

CABINET

5 July 2004

CHANGES TO COUNCIL CONSTITUTION – PART 3: RESPONSIBILITY FOR
FUNCTIONS – SCHEME OF DELEGATION TO OFFICERS

REPORT OF CITY SECRETARY AND SOLICITOR

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RECENT REFERENCES:

CAB 322 Regulation of Investigatory Powers Act 2000 – 30 January 2002

EXECUTIVE SUMMARY:

This is one of a series of reports to Cabinet which sets out necessary updates to the Constitution.

It recommends that a number of changes be made to the Council's Scheme of Delegation to Officers. It includes amendments already approved by Committee and those requested by Directors to update their powers (all Corporate Management Team have been consulted). All the proposed amendments are shown as tracked in Appendix 1 to the report for ease of reference.

The changes detailed in paragraph 2 of the report are necessary to implement recommendations made by the Office of Surveillance Commissioners under the Regulation of Investigatory Powers Act (RIPA) 2000.

In addition, it is proposed that all Directors be given the power to *appoint* officers/inspectors under statutory legislation. More detailed changes are also recommended in relation to various powers that fall within the Environmental Health Department, such as appointment of Enforcement Officers. There is also a new power for the Chief Executive under the Anti Social Behaviour Act 2003 to authorise officers to take action under the Act.

The report also suggested that the period for which Directors can appoint temporary staff be increased from three to six months.

RECOMMENDATIONS:

That, subject to any comments from Members, the revised version of the Scheme of Delegation to Officers (included within Part 3 of the Constitution), as set out in Appendix 1 to this report, be recommended to Council for approval.

CABINET5 July 2004CHANGES TO COUNCIL CONSTITUTION – PART 3: RESPONSIBILITY FOR FUNCTIONS – SCHEME OF DELEGATION TO OFFICERSREPORT OF CITY SECRETARY AND SOLICITORDETAIL:1 Introduction

1.1 This report sets out a number of alterations that it is recommended are made to the Scheme of Delegation to Officers (changes tracked in Appendix 1 to the report).

2 Authorisations under the Regulation of Investigatory Powers Act (RIPA) 2000

2.1 On 30 January 2002 a report to Cabinet outlined the implications of the Regulation of Investigatory Powers Act 2000 (RIPA) and recommended that specified officers be given delegated power to authorise directed surveillance in accordance with the requirements of RIPA. Some concern was expressed that the delegated power to authorise directed surveillance should be restricted to Directors only and not to their deputies. In the event it was resolved that deputies could be included in the list of authorised officers.

2.2 On 1 July 2003, an Assistant Surveillance Commissioner visited the Council and concluded that the Council had developed a sound practical implementation of the statutory requirements of RIPA. The Commissioner made a number of recommendations, and the purpose of this part of this Report is to make appropriate changes to the way in which senior officers are authorised in order to implement those recommendations.

2.3 Section 27 of RIPA provides that surveillance will be lawful provided it is carried out in accordance with an authorisation. Section 30 provides that the persons entitled to grant such authorisations, will in the case of local authorities be that of "Assistant Chief Officer" or above or an "Officer responsible for the management of the investigation". Neither is defined in the Act and the Council previously dealt with this by nominating appropriate Directors and their deputies to be authorising officers.

2.4 The Assistant Commissioner has pointed out that although this was a careful and responsible approach by the Council and has not caused any apparent problems it does need to be reconsidered. In practice he recommends that a designated authorising officer must have suitable training or experience to fully appreciate the operational RIPA requirements. In some instances the officer will be below rank of deputy Director but would qualify by virtue of being officer responsible for the management of the investigation.

2.5 He recommends that this can be achieved by giving delegated power to a suitable senior officer to specify by name those officers who may grant RIPA authorisations. That officer will be responsible for ensuring that authorised officers are of appropriate rank and have adequate working knowledge of RIPA in order to provide properly considered authorisations. It is therefore recommended that the City Secretary and Solicitor be given delegated power to specify by name those officers who may grant RIPA authorisations.

3 Anti Social Behaviour Act 2003

- 3.1 This Act includes a power for the Chief Executive to authorise Officers to exercise powers and duties under the provisions of the Anti-Social Behaviour Act 2003 (for example, closing down noisy premises). It is recommended the Scheme of Delegation be amended to take account of this new power.

4 Appointment of Enforcement Officers

- 4.1 Currently, the Scheme of Delegation states that all Directors can “authorise or designate officers and such other persons as might be necessary for the purpose of performing the Council's statutory powers or duties, including to enter and inspect land or premises or to make investigations or to obtain information or samples” (Section 6 of the Council's Constitution, paragraph B, 8 refers). It is recommended that the Scheme be clarified to enable all Directors to be given the power to *appoint* inspectors/officers.

5 Appointment of temporary staff

- 5.1 The current Scheme enables Directors to appoint temporary staff for periods of up to three months. It is suggested that this period be increased to a maximum of six months to allow more flexibility. However, the appointment could not be renewed for a further period without reference to the Director of Personnel, in order to avoid temporary staff being employed for periods of twelve months or more and consequently acquiring employment rights, such as paid leave entitlement. In addition, it enables the Personnel Department to monitor staff employed on a temporary basis for long periods of time as the cost of employing such staff is normally higher than if the Council employed the staff direct. Any request to employ temporary staff for periods over twelve months would be referred to the Personnel Committee.

6 Portfolio Holders

- 6.1 References to Portfolio Holders throughout the Scheme have been amended to take account of the new designations agreed at Cabinet on 24 June 2004.

7 Estates Matters

- 7.1 The current Scheme enables approval of lettings or licences or the renewal of tenancies where the rent does not exceed £20,000 (Director of Development Services, Estate Matters, Numbers 5 and 6 refer). The rent level specified has not been reviewed for a number of years and it is therefore suggested that it be increased to £30,000.

OTHER CONSIDERATIONS:

- 8 CORPORATE STRATEGY (RELEVANCE TO): To be more open and democratic.

- 9 RESOURCE IMPLICATIONS: None.

BACKGROUND DOCUMENTS: None

APPENDICES: Proposed amendments to the Council's Scheme of Delegation