

**COUNCIL
27 APRIL 2005**

**SCHEME OF DELEGATION TO OFFICERS
(Constitution Review Group)**

1 INTRODUCTION

1.1 The purpose of this report is to seek the approval of the Council to:-

- a revision to the way in which the Scheme of Delegation to Officers is drafted, and
- a transfer of delegated responsibilities to the Director of Children's Services in order to comply with the provisions of the Children Act 2004

2 RECOMMENDATION

2.1 **That the Scheme of Delegation to officers be amended as set out in Annexe 1 to this report.**

2.2 **That on his/her appointment the Director of Children's Services be delegated those powers currently delegated to the Director of Education and Libraries and the Director of Social Services and Housing in respect of those functions for which the Director of Children's Services is to be responsible for pursuant to Section 18 of the Children Act 2004.**

3 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

3.1 The advice of the Borough Solicitor has been incorporated into this report.

Borough Finance Officer

3.2 There are no financial implications directly arising from this report.

Access Implications

None.

4 THE SCHEME OF DELEGATION

4.1 Essentially, there are two ways in which a Scheme of Delegation to officers may be drafted. The first and more traditional way is by way of a lengthy list of specific powers delegated to officers with all other powers reserved for Members.

The alternative is to delegate all powers falling within an area of service provision to officers excepting identified decisions reserved for Members.

- 4.2 At its meeting on 9th June 2004 the Constitution Review Group agreed to consider a proposed revision to the Scheme of Delegation using the second model. However, the agreement of the CRG was on the footing that the revised draft would not seek to alter the existing balance of decision making between Members and officers.
- 4.3 The current Scheme of Delegation is a hybrid of each of the alternatives alluded to in paragraph 4.1 above. The delegation to the Director of Environment and Leisure sets out a very lengthy list of powers (the first model) whilst the delegation to the Director of Education and Libraries adopts the second model.
- 4.3 A (part) revised proposed Scheme of Delegation is shown at Annexe 1. The draft does not set out any revisions of the delegations to the Director of Social Services and Housing or the Director of Education and Libraries as the imminent appointment of a Director of Children's Services will significantly impact upon the delegations to those officers. A report will be submitted to the Council at a future date on detailed revisions to the Scheme of Delegation consequent upon the appointment of a Director of Children's Services. Should the Council approve the recommendation in paragraph 2.1 above the further report will be drafted proposing revisions in accordance with the model proposed in this report for the Director of Environment and Leisure.

5 The Revised Draft

- 5.1 The Scheme of Delegation commences with an introduction and general provisions relating to authorisations and limitations. The provisions of the draft are in essentially the same format as in the current scheme but with the following alterations:-
- paragraph 2(a)(viii) expressly recognises that Directors may appoint "proper" and statutory officers (page 2 of Annexe 1).
 - paragraph 2(c)(iv) specifies that charges should be levied as set out in the annual budget though Directors may fix charges for new services (pages 2 and 3 of Annexe 1). There are specific powers for the Director of Environment and Leisure to vary charges (as per the current scheme)
 - Orders/Notices should only be issued by the Borough Solicitor if he/she has designated it appropriate to do so (paragraph 2(c)(v)) (page 3 of Annexe 1).
 - the making of Compulsory Purchase Orders is reserved for Members (paragraph 2(c)(vi) (page 3 of Annexe 1).
- 5.2 The current Scheme of Delegation allows for decisions falling within the remit of a Committee to be taken by a Director, in consultation with the Chairman, in cases of urgency; there is no provision for urgent decisions which are normally reserved for Council. It is proposed that the Chief Executive or a Director should, in consultation with the Mayor, the Leader and the Leader of the Minority Group,

be authorised to take urgent decisions which would otherwise be referred to Council (paragraph 4, page 5 of Annexe 1).

- 5.3 Paragraph 6 on page 6 of Annexe 1 (references to legislation to include subordinate legislation) is new.
- 5.4 Part A of Table 1 (page 7 of Annexe 1) has been amended by the insertion of an additional paragraph 4 to make clear that Directors are authorised to respond to requests under Data Protection and Freedom of Information legislation. Part B of Table 1 (authorisations to the Chief Executive) has not been altered.
- 5.5 The delegations to the Director of Corporate Services and Resources have been modified by:-
- deleting references to the civil registration and electoral registration services which are now transferred to the Borough Solicitor (paragraph 12 of page 13 of Annexe 1).
 - deleting the authority to submit planning applications on behalf of the Council (the responsibility of the Head of Property)
 - deleting delegations in respect of property matters which are now delegated to the Head of Property
- 5.6 The major changes proposed are found in the delegations to the Director of Environment and Leisure (page 8 of Annexe 1 et seq). Paragraph 1 of that section of the draft sets out a number of broad delegations (e.g. all powers under planning legislation) with a number of specific powers (e.g. those relating to Bracknell Market) which cannot be swept up under any broader designation. Paragraph 2 of the section sets out the exceptions and limitations to the delegations i.e. it prescribes those decisions which are reserved for Members. Although this section of the scheme is longer than ideal (running to just over four pages), attributable to the broad range of miscellaneous functions for which the Director is responsible, it is considered to be a significant improvement on the provisions of the current scheme which are shown at Annexe 2.
- 5.7 The delegations to the Head of Property (pages 13 and 14 of Annexe 1) have been re-cast from those previously delegated to the Director of Corporate Services and Resources to follow the second model of drafting though in substance they have not been altered.

6 Reviewing the Scheme of Delegation

- 6.1 Although adopting the second model for drafting schemes of delegation would reduce the risk of officers taking decisions without proper authority it will still be necessary to regularly review the scheme. New legislation may confer entirely new functions upon the Council (e.g. the Licensing Act 2003). Also, when legislation is enacted it will be necessary to identify which decisions should appropriately be reserved for Members.

7 DELEGATIONS TO THE DIRECTOR OF CHILDREN'S SERVICES

- 7.1 Due to the timing of the commencement of the relevant provisions of the Children Act 2004 (1st April 2005) it has not proved possible to draft a Scheme of Delegation for that post using the model proposed for the Director of Environment and Leisure. Furthermore, revisions to the drafting of delegations to the Director of Social Services and Housing and the Director of Education and Libraries will be contingent upon the identity of the Director appointed to the post of Director of Children's Services.
- 7.2 The Children Act 2004 provides that with effect from 1st April 2005 the Council may appoint a Director of Children's Services and that with effect from "the appointed day" (yet to be designated) the Council must appoint a Director of Children's Services. This Council has decided to appoint a Director in advance of the appointed day. However, the Act also specifies that with effect from his/her appointment the Director must assume responsibility for both Education and Social Services functions relating to Children. Accordingly, it is proposed that the newly appointed Director should in respect of those functions, have those powers currently delegated to the Director of Education and Libraries and the Director of Social Services and Housing.

Background Papers

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