

**Meeting:** Full Council

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## CONSTITUTION AMENDMENTS AND OFFICER DELEGATIONS

Author – Paul Froggatt Ext.No. 2212

Lead Officer – Ian Paske Ext.No. 2225

Contact Officer – Paul Froggatt Ext.No. 2212

### **1 PURPOSE**

To propose changes to the Scheme of Delegations to Officers and other related amendments within the Council's Constitution.

### **2 BACKGROUND**

- 2.1 In December 2002, the Standards Committee commissioned the Chartered Institution of Public Finance and Accountancy (CIPFA) to undertake an ethical governance audit of the Council. The Audit was received earlier this year and considered in detail by the Standards Committee on 7 July 2003. This report is primarily concerned with one aspect of the report dealing with delegations to officers and the Standards Committee has approved the substantial changes proposed below.
- 2.2 Much of the General Scheme of Delegation, Standing Orders and Constitution has recently been revised in line with the new political arrangements but, in common with many other authorities, the Officer Delegations have not yet been brought up to date.
- 2.3 The Ethical Governance Audit considered that the Officer Delegations should generally be briefer and more user friendly as well as making a number of detailed criticisms of inconsistent and inappropriate delegations.
- 2.4 The officers accept that these criticisms are valid and that the officer delegations are in need of general revision. In spite of the lengthy and detailed delegations to officers, there are gaps in the delegations, which cause problems from time to time, and it is, therefore, suggested that chief officers are given general powers of competence to deal with matters in their area. This practice is adopted by a number of authorities, who have undertaken a thorough revision of their constitutional arrangements. These powers are subject to matters, which are reserved either to the Executive as a whole or individual Executive members or to the Council and its committees. In addition, the Executive, the Council or one of its committees may, at their discretion, choose to exercise a function which would usually be delegated to a chief officer.
  - 2.4.1 Under the new constitutional arrangements much of the day to day decision making is made by, or under the auspices of the Executive rather than the Council and its committees. It should be noted that it is also for the Executive itself to decide which "executive" business and decision making should be delegated to officers.

- 2.4.2 The Chief Executive will have overall control of the officer delegations and adjust these, as appropriate, or determine who should deal with areas of uncertain or overlapping control.
- 2.4.3 The exercise of functions by officers will be subject to other internal controls for example contract standing orders and, where appropriate, Council policy.
- 2.4.4 Local Government legislation occasionally requires certain functions, often procedural ones, to be exercised by a nominated officer described as the "proper officer". (These are in addition to the statutory officer provision referred to in Article 12 of the Constitution). These appointments may be made by the Council, its committees or the Executive, the Chief Executive or chief officers for areas falling within their departmental control.
- 2.4.5 An exception has been made in this general scheme for the Head of Development and Planning. His delegations, for the most part, derive from the Planning and Development Committee and there is a requirement that his line Manager the Director of Environmental Services, who is also Deputy Chief Executive, is not compromised by conflicts of interest, for instance, where the Council has land interests as well as a planning role. As a result, the Planning and Development Committee will decide from time to time the type of planning decisions delegated to this Officer. This is not, of course, "executive" business.
- 2.4.6 These proposed changes to the Constitution will require the deletion pages 67-138 inclusive of Appendix A of Part 3 (the whole content of the current Appendix), to be replaced by the new delegations to be found in the Appendix to this report
- 2.4.7 The introduction of new political structures resulted in some prescriptive statutory procedures relating to officer employment. These are substantially to be found in the Officer Employment procedure Rules in the Constitution (Third version July 2002), some minor clarification and consequential amendments are however required. Generally the appointment, dismissal and disciplinary action against officers is not "executive" business. Further the appointment, dismissal and disciplinary action of and against all, except the most senior officers, is the statutory responsibility of the Head of Paid Service (the Chief Executive) or his nominee. In the interest of clarity, he should also be the Proper Officer for the purposes of the Local Authorities (Standing Orders) (England) Regulations 2001. The Terms of Reference of the Council's Appointments Committee should also reflect accurately the requirements of these Regulations and should be revised to read as follows:

‘The appointment and dismissal of Chief Officers subject to the requirements of the Local Government Act 2000 and the Local Authorities (Standing Orders) (England) Regulations 2001.’

### **3 RECOMMENDATIONS**

- 3.1 That the revisions to the Constitution set out in 2.3.7 above and in the Appendix to this report be adopted.
- 3.2 That the Chief Executive be the Proper Officer for the purposes of the Local Authorities (Standing Orders) (England) Regulations 2001.

- 3.3 That the Terms of Reference of the Appointments Committee be amended in the form set out in 2.3.8 above.

#### **4 BACKGROUND DOCUMENTS**

- An Ethical Governance Audit of Stevenage Borough Council - March 2003  
*The Chartered Institute of Public Finance and Accountancy*

**Draft Officer Delegations**

General

- Delegations to officers shall be without prejudice to the rights and powers of the Council and its committees or the Executive and its committees, as appropriate at any time to decide upon any matters which fall within their responsibility.
- In exercising powers delegated to them under this Scheme of Delegation, officers:
  - Shall comply with standard orders, contract standing orders and financial regulations and any other relevant matters set out in the Council's Constitution;
  - shall comply with the approved policy schemes and decisions of the Council, its committees or the Executive;
  - shall consult with the appropriate professional or technical officers of the Council on relevant matters, in particular, the Chief Finance Officer and Borough Solicitor;
  - shall consult, where appropriate, with the Executive Member(s) whose portfolio(s) is/are affected.

Proper officer provisions

- Subject to the appointments specified elsewhere in the Constitution, the relevant chief officer will make the proper officer appointments within his or her area of control. In the event of any uncertainty, the Chief Executive may make or remake any proper officer appointment (save that the Chief Executive shall always make any proper officer appointments which relate to the functions of the Planning and Development Committee).

Executive functions

- To exercise all of those executive functions which the Executive does not reserve to itself, to an Executive Member or to a Joint Local Committee. Subject to discretion of the Executive to amend these delegations, these functions are deemed to be delegated to the relevant chief officer as follows:
  - The Chief Executive may exercise any executive function in the absence of a relevant chief officer or nominate another chief officer to do so in the Chief Executive's absence;
  - the Chief Executive may exercise any executive power in cases of urgency whether or not reserved to executive decision making and whether or not falling within the departmental or budget area of another chief officer;
  - any chief officer may exercise any executive power falling within his or her departmental or budget area;
  - such other corporate areas of responsibility to which a chief officer will be nominated from time to time;

- the Borough Solicitor shall have authority to institute, defend or settle any legal proceedings as necessary to protect the interests of the Council

### **Council functions**

- To exercise all of those Council functions that are not specifically reserved to Full Council decision-making. These functions are deemed to be delegated to the relevant chief officer as follows:-
- The Chief Executive may exercise any Council function in the absence of a relevant chief officer or nominate another chief officer to do so in the Chief Executive's absence.
- The Chief Executive may exercise any Council power in cases of extreme urgency whether or not reserved to Full Council decision making and whether or not falling within the departmental or budget area of another chief officer.
- Any chief officer may exercise any Council power falling within his or her departmental or budget area, save that decisions or actions delegated by the Planning and Development Committee shall be exercised by the Head of Development and Planning or his delegatee.
- Such other corporate areas of responsibility to which a chief officer will be nominated from time to time.
- The Borough Solicitor shall have authority to institute, defend or settle any legal proceedings as necessary to protect the interests of the Council.

### **Exercise of Officer Delegations**

Each Chief Officer will establish a scheme of delegations for his/her department or budget area which specifies the functions, names the post which may carry out that delegated decision and the limits if any on the delegation. The limits on delegation will include the obligation to consult record and/or refer back to the Chief Officer in certain circumstances.

The Borough Solicitor will specify the format for the scheme of delegation and will maintain the current version of the Council's scheme of officer delegations.