

CABINET

10 MAY 2022

SCHEME OF DELEGATIONS – REGULATORY SERVICES

Portfolio Holder: Councillor Jane Chitty, Portfolio Holder for Planning, Economic Growth and Regulation

Report from: Richard Hicks, Director of Place and Deputy Chief Executive

Author: Ian Gilmore, Head of Regulatory Services

Summary

This report seeks Cabinet approval to amend the Employee Scheme of Delegations with regards to Regulatory Services in the Regeneration, Culture and Environment Directorate.

1. Budget and policy framework
 - 1.1. The approval of delegations in relation to the Council's Regulatory Services functions is a matter both for Cabinet and Full Council as some matters are executive functions (Cabinet) and some are non-executive functions (Council).
2. Background
 - 2.1. Section 9E of the Local Government Act 2000 allows the Cabinet to arrange for the discharge of its functions by an officer of the authority, whilst section 101A of the Local Government Act 1972 allows the local authority to arrange the discharge of its (non-executive) functions by an officer of the authority. The current delegations in respect of the Regulatory Services functions are set out at paragraph 8.12 of the employee scheme of delegation.
 - 2.2. As part of an ongoing review of the Employee Delegation Scheme, the new Head of Regulatory Services has worked with colleagues in Legal Services and Democratic Services to review the existing delegations in relation to environmental health, environmental compliance and trading standards matters to ensure they remain fit for purpose.
 - 2.3. Therefore, amendments to the current delegation are sought to clarify the Constitution and make it clearer what decisions are covered. This will ensure that officers continue to be clear as to the limits of their powers and that the Council is adequately protected. Amending the delegations will also ensure

that the Council is able to continue making decisions in these areas, some of which are statutory functions with tight deadlines.

2.4. The following executive additions to the existing delegations are recommended for approval by the Cabinet:

- Waste enforcement
- Market surveillance

2.5. The following non-executive additions to the existing delegations are set out below and the Cabinet are asked to recommend these to Full Council for approval:

- Safety of sports grounds
- Animal licensing
- Second hand goods dealers, occasional sales and squat shops

2.6. These proposed additions are presented as tracked changes to the existing delegations at Appendix 1 to the report.

3. Options

3.1. Cabinet and Council are being asked to approve the amended delegations in the attached appendix, Members could choose not to amend the delegations, however this would lead to a risk that the constitution remained unclear and there could a legal challenge of the decisions.

3.2. Option 1 Cabinet agree to the amended delegations.

3.3. Option 2 Do nothing.

4. Advice and analysis

4.1. Option 1 is recommended as this will ensure that the Council can continue to exercise its statutory functions and will minimise the risk of any legal challenge to the validity of the decision.

4.2. Option 2 is not recommended as this will leave the Council at risk of a legal challenge to the validity of decisions.

5. Risk management

5.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Failure to amend the delegations	Leaving the delegations in the current form will mean that they continue to be unclear leading to a potential risk of challenge to the validity of the Council's decisions.	Amend the delegations.	D1

6. Financial implications

- 6.1. If the delegations are not amended there is a risk of challenge to the validity of the Council's decisions, which if successful would require the Council to pay costs.

7. Legal implications

- 7.1. Cabinet can arrange for the discharge of its functions under the Local Government Act 2000. Council can arrange for the discharge of its functions under the Local Government Act 1972. This is currently dealt with by way of delegations within the employee scheme of delegation contained in the Constitution.
- 7.2. Any decisions made without delegated authority will automatically be ultra vires and therefore unlawful. If the decision is challenged, then the Council will be unable to defend such a decision and will be liable to pay legal costs.
- 7.3. In order to minimise the risk of challenge to the use of any powers by the Council it is necessary to ensure that any adoption of powers and subsequent delegation to officers has a clear audit trail.

8. Recommendations

- 8.1. The Cabinet is recommended to delegate authority to the Director of Place and Deputy Chief Executive to exercise and to delegate to officers at an appropriate grade the executive functions set out in paragraph 2.4 of the report.
- 8.2. The Cabinet is asked to recommend to Full Council to delegate authority to the Director of Place and Deputy Chief Executive to exercise and to delegate to officers to officers at an appropriate grade the non-executive functions set out in paragraph 2.5 of the report.

9. Suggested reasons for decisions

- 9.1. The amendments to the delegations be made to reduce the risk of legal challenge to the exercise of the Council's functions.

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Appendices

Appendix 1 – Paragraph 8.12 of the Employee Delegation Scheme.

Background papers

None