

Agenda Item	15
Report No	HC/23/14

4 September 2014

SCHEME OF DELEGATION AND ADMINISTRATION TO COMMITTEES AND SUB COMMITTEES AND TO OFFICERS/STANDING ORDERS RELATING TO THE CONDUCT OF MEETINGS

Report by the Depute Chief Executive/Director of Corporate Development

Summary

This report outlines proposals for amendment to the Council's Scheme of Delegation and Administration to Committees and Sub Committees and to Officers. Annual Review of the Scheme is a requirement of the Council's Code of Corporate Governance.

In relation to Standing Orders, and in light of the amendments already agreed earlier in the year, it is considered that there is no further requirement for any additional review at this time.

1. Main Amendments

The main changes to the Scheme of Delegation – which are highlighted below – are in relation to:

Part II – Terms of Reference of Headquarters Committees

Part III – Functions Referred/Powers and Duties Delegated to Planning Application Committees

Part IV – Powers Delegated to Officers

1.1 Part II – Terms of Reference of Headquarters Committees

Education, Children and Adult Services Committee

Include wording as follows –

To receive two reports per year on the performance and activity of High Life Highland and annually for Inverness Leisure and Eden Court.

1.2 Part III – Functions Referred/Powers and Duties Delegated to Planning Application Committees

Amend wording as follows –

Current Version – To exercise delivery of the development management and enforcement functions under the Town and Country Planning (Scotland) Act 1997 (as amended) and the Planning etc (Scotland) Act 2006, where such functions and powers are not delegated to Officers or where Officers have declined to exercise their delegated powers and with the exception of (i) applications for planning permission falling within the category of 'national development' (as designated by s3A(4)(b) of the Town and Country Planning (Scotland) Act 1997 (as amended); (ii)

applications for planning permission falling within the category of 'major developments' (as designated by s26A(1)(b)&(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) which are considered to be significantly contrary to the development plan; and (iii) applications made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) which relate to developments falling within the category of 'national development' or 'major developments' where the subject planning permission was granted by the Planning, Development & Infrastructure Committee.

Proposed Version – To exercise delivery of the development management and enforcement functions under the Town and Country Planning (Scotland) Act 1997 (as amended) and the Planning etc (Scotland) Act 2006 where such functions and powers are not delegated to Officers or where Officers have declined to exercise their delegated powers and with the exception of: (i) applications for planning permission falling within the category of 'national development' (as designated by s3A(4)(b) of the Town and Country Planning (Scotland) Act 1997 (as amended); (ii) applications for planning permission falling within the category of 'major developments' (as designated by s26A(1)(b)&(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) which are considered to be significantly contrary to the development plan and (iii) applications made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) which relate to developments falling within the category of *either (a) national development or (b) major developments which are (i) considered to be significantly contrary to the development plan or (ii) where the subject planning permission was granted by the Planning, Development & Infrastructure Committee.*

Include the following –

To receive reports on Proposal of Application Notices for national development (as designated by s3A(4)(b) of the Town and Country Planning (Scotland) Act 1997 (as amended) and major developments (as defined by s26A(1)(b)&(2) of the Town and Country Planning (Scotland) Act 1997 to allow Members to comment on issues related to the proposed developments (but not to discuss the merits or otherwise of the proposed developments).

1.3 Part IV – Powers Delegated to Officers

Finance Service

Amend wording as follows -

Current Version – Housing Benefit (General) Regulations 1987 – to administer the Scheme in respect of Housing Benefit – delegated to Head of Exchequer and Revenues.

Proposed Version – Housing Benefit (General) Regulations 1987 *and Welfare Reform Act 2013* – to administer the Scheme in respect of Housing Benefit *and successor arrangements, including support services for Universal Credit etc* – delegated to Head of Revenues and Business Support.

Current Version – Council Tax Benefit (General) Regulations 1992 – to administer the Scheme in respect of Council Tax – delegated to Head of Exchequer and Revenues.

Proposed Version – Council Tax Benefit (General) Regulations 1992 – to administer

the Scheme in respect of Council Tax. Also, *reduction and Legacy Scheme for Council Tax Benefit – delegated to Head of Revenues and Business Support.*

Current Version – Write-off all accounts which are subject to actions involving sequestration, liquidation, administration or receivership following notification by Trustee/Accountant in Bankruptcy or via Edinburgh Gazette – delegated to Head of Exchequers and Revenues and Officers delegated by him.

Proposed Version – Write-off all accounts which are subject to actions involving sequestration, liquidation, administration or receivership following notification by Trustee/Accountant in Bankruptcy or via Edinburgh Gazette. *Write-off actions will also include accounts that are subject to insolvency actions – delegated to Head of Revenues and Business Support and Officers delegated by him.*

Care and Learning

Amend wording as follows – delegated to Area Education Managers/Senior Education Officers and Head Teachers -

Current Version – Education (Scotland) Act 1980 – Section 87 – suspension of teachers from exercise of their duties.

Proposed Version – Education (Scotland) Act 1980 – Section 87 – suspension of *teaching and non-teaching staff* from exercise of their duties.

Delete wording as follows –

To accept donations and deposits for the Council's collections in line with agreed collection policies – delegated to Curators Inverness Museum and Highland Folk Museum

To vary the opening hours of facilities with the agreement of the Local Member and the Community Council – delegated to Senior Community Learning and Leisure Officers.

To determine opening arrangements of facilities over Bank Holiday periods – delegated to Head of Service.

To vary charges for facilities and activities in line with inflation – delegated to Senior Community Learning and Leisure Officers.

Development and Infrastructure

Applications, Notifications and Opinions –

Delegated to Head of Planning and Building Standards, Area Planning Manager, Development Management Team Leader and Principal Planning Officer -

Amend wording as follows –

Current Version – to determine all applications with the exception of the following – applications for 'major developments' (designated as such under s26A(1)&(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) which are significantly contrary** to the development plan.

Proposed Version – to determine all applications with the exception of the following – applications for ‘major developments’ (designated as such under s26A(1)&(2) of the Town and Country Planning (Scotland) Act 1997 (as amended) which are *recommended for approval or irrespective of the recommendation are significantly contrary** to the development plan.*

Current Version – to determine all applications with the exception of the following – applications made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) which relate to developments falling within the category of ‘national development’ or ‘major developments’ and where the subject planning permission was granted by the Highland Council or a Committee of the Highland Council.

Proposed Version – to determine all applications with the exception of the following – *applications made under Section 42 of the Town and Country Planning (Scotland) Act 1997 (as amended) which relate to developments falling within the category of ‘national development’ or ‘major developments’.*

Include wording as follows –

To determine all applications with the exception of the following - applications, other than those under Sections 36 and 37 of the Electricity Act 1989 (as amended), recommended for refusal for reasons which do not include the non-submission of further information requested under Regulation 3(2) of the Town and Country Planning (Listed Buildings and Buildings in Conservation Areas)(Scotland) Regulations 1987 (as amended).

Amend wording as follows –

Current Version – to determine all applications with the exception of the following - applications other than those under Sections 36 and 37 of the Electricity Act 1989 (as amended) recommended for refusal for reasons which do not include the failure to conclude a Section 75 Obligation or Section 69 Agreement (but only after a period of 6 months has expired following the decision to grant planning permission subject to such an obligation or agreement).

Proposed Version - to determine all applications with the exception of the following – applications other than those under Sections 36 and 37 of the Electricity Act 1989 (as amended) recommended for refusal for reasons which do not include the failure to conclude a Section 75 Obligation or Section 69 Agreement (but only after a period of *4 months* has expired following the decision to grant planning permission subject to such an obligation or agreement).

Current Version – to determine all applications with the exception of the following – applications submitted by a Member of the Highland Council or a Senior Official of the Highland Council.

Proposed Version – to determine all applications with the exception of the following – applications submitted by *or in the name of* a Member of the Highland Council or a Senior Official of the Highland Council *in their personal capacity or acting as an agent for an applicant.*

Include wording as follows – delegated to Head of Environment and Development -

To serve a notice, under s2(2)(b) of the Planning (Listed Buildings and Conservation

Areas) (Scotland) Act 1997 (as amended) on every owner, lessee and occupier of a building, stating that the building has been included in, or excluded from, the List of Buildings of Special Architectural or Historic Interest for Highland Council.

Include wording as follows – *delegated to Head of Planning & Building Standards, Area Planning Manager, Development Management Team Leader and Principal Planning Officer –*

To instruct the taking of ‘direct action’ under s135 of the Town and Country Planning (Scotland) Act 1997 (as amended) in response to non-compliance with any notice requiring the proper maintenance of land (Amenity Notice) served under s179.

Miscellaneous/Non-Statutory Powers - Housing

Amend wording as follows – delegated to Head of Property Partnerships -

Current Version – To manage the Council’s land bank fund in accordance with the priorities set out by the Planning, Development and Infrastructure Committee including agreement of terms of all loans and granting of loans for feasibilities.

Proposed Version – To manage the Council’s land bank fund in accordance with the priorities set out by the Planning, Development and Infrastructure Committee.

To agree terms of all land bank fund loans and grants and granting loans for feasibilities.

Current Version – To grant leases of HRA land and non-residential property or approve the assignation of such leases (after consultation with Ward Members).

Proposed Version – To grant leases of HRA land and non-residential property or approve the assignation (*after consultation with Ward Members and Area Community Service Manager*).

To approve variation in terms of leases including rent reviews and lease renewals in respect of HRA land and non-residential property (after consultation with Area Community Service Manager).

Current Version – To acquire property or land up to a value of £150k using HRA funding for the delivery of new Council housing, subject to consultation with Ward Members.

Proposed Version – To acquire property or land up to a value of £150k using HRA funding for the delivery of new Council housing, *subject to consultation with Ward Members and Area Community Service Manager.*

To determine applications for purchases of houses (other than those held on the Housing Account under the Tenants’ Right to Buy legislation).

Miscellaneous/Non-Statutory Powers – Property

Include wording as follows – delegated to the Head of Property Partnerships -

To identify, recommend and report on industrial and commercial development opportunities.

Amend wording as follows – delegated to the Head of Property Partnerships -

Current Version – To acquire or lease assets up to a value of £150,000 for acquisitions and £15,000 pa for leases, after consultation with Local Members (for industrial and investment properties only).

Proposed Version – To acquire or lease assets up to a value of £150,000 for acquisitions or £15,000 pa for leases, after consultation with Local Members (for industrial and investment purposes only).

Include wording as follows – delegated to the Head of Property Partnerships -

To manage the General Fund (other property) budget to maximise income and minimise expenditure to ensure best value for Highland Council industrial and investment property assets.

To market IIP properties in accordance with Estate Agent's Act 1979 and Property Misdescriptions Act 1991.

To vet applications for leasing IIP properties to ensure suitability of tenants.

Amend wording as follows – delegated to the Head of Property Partnerships -

Current Version – To vary the investment portfolio leases in compliance with lease terms or in order to improve management or valuation issues.

Proposed Version - To vary the investment portfolio leases in compliance with lease terms *in order to comply with new statutes, regulations or best practice to improve management or valuation issues.*

Include wording as follows – delegated to the Head of Property Partnerships –

To report regularly to the Planning, Development and Infrastructure Committee on transactions approved and income recovery in respect of General Fund Industrial & Investment Properties.

To report regularly to the City of Inverness Area Committee on transactions approved and income recovery in respect of Inverness Common Good Fund commercial lets.

Trading Standards

Include new Section as detailed in Appendix 1 to this report.

2. Other Administrative Changes

- 2.1 A number of minor administrative changes have also been made to remove duplication and to clarify existing arrangements.

3. Implications Arising from the Report

- 3.1 There are no resource, legal, climate change/carbon clever, equalities, Gaelic or rural risk implications arising from these proposals.

4. Recommendation

4.1 The Council is asked to approve the proposed amendments to the Scheme of Delegation and Administration to Committees and Sub Committees and to Officers as detailed and to note that an updated copy will be circulated to all Members following the meeting.

4.2 The Council is also asked to agree that, in relation to Standing Orders, and in light of the amendments already agreed earlier in the year, there is no further requirement for any additional review at this time.

Designation: Depute Chief Executive/Director of Corporate Development

Date: 26 August 2014

	Description of Power or Duty	Title of Officer to whom/level of post to which delegated
<u>Trading Standards</u>		
<p>Agricultural Produce (Grading and Marking) Acts 1928 – 1931; Agriculture Act 1970; Antisocial Behavior etc (Scotland) Act 2004 [Part 10 Sale of Spray Paint to Children]; The Biocidal Products Regulations 2001; Children and Young Persons (Protection from Tobacco) Act 1991; Civic Government (Scotland) Act 1982; Clean Air Act 1993; Consumer Credit Act 1974; Consumer Credit Act 2006; Consumer Protection Act 1987; Consumer Protection (Distance Selling) Regulations 2000; Consumer Protection from Unfair Trading Regulations 2008; Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013; Control of Pollution Act 1974; Copyright, Designs and Patents Act 1988; Development of Tourism Act 1969; Education Reform Act 1988; The Electromagnetic Compatibility Regulations 2006; Energy Act 1976; Energy Conservation Act 1981; Enterprise Act 2002; Estate Agents Act 1979; European Communities Act 1972; Explosives Acts 1875 & 1923; Fair Trading Act 1973; Fireworks Act 2003; Food & Environment Protection Act 1985; Hallmarking Act 1973;</p>	<p>Subject to any restriction set out below, to carry out the functions of the Council, as Local Weights and Measures Authority; Local (Consumer Safety) Authority; Enforcement Authority and otherwise, including (without prejudice to the foregoing generality) to exercise the enforcement powers referred to in the Regulations and Acts listed, and any other Regulations made thereunder.</p>	<p>Enforcement Officer (Trading Standards); Assistant Trading Standards Officer</p>

<p>Health & Safety At Work Etc. Act 1974; Housing Scotland Act 2006; Medicines Act 1968; Motor Cycle Noise Act 1987; Pesticides (Fees and Enforcement) Act 1989; Petroleum (Regulation) Acts 1928-36; Poisons Act 1972; Prices Acts 1974 and 1975; Property Misdescriptions Act 1991; Road Traffic Act 1988; Road Traffic Offenders Act 1988; Telecommunications Act 1984; Timeshare Act 1992; Tobacco Advertising & Promotion Act 2002; Tobacco and Primary Medical Services (Scotland) Act 2010; Trade Descriptions Act 1968; Trade Marks Act 1994; Video Recordings Acts 1984 and 1993;</p>		
<p>General Product Safety Regulations 2005</p>	<p>Regulations 21 to 23 - Test purchases; Powers of entry and search etc.</p>	<p>Enforcement Officer (Trading Standards)</p>
<p>General Product Safety Regulations 2005</p>	<p>Regulation 11- Issue of Suspension Notice</p>	<p>Trading Standards Officer</p>
<p>General Product Safety Regulations 2005</p>	<p>Regulation 12, 13 and 14 – Issue of Notice to Mark, to Warn and to Withdraw</p>	<p>Trading Standards Team Leader</p>
<p>General product Safety Regulations 2005</p>	<p>Regulation 15 - Issue of Recall Notice and all other enforcement duties and responsibilities assigned by the regulations to the council as the enforcement authority</p>	<p>Trading Standards Manager</p>
<p>Weights and Measures Act 1985</p>	<p>Those responsibilities, duties and powers assigned by the act to an Inspector</p>	<p>Trading Standards Officer</p>
<p>Weights and Measures Act 1985</p>	<p>Those responsibilities, duties and powers assigned by the act to the Chief Inspector</p>	<p>Trading Standards Manager</p>
<p>Tobacco and Primary Medical Services (Scotland) Act 2010;</p>	<p>Schedule 1 Paragraph 8 – Authority to withdraw a Fixed Penalty Notice</p>	<p>Trading Standards Manager</p>
<p>Farm & Garden Chemicals Act 1967; Offensive Weapons Act 1996</p>	<p>Legislation which the Council has no statutory duty to enforce but which is associated with the Trading Standards function and which Committee (Council) has agreed should be included in list of legislation to be enforced. This legislation does not include any</p>	<p>Enforcement Officer (Trading Standards)</p>

	provisions for powers of officers enforcing the legislation	
Civic Government (Scotland) Act 1982	Section 94 and 99 – to serve notices on occupiers or owners of premises or land on which disused petrol tanks are situated.	Enforcement Officer (Trading Standards)
Various Acts	To increase fees and charges as follows:- a) fees payable under the Health & Safety at Work Etc Act 1974 in relation to the storage of Explosives and keeping of Petrol to the statutory maximum, set out in the current version of the Health and Safety (Fees) Regulations b) fees and charges payable under the Poisons Act 1972 and Weights and Measures Act 1985, according to the Council's Charging Policy.	Trading Standards Manager
Regulation of Investigatory Powers Act 2000; Regulation of Investigation Powers (Scotland) Act 2000	To authorise action to undertake directed surveillance, the use of covert human intelligence sources or to seek access to communications data.	Trading Standards Manager
Manufacture and Storage of Explosives Regulations 2005; Explosives Regulations 2014; Petroleum (Regulation) Acts 1928 and 1936; Petroleum (Consolidation) Regulations 2014; Poisons Act 1972; Fireworks Regulations 2004	To grant, but not refuse, applications, renewals or transfers of licences, registrations, approvals and other permissions sought (including variation thereof).	Trading Standards Manager.