

**All Committee meetings were cancelled with effect from 23rd March, 2020 due to the COVID-19 emergency.**

**The recommendations in this report were approved by an Executive Director of the Council, acting under delegated authority in terms of paragraph 2.1.1 of the Council's List of Officer Powers**

Approved by the Chief Executive – 13th April, 2020

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## Supplier Relief – Scottish Procurement Practice Note 05/2020

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Report by: Les Robertson Head of Revenues and Commercial Services

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Wards Affected: All

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### Purpose

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The report seeks authority within the current financial regulations to set up and administer a supplier relief scheme as detailed in the Scottish Government's Procurement Practice Note 05/2020.

### Recommendations

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Committee is asked to:

- Approve and support the Supplier Relief Scheme as detailed within this report and associated appendices;
- Approve the setting up of a decision-making function under the guidance of the Executive Director (Finance and Corporate Services);
- Approve and Authorise the Executive Director Finance and Corporate Services to approve payments, including advanced payments where deemed appropriate as detailed in the scheme and policy note SPPN05/2020 under delegated authority;
- Note that the Executive Director Finance and Corporate Services will temporarily vary the Financial Regulations to give effect to the Supplier Relief Scheme detailed in this report

### Resource Implications

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The scheme will predominately authorise expenditure to suppliers that is currently within the authorities existing budget. Exceptions can be made to comply with the aim of the scheme which will be authorised on a case by case basis by the Executive Director (Finance and Corporate Services).

### Legal & Risk Implications

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The scheme must operate within the framework set out in the Policy Note issued by Scottish Government. To minimise the risk, officers will work at a national level to ensure guidance is being followed and the whole process will be reviewed by the Council's Legal Services and awards will be subject to retrospective audit review.

There is a risk that suppliers may be eligible for and receive various forms of relief from this scheme as well as other national schemes. In designing the Supplier Relief Scheme, measures must be put in place to ensure there is no double provision of relief and this will require "open book" reviews between suppliers and Fife Council.

The scheme is subject to the revised State Aid rules and the designed scheme must ensure businesses are not awarded more than 800,000 euros in State Aid.

Another risk identified is that other Council officers may agree with their own supplier base to make alternative payment arrangements or contractual amendments, such actions taken out with this scheme, are not permitted in either the current or revised Financial Regulations.

## **Impact Assessment**

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An EQIA is not appropriate as the scheme is designed to assist all relevant businesses and therefore enhances existing policy.

## **Consultation**

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Consultation has taken place both at a national level with Scottish Government and COSLA and at a local level with CET and relevant services inputting to the identification of relevant suppliers who we may assist.

## **1.0 Background**

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- 1.1 As a consequence of the Coronavirus COVID-29 crisis, the Scottish Government have issued guidance to all public “contracting authorities” in terms of two Scottish Procurement Policy Notes (SPPN4/2020 and SPPN 5/2020) which urges all public bodies to take urgent action to review all current contracts and to consider the options set out in the guidance:
  - Contract modifications to time scale
  - Contract modification to scope
  - Accelerated payment practices
  - Interim/Advance payment relief
  - Consider suppliers interim payment proposals
- 1.2 The guidance covers all contracts entered into by public bodies and requires Fife Council to review, urgently, all current contracts and to identify suppliers who may require consideration and implementation of an interim payment proposal.
- 1.3 It is for each public body to determine, on a contract by contract basis, what form of supplier relief is appropriate, and decisions taken on a case by case basis taking into account Fife’s Council’s financial regulations, governance and audit arrangements are complied with.
- 1.4 The overall aim of the scheme is to ensure that critical suppliers are identified and supported financially, or contract terms varied, in the short term, to ensure that continuity of supply of critical services can be maintained in the medium and long term.
- 1.5 The guidance has immediate effect and applies until 30<sup>th</sup> June 2020 but may be extended by Scottish Government.

- 1.6 The Council's Financial Regulations currently do not permit payments to be made to suppliers for goods or services that are not delivered. However, to give effect to the Supplier Relief Scheme the Executive Director Finance and Corporate Services will vary the Financial Regulations temporarily, with immediate effect, to facilitate payments being made under this scheme. The Executive Director's authority to vary the Financial Regulations is set out in paragraph 1.1.3 of that document.
- 1.7 The updated Fife Council Financial Regulations will only allow the Executive Director Finance and Corporate Services to vary payment and contractual terms. Communications with other officers of the Council will be required to ensure no other officer enters in to such negotiations with suppliers as this would not be permitted within the terms of the updated regulations.

## **2.0 Supplier Relief Scheme**

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- 2.1 A supplier relief scheme has been developed to support critical suppliers. The starting point is the identification within our current suppliers which ones are deemed as critical and whom have been adversely impacted by the current crisis. The Council's procurement service has reviewed our current suppliers and have identified a number of suppliers who they consider to fall into this category. This list has been shared with all Executive Directors and requests that the list is reviewed by each Directorate so that a comprehensive list of suppliers is identified. The next step is to enter into dialogue with the identified suppliers to pursue the relief scheme.
- 2.2 Full details of the scheme, process charts, application process are contained in appendices to this report. The aim of the scheme will require the Council to contact each supplier and agree legal variations to the contract.
- 2.3 In every case, the supplier will be required to make proposals to Fife Council as contained in the application process and it is key that "open book" arrangements are agreed to ensure appropriate support is provided and that there is no double provision of support from national schemes such as the 80% Job Retention Scheme.
- 2.4 In every case where supplier relief is requested, a full variation report will be written and submitted to an appropriate decision-making group made up of the following officers: -
  - Head of Finance
  - A nominated solicitor from Legal Services
  - Procurement Service Manager
  - Head of Revenue and Commercial Services

These officers will review, on a case by case basis, each report and provide recommendations to Executive Director Finance and Corporate Services on the appropriateness of the relief requested and the value and timescale for each relief application.

- 2.5 Records of each decision will be retained and may be subject to review by Audit Services.
- 2.6 Where relief is awarded under the Supplier Relief Scheme, this will be documented and issued to each supplier in the form of a variation letter which constitutes a formal and legally binding variation to the contract. This will be reviewed on a monthly basis to ensure, when other national reliefs are in a position to be awarded, that the Supplier Relief is reviewed and adjusted accordingly to avoid any double provision of the relief.

## 3.0 Conclusions

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- 3.1 Fife Council is a public body deemed to be a contracting authority and in terms of the guidance is required to develop, urgently, a supplier relief scheme.
- 3.2 In developing the scheme, Fife Council is required to identify and support critical suppliers and provide supplier relief to ensure the medium and long-term viability of these critical suppliers.
- 3.3 Fife Council must also ensure, it complies with its own governance, financial and audit requirements in developing the scheme and making awards from this scheme. As such the overall governance has been developed to ensure appropriate suppliers are identified and supported. This is being done in an open and transparent manner and decision making will be subject to retrospective review by audit services.
- 3.4 Clear internal communications will be issued via CET and CLT to ensure the scheme is known and that the power to vary payment or contractual terms is limited to the Executive Director Finance and Corporate Services as detailed in the Financial Regulations (as amended).

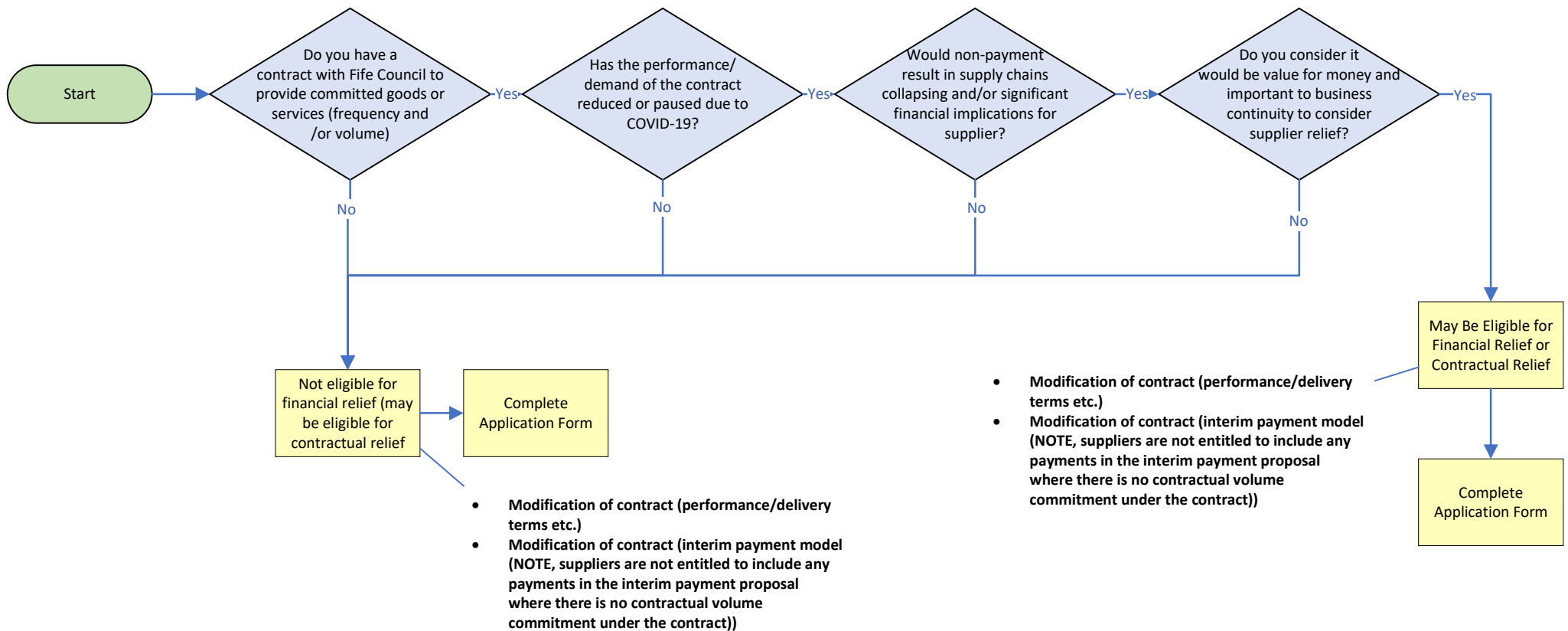
### List of Appendices

1. Supplier relief overall process
2. Supplier relief external process
3. Supplier Relief internal process
4. Supplier relief – draft application form

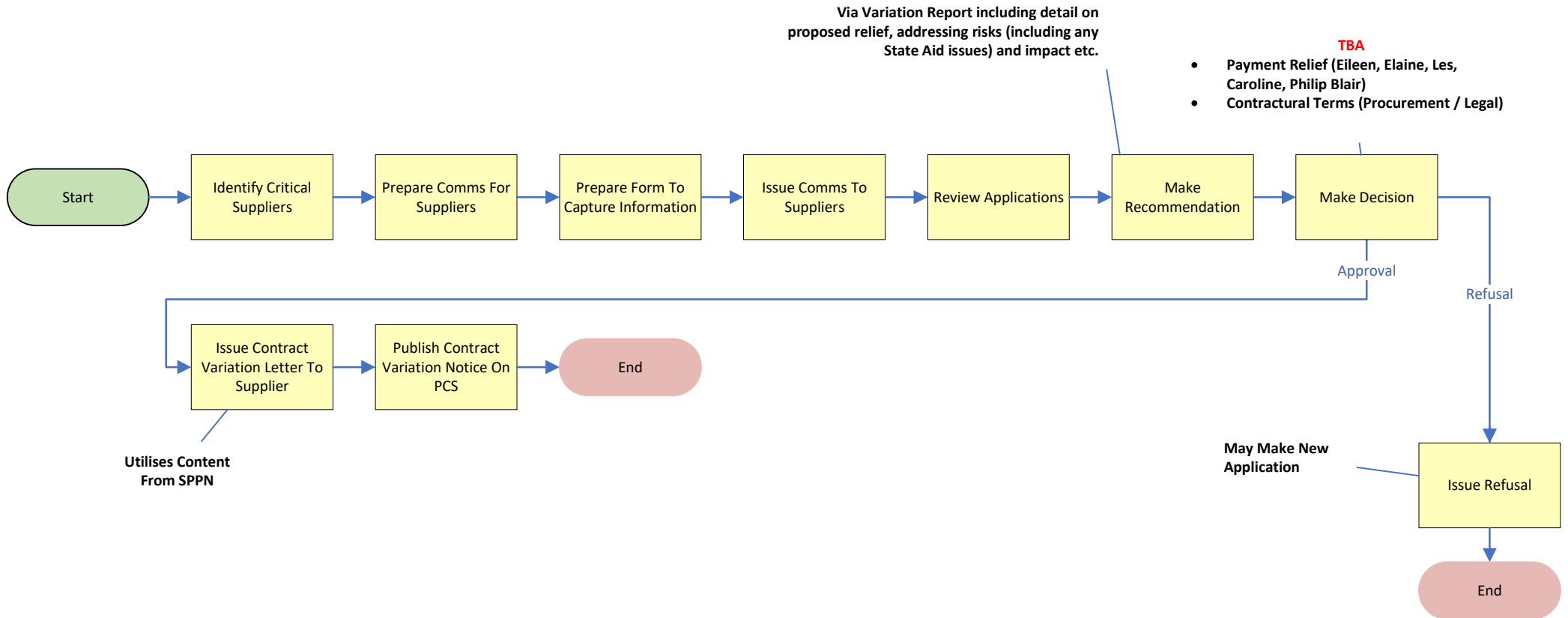
### Report Contact

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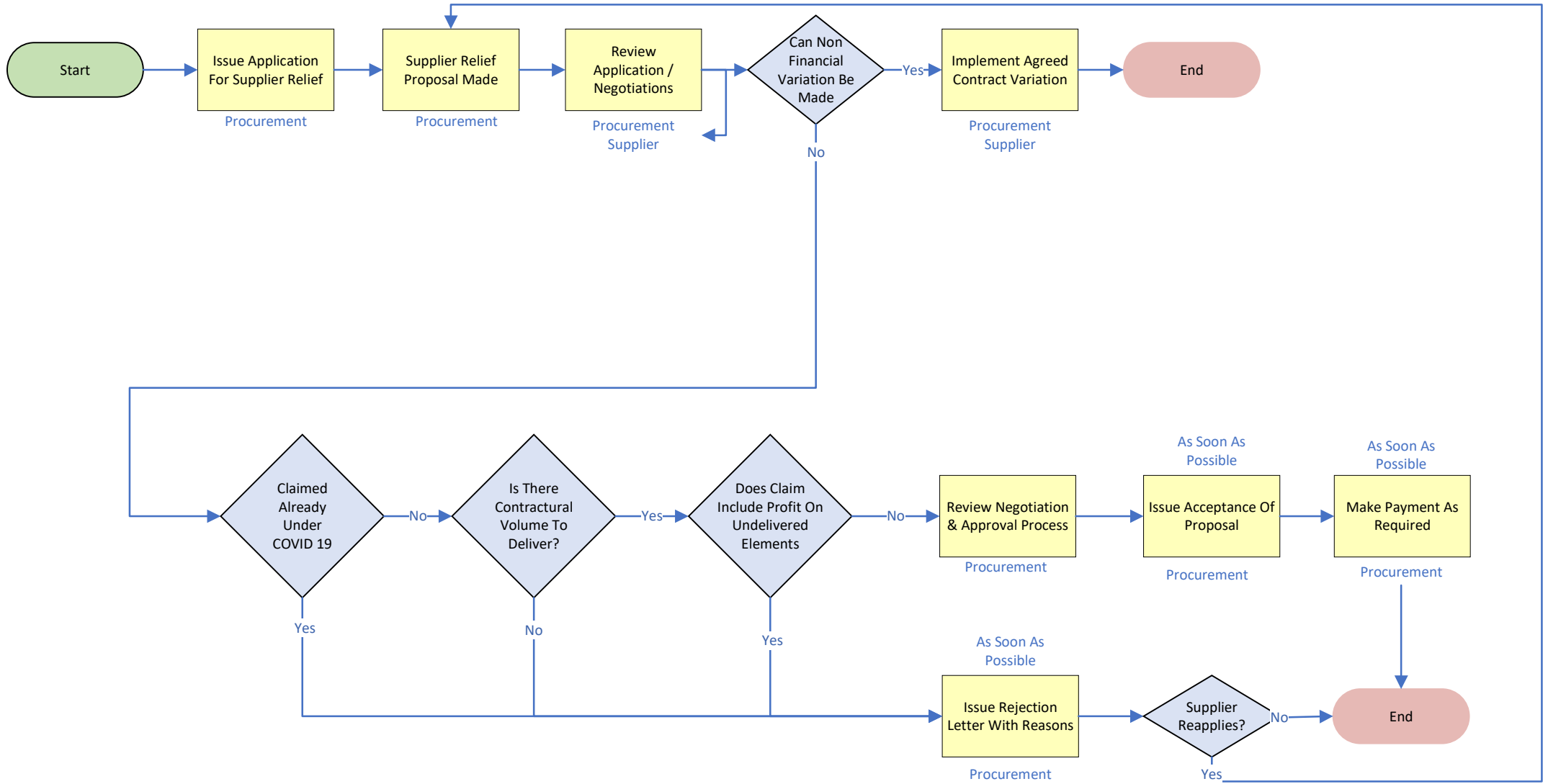
# SUPPLIER RELIEF



# SUPPLIER RELIEF



# SUPPLIER RELIEF





## COVID-19 - Supplier Relief Application

The purpose of this application is for a supplier to request a variation in contract terms from the authority to give relief to the supplier on the terms of this variation. The authority and the supplier acknowledge that the relief is given in light of SPPN 5/2020 and that both parties shall act in good faith and work together towards the principles set out in SPPN 5/2020. The supplier acknowledges that any relief given to it is at the sole discretion of the authority.

<b>Supplier Name</b>	
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<b>Supplier Address</b>	

<b>Fife Council Contract Title / Reference</b>	
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Any payments agreed to will be in compliance with the current State aid rules or the Temporary Framework introduced by the European Commission to further support the economy in the COVID-19 outbreak and the four state aid tests below will be applied. Further information can be found below

[Click Here For Information](#)

- 1. There has been an intervention by the State or through State resources which can take a variety of forms (e.g. grants, interest and tax reliefs, guarantees, government holdings of all or part of a company, or providing goods and services on preferential terms, etc)*
- 2. The intervention gives the recipient an advantage on a selective basis, for example to specific companies or industry sectors, or to companies located in specific regions.*
- 3. Competition has been or may be distorted.*
- 4 The intervention is likely to affect trade between Member States.*

Would State Aid Be Applicable?	<input type="checkbox"/>
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Have you made a claim under the contract with any other COVID-19 related relief, grant, intervention or other measure which results in you receiving more than one benefit/relief for the same underlying cash-flow issue?	<input type="checkbox"/>
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Will any part of this claim cover where there is no contractual volume commitment to deliver?	<input type="checkbox"/>
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Do any amounts within this claim cover profit on undelivered elements of the contract?	<input type="checkbox"/>
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<b>What Form Of Suppliers Relief Do You Wish To Claim?</b> <small>(Select All That Apply From List)</small>	

Please provide details of variation proposed	
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Please Demonstrate Why Such Relief Will Aid Your Cashflow	
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If Variation Requires Change In Payment Schedule Please Identify These	
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I confirm That Any Payments That Will Be Made To Me By Fife Council Will Be Used As Intended  
(To employ and pay staff in full (including those on zero hours, self-employed and sub-contracted); To pay suppliers; and To maintain the solvency and capacity of the business)

I confirm that I will permit the Council access to our accounts (open book accounting), if requested, for confirming monies paid out have been used as intended, audit and reconciliation purposes.

**Declaration**

I will keep Fife Council informed of any other relief sought since making this application and I have authority to make such application on behalf of the above named contractor

**Name**

**Date**

Fife Council aims to consider this application and make any agreed amendments if approved as soon as is practicably possible