

## **Constitution Committee**

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**Date of Meeting:** 22 November 2018

**Report Title:** Proposed Changes to the Constitution – Chief Officer Delegations

**Portfolio Holder:** Cllr Paul Findlow – Corporate Policy and Legal Services Portfolio Holder

**Senior Officer:** Daniel Dickinson – Acting Director of Legal Services

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### **1. Report Summary**

- 1.1. The purpose of this report is to alert members to a need, identified by Regulatory Services colleagues, to amend three paragraphs of the constitution relating to officer powers. The need arises in order to improve clarity and operational efficiency in respect of regulatory enforcement functions.

### **2. Recommendation/s**

- 2.1. That the Constitution Committee note the intention of the Monitoring Officer to amend paragraphs 37, 41 and 42 of the delegations to Chief Officers section of the Constitution as set out in the appendix hereto.

### **3. Reasons for Recommendation/s**

- 3.1. The changes proposed will ensure greater operational clarity and efficiency.

### **4. Other Options Considered**

- 4.1. None

### **5. Background**

- 5.1. The first paragraph in respect of which amendments are proposed is paragraph 37 on page 94, which is a general delegation to all chief officers. It currently reads:-

*“37 To enter into reciprocal arrangements for the authorisation and appointment of officers to facilitate cross-border co-operation in the discharge of delegated functions with any other council.”*

5.2. There may be scenarios where such reciprocal arrangements need to be made with enforcement authorities that are not councils. Consequently, after the words “any other council” the words “or enforcement authority” should be added. This reflects the position in the constitution prior to 1 January 2018.

5.3. The second and third paragraphs in respect of which amendments are proposed are paragraphs 41 and 42 on page 95. Those paragraphs deal with the “legal authorisation and enforcement” functions delegated to all chief officers. Those paragraphs are, for convenience, reproduced below.

*“41 To authorise officers possessing such qualifications as may be required by law and where Chief Officers are satisfied that appropriate training has been undertaken, to:*

*41.1 take samples, carry out inspections or surveys, enter land and premises and generally perform the functions of and/or act as a duly authorised, officer of the Council (howsoever described)*

*41.2 issue certificates of authority or certify copies of documents*

*41.3 enforce the requirements of legislation*

*41.4 instruct the Monitoring Officer to consider whether or not legal proceedings to enforce the requirements of legislation are appropriate.*

*42 With the approval of the Monitoring Officer, to:*

*42.1 authorise the issue and service of requisitions for information, any notice, order or direction*

*42.2 approve or issue any licence which may be required or authorised by or under any legislation or byelaws (not otherwise mentioned in this scheme of delegation)*

*42.3 authorise the institution of legal and quasi-legal proceedings and/or other action (including debt recovery) as is considered necessary to protect the interests of the Council*

*42.4 sign certificates for contracts.”*

- 5.4. The intention of paragraphs 41 and 42 is to authorise officers to undertake enforcement activity. The difference between the two paragraphs is that the functions set out in paragraph 41 do not require the prior approval of the Monitoring Officer, whereas those set out in paragraph 42 do.
- 5.5. Operationally the approval of the Monitoring Officer is only necessary for the institution of legal and quasi-legal proceedings and in respect of the general “catch all” power to authorise other action considered necessary to protect the interests of the Council (42.3).
- 5.6. All of the other matters referred to in the current paragraphs 41 and 42 can quite properly be exercised/delegated by Chief Officers without the prior approval of the Monitoring Officer. It is perfectly appropriate for the routine exercise of those powers to be undertaken in service, under the supervision and approval of appropriate service management hierarchies. Whilst legal advice can be and is sought as and when required, the requirement for prior approval from the Monitoring Officer in respect of those matters is considered to be an unnecessary administrative burden.
- 5.7. Consequently, these two paragraphs need to be restructured. There needs to be two new paragraphs. The first new paragraph should deal with all of those functions in respect of which the prior approval of the Monitoring Officer is not required. The second new paragraph should deal with those functions that require the approval of the Monitoring Officer. Proposed new paragraphs 41 and 42 are set out below accordingly.
- 5.8. In respect of the proposed new paragraph 41, there is scope to apply normal drafting conventions to improve clarity. The drafting convention would be to commence the paragraph by giving a general authorisation to undertake enforcement activity, and then provide a non-exhaustive list of examples of the sort of enforcement activity contemplated. That approach is adopted in the proposed new paragraph 41.
- 5.9. In respect of the proposed new paragraph 41, Members will notice that the provision in the current paragraph 41.4, specifically empowering officers to ask the Monitoring Officer whether or not legal proceedings would be appropriate to enforce legislation, has been omitted. In reality, any officer (or Member for that matter) is at liberty to take a view from the Monitoring Officer as to whether or not legal proceedings are appropriate. The current paragraph 41.4 serves no useful purpose and should be deleted.

5.10. Additionally, Members will notice that “applying for warrants” has been added to the proposed new paragraph 41 to clarify that this activity (ancillary to the exercise of powers to enter/seize) does not require the prior approval of the Monitoring Officer.

5.11. The Monitoring Officer is of the view that the changes proposed rank as changes which provide appropriate clarity and correct inconsistencies in drafting. They have no impact on the substantive effect of the paragraphs in question as originally drafted and can, therefore, be made in consultation with the Chairman and Vice Chairman of the Committee in accordance with paragraph 67 on page 106/7 of the constitution. Nevertheless, these matters are presented to full committee so that the opportunity exists for Members to seek any clarification they may require on these matters.

## **6. Implications of the Recommendations**

6.1. There are no Legal, Financial, Policy, Equality, Human Resources, Risk Management, Rural Communities, Children & Young People or Public Health implications that flow from the proposed amendments.

## **7. Ward Members Affected**

7.1. All wards are equally affected.

## **8. Consultation & Engagement**

8.1. Colleagues in Regulatory Services have been extensively consulted.

## **9. Access to Information**

9.1. The Constitution can be accessed through the Council’s website.

## **10. Contact Information**

10.1. Any questions relating to this report should be directed to the following officer:

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