Variations / Extensions / Amendments

Purpose of This Guidance

This guidance helps organisations manage changes to medium-to-high risk contracts in a compliant, transparent, and controlled way.

Variations, extensions and amendments must be planned, justified, risk-assessed, and formally documented to ensure they do not breach procurement rules or compromise value for money.

Key Principles

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Lawful and Transparent

All changes must comply with

- Procurement (Scotland) Act 2014,
- Public Contracts (Scotland) Regulations 2015, and
- Organisation-specific standing orders/financial regulations.

If a change risks being considered a **new contract** or a **substantial modification**, the contract must be re-tendered.

Control and Governance

Medium-to-high risk contracts require:

- Robust oversight,
- Senior management approval, and
- Formal documentation of decisions and rationale.

Proportionality & Risk Assessment

The complexity and level of scrutiny should match the **risk level**, **value**, and **potential impact** of the change.

Value for Money

Changes must be commercially justified and deliver:

- Outcomes aligned with the original contract,
- Cost efficiency,
- Continued service performance.

Types of Contract Changes

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Variation

A change to the contract's scope, requirements, deliverables, service levels, or working methods.

Examples:

- Adding new reporting requirements
- Changing a service delivery location
- Increasing or reducing volumes
- Adjusting Key Performance Indicators (KPIs) or service levels

Contract Extension

Extending the contract term where:

- The original contract includes an **option to extend**, and
- The value including extensions was accounted for in the procurement.

Amendment

Any change to contractual terms and conditions such as:

- Pricing mechanisms
- Governance arrangements

- Liability clauses
- Payment terms

When Variations or Amendments Are Allowed

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Changes must meet one of these conditions:

1. **Clearly provided for** in the original contract (e.g., indexation, agreed change control mechanism).
2. **Not substantial** (i.e., do not materially alter the nature of the contract).
3. **Below legal thresholds** and within permitted percentage increases (as per regulations).
4. **Unforeseen circumstances** make the change essential and compliant with regulation allowances.

There are a variety of issues that should be considered in any change management process to ensure that it is effective. Three key areas for consideration are:

- the need for change impact reports;
- any pricing principles that will apply to the change; and
- the supplier's obligation to undertake the change.

Where the consequences of getting things wrong are significant and it is recognised that a change is required, it makes sense to run a formal pilot. If the pilot fails to meet expectations, you can revisit and retest until you achieve the required results. This can be done before committing your resources to, and reputation on a wider scale contractual change.

For example, **"Plan, Do, Check, Act" (PDCA)** is a recognised continuous improvement plan (CIP) model. It can be utilised to ensure your change will deliver the desired results. As its name indicates, there are 4 steps to the model of which steps 2 and 3 can be repeated until the desired result is achieved. The 4 steps can be summarised as:

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Plan, Do, Check, Act (PDCA)

1. **Plan:** Define the problem to be addressed. Collect the relevant data. Ascertain the problem's root cause
2. **Do:** Develop possible solutions. Select the most appropriate solution(s). Implement a small-scale pilot solution. Decide upon a measurement to gauge effectiveness of the pilot.
3. **Check:** Check the problems you have encountered during the pilot and identify the root causes. Measure how effective the solution has been by comparing pre-pilot and post-pilot data. Depending on the success of the pilot, you have the option of repeating the “Do” and “Check” phases. You can incorporate additional improvements until you get the desired result
4. **Act:** You can implement your solution. However, if you are using the PDCA as part of a continuous improvement initiative, you need to loop back to the Plan Phase (Step 1) and seek out further areas for improvement.

Contract Variations

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Variations (changes to requirements) to the contract should be **exceptional**, not routine.

Contract variations should only be permissible where changes **do not significantly alter** the original contract’s scope, value or duration.

A significant change could be to the:

- contract scope
- contract value
- contract duration

If a proposed change is significant (change in scope, large value increase, much longer duration) then you may need to conduct a **new procurement exercise**.

If you are unable to estimate the value of a contract that contract will be explicitly made subject to the procurement rules.

If a significant change to the contract is proposed, you must contact your local Procurement Function or Centre of Expertise for advice on how to proceed before making changes.

Suggested Responsibilities/Considerations

- when permitted.
- process to follow - all changes must follow formal change control procedures.
- procurement must be involved in significant amendments.
- escalation should be earlier for high-risk/strategic suppliers, and proportionate.

Why it is Important

- variations or amendments **changes the terms of a legally binding agreement**
- proper management ensures changes are **authorised, documented, and compliant** with procurement and governance rules
- prevents disputes or claims later about what was or wasn't agreed
- without a formal process, even small changes can invalidate parts of the contract or create ambiguity
- public sector organisations must show that all contract changes are **fair, transparent, and traceable**
- clear records of variations support **audit, governance, and reporting requirements**
- demonstrates accountability for decision-making and use of public funds
- a structured variation process creates documented evidence of:
  - what changed and why
  - who approved it
  - when it was implemented
  - the impact on cost, scope, and delivery

A **Contract Variation Request Form** is available for you to use and can be found at the bottom of this page.

Example Governance Process for Contract Changes

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Step 1 — Identify the Need for Change

Triggers include:

- Legislative or regulatory changes
- Business needs shifts
- Performance issues requiring remedy
- Budget changes
- Operational needs discovered during delivery

All changes must be **justified in writing**.

Step 2 — Assess the Impact

Assessment should consider:

Contractual Impact

- Does the scope change?
- Is the change substantial?
- Does it alter competition?

Commercial Impact

- Price changes
- Market benchmarking
- Supplier cost justification

Risk Impact

- Service continuity
- Reputational or legal risks
- Risk of challenge by non-winning suppliers

Operational Impact

- Implementation timelines
- Resources required

Financial Impact

- Budget availability
- Whole-life cost implications

Complete a **Change Impact Assessment Form**. There is a template available for use to use at the bottom of this page.

Step 3 — Legal and Procurement Review

- Procurement colleagues must review the change.
- Legal services should confirm compliance.
- If necessary, conduct a procurement law risk analysis.

Failure to do this may invalidate the contract.

Step 4 — Governance Approval

Approvals depend on organisational rules, but common requirements include:

- Contract Manager recommendation
- Senior Responsible Officer (SRO) sign-off
- Finance approval (for cost increases)
- Procurement approval
- Legal approval

High-risk changes may require:

- Governance board approval
- Audit committee notification
- Change control board sign-off

Step 5 — Supplier Engagement

Do not start discussions or negotiate with the supplier(s) until internal approval is secured.

Supplier engagement should cover:

- Necessity of the change

- Commercial impacts
- Implementation timelines
- Risks and mitigations
- Alternative options

Document all discussions.

Step 6 — Formal Change Control Documentation

Use a **Change Control Notice (CCN)** or **Contract Modification Form** including:

- Description of change
- Justification
- Revised pricing or contractual terms
- Implementation timeline
- Signatures from both parties
- Updated schedules / KPIs / pricing tables

All signed documents must be retained in a contract file.

Step 7 — Update Documentation & Systems

Update:

- Contract registers
- Risk logs
- Balanced scorecard/KPIs
- Contract management plan
- Procurement documentation
- Financial forecasting and budgets

If the change results in a modified value above thresholds, **publish a Contract Modification Notice** on Public Contracts Scotland (PCS).

Change Impact Reports

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Before any change request can be properly considered, the customer and the supplier must understand the implications of the proposed change. To support this you may require the service provider to prepare an impact report. (The service provider will normally be in the best position to assess the impact of a change). Ideally, the impact report will present a full description of the change, including how the change is to be implemented and, where relevant, detail:

- the feasibility of the change;
- the effect of the change on the ability of the supplier to meet its obligations under the contract;
- any cost implications of the change;
- any consequential impact of the change;
- where appropriate, acceptance testing procedures and acceptance criteria for the proposed change; and
- any other information likely to be of relevance.

Checklist

Checklist

Contract Variations Checklist

Key issues to consider in managing contract variations include:

Key Areas	Achieved?
• Are procedures required by the contract being followed?	
• Have the reasons for the proposed variation been assessed? Does this indicate an emerging or actual problem?	
• Has the impact of the proposed variation on the contract's deliverables been assessed? Particularly whether the variation or the work it represents is actually required and is already part of the original contract deliverables?	

• Has the effect of the proposed variation on the contract's price been determined?	
• Has authority been given for making the variation?	
• Has the variation and its impact been properly documented?	
• Have you undertaken all reporting requirements?	

For above threshold contracts, the starting position is that contract changes will require a new competition to be held. This is unless one of six exceptions can be applied. These exceptions are:

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Exceptions from Holding a New Competition

1. Where the change is provided for in a clear, precise and unequivocal review clause. This clause must have been included in the initial procurement documents.

2. Where additional goods & services or supplies are now necessary and a change of supplier is not possible for economic or technical reasons. Where such a change would result in significant inconvenience or substantial duplication of costs. This is provided that any price increase does not exceed 50% of the initial contract value.

3. Where the need for change is brought about by circumstances which an Organisation could not reasonably have foreseen, does not alter the overall nature of the contract; and does not result in a price increase greater than 50% of the initial contract value or framework agreement.

4. Replacement of the original supplier by another under a review clause; universal or partial succession, perhaps due to takeover, merger, acquisition or insolvency; or where the Organisation steps in and assigns some or all of the goods, or services back to itself. The new supplier must meet the selection criteria of the original tender.

5. Where changes, irrespective of their value, are not substantial. This could include a change to the economic value of the contract in favour of the successful supplier(s).

6. For minor changes, these must not affect the nature of the contract, must be valued below the relevant threshold and be less than 10% of the initial contract value for goods and services.

When making successive modifications you must take care that the cumulative value of these does not breach any of the previous requirements. This does not apply in the case of point 3, where successive modifications would, by definition be unrelated and so the value limitation of successive modifications does not cumulate.

If planned modifications are determined not to meet the criteria or have not been provided for in the original contract documentation, then a new procurement procedure must be undertaken. Legal advice should be sought.

For more information on contract modification during the term of the contract, please see Regulation 72.

Supplier's obligation to undertake the change

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A detailed Change Management Process is of little value if the change required has been determined, and the supplier refuses to implement. Accordingly, the Change Management Process may mean the supplier cannot unreasonably refuse (either directly or indirectly) a change requested by the Organisation.

Unreasonable grounds for refusing a change might include:

- demanding unreasonable charges for the change;
- imposing unreasonable conditions for undertaking the change; or
- refusing to include the change under the agreement. This could be despite the subject matter being reasonably related to, or connected with, the services.

A carefully drafted Change Management Process can mean the difference between what the customer requested in terms of systems/services, and what they discover is actually needed during the term of the contract.

Pricing Principles

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You should specify how costs associated with any change will be allocated between your Organisation and the supplier(s). This should be done as part of the Change Management Process.

Ordinarily, the Organisation should be required to pay for a change when the change is not considered to be within scope of the existing contract.

Where a change falls outside the scope of the existing contract, the Change Management Process may detail the principles that will determine the price to be paid by the Organisation. For example, the Change Management Process may stipulate that the price for any change should be:

- reasonable;
- competitive; and

- not higher than the price a customer would pay for similar products or services from another supplier.

The Change Management Process may enable the Organisation to request the supplier to provide an auditor's certificate. This could confirm that the pricing of any change complies with the pricing principles.

Managing Contract Extensions

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Principles

To extend legally:

1. Extension option **must be included in the original contract**.
2. Original **estimated value must include** all extension periods.
3. Extension must **not alter the original scope**.
4. Approvals and governance must be followed.

Extension Due Diligence Checklist

- Review contract performance
- Assess supplier capability
- Consider market testing (if appropriate)
- Review value for money
- Update risk assessment
- Confirm budget availability
- Prepare a contract extension report/approval paper
- Obtain approval from senior management or governance board

Document the Extension

Use a **Formal Extension Agreement** signed by both parties.

High-Risk Considerations

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When a variation becomes a new procurement

A change may be deemed substantial if it:

- Introduces material new services
- Changes the overall nature of the contract
- Alters the economic balance in favour of the supplier
- Increases value beyond permitted thresholds

If substantial → **a new procurement is required**.

Avoiding Scope Creep

Actions:

- Enforce a strong change control process
- Challenge unnecessary changes
- Document and monitor all variations
- Use a central register of changes
- Ensure value for money remains demonstrable

Audit and Accountability

Medium-to-high risk contracts must maintain a **clear audit trail**, including:

- Justification documents
- Approval evidence
- Change logs
- Negotiation notes
- Updated KPIs and performance reports

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Roles & Responsibilities Summary

Role	Responsibilities

Contract Manager	Identify need, draft impact assessment, lead negotiations, update records
Procurement	Assess legality, advise on process, ensure compliance, approve changes
Legal Services	Review contractual implications, confirm regulatory compliance
Finance	Approve additional spend, validate budgets
Senior Responsible Officer	Approve strategic or high-risk changes
Supplier	Provide evidence, agree change terms, implement change

Contract Termination

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It is possible for an Organisation to terminate a contract during its term. These circumstances are covered in the Dispute Resolution, Termination & Contract Exit

Please note: you cannot terminate a contract with the aim of avoiding procurement rule obligations.

Any documents you need are listed below

Change Impact Assessment (CIA) Template

(file type: docx)

Contract Variation Request Form

(file type: xlsx)

Contract Variation Workflow Diagram

(file type: docx)