

Report to:	Audit and Governance Committee
Date:	5 October 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 Eastbourne Scheme and recommend it to Cabinet and full Council for approval
Officer recommendation(s):	<p>(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</p> <p>(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</p>
Reasons for recommendations:	The existing Scheme for Eastbourne has not been fully updated since 2015, leading to uncertainty over certain officer powers and difficulty with implementation.
Contact Officer(s):	Name: Oliver Dixon Post title: Lawyer and Data Protection Officer E-mail: oliver.dixon@lewes-eastbourne.gov.uk Telephone number: 01323 415881

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 (EBC) and Lewes District Council (LDC) 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 EBC retains exclusive functions relating to–

Eastbourne Homes, Devonshire Park culture and tourism, and the Eastbourne Downs Golf Club.

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

LDC retains exclusive functions relating to–

- (i) its development management functions on behalf of South Downs National Park Authority, and
- (ii) its management of Code of Conduct matters in relation to parish councils.

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 Eastbourne Constitution Working Group (CWG) met on 23 June 2023 to review the Eastbourne 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 meeting, CWG commented on the draft in detail. As regards financial decision-making under delegated powers, members were assured that chief officers would have regard to the Financial Procedure Rules as well. In relation to item B44 (the power to place officers at the disposal of another authority), officers agreed to limit the power by stating “Where the disposal relates to a high profile matter or one of strategic importance, the Chief Officer should give due consideration to consulting the relevant Cabinet member.”

2.4 In relation to item C11, members indicated that management of The Stage Door pub (delegated to the Director Tourism, Culture and Organisational Development) was not a “cultural” function. Officers agreed to delete this reference and include it as a standalone item (now C11A).

- 2.5 In response to a query about the management of Eastbourne Downs Golf Club, officers explained that, as the Council owned the Golf Club building and golf course, it was appropriate for the Director of Tourism, Culture and Organisational Development to have director-level authority for the provision and management of this important asset.
- 2.6 The Monitoring Officer has revised the draft Scheme to reflect the above items, and CWG were happy for the updated version to go forward to Audit and Governance Committee.
- 2.7 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 more systematic numbering protocol throughout the document. To enable the Committee to see the most recent set of amendments, Appendix 1 is shown in tracked mode.

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 paragraphs 4.01 and 4.02 of Article 4 and section 1 of Part 3 of the constitution – see link under Background Papers (paragraph 11 below). Any functions not listed in those provisions 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 1 November 2023, and full Council approving the Council functions at its meeting on 15 November 2023, the new Scheme will come into force once the directors' existing sub-delegations are aligned to the new parent Scheme.
- 3.6 LDC's draft Scheme was submitted to the Lewes Audit and Governance Committee on 4 September for review. After due consideration, the committee

referred the draft to Lewes Cabinet on 9 November 2023 and Full Council on 20 November 2023 for approval.

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. 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.
- 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

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

11 Background papers

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

- Eastbourne Borough Council's current Scheme of Delegations
[Microsoft Word - part 3_D \(Responsibility for Functions\) \(Section D - Scheme of delegations\) \(Updated April 2023\) \(lewes-eastbourne.gov.uk\)](#)
- Lewes District Council's current Scheme of Delegations
[Microsoft Word - Constitution_Part9_T \(Scheme of Delegation\) \(June 2021\) \(lewes-eastbourne.gov.uk\)](#)
- List of functions reserved to full Council
[Microsoft Word - part 2 \(Articles of the Constitution\) \(Dec 2020\) \(lewes-eastbourne.gov.uk\)](#)
[EBC Constitution Part 3B \(lewes-eastbourne.gov.uk\)](#)