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**DARLINGTON PUBLIC HEALTH CONTRACTS TRANSITION**

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**Responsible Cabinet Member - Councillor Andy Scott,  
Health and Partnerships Portfolio**

**Responsible Director - Murray Rose, Director of People**

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**SUMMARY REPORT**

**Purpose of the Report**

1. To seek members approval to waiver contract procedure rule 18 for a small number of contracts under the exceptional circumstances created by the implementation of the Health and Social Care Act 2012 ("the Health and Social Care Act").

**Summary**

2. The Health and Social Care Act has significant implications for the Council including the transfer of commissioning responsibilities for a range of public health services (previous papers have been submitted outlining these responsibilities). From 1 April 2013 public health functions transfer from Primary Care Trusts (PCTs) to local authorities, Public Health England (PHE) or the NHS Commissioning Board (NHS CB). This report specifically covers those contracts transferring to the Council.
3. The implementation timescales for the Health and Social Care Act do not allow sufficient time between the allocation of the public health grant to local authorities (confirmed January 2013) and the commencement of public health commissioning responsibilities in local authorities (1 April 2013) to undertake robust procurement across the range of service areas. Additionally, guidance has been issued from the Department of Health that local authorities should not take action, particularly in the first year after transition, which would destabilise providers of public health services and pose risk to the delivery of services. A draft memorandum of understanding around shared services has been produced with Durham County Council to ensure this stability locally in 2013/14.
4. This paper outlines the proposed review and re-procurement timescales for key public health services which require Council approval.
5. Reviews to take place in the coming months may identify services for decommissioning. In such circumstances or where the procurement process is straight forward the full waiver period may not need to be utilised. For services that

are mandated such as sexual health services and health checks there will be not option not to continue to provide the service but they may be commissioned in a different way.

6. The public health allocation has now been confirmed. The allocation is for a 2 year period and is ring-fenced to meet public health responsibilities in local authorities. The allocation for Darlington Borough Council is; £6,989,000 for 2013/14 and £7,184,000 for 2014/15. The allocation covers both services mandated through regulation and all other services that will be required locally based on need to help people live longer, healthier and more fulfilling lives, and to improve the health of the most vulnerable fastest. The allocation is sufficient to meet all currently identified transferring responsibilities. Local authorities will be required to send quarterly high-level returns of their expenditure and a more detailed annual return setting out how the grant has been used to this end. These returns will be analysed by public health England who will report their findings to the Secretary of State.
7. It is proposed that where contract procedure rules are waived for a period of more than 12 months that contracts will still only be issued for a maximum of 12 months with an option to extend. This is to mitigate the risk for the Council associated with system wide financial pressures. Additionally, where any contracts are awarded mid-year, break clauses will be utilised to ensure that they remain affordable into the following financial year.

### Recommendation

8. It is recommended that Members approve the proposed waiver of contract procedure rule 18 under the exceptional circumstances created by the implementation of the Health and Social Care Act for the contracts shown below and described more fully in the main report.

Item no	Service	Maximum Term of Waiver	Supplier
1	The Health Improvement Service	6 months from 1 April 2014	County Durham and Darlington Foundation Trust CDDFT
2	Children's Services for 5-19 year olds	12 months from 1 April 2014	CDDFT
3	Sexual Health Integrated Services	24 months from 1 April 2013	(CDDFT)
4	Adult Integrated Drug and Alcohol Treatment and Recovery Services	24 months from 1 April 2013	North East Council for Addictions (NECA)
5	Young People's Substance Misuse Nursing	24 months from 1 April 2013	Tees Esk and Wear Valleys Foundation Trust (TEWV)

6	NHS Health Checks	18 months from 1 April 2013	Multiple including CDDFT, Pharmacies and GP practices

## Reasons

9. The recommendations are supported by the following reasons :-
- (a) To ensure DBC is compliant with the Health and Social Care Act 2012 in terms of the transfer of public health responsibilities.
  - (b) To ensure safe transfer of contractual responsibilities and manage the capacity requirements associated with review and re-procurement across the range of public health services.
  - (c) To ensure sufficient time to undertake robust reviews and development of commissioning intentions so that efficient service models are commissioned which are evidence based and affordable.
  - (d) To ensure sufficient time for robust procurement to be undertaken including lead in time for providers to set up services and for the management of TUPE implications.

**Murray Rose**  
**Director of People**

## Background Papers

Health and Social Care Act 2012

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S17 Crime and Disorder	Contracts covered within this report contribute to Crime & Disorder Strategies
Health and Well Being	Contracts covered within this report contribute to Health & Well Being Strategies
Carbon Impact	There are no impacts included within this report
Diversity	There are no specific diversity issues included within this report
Wards Affected	All
Groups Affected	All
Budget and Policy Framework	This does not alter the budget or policy framework
Key Decision	Yes
Urgent Decision	No
One Darlington: Perfectly Placed	The contracts included within this report make a contribution to narrowing the health and equalities between different groups within the Borough
Efficiency	The terms Members are being asked to agree allow for efficient management of the contracts in both the short and medium term

## MAIN REPORT

### Information and Analysis

10. As a result of the Health and Social Care Act 2012, responsibility for a number of public health services and contracts will be transferred to Darlington Borough Council on 1 April 2013. To ensure continuity of service provision and sufficient time to review and re-procure services after the public health financial allocation is confirmed the proposal is to waive contract procedure rules for a limited time. This proposal is the result of the exceptional circumstances created by the Health and Social Care act 2012 and the transition arrangements underway to comply with the Act.
11. A summary of services transferring to Darlington Borough Council which require consideration under contract procedure rules is outlined below. A summary table is provided in **Appendix A**.
12. The total value of the waivers is an estimated maximum based on current spend and is subject to annual negotiation of contracts for 2013/14 pending approval of this paper.
13. There are two services which are currently contractually committed until 31 March 2014 under the national "Transforming Community Services" agreement which was put into place when community provision was transferred from PCTs into provider trusts. These services are; The **Health Improvement Service** and **Children's Services for 5-19 year olds** both provided by County Durham and Darlington Foundation Trust (CDDFT), referred to as item 1 and 2 in the summary table

above.

14. The transfer order (of which a draft has been produced by the PCT) for public health contracts is likely to require these contracts to be honoured. These contracts will therefore continue until March 2014 and the ongoing liability for the Council to continue with these contracts is expected to be confirmed by the transfer order to be passed by Parliament.
15. However, in order to ensure sufficient time to undertake full procurement and to take account of any TUPE implications the option of a further 6 month maximum extension is requested on the health improvement service and a further 12 months maximum on children's services contracts thus requiring a waiver of the procurement rules for a period of 6 and 12 months respectively. Additionally, it is likely that from March 2015 additional responsibilities for service for 0-5 year olds will come to local authorities. Any re-procurement of children's services would need to include the implications of this.
16. Contract extensions will only be issued if required and there will be no contractual obligation to commission these services beyond April 2014.
17. There are four additional services for which a waiver of procurement rules is requested. Each is outlined below with the proposed length of waiver and rationale.
18. **Item 3. Sexual Health Integrated Services**  
**Current Provider: County Durham and Darlington Foundation Trust (CDDFT)**  
It is recommended that a waiver of maximum 24 months (up to 31 March 2015) is granted on this service.
19. This service is covered by an MOU with Durham outlining our intention not to destabilise shared provision in 2013/14.
20. The option to extend will allow a full review to be completed and a full procurement undertaken including additional time for the management of TUPE implications and service start up should a different provider be awarded the contract.
21. **Item 4. Adult Integrated Drug and Alcohol Treatment and Recovery Services**  
**Current Provider: North East Council for Addictions (NECA)**  
It is recommended that a waiver of up to maximum 24 months (up to 31 March 2015) is granted in this service.
22. The service is a new service which has been established during 2012/13.
23. The recommendation reflects that fact that this service was market tested under a full tender in 2011/12. Should commissioning arrangements have remained with PCT, a three year contract would have been issued at this point which is deemed a suitable period of contract for a complex clinical service such as this. The 2-year waiver period therefore reflects this.

24. A reduced waiver period may destabilise the provision of service to highly vulnerable individuals in Darlington.
25. The option to extend will allow a full review to be completed and a full procurement undertaken including additional time for the management of TUPE implications and service start up should a different provider be awarded the contract.
26. **Item 5. Young People's Substance Misuse Nursing**  
**Current Provider: Tees Esk and Wear Valleys Foundation Trust (TEWV)**  
It is recommended that a waiver of up to maximum 24 months (up to 31 March 2015) is granted in this service.
27. The option to extend will allow a full review to be completed and a full procurement undertaken including additional time for the management of TUPE implications and service start up should a different provider be awarded the contract.
28. The option to extend will also allow for the young people's service to be considered alongside the review of adult services for drugs and alcohol outlined in item 4.
29. **Item 6. NHS Health Checks**  
**Current Provider: Multiple including CDDFT, Pharmacies and GP practices**  
It is recommended that a waiver of up to maximum 18 months (up to 30 September 2014) is granted in this service.
30. The option to extend will allow a full review to be completed and a full procurement undertaken including additional time for the management of TUPE implications (if any) and service start up should a different provider be awarded the contract (for GP and pharmacy provision, it is questionable whether TUPE would apply due to the much broader roles undertaken by those who carry out health checks as only a part of their role).
31. The option to extend will allow for consideration of a future service model. The current model is aligned to Durham. Alternative models operate in Tees and the most efficient and effective means of delivering the service in Darlington needs to be explored in advance of going out to procurement.
32. All the above mentioned contracts have been or will be added to the corporate procurement plan as required. Strategic contracts will also follow the required process.
33. The maximum combined value of all the services for which waivers are requested across 2013/14 will not exceed £2,370,772 and in 2014/15 will not exceed £3,272,772. The total public health grant across the 2 years is £14,173,000.
34. For the above services robust contract management arrangements will be in place including formal monitoring meetings and clear performance reporting requirements. Additionally, negotiations will take place with current providers in advance of issuing a new contract to ensure value for money.

35. Additionally, there are a number of services which are either provided by DBC or are commissioned by DBC and to which public health makes a contribution. No procurement implications have been identified with these services. The finance for these services will be managed by an internal transfer of funds from the public health grant and will be supported a service level agreement and specification. These services will still be subject to review by 1 April 2015.

### **Legal Implications**

36. Legal advice has been provided to confirm that notwithstanding the length of waiver the contractual commitment to the services referred to in this report should not exceed the time required to put in place new robust procurement processes.

37. The direct awards are justified by the public interest in maintaining provision of the health functions to be transferred to the Council by the Health and Social Care Act 2012 and for re-commissioning to take place after the transfer to the Council of the former PCT commissioning staff having specialised expertise in these areas of clinical and non clinical commissioning.

38. The services to which this report relates are Part B services under EU Procurement Law. The procurement regime for Part B services is limited to openness and transparency which this report seeks to address and the risk of procurement challenge is low.

39. Procurement risk will be mitigated in the contract documents by the steps outlined in paragraph 34 above.

## Public Health Contracts Summary Table

### Contracted until March 2014 under TCS agreement

<b>Service</b>	<b>Current Provider</b>
Health Improvement Service (Workplace, stop smoking, food and health, health trainers, library, physical activity, health checks)	CDDFT
Children's services	CDDFT

### Contracted until March 2013

<b>Service</b>	<b>Current Provider</b>
Sexual health integrated services	CDDFT
Adult integrated treatment recovery service	NECA
Young People's Substance Misuse Nursing	TEWV
NHS Health checks	CDDFT, GP practices, pharmacies