuals engaged by public sector bodies pay the correct amount of tax and National Insurance Contributions.
3. HMRC regularly inspect the records of organisations and has the power to impose substantial penalties and require the repayment of lost revenues with interest for failure to comply with regulations and guidance in relation to employment status and IR35.
4. The Council therefore has a legal duty to satisfy itself that any individuals engaged by the Council pay the correct amount of tax and National Insurance Contributions in line with this new legislation. This must happen in a consistent and objective way following corporate procedures.
5. In January 2017, Cabinet approved the adoption and implementation of an overarching Protocol for the Procurement of all Services, supplemented by specific protocols for Works and Construction related activity, ICT and Forestry and Grounds Maintenance. This protocol provides basic guidance for procuring any service that the Council may require and the specific protocols highlight the requirements of officers when engaging Construction Contractors, the considerations and processes relating to the procurement of ICT hardware, software and services together with the considerations and processes relating to the procurement of all forestry and grounds maintenance activity
6. The Off Payroll Working (IR35) protocol is required to clarify the considerations and processes relating to the engagement of individuals by the Council to ensure that the Council remains compliant with HMRC regulations and guidance in relation to employment/IR35 status. It is intended to be read in conjunction with the Protocol for the Procurement of all Services.

7. The Trade Union Commissioning and Procurement protocol is a way of improving our working with trade unions and clarifies the trade unions role within commissioning and procurement activity.

Proposal

8. It is proposed that:
- The Off Payroll Working (IR35) protocol is adopted for the engagement of all contractors that may fall within this legislation.
 - The Trade Union Commissioning and Procurement protocol is adopted in the key stages of any commissioning activities, service reviews, service transformation and/or procurement process involving changes to the number or terms and conditions of existing employees.
9. The Contract Procedure Rules within the Constitution will require amendment to provide for the application of the Protocols to all services, works and construction related activity and the engagement of individuals. The proposed amendment is detailed in Appendix 2.
10. Discussions are currently taking place with representatives from The Gateshead Housing Company to encourage them to adopt the same protocols. Should the Board of the Housing Company agree to adopt the protocols it would be beneficial to dual badge them with the name of the Council and also the name of the Gateshead Housing Company.
11. Approval is sought to authorise the Service Director, Corporate Commissioning and Procurement to make minor amendments to the Protocols to ensure that they remain current and comply with best practice guidance that is still emerging from Central Government as a result of the Public Contract Regulations 2015.

Recommendations

12. It is recommended that:
- (i) The Protocols are adopted and implemented across the Council.
 - (ii) Council is recommended to approve an amendment to the Constitution to provide for the Protocols.
 - (iii) Training, which will be linked to the Workforce plan, is developed and will be mandatory for all officers involved in procurement.
 - (iv) Approval be given to the Service Director, Corporate Commissioning and Procurement to make minor amendments to the protocols and also dual badge them with the name of the Council and also the name of the Gateshead Housing Company if appropriate.

For the following reasons:

- (i) To ensure the Council remains compliant with HMRC regulations and guidance in relation to employment/IR35 status.
- (ii) To clarify the trade union role within commissioning and procurement activity.

APPENDIX 1

Policy Context

1. The Council has a legal duty to satisfy itself that any individuals engaged by the Council pay the correct amount of tax and National Insurance Contributions in line with this new legislation. This must happen in a consistent and objective way following corporate procedures.
2. The Trade Union Commissioning and Procurement protocol provides a consistent and common approach to involving and consulting the recognised unions appropriately in the commissioning and procurement cycle and before any key decisions are made that may have an impact on employees.

Background

3. On 6 April 2017 Off Payroll Working legislation came into effect to ensure that individuals engaged by public sector bodies pay the correct amount of tax and National Insurance Contributions.
4. Building on the success of the adoption and implementation of the Procurement Protocols approved by Cabinet in January 2017 for Services, supplemented by specific protocols for Works and Construction related activity, ICT and Forestry and Grounds Maintenance it is considered appropriate to extend this approach to the engagement of all individuals to ensure the Council remains compliant with HMRC regulations and guidance in relation to employment/IR35 status.
5. The Protocol has been developed using expertise and knowledge from a number of services and key officers from across the Council to ensure that it is robust and practical.
6. It is proposed that further protocols may be added where deemed necessary.
7. The implementation of the Protocol would tighten the procedures around the engagement of individuals and reduce the risk of failure to comply with regulations and guidance in relation to employment status and IR35.
8. The Corporate Commissioning and Procurement Strategy included a commitment to collaborate with trade union representatives to develop a Trade Union Agreement for Commissioning and Procurement.
9. A working group was established and a protocol has been developed in consultation with representatives from Unison and GMB to enable improved consultation between officers of the Council and trade union representatives on all matters relating to commissioning and procurement.

Consultation

10. Consultation has taken place with representatives from Unison and GMB.

Alternative Options

11. There are no alternative options.

Implications of Recommended Option

12. Resources:

- a) **Financial Implications** – The Council will be responsible for the payment of employers National Insurance contributions where IR35 applies.
 - b) **Human Resources Implications** – Specific tasks or procedures will be required by services as a result of the protocols.
 - c) **Property Implications** – There are no property implications with the implementation of the protocols.
13. **Risk Management Implication** – The Off Payroll Working protocol minimises the risk of failure to comply with regulations and guidance in relation to employment status and IR35.
 14. **Equality and Diversity Implications** - Nil.
 15. **Crime and Disorder Implications** – Nil.
 16. **Health Implications** - Nil.
 17. **Sustainability Implications** - Nil.
 18. **Human Rights Implications** - Nil.
 19. **Area and Ward Implications** - Nil.

Background Information

20. The documents that have been relied on in preparation of the report include:
The Protocols are attached as Appendix 3.

PROPOSED ADDITION TO THE CONSTITUTION

Page	Previous Wording	New Wording	Reason
160	N/A	<p>Part 3 – Rules of Procedure</p> <p>Contract Procedure Rules</p> <p>3. Consolidated Procurement Principles</p> <p>Amend paragraph 3.2:</p> <p>3.2 All procurement for services, works and construction related activity and the engagement of individuals are subject to the Council's Procurement Protocols.</p>	To make provision for the application of the Procurement Protocols.