

REPORT TO: East Lothian Council

MEETING DATE: 24 August 2021

BY: Executive Director for Council Resources

SUBJECT: Revisions to Standing Orders – Scheme of Delegation

1 PURPOSE

- 1.1 To present Council with the revised Scheme of Delegation for approval.

2 RECOMMENDATIONS

- 2.1 Council is asked to approve the revised Scheme of Delegation, which, if approved, will come into effect on 25 August 2021;
- 2.2 To delegate authority to the Chief Executive to add sections on delegated powers for the Chief Planning Officer and Chief Education Officer as and when these become statutory positions (in accordance with the relevant legislation), and to appoint officers to these positions; and
- 2.3 To appoint the Executive Director for Council Resources as the Section 95 (Chief Finance) Officer, and to delegate authority to the Chief Executive to review and determine the appointment to this statutory post once the new Head of Finance has taken up their post.

3 BACKGROUND

- 3.1 The Scheme of Delegation forms one of the Council's governance documents and sets out those responsibilities that are delegated to Council officers. It is regularly reviewed to ensure it reflects current legislation and the Council structure. The current review also sought to make the document clearer and more user friendly and introduced a section where the responsibilities of statutory officers are separately identified.
- 3.2 The key changes to the Scheme of Delegation are as follows:

- It takes account of the new chief officer structure and has, as far as possible, taken on board the suggestions made by the CMT in terms of layout and detail.
 - There are separate sections for the statutory officers: Chief Executive (Head of Paid Service), Section 95 (Chief Finance) Officer, Chief Social Work Officer, and Monitoring Officer. A section for the Chief Planning Officer will be added in due course (in accordance with the Planning (Scotland) Act 2019), as will a section for a Chief Education Officer should that become a statutory position in the future. Authority is sought to delegate the inclusion of these sections and appointments to these two statutory positions to the Chief Executive.
 - As with the current Scheme, the revised Scheme includes a section for each Head of Service, with Heads of Service retaining delegated authority for all operational matters within their own service. However, rather than a detailed list of operational functions, there is now a general statement to reflect that Heads of Service will have authority to carry out all functions and responsibilities in accordance with relevant legislation and regulations, and within policy and budget, for their service.
 - Provision has been made for the Chief Executive and statutory officers (in consultation with the political groups) to take decisions where urgent action is required (see Section 2.10); this provision is already reflected in Standing Orders at SO15.4.
 - As regards settling compensation claims relating to the buying and selling of land (as set out at Section 16.2(g) of the revised Scheme), the figure has increased from £15,000 to £25,000 to reflect inflationary increases and streamline this process.
- 3.3 It is proposed that the Executive Director for Council Resources is appointed as the Section 95 (Chief Finance) Officer, and that authority is delegated to the Chief Executive to review and determine the appointment to this statutory post once the new Head of Finance has taken up their post.
- 3.4 If approved, the revised Scheme of Delegation will be reviewed on an annual basis, with any changes being presented to Council for approval (other than the inclusion of delegations to the Chief Planning Officer and Chief Education Officer, and the review and determination of the Section 95 (Chief Finance) Officer, as set out above, should Council agree to delegate authority to the Chief Executive with regard to these positions).

4 POLICY IMPLICATIONS

- 4.1 If approved by Council, the revised Scheme will be included as Appendix 2 to the Council's Standing Orders, replacing the current Scheme.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – None
6.2 Personnel – None
6.3 Other – None

7 BACKGROUND PAPERS

- 7.1 East Lothian Council's Standing Orders

| | |
|----------------------|--|
| AUTHOR'S NAME | Lel Gillingwater |
| DESIGNATION | Team Manager - Democratic & Licensing |
| CONTACT INFO | lgillingwater@eastlothian.gov.uk |
| DATE | 2 August 2021 |

EAST LoTHIAN COUNCIL SCHEME OF DELEGATION

Contents

1. Introduction
2. General Duties and Responsibilities Delegated to Officers (including Jointly Appointed Officers)
3. Specific Duties and Responsibilities Delegated to the Chief Executive (Head of Paid Service)
4. Specific Duties and Responsibilities Delegated to the Section 95 (Chief Finance) Officer
5. Specific Duties and Responsibilities Delegated to the Monitoring Officer
6. Specific Duties and Responsibilities Delegated to the Chief Social Work Officer
7. General Duties and Responsibilities Delegated to Executive Directors and Director of the East Lothian Health and Social Care Partnership
8. General Duties and Responsibilities Delegated to Heads of Service
9. Specific Duties and Responsibilities Delegated to the Head of Children's Services
10. Specific Duties and Responsibilities Delegated to the Head of Communities
11. Specific Duties and Responsibilities Delegated to the Head of Corporate Support
12. Specific Duties and Responsibilities Delegated to the Head of Development
13. Specific Duties and Responsibilities Delegated to the Head of Education
14. Specific Duties and Responsibilities Delegated to the Head of Finance
15. Specific Duties and Responsibilities Delegated to the Head of Housing
16. Specific Duties and Responsibilities Delegated to the Head of Infrastructure

17. Specific Duties and Responsibilities Delegated to the Head of Operations (East Lothian Health and Social Care Partnership)
18. Scheme of Delegation for Planning Applications
19. Statutory Appointments of Officers

DRAFT

1. Introduction

Under Section 56 of the Local Government (Scotland) Act 1973, the Council is entitled to delegate certain duties and responsibilities to committees, sub-committees or Council officers.

The Scheme of Administration sets out the duties and responsibilities delegated to the Council's committees and sub-committees. The Scheme of Delegation details the functions, both statutory and non-statutory, which the Council has agreed to delegate to officers. It should be read in conjunction with the Council's Standing Orders, Scheme of Administration, Financial Regulations, and the Role Descriptions for Statutory Officers and Chief Officers.

The Scheme of Delegation does not allow the following matters to be delegated to officers:

- Matters that must be considered by Council or a committee or sub-committee
- Matters not covered by the Scheme of Delegation
- Matters which, by law, cannot be delegated to an officer

Notwithstanding the duties and responsibilities delegated to officers as set out within this Scheme of Delegation, councillors retain the right to request a report to Council, committee or sub-committee on any issue deemed to be of significant interest to councillors and/or the wider public, prior to any delegated decision being taken.

2. General Duties and Responsibilities Delegated to Officers (including Jointly Appointed Officers)

- 2.1 The authority delegated to officers through the Scheme of Delegation must be used not only in accordance with the terms of the Council's Standing Orders, Scheme of Administration and Financial Regulations, but also in accordance with all relevant Council policies, procedures and guidelines, and the current approved budget.
- 2.2 Officers shall have delegated authority to incur expenditure on behalf of the Council, including the signing of contracts and agreements, in accordance with Council policy, procurement procedures and other relevant financial procedures, as approved within the Council's Financial Regulations. All such expenditure must be within the authorised estimates of the expenditure of the Council as a whole.
- 2.3 Officers exercising delegated powers in terms of this Scheme must consult the Chief Executive, the appropriate Executive Director, Director of the East Lothian Health and Social Care Partnership, and other Heads of Service (as appropriate) as regards all sensitive or complex matters, or if they require advice or guidance. In particular, officers must get technical, construction, legal, financial, procurement, HR and risk management advice.
- 2.4 Officers exercising delegated powers in terms of this Scheme will be expected to consult local ward councillors if it appears that a proposed decision or action could directly affect a particular ward. This does not apply if the decision or action has a general effect on all wards.
- 2.5 Where a matter falls within the remit of more than one Head of Service and there is dispute as to how the matter should be handled, the Chief Executive will have the final decision, and a formal record of the decision will be retained.
- 2.6 The Council authorises any officer with specific delegated powers, duties or responsibilities set out in this Scheme to further delegate any of those powers, duties or responsibilities to other appropriate officers. Any officer using delegated powers will be fully accountable to the Council for their actions. However, if an officer delegates their powers to another officer, this will not relieve the delegating officer of their responsibility for the duties they have delegated.
- 2.7 Proper officers appointed to statutory roles cannot delegate their duties to other officers. However, if they cannot carry out their delegated duties because they are unavailable, designated officers may carry out those duties on their behalf (as set out in Sections 3–6 (C) of this Scheme of Delegation).

- 2.8 The Chief Executive or Executive Directors/Director of Health and Social Care are authorised to act in the absence of any Head of Service.
- 2.9 As set out in Standing Order 15.3, power is delegated to the Chief Executive and all Chief Officers to take any action with regard to any emergency involving serious danger to life, property or public welfare, or in accordance with the Council's Business Continuity Plan. Any action taken under Standing Order 15.3 will be reported to the Provost or Leader and the appropriate committee convener as soon as possible and thereafter to the Council.
- 2.10 As set out in Standing Order 15.4, power is delegated to the Chief Executive and statutory officers, in conjunction with cross-party councillor representation, to take immediate or urgent action with regard to matters not covered by Standing Order 15.3.

DRAFT

3. Specific Duties and Responsibilities Delegated to the Chief Executive (Head of Paid Service)

A. General

3.1 The Chief Executive has overall authority over all other officers, and is authorised to carry out all functions and responsibilities in accordance with all relevant legislation and regulations, and within policy and budget, for the following:

- Organisational structures and workforce
- Strategic management
- Emergency planning

3.2 The Chief Executive is also appointed as the Returning Officer for the East Lothian Council area, and has the authority to exercise all functions relevant to that role, in accordance with all relevant legislation and regulations.

B. Specific Delegated Functions

3.3 Acting as Head of Paid Service

3.4 Authorising the implementation of national and local agreements relating to pay and conditions of service, in consultation with the Head of Corporate Support

3.5 Reviewing the chief officer organisational structure, and recommending any changes to the Council

3.6 Reviewing the Council's administration and management arrangements and systems, and, where appropriate, making any changes necessary to improve how services are provided

3.7 Making changes to the Council's Scheme of Delegation arising as a result of changes to the Council's structures or role titles/responsibilities

3.8 Appointing, after consultation with the Council Leader and relevant Cabinet Spokesperson, an Acting Executive Director or Head of Service when the post holder is likely to be absent for more than two months, or the post is vacant

3.9 Appointing, after consultation with the Chief Executive of NHS Lothian, the Council Leader, Provost and Convener of the East Lothian Integration Joint Board, an Acting Chief Officer (Director) for the East Lothian Health and Social Care Partnership, when the post holder is likely to be absent for more than two months, or the post is vacant

- 3.10 Approving grades for all Executive Directors, Director of the East Lothian Health and Social Care Partnership, and Heads of Service, in consultation with the Leader of the Council
- 3.11 Agreeing, in conjunction with the Chief Finance Officer, severance terms with any Chief Officer whereby the Chief Officer in question agrees to terminate their contract of employment with the Council
- 3.12 Approving special leave without pay for Executive Directors/Director of the East Lothian Health and Social Care Partnership, in accordance with the relevant terms and conditions of service
- 3.13 Taking disciplinary action against Chief Officers, up to dismissal
- 3.14 Suspending any Executive Director or Head of Service (after consultation with the appropriate Executive Director) from duty on full pay, subject to relevant statutory provisions and to reporting the suspension to Cabinet
- 3.15 Suspending the Director of the East Lothian Health and Social Care Partnership, in consultation with the Chief Executive of NHS Lothian, from duty on full pay, subject to relevant statutory provisions and to reporting the suspension to the East Lothian Integration Joint Board
- 3.16 Maintaining a Council Plan, and ensuring that all services adhere to its requirements
- 3.17 Authorising any appropriate measures and expenditure which may be required in the event of an emergency situation or major incident, in accordance with the Council's Business Continuity arrangements and Standing Order 15.3
- 3.18 Receiving councillors' declarations that they accept their role (declaration of acceptance of office)
- 3.19 Receiving councillors' resignations
- 3.20 Receiving requests for special meetings and issuing summonses to special meetings
- 3.21 In consultation with the Head of Corporate Support, preventing reports containing sensitive information from being available to the public, deciding which documents are not open to inspection, and for providing documents to the press, in accordance with legislative requirements.
- 3.22 Facilitating internal audit of Council services

- 3.23 Authorising officer-directed surveillance, and officer covert human intelligence sources
- 3.24 Receiving all election-related documents after an election.

C. Proper Officer Delegation

- 3.25 In the absence of the Chief Executive (Head of Paid Service), Executive Directors are authorised to carry out the duties of the Chief Executive.
- 3.26 In the absence of the Returning Officer, the Depute Returning Officer, appointed by the Returning Officer, is authorised to carry out the duties of the Returning Officer.

DRAFT

4. Specific Duties and Responsibilities Delegated to the Section 95 (Chief Finance) Officer

A. General

- 4.1 The Chief Finance Officer is designated by the Council as the proper officer responsible for the administration of the Council's financial affairs in accordance with Section 95 of the Local Government (Scotland) Act 1973.
- 4.2 The Chief Finance Officer is authorised to carry out all functions and responsibilities in accordance with relevant legislation and regulations, and within the Council's policies and approved budget in relation to corporate finance and financial services.
- 4.3 The Chief Finance Officer is authorised to enter into agreements as regards borrowing and lending to meet the Council's needs, to manage the Council's loans fund, and to manage financial and lease agreements.

B. Specific Delegated Functions

- 4.4 Discharging Section 95 duties (as set out in the Local Government (Scotland) Acts)
- 4.5 Making amendments to the Council's Financial Regulations to take account of new or amended legislation, Council policies or procedures, or Council decisions
- 4.6 Developing and managing the Council's capital financial planning processes in accordance with the Council's Financial and Capital Strategies
- 4.7 Producing the Council's annual accounts in accordance with the Local Government (Scotland) Acts and relevant codes of practice
- 4.8 Taking or authorising decisions in relation to the Council's investments or borrowing, in accordance with the Council's Treasury Management Strategy, including in relation to borrowing in advance of need in certain situations (e.g. where doing so would be economically beneficial for the Council)
- 4.9 Accepting and reclaiming grants from the Scottish Government and other parties, in consultation with the relevant Executive Director/Head of Service
- 4.10 Approving the terms of purchasing works, goods and services in accordance with the Council's Procurement Procedures

- 4.11 Authorising required financial checks on proposed suppliers, contractors and customers of the Council
- 4.12 Making arrangements for receiving and holding tenders, in line with the Council's Procurement Procedures
- 4.13 Authorising emergency financial aid to employees of up to £200
- 4.14 In accordance with relevant approved Council policies, determining appropriate interim responsibility payments of up to 10% of current salary to reflect significant additional responsibilities undertaken in respect of major developments and initiatives
- 4.15 Writing off individual debts which are not recoverable up to a maximum of £50,000 (individual debt write-offs of over £50,000 shall require Cabinet approval)
- 4.16 Determining and actioning debt recovery procedures, including in relation to Council Tax and National Non-domestic Rates, in accordance with relevant legislation
- 4.17 Managing public trusts

C. Proper Officer Delegation

- 4.18 The Executive Director for Council Resources will act as the Chief Finance Officer. In their absence, an appropriately qualified and experienced officer is authorised to carry out the duties of the Chief Finance Officer.

5. Specific Duties and Responsibilities Delegated to the Monitoring Officer

A. General

- 5.1 The Monitoring Officer is designated by the Council as the proper officer responsible for carrying out certain duties and functions in accordance with Section 5 and 5A of the Local Government and Housing Act 1989.

B. Specific Delegated Functions

- 5.2 Taking responsibility for matters relating to the conduct of councillors and officers
- 5.3 Setting up and maintaining the Register of Interests for all councillors and making these available to the public
- 5.4 Reporting on matters that they believe are, or are likely to be, illegal or amount to maladministration
- 5.5 Reporting on any maladministration or injustice following an investigation by the Standards Commission for Scotland
- 5.6 Maintaining a list of politically restricted posts within the Council
- 5.7 Deciding whether an application made by a councillor or Council employee for a Council service should be referred to Council or an appropriate committee/sub-committee for determination.

C. Proper Officer Delegation

- 5.8 The Head of Corporate Support will act as the Monitoring Officer. In their absence, the Service Manager – Legal, and the Service Manager – People and Governance are authorised to carry out the duties of the Monitoring Officer. The Team Manager – Democratic and Licensing is also authorised to carry out duties relating to the Councillors' Code of Conduct.

6. Specific Duties and Responsibilities Delegated to the Chief Social Work Officer

A. General

- 6.1 The Chief Social Work Officer is designated by the Council as the proper officer responsible for carrying out all duties and functions in accordance with the principles, requirements and guidance set out in Section 5(1) of the Social Work (Scotland) Act 1968.

B. Specific Delegated Functions

- 6.2 Carrying out all functions of Chief Social Work Officer, in accordance with relevant legislation
- 6.3 Maintaining a Child Protection Register of children in need of protection from abuse
- 6.4 Providing services to children at risk of becoming accommodated
- 6.5 Determining and authorising all secure accommodation placements for children
- 6.6 Transferring children subject to a Supervision Order in cases of urgent necessity
- 6.7 Providing continuing care to formerly looked after children
- 6.8 Meeting the Council's duties as an adoption agency, including determining recommendations made by the Adoption Panel
- 6.9 Making arrangements to ensure that kinship care assistance is available
- 6.10 Approving guardianship applications
- 6.11 Acting as guardian to adults with incapacity where the guardianship functions relate to the personal welfare of the adults and no other suitable individuals have consented to be appointed
- 6.12 Providing services and after-care services for people with a mental disorder
- 6.13 Ensuring oversight and management of registered sex offenders
- 6.14 Taking decisions in relation to the management of drug treatment and testing orders

6.15 Carrying out, or authorising the carrying out of, functions as the appropriate authority in relation to a breach of a supervised release order, or appointing someone to carry out these functions

C. Proper Officer Delegation

6.16 The Head of Children's Services will act as the Chief Social Work Officer. In their absence, an officer identified from a pool of appropriately qualified and appropriately experienced officers is authorised to carry out the duties of the Chief Social Work Officer.

DRAFT

7. General Duties and Responsibilities Delegated to Executive Directors and the Director of East Lothian Health and Social Care Partnership

A. Delegated Functions

- 7.1 Amending the organisational structure of their services, including the number and designation of posts, in accordance with Council policies and procedures
- 7.2 Managing their services, and reviewing the performance of their services
- 7.3 Delegating duties in accordance with Standing Orders relating to contracts entered into and issuing orders for providing goods and services in accordance with Council policy, procurement procedures and other relevant financial procedures, as set out in the Council's Financial Regulations, and within the Council's approved budget
- 7.4 Transferring amounts between budgets within their control
- 7.5 Delegating duties as set out in the Council's Financial Regulations, for normal working practices
- 7.6 Authorising the payment of bills for goods and services received in accordance with Section 7.3 (above).
- 7.7 Advising the Chief Finance Officer about any unusual financial obligations that will affect the Council
- 7.8 Ensuring that services comply with statutory legal requirements
- 7.9 Ensuring safe working procedures and processes, and maintaining proper security for staff, buildings, stocks, stores, furniture and equipment, in accordance with statutory legal requirements and Council policies and procedures
- 7.10 Responding to consultation documents within the set time limit, where appropriate
- 7.11 Ensuring that Council policies and procedures are consistent and are followed
- 7.12 Carrying out duties imposed by statute pertaining to their areas of responsibility or the subject of specific delegations of authority by the Council.

B. Proper Officer Delegation

- 7.13 In the absence of an Executive Director or the Director of the East Lothian Health and Social Care Partnership, the relevant Head(s) of Service are authorised to carry out their duties.

DRAFT

8. General Duties and Responsibilities Delegated to Heads of Service

A. General

- 8.1 Authority delegated to Executive Directors/Director of the East Lothian Health and Social Care Partnership may then be delegated on to Heads of Service
- 8.2 In exercising delegated authority, Heads of Service must ensure that they comply with:
- relevant laws, guidance and codes of practice
 - the procedural rules of their service
 - the Council's Procurement Procedures and Financial Regulations
 - the Council's insurance, risk management and business continuity arrangements
 - the Council's Standing Orders
 - the Council's HR policies and procedures
 - all relevant plans and policies adopted by the Council
 - the approved budget
 - approved service plan(s)
 - the rules on access to information, data protection and freedom of information
- 8.3 When carrying out duties delegated to them, Heads of Service must consult with other relevant officers if their actions will affect the responsibilities of another Head of Service. Where it is not clear which Head of Service has responsibility for a particular action or decision, the Chief Executive will determine the matter.

B. Delegated Functions

- 8.4 Contributing to the development of corporate policies and procedures through the Council Management Team
- 8.5 Setting and maintaining service standards to meet the Council's priorities
- 8.6 Putting in place service plans, and managing services within the Council's policies
- 8.7 Generally taking all operational decisions relating to the services being provided
- 8.8 Taking decisions on formal complaints about matters within their service areas
- 8.9 Managing and developing the workforce within their service areas

- 8.10 Suspending any employee in consultation with the Head of Corporate Support
- 8.11 Spending the approved budget appropriate to the services being provided
- 8.12 Setting and reviewing existing charges for Council services to ensure the needs of the budget are met (with the introduction of new charges being the responsibility of the Cabinet)
- 8.13 Applying for and accepting grants or a challenge fund, as long as these do not give rise to future financial commitments that the Council has to meet, or do not need the Council to provide equal funding that cannot be met from existing budgets
- 8.14 Procuring supplies and services in accordance with the provisions set out in Section 7.3
- 8.15 Entering into contracts in accordance with the provisions set out in Section 7.3
- 8.16 Accepting the lowest or best value tender where the value or estimated value of the contract is in accordance with the Council's Procurement Procedures
- 8.17 Promoting, marketing or presenting events
- 8.18 Authorising the production of publications relating to the services being provided
- 8.19 Serving statutory notices relating to the services being provided
- 8.20 Taking enforcement action when required relating to the services being provided
- 8.21 Reviewing the Council's actions and decisions, and dealing with requests for information under the Freedom of Information (Scotland) Act 2002 and ensuring compliance with all Data Protection legislation.
- 8.22 Carrying out the duties of the Council imposed by statute pertaining to their areas of responsibility or the subject of the specific delegations of authority by the Council.

C. Proper Officer Delegation

- 8.23 Where a Head of Service has been given delegated authority, they may authorise any member of their staff to act on their behalf. Any Head of Service using delegated authority will be fully responsible to the Council for their actions and those of any officer they delegate the duties to.

9. Specific Duties and Responsibilities Delegated to the Head of Children's Services

A. General

9.1 The Head of Children's Services is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Aftercare
- Child Protection
- Children's Disability
- Fostering
- Intake and Assessment
- Long-term Care and Support
- Residential
- Young People and Justice

B. Specific Delegated Functions (see also functions delegated to the Chief Social Work Officer at Section 6)

9.2 Setting fees for curators ad litem, foster and kin carers, and community carers

9.3 Approving grants to voluntary organisations

10. Specific Duties and Responsibilities Delegated to the Head of Communities

A. General

10.1 The Head of Communities is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Connected Communities
- Customer Services
- Policy, Improvement and Partnerships
- Protective Services

B. Specific Delegated Functions

10.2 Approving grants to individuals and organisations within the community, up to a maximum decided by the Council

10.3 Making suitable arrangements for the Council's insurance matters, and settling individual insurance claims up to a maximum of £100,000

11. Specific Duties and Responsibilities Delegated to the Head of Corporate Support

A. General

11.1 The Head of Corporate Support is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Communications
- Customer Feedback
- Democratic Services
- Executive Support, including to Lord Lieutenant
- Human Resources and Payroll
- Information Governance
- IT Services
- Legal Services
- Licensing
- Registration Services
- Unified Business Support

B. Specific Delegated Functions

11.2 Appointing and re-appointing curators ad litem and reporting officers

11.3 Appointing members to the East Lothian Local Licensing Forum

11.4 Determining the following licensing matters (in accordance with relevant legislation, as set out in the scheme of delegation adopted by the Licensing Sub-Committee):

- a. to grant a licence, on advice from the Chief Constable that there are no objections
- b. to renew a licence, if there are no new objections or adverse information received since or before the Licensing Sub-Committee's last consideration of the matter and the licence sought is the same as the licence previously granted
- c. to grant a licence in terms of any other primary or secondary legislation which regulate licensing regimes falling within the ambit of the Licensing Sub-Committee, if there are no new objections or adverse information received since or before the Licensing Sub-Committee's last consideration of the matter and the licence sought is the same as the licence previously granted
- d. to determine whether exceptional circumstances exist which would justify the return of application fees in cases where the application is not progressed

- e. to suspend a licence with immediate effect in terms of paragraph 12 of Schedule 1 of the Civic Government (Scotland) Act 1982
- f. to determine whether 'good cause' has been shown by an applicant where the application for renewal of a licence is received late, in terms of paragraph 8(5A) of Schedule 1 of the Civic Government (Scotland) Act 1982
- g. to provide that if, for any reason, the delegated officer considers it inappropriate to determine an application under delegated powers, the application will be referred to the Licensing Sub-Committee for determination

DRAFT

12. Specific Duties and Responsibilities Delegated to the Head of Development

A. General

12.1 The Head of Development is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Business Development
- Economic Development
- Growth
- Heritage and Monuments
- Planning
- Street Naming and Numbering
- Tourism
- Regeneration

B. Specific Delegated Functions

12.2 Taking decisions on planning applications and enforcing planning laws, subject to the protocol set out in Section 18 of this Scheme of Delegation

12.3 Monitoring planning permission and other permissions, and taking enforcement action under Part V1 and V11 of the 1997 Act, including serving notices, taking direct action and prosecuting people for not keeping to such notices

12.4 Determining requests to undertake work to trees that are either protected by a Tree Preservation Order or are within a Conservation Area; and determining applications for Tree Preservation Orders where there are no outstanding objections

12.5 Providing the Council's view as planning authority on planning applications and other consultations from neighbouring planning authorities and the Scottish Government

12.6 Taking decisions in relation to grants for economic development, business development, tourism, and regeneration activities, to both the private and third sectors

12.7 Determining applications for grant assistance under a Conservation Area Regeneration Scheme

13. Specific Duties and Responsibilities Delegated to the Head of Education

A. General

13.1 The Head of Education is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Additional Support for Learning
- Early Learning and Childcare Provision
- East Lothian Works and associated Employability Services
- Educational Psychological Services
- Inclusion and Equality
- Learning Estate
- Primary Education
- Quality Improvement of Schools
- Secondary Education
- Strategy and Operations

B. Specific Delegated Functions

13.2 Managing, assessing and awarding higher school bursaries

14. Specific Duties and Responsibilities Delegated to the Head of Finance

A. General

14.1 The Head of Finance is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Benefits and Financial Assessments
- Budget Development
- Corporate Accounting
- Council Tax
- Financial Inclusion
- Planning Obligations
- Procurement
- Rent Income
- Revenues
- Service Accounting
- Treasury and Banking
- Welfare Rights

B. Specific Delegated Functions

15. Specific Duties and Responsibilities Delegated to the Head of Housing

A. General

15.1 The Head of Housing is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Community Housing
- Homelessness
- Housing Strategy and Development
- Property Maintenance
- Service Development and Support
- Sheltered Housing

B. Specific Delegated Functions

15.2 Authorising expenses, under the Housing Act 1994, to people who are old, disabled or in poor health

15.3 In conjunction with the Head of Operations (ELHSCP), providing support services for vulnerable homeless people to standards set by the Care Commission

16. Specific Duties and Responsibilities Delegated to the Head of Infrastructure

A. General

16.1 The Head of Infrastructure is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Engineering Services and Building Standards
- Estates
- Facilities Management
- Roads Services
- Sport, Countryside and Leisure
- Strategic Asset and Capital Plan Management
- Transport Services
- Waste Services

B. Specific Delegated Functions

16.2 In consultation with, and with the agreement and approval of the Section 95 Officer, the Service Manager – Legal, and other officers as required, undertake:

- a. Disposals of land and/or buildings (if the highest offer is not to be accepted or the property is to be sold without having to be advertised, the matter is referred to Cabinet)
- b. Acquisitions of land and/or buildings as agreed within the capital programme
- c. Agreeing terms for the disposal of small areas of open space ground on the Housing Revenue Account or managed by Sport, Countryside and Leisure, where such areas are not advertised for sale
- d. Agreeing terms for leases/tenancies of land or buildings, and all matters arising from the lease of a property, including lease transfer and variation, sub-letting, change of use, alterations, and recovering overdue rent and other charges
- e. Agreeing terms for granting wayleaves, rights of way and servitudes
- f. Agreeing terms for an excambion of land required for any of the Council's functions where this action is within the approved capital programme
- g. Settling claims for professional fees and costs in connection with buying and selling land, and compensation claims of up to £25,000

17. Specific Duties and Responsibilities Delegated to the Head of Operations (East Lothian Health and Social Care Partnership)

A. General

17.1 The Head of Operations (East Lothian Health and Social Care Partnership) is authorised to carry out all functions and responsibilities (except where a specific professional qualification is required to be held) in terms of all relevant legislation and regulations, and within policy and budget, for the following services:

- Access and Prevention
- Adult Community Services
- Adult Statutory Services
- Hospitals and Care Homes
- Primary Care

B. Specific Delegated Functions

17.2 Taking decisions, in consultation with the Council's Chief Finance Officer, on applications for changing maintenance rates for private or voluntary homes not covered by the National Health Service and Community Care Act 1990

18. Scheme of Delegation for Planning Applications

18.1 Decisions in relation to planning applications

- a. Delegated Decisions – ‘Local Developments’ as defined in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2008 shall be determined by the Service Manager – Planning without reference to Members, subject to 18.1(b) below. Such determination shall include, where appropriate, authority for the Council to enter into any legal agreement in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997 or otherwise and authority for the Council to take enforcement action in instances where retrospective planning permission is refused for unauthorised development.
- b. Scheme of Delegation List – A list of reports on applications to be decided under delegated authority in terms of 18.1(a) above which raise important planning issues and/or are subject to any amount of public objection shall be circulated each week to Members, who then shall have seven days in which to request referral to the Planning Committee, otherwise the officer decision shall be issued by the Service Manager – Planning in terms of 18.1(a) above. The Member who has requested referral to the Planning Committee shall prepare the Statement of Reasons for issue by the Planning Authority giving the reasons why the Planning Committee and not the Service Manager – Planning should determine the application.

18.2 Appeal to Scottish Ministers against the failure to take a decision on a planning application

In cases where an applicant has appealed to Scottish Ministers against the failure to take a decision on a planning application, the Service Manager – Planning shall have authority for submitting the Council’s submission on the appeal, as a Council Officer statement.

18.3 Decisions in relation to enforcement of planning control

- a. Authority for service of Planning Contravention Notices and Breach of Condition Notices will be delegated to the Service Manager – Planning and will be reported for Members’ information to the Members’ Library.
- b. Committee Expedited List – reports recommending service of Enforcement Notices, Stop Notices and Notices under Section 179 (‘Land Adversely Affecting Amenity of Neighbourhood’) of the Town and Country Planning (Scotland) Act 1997 shall be circulated each week to Members, who then shall have seven days in which to request referral to the Planning Committee, otherwise the officer recommendation is deemed to be accepted and the Service Manager – Planning shall be authorised to proceed on that basis.

18.3 **Decisions in relation to the variation, modification or discharging of planning obligations**

- a. The Service Manager – Planning shall have authority to determine applications to vary, modify or discharge planning obligations, in terms of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010
- b. The Service Manager – Planning shall have authority to determine applications to vary modify or discharge Good Neighbour Agreements, in terms of the Town and Country Planning (Modification and Discharge of Good Neighbour Agreements) (Scotland) Regulations 2010.

DRAFT

19. Statutory Appointment of Officers

- 19.1 Under various laws, the Council must appoint officers for a variety of purposes. Officers appointed to perform these roles are authorised to take the actions that are an essential part of their roles. The 'statutory appointments' that the Council has made are set out in this section.

| Relevant Law | Role | Proper Officer |
|---|---|--|
| Civic Government (Scotland) Act 1982 | | |
| Section 113 | Proper officer for keeping evidence of management rules | Head of Corporate Support |
| Community Empowerment (Scotland) Act 2015 | | |
| Section 22 | Proper officer for receiving participation requests | Head of Communities |
| Section 79 | Proper officer for receiving asset transfer requests | Head of Communities |
| Data Protection Act 2018 | | |
| Chapter 4, Sections 69-71 | Proper officer for monitoring compliance; for informing and advising the data controller of their obligations; for co-operating with the supervisory authority in respect of (1) East Lothian Council, and (2) East Lothian Licensing Board | Team Manager – Information Governance |
| Environmental Protection Act 1990 | | |
| Section 149(1) | Proper officer for dealing with stray dogs in the area | Head of Communities |
| Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests Regulations) 2003 | | |
| Section 7(1) | Proper officer for setting up and keeping the register of councillors' business, personal and financial interests, and making these available to the public | Monitoring Officer / Team Manager – Democratic and Licensing |
| Licensing (Scotland) Act 2005 | | |
| Schedule 1, para. 8(1)(a) | Proper officer to act as the Clerk to the Licensing Board | Service Manager – People and Governance |
| Section 13 | Proper officer for supervising compliance by licence-holders, mediating, issuing notices and applying for premises licence reviews | Licensing Standards Officer |
| Local Authorities (Contracts) (Scotland) Regulations 1997 | | |
| Regulation 4 | Proper officer for certification purposes (powers to enter into a contract of other matters) | Head of Finance |
| Local Government (Scotland) Act 1973 | | |
| Section 33a | Proper officer for receiving councillors' declarations that they accept their role (declaration of acceptance of office) | Chief Executive |
| Section 33a(3) | Proper officer that the declaration of acceptance of officer can be made to | Chief Executive / Monitoring Officer / |

| | | |
|---|--|--|
| | | Service Manager – People and Governance / Team Manager – Democratic and Licensing |
| Section 34 | Proper officer for receiving councillors' resignations | Chief Executive |
| Section 40 | Proper officer for receiving general notices from councillors about any financial interest in a matter, and for recording the councillors' interests | Monitoring Officer / Service Manager – People and Governance / Team Manager – Democratic and Licensing |
| Section 43 and para. 1(4) of Schedule 7 | Proper officer for receiving requests for special Council meetings | Chief Executive |
| Section 43 and para. 2(1) of Schedule 7 | Proper officer for signing summonses to special Council meetings | Chief Executive |
| Section 43 and para. 2(2) of Schedule 7 | Proper officer for receiving a councillor's notice of an alternative address | Head of Corporate Support |
| Section 50b | Proper officer for preventing reports containing sensitive information from being available to the public, and for providing documents to the press | Chief Executive / Executive Director for Council Resources / Head of Corporate Support |
| Section 50c | Proper officer for providing a written summary when the minutes of a meeting cannot be made available to the public | Head of Corporate Support |
| Section 50f | Proper officer for deciding which documents are not open to inspection | Chief Executive / Executive Director for Council Resources / Head of Corporate Support |
| Section 92 | Proper officer for transferring securities | Executive Director for Corporate Resources / Head of Finance |
| Section 95 | Proper officer for managing the Council's financial affairs | Executive Director for Council Resources |
| Section 145 | Proper officer for asking Ordnance Survey for information | Executive Director for Place |
| Section 190 | Proper officer for serving notices on behalf of the Council and starting legal proceedings | Chief Executive / Executive Directors / Head of Corporate Support / Service Manager – Legal |
| Section 191 | Proper officer for signing any claim on behalf of the Council in any sequestration, liquidation, and similar | Chief Executive / Executive Director for Council Resources / |

| | | |
|--|---|--|
| | proceedings where the Council is entitled to make a claim | Head of Corporate Support / Service Manager – Legal (in consultation with Head of Corporate Support) |
| Section 193 | Proper officer for signing notices and orders | Relevant Executive Director or Head of Service responsible for the service relating to the notice/order (in consultation with the Service Manager – Legal) |
| Section 194 | Proper officer for signing deeds and using the Council's seal | Chief Executive / Head of Corporate Support / Service Manager – Legal / Designated Senior Solicitor |
| Section 197 | Proper officer for arranging for documents to be inspected and filed | Head of Corporate Support |
| Section 202 | Proper officer for confirming that byelaws are valid and for sending copies to other relevant authorities | Service Manager – Legal |
| Section 202B | Proper officer for putting valid byelaws in the register of byelaws | Service Manager – Legal |
| Section 204 | Proper officer for providing certificates as evidence of byelaws | Service Manager – Legal |
| Section 206 | Proper officer for keeping a register of people who are made 'freemen' of the area | Head of Corporate Support |
| Section 231 | Proper officer for asking the Sheriff about matters arising from the Local Government (Scotland) Act 1973 | Chief Executive / Executive Directors / Head of Corporate Support (in consultation with the Service Manager – Legal) |
| Local Government and Housing Act 1989 | | |
| Section 2 | Proper officer for keeping lists of posts that are politically restricted | Head of Corporate Support |
| Section 4 | Proper officer to act as the Head of Paid Service | Chief Executive |
| Section 5 | Proper officer to act as the Monitoring Officer | Head of Corporate Support |
| Public Records (Scotland) Act 2011 | | |
| Section 1(2)(a)(i) | Proper officer for the management of the Council's public records | Head of Corporate Support / Service Manager – People and Governance |

| | | |
|---|---|--|
| Section 1(2)(a)(ii) | Proper officer for ensuring compliance with the Records Management Plan | Team Manager – Information Governance |
| Regulation of Investigatory Powers (Scotland) Act 2002 | | |
| Section 6 | Proper officer for authorising directed surveillance | Executive Director for Place / Head of Communities / Service Manager – Protective Services |
| Section 7 | Proper officer for authorising covert human intelligence sources | Executive Director for Place / Head of Communities / Service Manager – Protective Services |
| Representation of the People Act 1983 | | |
| Section 41 | Proper officer to act as the Returning Officer | Chief Executive |
| Scottish Local Government Elections Order 2007 | | |
| Rule 57 | Proper officer for receiving all election-related documents following an election | Chief Executive |
| Social Work (Scotland) Act 1968 | | |
| Section 3 | Proper officer to act as the Chief Social Work Officer | Head of Children's Services |
| Weights and Measures Act 1985 | | |
| Section 72(1)(a) | Chief inspector of weights and measures | Executive Director for Place |

19.2 The proper officers appointed for the roles set out in Section 19.1 cannot delegate their duties to other officers. However, if they cannot carry out their delegated duties because they are not available, the following officers will carry out their duties:

| Proper officer appointed for the roles set out in Section 19.1 | Officer(s) who will carry out duties if the proper officer is not available |
|---|--|
| If the Chief Executive is not available to act as Head of Paid Service | Executive Directors, as agreed |
| If the Returning Officer is not available for election purposes | Depute Returning Officer |
| If the Executive Director for Council Resources is not available to act as Section 95 Officer | A suitably qualified and experienced person from within the Finance Service |
| If the Head of Children's Services is not available to act as Chief Social Work Officer | A suitably qualified and experienced person from within the following services: Children's Services Adult Statutory Services Adult Community Services |
| If the Head of Corporate Support is not available to act as Monitoring Officer | Service Manager – Legal Service Manager – People and Governance Team Manager(s) – Democratic and Licensing (in relation to matters |

| | |
|--|---|
| | concerning the Councillors' Code of Conduct) |
| If an Executive Director is not available | Relevant Head of Service |
| If the Service Manager – People and Governance is not available to act as Clerk to the Licensing Board | Service Manager – Legal |
| If the Executive Director for Council Resources is not available to act as the Senior Information Risk Officer | Head of Corporate Support |
| If the Team Manager – Information Governance is not available to act as Data Protection Officer | Head of Corporate Support / Service Manager – People and Governance |

DRAFT