

## REPORT TO PROCEDURES COMMITTEE – 24<sup>th</sup> MAY 2019

### SCHEME OF GOVERNANCE

#### 1 Recommendations

The Committee is recommended to:

- 1.1 **Agree to recommend to Full Council, the changes to the Scheme of Governance, that are detailed in Appendices 1 and 2.**
- 1.2 **Note that proposed changes to the Scheme of Governance will be reported to Full Council for noting on 26<sup>th</sup> September 2019 and for approval on 21<sup>st</sup> November 2019.**

#### 2 Background / Discussion

- 2.1 The Procedures Committee has a remit to consider proposed changes to Aberdeenshire Council's Scheme of Governance, and to make recommendations about required amendments to Full Council.

#### Proposed Amendments to the Scheme

- 2.2 The proposed changes are set out in the appendices. Each proposal is highlighted in bold red, with an explanation as to the reasoning for the change set out below in a text box.
- 2.3 To ensure that the Scheme of Governance is always improving, the documents are continually reviewed for minor spelling or grammatical errors, renumbering, renaming, terminology that requires to be updated or legislation that requires to be added to an appendix of the Scheme. These changes have not been highlighted, on the basis that these amendments are of a minor nature.
- 2.4 If any separate decision of this Committee at its meeting of 24<sup>th</sup> May 2019 requires further amendment to the Scheme of Governance, those changes will be incorporated into the draft to be presented to Full Council on 26<sup>th</sup> September 2019.
- 2.5 Changes of particular note are explained below.
- 2.6 **Appendix 1**  
**Part 2A – List of Committee Powers**
  - (i) A new General Provision 5 has been added which clarifies that an Area Committee can choose not to use its delegation and can defer the matter to the relevant Committee or Sub-Committee . This is accepted practice but is not currently reflected in the Scheme in explicit terms.

- (ii) A new General Provision 14 has been added which would allow a different committee to reconsider a matter where an earlier decision had been appealed successfully and overturned. The Council may be required to reconsider the matter following the appeal, and there may be a condition that it is reconsidered by a different committee than that which took the original decision. Presently, Full Council would require to determine that a different Committee be appointed to reconsider the matter.
- (iii) The Area Committees' powers to approve decisions relating to Common Good in their areas is being expanded to clarify that it includes decisions relating to change of use of Common Good Land. This updates the delegations in line with the enactment of Section 104 of the Community Empowerment (Scotland) Act 2015 which created a requirement for consultation with the community when planning to dispose or change the use of Common Good Land.
- (iv) Following a decision of Full Council on April 25<sup>th</sup> 2019, Business Services Committee was delegated authority for the monitoring and scrutiny of future projects. All permanent delegations must be added to the Scheme of Governance and the appropriate section of Business Services Committee's powers is Property, as the Property Service has the responsibility for managing the delivery of the capital plan and capital projects. The functions of this Committee have also been clarified with the addition of Commercial and Procurement to Section 1.1 (d).
- (v) Following the decision of Full Council on 25<sup>th</sup> April 2019, Communities Committee's delegations are to include the delegation to approve the Council's annual Local Child Poverty Action Report following consultation with Area Committees and Education & Children's Services Committee.
- (vi) Section 25 of the Education (Scotland) Act 2016 is due to be enacted this year. This legislation provides that local authorities appoint a Chief Education Officer. This proper officer position has been added to the appointments that must be approved by Full Council. Clarity has been given by adding a reserved delegation to Section A. This is also reflected in the general delegation A.15 to Chief Officers as detailed below.

## 2.7 **Appendix 2** **Part 2B – List of Officer Powers**

- (i) General Delegation A.15 has been updated to include the Chief Education Officer as a statutory officer. Section 25 of the Education (Scotland) Act 2016 is expected to come into force in September 2019 and will require that Local Authorities appoint a Chief Education Officer. The overall objective of the Chief Education Officer is to ensure the provision of effective, professional advice to the local authority, elected members and officers, in relation to the authority's provision of services with a bearing on education. The post should assist the authority in understanding the complexities of education service delivery,

particularly in relation to the authority's specific statutory duties, and the key role education plays in contribution to the achievement of national and local outcomes. The officer appointed must have such qualifications as may be prescribed by Regulations made by the Scottish Ministers, and such experience as the authority considers appropriate in relation to the carrying out of the advisory function.

- (ii) General Delegations A.16 and A.17 have re-drafted and improved.
- (iii) Head of Legal and Governance's delegations require the deletion of D.8.19 as the delegation to administer unopposed applications to carry out civil marriages outwith registry offices is obsolete.
- (iv) The Head of Property and Facilities Management's delegations have been reviewed and added to in terms of the Housing Revenue Account Capital Programme.
- (v) The Head of Children's Service's delegations in relation to approval holidays for looked after children, have been clarified and improved. This reflects current practice.
- (vi) The Chief Social Worker Proper Officer delegation has been removed from Head of Children's Services and the specific powers from the Chief Officer of the Integration Joint Board section and placed in their own section (H) of the Scheme. This reflects the current position and ensures transparency as to the appointment and delegations of the proper officer position.

## 2.8 **Appendix 3** **Part 4H - Glossary**

- (i) The definition of Head of Service has been amended to include Partnership Managers in the Health and Social Care Partnership. This adds clarity and ensures that those Chief Officers have the correct delegations to deliver their role effectively.
- (ii) The definition of HRA Capital Programme has been added.

2.9 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

## 3. **Scheme of Governance**

The Committee is able to consider this item in terms of Section R of the List of Committee Powers in Part 2A of the Scheme of Governance as it relates to matters arising from the Scheme of Governance.

## 4. **Implications and Risk**

4.1 An equality impact assessment is not required because the recommendations in this report do not have a differential impact on any of the protected characteristics at this time. However, when the recommendations are reported

to Full Council, an equality impact assessment will be prepared to accompany the reports.

- 4.2 At this time there are no staffing or financial implications. Further information will be available following the scoping out of the options referred to in the report.
- 4.3 The following Risks have been identified as relevant to this matter on a Strategic Level BSSR003 Future Governance. The Council needs to be assured that it has the best fit of decision making so as to make it an agile and efficient body and a governance structure that reflects and serves well the communities whose priorities it is here to deliver. The link is [here](#) to the Directorate Risk Registers.

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**Director of Business Services**

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May 15<sup>th</sup> 2019

## APPENDIX 1

### Changes to Part 2A – List of Committee Powers

#### List of Committee Powers

This document sets out the powers of each of the Council's Committees to enable them to make decisions about strategic policy and the matters set before them.

This document lists the powers which have been reserved by Full Council and those which have been delegated to the Council's appointed Committees in terms of Section 56 of the Local Government (Scotland) Act 1973 and any other applicable legislation.

#### General Provisions

1. This List of Committee Powers is subject to these general provisions and:-
  - a. The Local Government (Scotland) Act 1973,
  - b. The Local Government Etc. (Scotland) Act 1994,
  - c. Any other statutes,
  - d. The provisions of the Scheme of Governance,
  - e. The exceptions, limitations and special delegations in this List of Committee Powers,
  - f. The Public Sector Equality Duty.
2. The Committees of the Council shall be delegated all the functions, services, undertakings or other matters, whether in pursuance of statute or otherwise, as contained in the respective sections of this List of Committee Powers.
3. When such functions, services, undertakings or other matters are delegated to a Committee, the Committee shall have the power to exercise the function as the Full Council could have exercised it had there been no delegation.
4. It shall be competent for a Committee, in relation to any matter -
  - a. instead of taking a decision, to make a recommendation to Full Council in which event the matter shall be decided by Full Council after consideration of the Committee's recommendation. Such recommendation must be made in a report submitted to Full Council by the appropriate service.
  - b. consult with any other Committee prior to taking a decision. Such request must be made in a report submitted to the Committee by the appropriate service.
5. **It shall be competent for an Area Committee, in relation to any matter, instead of taking a decision, to make a recommendation to the appropriate Committee or Sub-Committee which has the remit for the matter, in which event the matter shall be decided by the Committee or Sub-Committee after consideration of the Area Committee's recommendation. Such recommendation must be made in a report submitted to the Committee or Sub-Committee by the appropriate service.**

6. Full Council may delegate to a Committee and to an Officer of the Council any of the functions which have been reserved to Full Council with the exception of functions that statute requires Full Council to determine and matters set out in A.1.
7. A Policy Committee may delegate to an Area Committee or to an Officer of the Council any of the functions which have been delegated to the Committee.
8. An Area Committee or Sub-Committee may delegate to an Officer any of the functions which have been delegated to the Committee.
9. As far as consistent with legislation, Committees have power to delegate to Sub-Committees.
10. In exercising the functions conferred on them, Committees and Officers shall comply with the Standing Orders of the Council insofar as applicable and with any resolutions or instructions given by Full Council.
11. The Full Council may, notwithstanding the delegation of any matter to a Committee or Officer, deal with any questions not previously determined in terms of that delegation.
12. Full Council may vary, add to, recall or restrict any delegation.
13. In the event of any purported decision of an Area Committee or any Policy Committee being in the professional judgement of the Monitoring Officer or their nominee ultra vires of that Committee's powers, the matter shall be referred to the appropriate Policy Committee or Full Council.
14. **In the event of the continued consideration of any matter by an Area Committee or Policy Committee, following a legal challenge to a prior decision of that Committee, being in professional judgement of Monitoring Officer or their nominee contrary to natural justice, the matter shall be referred to an appropriate alternative Area Committee, Policy Committee or Full Council for determination.**

New Provision 5 is added for clarity, an Area Committee can defer to a committee but this is currently not reflected in the General Provisions.

New provision 14 added to allow a different committee to determine a matter following a successful legal challenge to an earlier committee decision.

This section will require renumbering.

## A. FULL COUNCIL

All Members of Aberdeenshire Council sit on Full Council and are responsible for electing the Provost, Depute Provost and Committee Chairs and Vice Chairs. Full Council also sets the Council's budgets, council tax, housing rents and approves strategic plans and other reserved matters.

### 10. Human Resources

10.1 Appointment and dismissal of the Chief Executive and dismissal of Directors and Area Managers in accordance with agreed Human Resources & Organisational Development (HR&OD) procedures.

10.2 Arrangements for the maintenance of ethical standards of conduct of Councillors and Officers.

**10.3 Appointment of the Head of Paid Service, Monitoring Officer, Section 95 Officer, Chief Social Worker and Chief Education Officer as Proper Officers of the Council.**

Added for clarity. This is already detailed as a provision to General Delegation A.15 of part 2B of the List of Officer Powers. This addition to Full Council powers gives absolute clarity that Full Council appoints the this named Proper Officers of the Council.

## B. AREA COMMITTEES

There are six Area Committees being Banff and Buchan, Buchan, Formartine, Garioch, Kincardine and Mearns and Marr. These committees determine matters which directly affect their areas and make recommendations to Policy Committees on strategic matters and Council policy.

Subject to the General Provisions, the following matters are delegated to these Committees:

### 2. Common Good and Trusts

- 2.1 To administer Common Good Funds and trusts controlled by the Council for the benefit of its Area.
- 2.2 To determine the sale or lease of more than 12 months duration **or change of use** of Common Good assets within its Area before a Common Good Order is sought from the Court.

### 6. Finance and Procurement

- 6.4.1 To determine a purchase of works, goods or services either in principle in the format of a Business Case and/or when the contract is awarded where:
  - a. the value of the matter exceeds £1,000,000 or,
  - b. the value of the matter is between £50,000 and £1,000,000 and
    - i. the Committee has reserved the right to approve the Business Case following approval of a Work Plan, or
    - ii. a Business Case is required for approval where the matter has not previously been reported to Committee on a Work Plan or,
  - c. an officer has chosen not to exercise their delegated power to approve the Business Case and or award of contract and,
  - d. they are funded from an approved Capital Plan, Revenue Budget, Council reserve, statutory funds or under Direction from the Aberdeenshire Integration Joint Board for those functions for which they are responsible and,
  - e. they relate exclusively to its Area.

Provided that if the decision is not in accordance with Officer recommendations or does not accord with existing Council policy then the matter should be referred to the appropriate Policy Committee.

Section 104 of Community Empowerment (Scotland) Act 2015 came into force on June 27<sup>th</sup> 2018 created a requirement for consultation with the community when planning to dispose or change the use of Common Good Land. This addition clarifies that the delegation sits with Area Committees.

## C. BUSINESS SERVICES COMMITTEE

This is one of the four Policy Committees and it is responsible for developing, monitoring, reviewing and scrutinising the Council's policy and making decisions on matters relating to its functions as set out in C.1 below.

### 1. Committee Functions

1.1 The following functions of the Council are delegated to this Committee.

Subject to the General Provisions, the Committee shall have full powers to decide on all policy issues and resource matters (within agreed budgets) relating to those functions which have not been reserved to the Full Council or specifically delegated to any other Committee of the Council:

- a. Civic Government (Scotland) Act 1982 matters with implications across Area boundaries where objections or observations are received.
- b. Customer Communications and Improvement.
- c. **Commercial and Procurement.**
- d. Emergency Planning.
- e. Finance.
- f. Human Resources & Organisational Development (HR&OD) (except human resource matters relating only to teaching staff and associated professionals).
- g. Information and Communication Technology.
- h. Legal and Governance.
- i. Licensing other than Liquor Licensing.
- j. Aberdeenshire Licensing Forum
- k. Property and Facilities Management.
- l. Registration of Births, Deaths and Marriages.
- m. Valuation and Electoral Registration.

This Committee also has specific powers:

### 5. Property

5.1 To determine the acquisition, sale or lease of land or property not on the Council's Housing account where:

1. an Area Committee has made a decision in relation to a Community Asset Transfer that is contrary to Officer's recommendations or does not accord with Council policy or,
2. the matter has not already been appropriately determined at Area Committee or by officers in the proper exercise of their delegated powers

5.2. To determine:

1. the establishment or closure of work places, and,
2. the establishment or permanent closure of council property that has operated as Children's Services or Adult Social Care establishments.

Provided that, as appropriate, Area and Policy Committees and/or Integration Joint Board have been consulted prior to being determined by this Committee.

5.3. To determine policy and policy issues in relation to the

1. Surplus Property of the Council and
2. Asset Transfer of Council property in terms of the Community Empowerment (Scotland) Act 2015.

**5.4 To review, monitor and scrutinise the delivery of the Council's capital projects.**

C.1.1 (d) adds clarity in that Commercial and Procurement are included in the Business Services Committee remit. Added in to be alphabetical and there is subsequent re-lettering.

C.5.4 is added following the decision at Full Council on April 25<sup>th</sup> 2019.

## D. COMMUNITIES COMMITTEE

This is one of the four Policy Committees and it is responsible for developing, monitoring, reviewing and scrutinising the Council's policy and making decisions on matters relating to its functions as set out in D.1 below.

### 4. General

- 4.1 To determine the attendance of members at courses and conferences relating to matters within the remit of this Committee and within the approved budget allocation.
- 4.2 To approve a Council response to any external consultation on any policy matter falling within the delegation of the Committee.
- 4.3 To establish sub-committees and working groups.
- 4.4 To approve the Council's annual Local Child Poverty Action Report following consultation with Area Committees, Aberdeenshire Community Planning Board and Education & Children's Services Committee.**

Added following decision at Full Council on April 25<sup>th</sup> 2019. This report is required to comply with Section 13 (1) of the Child Poverty (Scotland) Act 2017.

## APPENDIX 2

### Changes to Part 2B – List of Officer Powers

#### A. GENERAL DELEGATIONS TO CHIEF EXECUTIVE, DIRECTORS, CHIEF OFFICER OF THE INTEGRATION JOINT BOARD, AREA MANAGERS AND THE HEADS OF SERVICE ('the Chief Officers')

- 15
1. Act as or designate a suitably qualified officer to act as a Proper Officer for all the statutory functions of the Council under all relevant legislation including the Requirements of Writing (Scotland) Act 1995 in relation to the functions of their service or services (including signing of contracts).
  2. To appoint officers as appropriate for the purposes of the administration and enforcement of all relevant legislation in relation to the functions of their service or services.

Provided that the proper officer positions of Head of Paid Service, Section 95 Proper Officer, Monitoring Officer, **Chief Education Officer** and Chief Social Work Officer are subject to direct appointment by Full Council.

16. To sign, issue and serve as appropriate –
1. statutory notices on behalf of the Council under all relevant legislation applicable to the functions of their service; and
  - ~~2. identity cards, and such other similar authorisations as may be required, to officers.~~
17. Exercise or to designate a suitably qualified officer to exercise the powers and duties of the Council and of an inspector and authorised officer (including, but not limited to **the issue of identity cards, and such other similar authorisations as may be required to officers**, the right to enter land and property, inspection, sampling, seizure of goods and services, opening containers, seizure and initiating prosecutions, where appropriate) as permitted under relevant legislation **and in accordance with any issued authorisation warrant.**

15. Addition of the appropriate appointment of a proper officer by Full Council.

16 and 17 The revised drafting improves the ability for Trading Standards and Protective Services to operate effectively.

## 8. Legal and Governance

~~8.1 Administer unopposed applications to carry out civil marriages outwith registration offices.~~

8.2 Following consultation with the Head of Economic Development and Protective Services, the Head of Roads, **Waste** and Landscape Services and the Chair of the relevant Area Committee, grant extended operating hours to fairgrounds operating on Council owned property.

Deletion of obsolete delegation. The Registrar General has this power.

Correction of job title.

## 9. Property and Facilities Management

Subject to the General Provisions and Limitations and in addition to the General Delegations, the Head of Property and Facilities Management is authorised to:

9.9 Following consultation with the Head of Finance, manage the delivery of the general fund Capital Plan

**9.10 Following consultation with the Head of Finance and the Head of Housing, manage the delivery of the Housing Revenue Account Capital Programme.**

Addition of responsibility. Reflects current practice so adds clarity and clarifies requirements for consultation on the HRA capital programme.

## 2. Children's Services

## Proper Officer Position

~~2.1 The Head of Children's Services is appointed by the Council to act as the Chief Social Work Officer in terms of Section 3 of the Social Work Act 1968 for Council functions and those within the remit of the Integration Joint Board.~~

- 2.1 The Head of Children's Services shall act as the Proper Officer in relation to the Council's functions in regard to:
- a. Part IV of the Children and Young Persons (Scotland) Act 1937.
  - b. Children and Young People (Scotland) Act 2014.
  - c. The Matrimonial Proceedings (Children) Act 1958.
  - d. The Children Act 1975.
  - e. The Adoption (Scotland) Act 1978 and the Adoption and Children (Scotland) Act 2007.
  - f. The Foster Children (Scotland) Act 1984.

### *Specific Delegations*

Subject to the General Provisions and Limitations and in addition to the General Delegations, the Head of Children's Services is authorised to:

- 2.3 Provide support, services, advice and assistance for children and their families under Part II of the Children (Scotland) Act 1995, and to carry out the Council's functions with respect to continuing care, protection and supervision of children under the 1995 Act.
- 2.4 Carry out the Council's functions with respect to adoption and fostering services under the Regulation of Care (Scotland) Act 2001.
- 2.5 ~~Arrange or assist in arranging~~ **Authorise, as required**, holidays or other absences appropriate to the needs of any child in the care of the Council in accordance with the policies of the Council **in and out of the United Kingdom of Great Britain and Northern Ireland.**
- 2.6 Carry out the functions of the Council in relation to the adoption of children in terms of the Adoption and Children (Scotland) Act 2007.
- 2.7 Carry out the functions of the Council as Care Authority under the Fostering of Children (Scotland) Regulations 1996.
- 2.8 Determine, following consultation with the Head of Finance assistance with legal fees and medical expenses in relation to adoptions.
- 2.9 Approve fees for curators ad litem, foster parents and community carers in accordance with Council policies.
- 2.10 Determine applications for grants in line with Council policies and the Financial Regulations.

- 2.11 Following consultation with the Head of Human Resources and Organisational Development, authorise, in appropriate circumstances, referrals and reports for submission to the Scottish Social Services Council.
- 2.12 Implement all types of legislation, as required by the Service relating to Children's Social Work and functions conferred on the Chief Social Work Officer including but not limited to the legislation set out in Section 3 of Appendix D.

The Head of Children's Services is required to authorise holidays, this re-drafting adds clarity.

Removal of the proper officer provision as Full Council appointed an officer in the Health and Social Care Partnership to the Proper Officer position of Chief Social Worker. This has to be reflected in the Scheme as it is a permanent change of delegations

#### **H. Chief Social Work Officer**

**The Chief Social Worker is a Proper Officer appointed by the Council to act as the Chief Social Work Officer in terms of Section 3 of the Social Work Act 1968 for Council functions and those within the remit of the Integration Joint Board.**

The Chief Social Work Officer has powers including but not limited to the following:

- 1.1 To provide or secure the provision of care and support services including residential services for people who are, or have been, suffering from mental disorder as defined in Section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- 1.2 To provide after-care services for people who are/have been, suffering from mental disorder as in Section 26 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- 1.3 To appoint Mental Health officers as in Section 32 of the Mental Health (Care and Treatment) (Scotland) Act 2003, and supervise the discharge of their statutory responsibilities; and,
- 1.4 Discharge the Council's duties under the Adults with Incapacity (Scotland) Act 2000, including:
  - 1.4.1 The following duties within Section 10 of the Act:
    - a. supervising guardians,
    - b. consulting the Public Guardian and Mental Welfare Commission on matters of common interests,

- c. receiving and investigating complaints about welfare attorneys and matters of common interests,
- d. receiving and investigating complaints about welfare attorneys and guardian, and,
- e. providing a guardian, welfare attorney or person authorised under an intervention order when requested; and,

1.4.2 The following duties within Section 57 of the Act:

- a. applying to be a guardian of an adult if there is no other suitable adult and managing the property, financial affairs and welfare of that adult in accordance with any order issued by the court in that regard, and,
- b. providing court reports of private applications to be a guardian.

New Section to reflect the separation of the role of Chief Social Worker from the Head of Children's Services and the Chief Officer of the IJB.

### APPENDIX 3

#### Changes to Part 4H – Glossary

<b>"Head of Service"</b>	<b>Means a senior officer responsible for strategic delivery of council services and includes Partnership Managers in the Health and Social Partnership</b>
<b>"HRA Capital Programme"</b>	<b>Means the Housing Revenue Account related capital priorities for the current year and future years.</b>

