NHS Highland

Meeting:	**Board Meeting**
Meeting date:	**29th September 2026**
Title:	**Non-Pay Spend SFI Section 9 update**
Responsible Executive/Non-Executive:	**Heledd Cooper, Director of Finance**
Report Author:	**Becky Myles, Head of Procurement**

Report Recommendation:
Approve the revised Section 9 (Non-Pay Procurement – Tendering, Contracting and Purchasing Procedures) of the Standing Financial Instructions and authorises implementation with immediate effect.

1. Approve the revised Section 9 of the NHS Highland Standing Financial Instructions.
2. Approve the revised governance approach distinguishing compliant Procurement-led negotiated procedures from Tender Waiver activity.
3. Delegate authority to the Director of Finance and Head of Procurement to implement supporting procedures, guidance and documentation.
4. Confirm that the revised Section 9 takes effect immediately following approval.

1 Purpose

This is presented for:
- Decision

This report relates to a:
- Government policy/directive
- Legal requirement
- Local policy

This report will align to the following NHSScotland quality ambition(s):
Safe, Effective and Person Centred

This report relates to the following Strategic Outcome(s)

Start Well		Thrive Well		Stay Well		Anchor Well	
Grow Well		Listen Well		Nurture Well		Plan Well	
Care Well		Live Well		Respond Well		Treat Well	
Journey Well		Age Well		End Well		Value Well	
Perform well	✓	Progress well		**All** Well Themes			

2 Report summary

2.1 Situation

Approval is sought to adopt the revised Section 9 of the NHS Highland Standing Financial Instructions (SFIs), covering Non-Pay Procurement, Tendering, Contracting and Purchasing Procedures. The proposed revisions strengthen governance, improve alignment with current procurement legislation and national policy, and provide greater clarity on the distinction between compliant procurement routes and exceptional Tender Waiver arrangements.

The most significant change is the formal recognition of Procurement-led negotiated procedures, including Negotiated Procedure without Prior Publication where legally permissible, as compliant procurement routes rather than non-competitive activity where appropriate justification and governance requirements have been met.

2.2 Background

The current SFI provisions pre-date a number of developments in procurement practice, including:

- Increased use of compliant negotiated procurement procedures under the Public Contracts (Scotland) Regulations 2015.
- Greater reliance on national and collaborative framework agreements.
- The need to distinguish between legally compliant direct awards and genuine exceptions requiring Tender Waiver approval.
- Internal audit, governance and compliance requirements for clear audit trails and documented procurement decision-making.

In practice, the absence of explicit recognition of Procurement-led negotiated procedures has created ambiguity regarding whether these arrangements should be reported as non-competitive activity (requiring a Tender Waiver) despite being permitted procurement routes under legislation. The revised wording addresses this issue whilst maintaining robust governance and Value for Money controls.

2.3 Assessment

The revised Section 9:

1. Clarifies Compliant Procurement Routes

The revision explicitly recognises the following as compliant procurement routes:

- Framework call-offs and mini-competitions
- Open and restricted procedures
- Other advertised tender procedures
- Dynamic Purchasing Systems
- Procurement-led negotiated procedures, both with prior publication and, where legislation permits, without prior publication.

2. Strengthens Procurement Governance

The revised section requires that:

- All regulated procurements are led or formally approved by Procurement.
- Any negotiated procedure is led or approved by Procurement.
- Procurement ensures legal compliance, route-to-market selection, value-for-money assessment and maintenance of an auditable procurement record.

3. Clarifies the Purpose of Tender Waivers

The proposal confirms that:

- Tender Waivers are exceptional governance approvals.
- Tender Waivers must not be used where a compliant procurement route is available.
- Procurement-led negotiated procedures do not require a Tender Waiver when the legislative tests have been met.
- Tender Waivers remain subject to delegated authority approval, Procurement and Finance review, and reporting through governance processes including Audit Committee

4. Improves Audit and Assurance
The revised classification table provides clear differentiation between:

Route	Classification	Tender Waiver Required
Framework call-off / mini competition	Competitive	No
Open or restricted procedure	Competitive	No
Procurement-led negotiated procedure	Competitive / Compliant	No
Direct award without justification or Procurement involvement	Non-competitive	Yes

This creates a transparent and auditable framework for procurement decision-making.

2.4 Proposed level of Assurance

Please describe what your report is providing assurance against and what level(s) is/are being proposed:

Substantial	✓	Moderate	
Limited		None	

Comment on the level of assurance

The proposed revision will:

- Improve compliance with procurement legislation.
- Reduce ambiguity regarding compliant direct awards.
- Ensure proportionate governance for urgent and specialist procurements.
- Reduce unnecessary administrative burden where lawful procurement routes exist.
- Strengthen auditability and management assurance.
- Improve consistency of procurement practices across NHS Highland.
- Better align SFIs with current Scottish Government procurement guidance and modern procurement practice.

3 Impact Analysis

3.1 Quality/ Patient Care

The proposed SFI revision is expected to have a **positive impact on quality of care and service delivery** by enabling NHS Highland to access critical goods, services and specialist providers more quickly where legislation permits a Procurement-led negotiated procedure. This is particularly relevant in situations involving service continuity, market scarcity, urgent operational requirements, interoperability of systems, or highly specialised care provision. The change reduces unnecessary delays associated with seeking Tender Waiver approval where a compliant procurement route already exists.

3.2 Workforce

The proposed SFI revision is expected to have a **positive impact on staff**, particularly those involved in commissioning, procurement, finance, operational management and service delivery. The revised arrangements provide greater clarity regarding approved procurement routes and reduce unnecessary administrative processes where a compliant Procurement-led negotiated procedure is available.

3.3 Financial

The proposed revision to Section 9 is primarily a **governance and compliance change** and does not in itself create any additional capital expenditure commitments or revenue pressures for NHS Highland. The change clarifies existing procurement routes available under procurement legislation and strengthens the governance framework supporting their use.

3.4 Risk Assessment/Management

Risk	Mitigation
Misinterpretation that negotiated procedures allow unrestricted direct awards	Procurement approval remains mandatory and legislative justification must be evidenced.
Reduced visibility of non-competitive spend	Tender Waiver reporting arrangements remain unchanged for genuinely exceptional cases.
Inconsistent application of revised rules	Updated procedures, guidance and staff communications will be issued following approval.

Overall risk is assessed as **Low**, with the revisions strengthening rather than weakening existing controls.

3.5 Data Protection

N/A

3.6 Equality and Diversity, including health inequalities

N/A

3.7 Other impacts

N/A

3.8 Communication, involvement, engagement and consultation

The proposed changes to Section 9 of the NHS Highland Standing Financial Instructions have been developed through a review of existing procurement governance arrangements and consideration of current procurement legislation, Scottish Government guidance and operational practice. The revision seeks to provide greater clarity regarding the distinction between compliant procurement routes and exceptional Tender Waiver arrangements, while strengthening governance and audit assurance.

The following communication, involvement and engagement activities have been undertaken:

- Engagement between **Procurement and Finance colleagues** to ensure the revised wording aligns with Standing Financial Instructions, delegated authority arrangements and financial governance requirements.
- Consultation with relevant **Procurement professionals and governance stakeholders** regarding the practical application of Procurement-led negotiated procedures and Tender Waiver processes.
- Review of the proposed changes against the **Public Contracts (Scotland) Regulations 2015**, Scottish Procurement Policy Handbook and Scottish Government Procurement Journey to ensure legislative and policy compliance
- Consideration of operational feedback arising from the use of Tender Waivers and negotiated procedures across a range of procurement activities in order to ensure that governance arrangements remain proportionate, practical and legally compliant.

3.9 Route to the Meeting

The proposal has been informed through a series of discussions held as part of ongoing procurement governance and SFI review activity, including:

- Meetings between Procurement and Finance representatives to review the proposed amendments and their governance implications.
- Discussion of procurement compliance, Tender Waiver governance and negotiated procurement procedures through existing procurement and governance forums.
- Drafting and review sessions undertaken as part of the broader Standing Financial Instructions update process.
- Review by relevant senior officers prior to submission for consideration.

No formal public consultation was required, as the proposal relates to internal governance arrangements and does not change the Board's statutory responsibilities or procurement obligations under existing legislation. The revisions clarify existing lawful procurement routes and strengthen internal controls rather than introducing new procurement powers.

Procurement & Logistics SLT (16/07/2026) – Approved
Finance & Procurement SMT (29/07/2026) – Approved

4.1 List of appendices

The following appendices are included with this report:

- Appendix 1 - Code of Corporate Governance, Section 9 SFI’s, Clause 9 - Tendering, Contracting and Purchasing Procedures

9 NON PAY

Tendering, Contracting and Purchasing Procedures

9.1 The Director of Finance shall prepare detailed procedural instructions on the obtaining of goods, services and works, incorporating thresholds set by the Board. The current Authorisation Limits are set out in Scheme of Delegation and the Financial Operating Procedures/Delegated level of Authority Matrix.

9.2 The Chief Executive shall designate a senior officer as the lead senior officer for procurement, and this person shall oversee the procurement of goods and services, to ensure there is an adequate approval of suppliers and their supplies based on cost and quality.

9.3 NSS National Procurement shall undertake procurement activity on a national basis on behalf of boards (including NHS Highland), and the Board shall implement these nationally negotiated contracts where appropriate.

9.4 The Board shall operate within the processes established for the procurement of publicly funded construction work.

9.5 The Board shall comply with Public Contracts (Scotland) Regulations 2015 (and any subsequent relevant legislation) for any procurement it undertakes directly.

9.6 The Director of Finance shall be responsible for the prompt payment of accounts and claims. Payment of contract invoices shall be in accordance with contract terms, or otherwise, in accordance with national guidance.

9.7 All other aspects of procurement activity must follow the requirements of the Standing Orders and SFIs. Any decision to depart from the requirements of this section must have the approval of NHS Highland Board.

9.8 The Director of Finance shall:

- Advise the Board regarding the setting of thresholds above which quotations (competitive or otherwise) or formal tenders must be obtained in accordance with the Public Contracts (Scotland) Regulations, as issued annually through Scottish Statutory Instrument.
- Ensure the preparation of comprehensive procedures for all aspects of procurement activity.

9.9 The following basic principles shall be generally applied:

- Procurement activity satisfies all legal requirements;
- Adequate contracts are in place with approved suppliers for the supply of approved products and services;
- Segregation of duties is applied throughout the process;
- Adequate approval mechanisms are in place before orders are raised;
- All deliveries are checked for completeness and accuracy, and confirmed before approval to pay is made; and
- All payments made are in accordance with previously agreed terms, and what the Board has actually received.

9.10 Limits of Authorisation of Orders shall be in accordance with those designed officers contained with the DLA matrix.

9.11 Contract Implementation and Regulated Procurement Matrix

THRESHOLD	PROCEDURE	ELECTRONIC SYSTEM
£GPA threshold	FTS Regulated Procurement procedure	PCS/PCS-Tender (Mandatory)

£50,000 - £GPA threshold	PCS Regulated Procurement procedure	PCS/PCS-Tender (Mandatory)
£25,000 - £49,999.99	Competitive Quotation (Minimum of 2)	PCS Quick Quote (Preferred)
£5,000 - £24,999.99	One Written Quotation	
Under £5,000	Demonstrate Value for Money	

The method for calculating the estimated contract value of a Regulated procurement is exclusive of VAT.

9.12 All procurement activity shall be undertaken in accordance with the Public Contracts (Scotland) Regulations 2015 and associated legislation, ensuring that processes are fair, transparent, proportionate and non-discriminatory.

The default expectation is that procurement activity will be subject to an objective competitive process to demonstrate value for money and mitigate risk.

The following are recognised compliant procurement routes and shall be considered competitive where undertaken in accordance with legislative and governance requirements:

- Use of existing national, regional or local framework agreements
- Open, restricted or other advertised tender procedures
- Mini-competition or direct award in accordance with framework/DPS rules
- Procurement-led negotiated procedures, including negotiated procedure with prior publication and, where permitted by legislation, negotiated procedure without prior publication

Where a Procurement-led negotiated procedure is applied in accordance with the Public Contracts (Scotland) Regulations 2015, supported by appropriate justification and audit trail, this shall constitute a compliant route to market and shall not be classified as a non-competitive action.

9.13 All regulated procurements and any procurement utilising a negotiated procedure must be led, or formally approved, by the Procurement function.

Procurement shall ensure:

- Compliance with applicable legislation and governance
- Selection of the most appropriate route to market
- Evidence of value for money through competition, benchmarking or structured negotiation
- Maintenance of a clear and auditable record of the procurement process

9.14 In exceptional circumstances the Tender Waiver process is to be used where it is impossible or impractical to undertake a competitive/compliant procurement process.

The Tender Waiver process must not be used as an alternative route to market where a compliant procurement route is available.

Prior to submission of a Tender Waiver, it must be demonstrated that all compliant procurement routes, including frameworks, quotations and Procurement-led procedures, have been considered and deemed not feasible.

The use of a Procurement-led negotiated procedure, where permitted by legislation, shall not require a Tender Waiver.

Tender Waivers must:

- Be fully justified and evidenced
- Be approved in line with delegated authority thresholds
- Be subject to Procurement and Finance review based on value for money and risk
- Be reported through appropriate governance routes, including Audit Committee

For the avoidance of doubt, procurement activity shall be classified as follows:

Procurement Route	**Classification**	**Tender Waiver**
Framework call-off / mini-competition	Competitive	No
Open / restricted procedure	Competitive	No
Procurement-led negotiated procedure (compliant Direct Award)	Competitive / compliant	No
Direct award without legal justification or Procurement involvement	Non-competitive	Yes

The Director of Finance will maintain a record of all such exceptions.

9.15 Where additional works, services or supplies have become necessary and a change of supplier/contractor would not be practicable (for economic, technical or interoperability reasons) or would involve substantial inconvenience and/or duplication of cost, an existing contractor may be asked to undertake additional works providing the additional works do not exceed 50% of the original contract value and are provided at a value for money cost which should normally be at an equivalent or improved rate to the original contract.

When goods or services are being procured for which quotations or tenders are not required and for which no contract exists, it will be necessary to demonstrate that value for money is being obtained. Written notes/documentation to support the case, signed by the responsible Budget Holder, must be retained for audit inspection.

Further detail on the ordering of goods and services and relevant documentation are set out in the Financial Operating Procedures.

When procuring Health & Social Care and Support Services, the Best practice guidance for public bodies on procurement of care and support services shall apply.

In all instances, the Scottish Procurement Policy Handbook and the Scottish Government Procurement Journey must be followed.

9.16 No order shall be issued for any item or items for which there is no budget provision unless authorised by the Director of Finance on behalf of the Chief Executive.

9.17 Orders shall not be placed in a manner devised to avoid the financial thresholds specified by the Board within the Scheme of Delegation.

9.18 All procurement on behalf of the Board must be made on an official order on the approved e-Procurement systems, PECOS, JAC or Maximo.

9.19 The Board shall not make payments in advance of need. However payment in advance of the receipt of goods or services is permitted in circumstances approved by the lead senior officer for procurement. Examples of such instances are:

- Items such as conferences, courses and travel, foreign currency transactions, where payment is to be made at the time of booking.

9.20 The Board shall not make payments in advance of need. However payment in advance of the receipt of goods or services is permitted in circumstances approved by the Director of Finance. Examples of such instances are:

- Where payment in advance of complete delivery is a legal or contractual requirement, e.g. maintenance contracts, utilities, rates.
- Where payment in advance is necessary to support the provision of services/delivery of a project by external providers (e.g. grants to local authorities or voluntary bodies.)
- Purchases from petty cash shall be undertaken in accordance with relevant financial operating procedures.

Commissioning of Patient Services

9.17 The Director of Finance, jointly with the Deputy Chief Executive will ensure service agreements are in place with other healthcare providers for the delivery of patient services, ensuring the appropriate financial details are contained and clarity on reporting of performance, quality and safety issues.

9.18 The Director of Finance shall be responsible for maintaining a system for the payment of invoices in respect of patient services in accordance with agreed terms and national guidance and shall ensure that adequate financial systems are in place to monitor and control these.

Payment of Invoices

9.19 The Director of Finance shall be responsible for the prompt payment of all invoices. The Director of Finance shall publish the Board’s performance in achieving the prompt payment targets in accordance with specified terms and national guidance.

9.20 The Director of Finance shall be responsible for designing and maintaining a system for the verification, recording and payment of all amounts payable by the Board. The system shall provide for authorisation by agreed delegated officers, a timetable and system for the payment of invoices and instruction to staff regarding handling, checking and payment of invoices.

9.21 The Director of Finance shall ensure that payments for goods and services are made only after goods and services are received. Prepayments will be permitted in exceptional circumstances and with the prior approval of the Director of Finance

Additional Matters for Capital Expenditure

Overall Arrangements for the Approval of the Capital Plan

9.22 The Board shall follow any national instructions on the approval of capital expenditure, such as the Scottish Capital Investment Manual. The authorisation process shall be described in the Scheme of Delegation.

9.23 The Chief Executive shall ensure that:

- there is an adequate appraisal and approval process in place for determining capital expenditure priorities within the Property Strategy and the effect of each proposal upon business plans;
- all stages of capital schemes are managed, and are delivered on time and to cost;

- capital investment is not undertaken without confirmation that the necessary capital funding and approvals are in place; and
- all revenue consequences from the scheme, including capital charges, are recognised, and the source of funding is identified in financial plans.

Implementing the Capital Programme

9.24 For every major capital expenditure proposal the Chief Executive shall ensure:

- that a business case as required by the Scottish Capital Investment Manual (SCIM) is produced setting out:
  a) an option appraisal of potential benefits compared with known costs to determine the option with the highest ratio of benefits to costs; and
  b) appropriate project management and control arrangements; and
- that the Director of Finance has assessed the costs and revenue consequences detailed in the business case.

9.25 The approval of a business case and inclusion in the Board's capital plan shall not constitute approval of the individual elements of expenditure on any scheme. The Chief Executive shall issue to the manager responsible for any scheme:

- specific authority to commit expenditure; and
- following the required approval of the business case, authority to proceed to tender.

9.26 The Scheme of Delegation shall stipulate where delegated authority lies for:

- approval to accept a successful tender; and
- where Frameworks Scotland applies, authority to agree risks and timelines associated with a project in order to arrive at a target price.

9.27 The Director of Finance shall issue procedures governing the financial management of capital investment projects (e.g. including variations to contract, application of Frameworks Scotland) and valuation for accounting purposes.

Public Private Partnerships and other Non-Exchequer Funding

9.28 When the Board proposes to use finance which is to be provided other than through its capital allocations, the following procedures shall apply:

- The Director of Finance shall demonstrate that the use of public private partnerships represents value for money and genuinely transfers significant risk to the private sector.
- Where the sum involved exceeds the Board's delegated limits, the business case must be referred to the Scottish Government for approval or treated as per current guidelines.
- Board must specifically agree the proposal.
- The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

Disposals of Assets

9.29 The Director of Finance shall issue procedures for the disposal of assets including condemnations. All disposals shall be in accordance with MEL(1996)7: Sale of surplus and obsolete goods and equipment and in accordance with the Property Transaction Handbook.

9.30 There is a requirement to achieve Best Value for money when disposing of assets belonging to the Health Board. A competitive process should normally be undertaken.

9.31 When it is decided to dispose of a Health Board asset, the head of department or authorised deputy will determine and advise the Director of Finance of the estimated market value of the item, taking account of professional advice where appropriate.

9.32 All unserviceable articles shall be:

- Condemned or otherwise disposed of by an employee authorised for that purpose by the Director of Finance.
- Recorded by the Condemning Officer in a form approved by the Director of Finance which will indicate whether the articles are to be converted, destroyed or otherwise disposed of. All entries shall be confirmed by the countersignature of a second employee authorised for the purpose by the Director of Finance.

Capital Accounting

9.33 The Director of Finance shall be notified when capital assets are sold, scrapped, lost or otherwise disposed of, and what the disposal proceeds were. The value of the assets shall be removed from the accounting records. Each disposal must be validated by reference to authorisation documents and invoices (where appropriate).

9.34 The Director of Finance shall approve procedures for reconciling balances on capital assets accounts in ledgers against balances on capital asset registers.

9.35 The value of each asset shall be indexed and depreciated in accordance with methods specified by the Capital Accounting Manual.

9.36 The Director of Finance shall calculate capital charges, which will be charged against the Board's revenue resource limit.