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<b>TO:</b>	Executive
<b>DATE:</b>	14 <sup>th</sup> SEPTEMBER 2017
<b>EXECUTIVE MEMBER:</b>	COUNCILLOR G KNIGHT

<b>KEY DECISION REQUIRED:</b>	NO
<b>WARD (S) AFFECTED:</b>	ALL

<b>SUBJECT:</b>	<b>AMENDMENT OF THE OFFICER SCHEME OF DELEGATION</b>
<b>RECOMMENDATIONS:</b> That additions and an amendment to the Officer Scheme of Delegation contained within the Council's Constitution be approved, as set out in Annex 1 in relation to Section 4 (Environmental Health) and Section 5 (Housing and other Residential Accommodation).	
<b>REASONS FOR RECOMMENDATIONS:</b> The Officer Scheme of Delegation needs to be kept up-to-date and for that purpose it is necessary to add some newly introduced legislation and to amend the delegation for one function, to ensure that all necessary enforcement powers available under the legislation can be utilised.	
<b>EXECUTIVE SUMMARY:</b> To enable the practical day-to-day functioning of a local authority, the council may delegate its powers, as it sees fit, to committees, officers and others.  The council's Constitution contains an Officer Scheme of Delegation that documents which decisions are delegated and this report seeks to update that scheme, which is necessary from time to time to incorporate new legislation and to reflect changes in the organisation of functions and services.  It is important that officers' delegated authority be very clearly documented and evidenced to ensure that enforcement action can be shown to be appropriately authorised.	

<b>Executive has authority to approve the above recommendations.</b>
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## **STATUTORY POWERS**

1. Section 37 of the Local Government Act 2000 requires the Council to prepare, keep up to date and publicise a Constitution. The Scheme of Delegation forms Section 3 of the Constitution.
2. Power exists under section 101 of the Local Government Act 1972 to arrange for the discharge of their functions by officers of the authority.

## **BACKGROUND**

3. Generally, powers conferred on a local authority by statute are conferred on the local authority as a whole. To enable the practical day-to-day functioning of a local authority the council may delegate its powers, as it sees fit, to committees, officers and others.
4. The council's Constitution contains the Officer Scheme of Delegation which documents its decisions to delegate powers to specified officers, sometimes with specified circumstances. This requires updating from time to time to account for new legislation, the repealing of legislation and for the amendment of errors and omissions.
5. Given the number and variety of functions conferred on local authorities it is inevitable that local authorities make frequent use of the power under section 101 of the Local Government Act 1972 to arrange for the discharge of their functions by officers of the authority.
6. Attached at **Annex 1** is a list, with reasons, of all the additions and amendments it is recommended be applied to the current Officer Scheme of Delegation.

## **KEY INFORMATION**

### **Addition to the Scheme of Delegation of the Housing and Planning Act 2016**

7. The Housing and Planning Act 2016 came into force in April 2017 and introduced a range of measures intended to crack down on 'rogue landlords' operating in the private rented sector. This new legislation is not reflected in the current Scheme of Delegation and to enable the new provisions to be utilised effectively, delegation of a number of the Council's duties and powers to officers is recommended.
8. The Act allows local housing authorities to impose a civil financial penalty on an individual or organisation as an alternative to prosecution for certain offences under the Housing Act 2004. Civil penalties may be imposed up to £30,000 for the following offences:
  - Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
  - Offences in relation to licensing of Houses in Multiple Occupation under section 72 of the Housing Act 2004;

- Offences in relation to licensing of houses under Part 3 of the Act under section 95 of the Housing Act 2004;
  - Offences of contravention of an overcrowding notice under section 139 of the Housing Act 2004;
  - Failure to comply with management regulations in respect of Houses in Multiple Occupation under section 234 of the Housing Act 2004;
9. Regard will be had to the circumstances of the offence in deciding whether prosecution or a civil penalty would be the most appropriate way of dealing with the offence and the level of penalty. The amount of penalty is to be determined by the local authority in each case, having regard to relevant statutory guidance.
10. The Act also extends the situations where rent repayment orders may be imposed. A rent repayment order requires a landlord to repay a specified amount of rent, upon application when the landlord has committed certain specified offences. These are:
- Failure to comply with an Improvement Notice under section 30 of the Housing Act 2004;
  - Failure to comply with a Prohibition Order under section 32 of the Housing Act 2004;
  - Breach of a banning order made under section 21 of the Housing and Planning Act 2016;
  - Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
  - Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977.
11. Local housing authorities and tenants are able to apply to the First-tier Tribunal for a rent repayment order. Rent paid by tenants themselves is repaid to the tenant, while rent paid through Housing Benefit or through the housing element of Universal Credit is repaid to the local authority. A rent repayment order can be applied for when the landlord has committed an offence, whether or not a landlord has been convicted of one of the offences listed above.
12. Where an application for a rent repayment order is made and the landlord has not been convicted of the offence for which the rent repayment order application is being made, the First-tier Tribunal will need to be satisfied beyond reasonable doubt that the landlord has committed the offence. The maximum amount of rent that can be recovered is capped at 12 months.
13. Local authorities can seek to impose a civil penalty and a rent repayment order for certain offences, where both sanctions are available.
14. All income received from civil penalties or rent repayment orders can be retained by the local authority, provided that it is used to further the local authority's statutory functions in relation to their enforcement activities covering the private rented sector, as specified in The Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017.

### **Addition to the Scheme of Delegation of the Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

15. Landlords in the private sector have been required since 1 October 2015 to have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (e.g. a coal fire, wood burning stove). Since that date, landlords have been required to ensure the alarms are in working order at the start of each new tenancy. These requirements are enforced by local authorities who can impose a fine of up to £5,000 where a landlord fails to comply with a remedial notice.
16. Where a local authority has reasonable ground to believe that a landlord has failed to comply with his or her duties under these Regulations, the local authority must serve a remedial notice within 21 days, requiring the landlord to take the necessary action within 28 days. If a landlord remains in breach, the local authority must arrange for remedial works to be carried out within 28 days. The local authority may also impose a penalty charge on the landlord of up to £5000.
17. This new legislation is not reflected in the current Scheme of Delegation and to enable the new provisions to be utilised effectively, delegation of a number of the Council's duties and powers to officers is recommended.

### **Addition to the Scheme of Delegation of the Private Water Supplies Regulations 2016**

18. A private water supply is any water supply which is supplied to a property that is not provided by a water company. About 1% of the population of England and Wales use a private water supply. Most of these supplies are situated in remote, rural parts of the country and can originate from a range of sources including; boreholes, natural springs, and watercourses. The Private Water Supplies Regulations 2016 concern water intended for human consumption and set out the standards and requirements for drinking water. They came into force in June 2016.
19. Local authorities act as the regulators for private water supplies and have a number of statutory duties under the Regulations. These Regulations place a duty on local authorities to conduct a risk assessment of each private water supply within their area and to undertake monitoring in order to determine compliance with drinking water standards. They also provide powers to require that a supply is improved by the relevant person(s) who control the supply.
20. This new legislation is not reflected in the current Scheme of Delegation and to enable the new provisions to be utilised effectively, delegation of a number of the Council's duties and powers to officers is recommended.

### **Amendment to the Scheme of Delegation regarding appeals to the First-tier Tribunal**

21. The current Scheme of Delegation includes the delegated function 'Exercise the Council's powers, duties and functions in relation to appeals to the Residential Property Tribunal'. This function is currently delegated to the Head of Service with responsibility for Housing. However, this function is dealt with by Environmental Health and as such an amendment delegating it to the Head of Service with

responsibility for Environmental Health is recommended. It is also recommended that the wording be amended from 'Residential Property Tribunal' to 'First-tier Tribunal', which is the current name for this body.

## Summary

22. **Annex 1** of this report lists in a table each addition and amendment that it is recommended be made to the Officer Scheme of Delegation. The format of the table matches the format of the existing scheme of delegation, with the addition of one further column to explain the reason for the change being sought.
23. All but the last of those columns (that is, all but the reason) will be incorporated into a revised scheme of delegation, should approval be granted.

## OPTIONS

24. The following options may be considered:
  - a) Agree the recommendations to add the legislation and make the amendment outlined above to the Council's Scheme of Delegation, as set out in the Annex. **This is the recommended option.**
  - b) Make amendments to the Annex and then agree the recommendations as set out in the revised Annex.
  - c) Do not agree the recommendations. This will significantly hinder the Council's ability to utilise the new provisions, as set out below, and is therefore **not recommended.**
25. It is not possible for officers to act without correctly delegated powers. Therefore failure to have an up to date and correct scheme of delegation means that any actions relating to undelegated or improperly delegated matters must be approved by the full council (which clearly would not be practical). In addition, where action is taken but delegations are not satisfactory the council could incur substantial legal costs and be unable to undertake effective enforcement of relevant provisions.

## LEGAL IMPLICATIONS

26. There are significant legal implications for not having an appropriately updated scheme of delegation. If enforcement action were to be taken but delegations were not satisfactory, the council could be vulnerable to legal challenge and incur substantial legal costs. Alternatively, the absence of appropriately delegated authority could impair our ability to appropriately enforce statutory provisions.

## FINANCIAL IMPLICATIONS

27. Failure to have in place appropriate delegated authority to utilise regulatory powers such as civil financial penalties, rent repayment orders and penalty charge notices impairs the Council's ability to recover the costs of enforcement from those who have breached legal requirements.
28. All income received from civil penalties or rent repayment orders can be retained by the local authority, provided that it is used to further the local authority's statutory

functions in relation to their enforcement activities covering the private rented sector. Penalty charge notice income may also be retained by the local authority, and fees are charged by the authority for certain work related to private water supplies. These are on a cost recovery basis only and have statutory maximum levels.

### **EQUALITIES IMPLICATIONS**

29. There are no equalities implications.

### **COMMUNICATION IMPLICATIONS**

30. In most cases where successful enforcement action is undertaken, there is liaison with the Communications Team, to discuss the merits of publishing the action, with a view to discouraging non-compliance among others. This might in future include reference to the use of new enforcement options, such as civil penalties or rent repayment orders.

### **RISK MANAGEMENT CONSIDERATIONS**

31. There are no significant risks associated with accepting the recommendations. There are substantial legal (and therefore financial) risks in not accepting the recommendations.

### **CONSULTATION**

32. None.

### **POLICY FRAMEWORK**

33. There are no aspects of the policy framework that relate to this report.

**Background Papers:**           None

## **AMENDMENT OF THE OFFICER SCHEME OF DELEGATION**

The table in this Annex presents proposed changes to Schedule 3b of the Council's Constitution - The Officer Scheme of Delegation.

The table includes all columns in the current scheme of delegation and a further column to explain the reason that it is proposed to make an amendment. The final column will not be included in the new scheme of delegation - it is simply for explanation.

The paragraph number is as in the existing scheme, where the provisions exists, or are labelled 'New', for wholly new delegations. These numbers will be changed once the revisions are incorporated, to enable fully sequential numbering.

14 September 2017

Amendment of the Officer Scheme of Delegation

**Paragraphs to be added or amended in relation to Section 4 (Environmental Health) and Section 5 (Housing and other Residential Accommodation)**

Section of the Scheme of Delegation	Delegated function	Act(s)	Officer(s)	Consultation Required with	Non-Executive/ Executive Function	Change and reason change is being proposed
Paragraph 5.19	Exercise the Council's powers, duties and functions in relation to appeals to the <del>Residential Property Tribunal</del> First-tier Tribunal	Housing Act 2004 Section 231	HoS with responsibility for <del>Housing</del>  Environmental Health	HOS with responsibility for Legal	Non-Executive	Amendment, as this function is dealt with by Environmental Health rather than Housing.  Name of Tribunal has also changed.
New paragraph in Section 5	Exercise the Council's powers, duties and functions in relation to the imposition of civil financial penalties	Housing and Planning Act 2016	HoS with responsibility for Environmental Health	-	Executive	Addition, as this is new legislation.
New paragraph in Section 5	Exercise the Council's powers, duties and functions in relation to the imposition of rent	Housing and Planning Act 2016	HoS with responsibility for Environmental Health	-	Executive	Addition, as this is new legislation.



14 September 2017

## Amendment of the Officer Scheme of Delegation

Section of the Scheme of Delegation	Delegated function	Act(s)	Officer(s)	Consultation Required with	Non-Executive/ Executive Function	Change and reason change is being proposed
	repayment orders					
New paragraph in Section 5	Exercise the Council's powers, duties and functions in relation to the enforcement of smoke and carbon monoxide alarm provisions	Smoke and Carbon Monoxide Alarm (England) Regulations 2015	HoS with responsibility for Environmental Health	-	Executive	Addition, as this is new legislation.
New paragraph in Section 4 (4.3.1)	Exercise the Council's powers, duties and functions in relation to the regulation of private water supplies.	Private Water Supplies Regulations 2016	HoS with responsibility for Environmental Health	-	Executive	Addition, as this is new legislation.