

**Report to:** Audit and Governance Committee

**Date:** 4 September 2023

**Title:** Updating and alignment of Scheme of Delegations to Officers

**Report of:** Monitoring Officer

**Ward(s):** All

**Purpose of report:** For the Committee to consider the draft new Lewes Scheme and recommend it to Cabinet and full Council for approval.

**Officer recommendation(s):** (1) To review and then to recommend to Cabinet the updated and aligned Scheme of Delegations to Officers (executive functions only) set out in Appendix 1; and  
(2) To review and then to recommend to full Council the updated and aligned Scheme of Delegations to Officers (council functions only) set out in Appendix 1.

**Reasons for recommendations:** The existing Scheme for Lewes has not been fully updated since 2015, leading to uncertainty over certain Officer powers and difficulty with implementation.

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## 1 Introduction

- 1.1 The Council's Scheme of Delegations to Officers forms part of the constitution and sets out the substance and extent of powers delegated by the executive and full Council to each of the directors, the Monitoring Officer and Head of Legal Services. These delegations relate to officers' operational powers to perform their routine day to day functions.
- 1.2 Additionally, the Scheme delegates powers to Proper Officers, namely those officers designated under local government legislation to perform 'proper officer' functions.
- 1.3 Since the Joint Transformation Programme in 2015, the Council (LDC) and Eastbourne Borough Council (EBC) have continued to operate under individual Schemes. The presentation and scope of each one is drafted differently.

- 1.4 This differing approach, in addition to the absence of a much needed update, has led to inconsistencies at corporate level where directors acting across both authorities have sought clarity over the nature and extent of their delegated powers. Equally, references to 'Proper Officer' legislation require a refresh to ensure only current law is cited.
- 1.5 Whilst updating and alignment is the overriding objective, two individual Schemes will remain, since LDC retains exclusive functions relating to–
- (i) its development management functions on behalf of South Downs National Park Authority (see the introductory text prior to item C57; and the content of C57(iii) of the draft Scheme), and
  - (ii) its management of Code of Conduct matters in relation to parish councils (see item 104 of the draft Scheme).

For ease of reference, these are highlighted in green in the draft Scheme.

EBC retains exclusive functions relating to Devonshire Park and culture and tourism, including Eastbourne Downs Golf Club.

- 1.6 The two Schemes will in all other respects be identical in presentation and content, enabling officers to interpret and apply their powers correctly and consistently across their entire service responsibility and both authorities' geographical areas.

## **2 Drafting and consultation to date**

- 2.1 The Monitoring Officer prepared initial drafts, which he referred to the Corporate Management Team on 14 June 2023 and to the Senior Managers Forum for comment. Their recommended amendments were reflected in a revised draft.
- 2.2 The Lewes Constitution Working Group (CWG) met on 21 June and 20 July 2023 to review the Lewes draft Scheme. CWG is a cross-party advisory body with a remit to consider proposed amendments to the constitution and make recommendations to Audit and Governance Committee. Subsequently it's for this committee to refer the draft Scheme to Cabinet and full Council for approval.
- 2.3 At their first meeting, CWG commented on the draft in detail and suggested amendments. In light of this, the Monitoring Officer revised the draft and presented it back to the Group for re-consideration. This latest version was endorsed by all members at their second meeting.

## **3 Proposal**

- 3.1 Part of the Audit and Governance Committee remit is to consider governance amendments (including constitutional matters). In that capacity, the Committee is invited–
- (i) to review the draft version of the updated and aligned Scheme set out in Appendix 1; and

- (ii) to recommend that Cabinet approve all executive functions; and that full Council approve all Council (i.e. non-executive) functions.

- 3.2 Council functions are set out in article 4.4 of the constitution – see link under Background Papers (paragraph 11 below). Any functions not listed in article 4.4 are, by default, executive functions.
- 3.3 To assist the Committee, from Part B onwards all Council functions in the draft Scheme are denoted with the letter ‘C’ in red. All other entries from Part B onwards are executive functions.
- 3.4 As indicated in paragraph 1.1, the Scheme specifies powers exercisable by officers on a routine, regular basis as part of their ordinary day to day functions. These are distinct from express delegations made by resolution of Cabinet or full Council, giving effect to a stand-alone officer report and recommendations on a specific topic.
- 3.5 Subject to Cabinet approving the executive delegations at its meeting on 9 November 2023, and full Council approving the Council functions at its meeting on 20 November 2023, the new Scheme will come into force once the directors’ existing sub-delegations are aligned to the new parent Scheme.
- 3.6 EBC’s Scheme will undergo the same decision-making pathway through its own Audit and Governance (27 September 2023), Cabinet (1 November 2023) and Full Council (15 November 2023).

## **4 Summary of Key Changes**

### **4.1 Layout**

- Contents list added for ease of reference
- Scheme opens with principles of interpretation (A) followed by delegations to all chief officers (B), and then to specified chief officers (C).
- Annex A summarises the remits of each chief officer
- Delegations to Director of Service Delivery now listed sequentially
- Consistent numbering protocol applied throughout

### **4.2 Content amendment**

- All references to legislation checked and updated where necessary.
- Repealed legislation is deleted
- Chief Officers’ titles and remits updated
- Obsolete powers removed
- Urgency powers added
- Limitations to exercise of Chief Executive’s powers to take urgent action, now requiring pre-notification to the Leader or Deputy Leader where reasonably practicable
- Chief Officers’ powers to determine staff matters at item B43 require consultation with the Director of Tourism, Culture and Organisational Development for the functions listed in the Limitations column
- Clarification of Chief Finance Officer’s treasury management powers

- Clarification added to the Director of Regeneration and Planning's planning functions
- Clarification of Assets of Community Value review powers conferred on Head of Legal Services

## 5 Outcome expected

- 5.1 An aligned and updated Scheme should ensure lawful, valid and consistent decision making by directors and their teams across both authority areas.

## 6 Business Case and alternative option(s) considered

- 6.1 The Council is under a legal duty to include in its constitution a list of powers exercisable by officers. See further at paragraph 8 below.

## 7 Financial appraisal

- 7.1 The cost of updating and managing an updated set of Schemes can be met by the revenue budgets of the Legal Services and Democratic Services teams.

## 8 Legal implications

- 8.1 Section 9P(1) of the Local Government Act 2000 requires a council operating executive arrangements to prepare and keep up to date a constitution which contains (amongst other things) "such information as the Secretary of State may direct." Under the Local Government Act 2000 (Constitution) Direction 2000, the Secretary of State directed that councils must include in their constitution–
- a description of those powers of the **executive** which are exercisable by an officer of the local authority, stating the title of the officer by whom each of the powers so specified is exercisable; and
  - a description of those powers of the **council** which are exercisable by an officer of the local authority stating the title of the officer by whom each of the powers so specified is for exercisable.
- 8.2 Apart from the record needing to list all powers delegated to specified officers, the document format is not prescribed by statute or common law. It is in the interests of council members, officers and the public, however, that the Scheme is clear and concise. It should also be prefaced by a set of principles as to how the Scheme operates (including arrangements for amending and adding to the Scheme as necessary from time to time) and guidelines by which it should be interpreted.
- 8.3 Section 100G(4) of the Local Government Act 1972 and section 9P(3) of the Local Government Act 2000 require that local authorities make a copy of its constitution available for inspection by members of the public at all reasonable hours. The council satisfies this obligation by publishing its constitution on its website.

8.4 The distinction between executive and council functions is specified in the Local Authorities (Functions and Responsibilities) Regulations 2000.

*Date of legal advice: 15.08.23*

*Legal ref: ADMIN-JOINT-OD (Governance)*

## **9 Risk management implications**

9.1 An aligned and updated Scheme provides a sound and proper basis on which directors can exercise powers on a delegated basis. It is no longer tenable for directors to rely on the current Scheme, given its many references to obsolete job titles, repealed legislation and lack of consistency across the shared LDC-EBC areas.

9.2 Officer decisions made without proper authority could provide an affected party with grounds to apply for a judicial review.

## **10 Appendices**

10.1 Appendix 1 - Proposed Scheme of Delegations to Officers, aligned and updated

## **11 Background papers**

11.1 The background papers used in compiling this report were as follows:

- Lewes District Council's current Scheme of Delegations  
[Microsoft Word - Constitution Part9 T \(Scheme of Delegation\) \(June 2021\) \(lewes-eastbourne.gov.uk\)](#)
- Eastbourne Borough Council's current Scheme of Delegations  
[Microsoft Word - part 3\\_D \(Responsibility for Functions\) \(Section D - Scheme of delegations\) \(Updated April 2023\) \(lewes-eastbourne.gov.uk\)](#)
- List of functions reserved to full Council  
[PART 2 \(lewes-eastbourne.gov.uk\)](#) (refer to Article 4.4 on pages B7 to B8)