

Report to:	Cabinet
Date:	9 November 2023
Title:	Updating and Alignment of Scheme of Delegations to Officers
Report of:	Simon Russell, Monitoring Officer
Cabinet member:	Councillor Chris Collier, Cabinet member for innovation, delivery and people
Ward(s):	All
Purpose of report:	To set out the need for an updated and aligned Scheme, and to outline key amendments
Decision type:	Key decision
Officer recommendation(s):	<p>(1) To consider the draft updated and aligned Scheme at Appendix 1 and approve all executive delegations.</p> <p>(2) To refer its approval to full Council for noting.</p>
Reasons for recommendations:	Lewes District Council’s existing Scheme has not been fully updated since 2015, leading to lack of clarity 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 the Council retains exclusive functions relating to–
- (i) its Port Health Authority functions at Newhaven harbour (see item C38A in Appendix 1);
 - (ii) its development management functions on behalf of South Downs National Park Authority (see introduction and item (iii) of item C57); and
 - (iii) its management of Code of Conduct matters in relation to parish councils (see C104).

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

EBC retains exclusive functions relating to Eastbourne Homes, Devonshire Park culture and tourism, and the 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. The latest version was endorsed by all members at their second meeting.
- 2.4 Since CWG's meeting in June, officers have made minor presentational improvements to the draft, for example listing the Director of Service Delivery's powers as consecutive entries on the Contents list, and adopting a systematic numbering protocol throughout the document. These are included in the draft Scheme presented in Appendix 1.

- 2.5 At its meeting on 4 September 2023, the Audit and Governance Committee – in its capacity to consider proposed governance amendments – reviewed the latest version of the draft.
- 2.6 The Committee identified certain text omitted from item F3 (authorisations to enter premises for environmental health and housing reasons) and a minor error in the drafting of that part. These have since been corrected.
- 2.7 Further discussions included executive functions, powers delegated to the Director of Regeneration and Planning, periodic reviews of the Scheme and training Officers on the Scheme. None of these observations required textual amendment. Subject to the corrections referred to at 2.6 above, the Committee recommended the draft Scheme to Cabinet (executive delegations) and to full Council (Council delegations).
- 2.8 On reviewing the latest draft, officers have identified that the Director of Service Delivery’s delegated powers to exercise the Council’s functions relating to homeless persons (at row C27) should be amplified to expressly include the power to carry out or to arrange to carry out homelessness reviews under Part VII of the Housing Act 1996. Row C27 has been amended accordingly.

3 Proposal

- 3.1 Cabinet is invited to accept the Audit and Governance Committee’s recommendation to approve the delegation of all executive functions listed in the draft Scheme at Appendix 1.
- 3.2 All functions in the Scheme are executive delegations except those marked with a ‘C’ suffix in the first column; these are Council functions and for approval by full Council only.
- 3.3 Subject to –
- (i) Cabinet approving the executive delegations, and full Council approving the Council functions at its meeting on 20 November 2023; and
 - (ii) Eastbourne Borough Council’s Cabinet and full Council taking the same steps for its Scheme,
- both authorities’ revised Schemes will come into force once the directors’ existing sub-delegations are aligned to the new parent Schemes.
- 3.4 Part A3 paragraphs (v) and (vi) authorise officers with powers conferred on them by the Schemes to delegate those powers further to another officer under a process known as sub-delegation. Paragraphs (vii) and (viii) set out the conditions under which sub-delegations may operate.
- 3.5 Sub-delegation alignment by the Council’s legal team should be complete by the end of December, allowing the revised Schemes to take effect from 1 January 2024.

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 and performance management

5.1 An aligned and updated Scheme should ensure lawful, valid and consistent decision making by directors, the Monitoring Officer and Head of Legal Services across both authority areas.

5.2 The Monitoring Officer has authority to make minor administrative amendments (such as job title and statute updates) and may at any time refer substantive amendments to the Council's Constitution Working Group for consideration and referral to Audit and Governance Committee.

6 Consultation

6.1 Consultation arrangements are summarised in part 2 above.

7 Corporate plan and council policies

- 7.1 An updated and aligned Scheme will support all elements of the Council's corporate plan, as each director, the Monitoring Officer and Head of Legal Services will have clear, lawful and consistent reference point for delegated decision-making.

8 Business case and alternative option(s) considered

- 8.1 The Council is under a legal duty to include in its constitution a list of powers exercisable by officers. See further at paragraph 10.

9 Financial appraisal

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

10 Legal implications

- 10.1 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. 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
 - b. 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.
- 10.2 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.
- 10.3 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.
- 10.4 The distinction between executive and council functions is specified in the Local Authorities (Functions and Responsibilities) Regulations 2000.

10.5 The Cabinet has authority to approve amendments to executive delegations. It should report its approval to full Council for noting only.

11 Risk Management implications

11.1 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.

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

12 Equality analysis

12.1 This proposal will have a positive impact on all staff, including staff with protected characteristics, as it will provide senior officers with a lawful and therefore robust decision-making protocol across both authorities. Subsequently, the risk of a decision being challenged for lack of legitimate power conferred on the decision-maker is minimised.

13 Appendices

13.1 Appendix 1 – proposed Scheme of Delegations to Officers, aligned and updated.

14 Background papers

14.1 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 \(lewes-eastbourne.gov.uk\)](#) – see Articles 2 and 4