

Decision Maker: COUNCIL

18 May 2022

Decision Type: Non-Urgent Non-Executive Non-Key

Title: REVIEW OF THE SCHEME OF DELEGATION TO OFFICERS

Contact Officer: Graham Walton, Democratic Services Manager
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Chief Officer: Tasnim Shawkat, Director of Corporate Services and Governance

Ward: All

1. Reason for decision/report and options

- 1.1 At the annual meeting of the Council each year a Scheme of Delegation to Officers is approved by Council and the Leader. The Scheme is an appendix to the Council's Constitution. Each year the Scheme is updated to address any changes of legislation or officer responsibilities and correct any minor errors, but in the past year the General Purposes and Licensing Committee has overseen a complete re-writing of the Scheme to make it more up to date, streamlined and easy to use. No new delegation or changes of substance are proposed.

2. **RECOMMENDATIONS**

- (1) That the Scheme of Delegations to Officers in respect of non-executive functions be approved.
- (2) That the Scheme of Delegation to Officers in respect of executive functions be received from the Leader of the Council.

Impact on Vulnerable Adults and Children

1. Summary of Impact: Not Applicable
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Transformation Policy

1. Policy Status: Existing Policy:
 2. Making Bromley Even Better Priority (delete as appropriate):
(5) To manage our resources well, providing value for money, and efficient and effective services for Bromley's residents.
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Financial

1. Cost of proposal: No Cost:
 2. Ongoing costs: Not Applicable
 3. Budget head/performance centre: Democratic Services
 4. Total current budget for this head: £366k
 5. Source of funding: Revenue Budget
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Personnel

1. Number of staff (current and additional): 6
 2. If from existing staff resources, number of staff hours: Not Applicable
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Legal

1. Legal Requirement: Statutory Requirement: Local Government Act 1972 and subsequent legislation, including the Local Government and Public Involvement in Health Act 2007.
 2. Call-in: Not Applicable: Council decisions are not subject to call-in
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Procurement

1. Summary of Procurement Implications: Not Applicable
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Property

1. Summary of Property Implications: Not Applicable
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Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications: Not Applicable
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Customer Impact

1. Estimated number of users or customers (current and projected): Not Applicable
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

- 3.1 Section 101 of the Local Government Act 1972 enables the Council to make arrangements for discharge of Council functions by officers. Similarly, under section 9E of the Local Government Act 2000 the Executive can make arrangements for discharge of executive functions by officers. The Scheme of Delegation to Officers sets out formal delegation of various powers to the Council's chief officers and their staff, and forms part of the Council's Constitution (Appendix 10).
- 3.2 The current scheme of delegation is a large and unwieldy document that has not benefitted from a substantial review for some time, other than annual updates. There is concern that some provisions might be out of date and that it would benefit from a review to make it more high-level and user friendly whilst meeting legal requirements and setting out more clearly the areas of responsibility and limitations. A scheme of delegation which aims to cover all eventualities and to list every possible legislation can be unwieldy, very restrictive and require continuous investment in time and resources to keep it up to date with changes in the law and circumstances. A high-level scheme of delegation on the other hand allows flexibility, ensures lawful delegation to catch changes in circumstances and ensures lawful and timely decisions can be made. The review and redraft of the scheme of delegation also aims to make it more user friendly and transparent. Members will retain control if clear parameters or limitations are expressly stated within the scheme of delegation.
- 3.3 The risk of not having a clear and robust scheme of delegation in place is that decisions may not be made by the right people leading to legal challenges to action being taken by the Council. It will also lead to lack of accountability if delegations are not clearly set out.
- 3.4 Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, where executive arrangements are in place the law sets out a distinct separation between the Executive and the rest of the Council in relation to how responsibility for local authority functions is exercised. This separation between executive functions and the rest of the Council is established by exception. The default position is that every function of the local authority is an executive function unless it is one of a number of exceptions that are specifically listed in the Functions Regulations.
- 3.5 The Council's Scheme of Delegation is normally updated for approval at the Council's annual meeting each year, although under the Local Government Act 2000 any executive powers delegated to officers have to be delegated not by the Council, but by the Leader of the Council, and it is open to the Leader to table changes to the executive scheme at any time.
- 3.6 In 2021 General Purposes and Licensing Committee set up a Working Group under the chairmanship of former Councillor Stephen Wells to consider the Scheme of Delegation - the Working Group met on 7th September 2021 and recommended that a new Scheme be drawn up. The principles suggested by the Working Group, for example a more transparent and consistent structure, a more user-friendly approach and clear limits to officer powers, were incorporated into a more modern Scheme. The draft of the new Scheme was considered by General Purposes and Licensing Committee on 5th April 2022 and authority was delegated to the Director to complete the Scheme in time for consideration at the Annual Council meeting. The draft Scheme was welcomed by the Working Group at a meeting on 25th April 2022, and, with some final editing, is presented for approval.

4. LEGAL IMPLICATIONS

The power for local authorities to delegate functions to officers is contained in Section 101 of the Local Government Act 1972 in respect of Council functions and section 9E of Local Government Act 2000 in respect of executive functions. The proposed new Scheme of Delegation will ensure that the Council has in place a fit for purpose scheme to ensure officers can correctly and legally exercise their powers. It will also ensure that decisions can be taken by officers on behalf of the

Council and the Executive in a timely and efficient manner whilst maintaining full accountability to members.

Non-Applicable Headings:	Impact on Vulnerable Adults and Children/Policy/Finance/Personnel/Legal/Procurement/Property/Carbon Reduction/Customer Impact/Ward Councillors
Background Documents: (Access via Contact Officer)	Scheme of Delegation to Officers - May 2021 Report to annual Council, 19 th May 2021, and to General Purposes and Licensing Committee on 5 th April 2022.