



# **Midlothian Council**

## **Scheme of Delegation**

Approved by Midlothian Council on: 27 September 2016

## **SCHEME OF DELEGATION TO CHIEF OFFICIALS**

This scheme of delegation to officers is carried out under Section 50G(2) of the Local Government (Scotland) Act 1973.

### **1 GENERAL DELEGATION TO CHIEF OFFICIALS**

#### **1 General**

The Chief Officials of the Council are those officers specified in Standing Order 17.1. Chief Officials must use the authority delegated to them in accordance with the policies and Standing Orders of the Council and will have delegated authority to execute all operational, functional and managerial matters relating to their service, except as may otherwise be specified in Standing Orders or Financial Regulations.

#### **2 Appointments**

Subject to Standing Order 17, appointing employees within agreed staffing levels and Divisional Budgets.

#### **3 Service Conditions**

Under guidelines set by the Chief Executive, deciding the following personnel matters:-

- \* special leave, secondment or leave to work or visit abroad;
- \* extending service beyond normal retirement age;
- \* recovery of maternity pay;
- \* attendance at training courses, seminars and professional development meetings;
- \* placing and advancement of employees within the appropriate salary grade; and
- \* authorising payment of acting-up allowances.

#### **4 Health and Safety Legislation**

Implementing the Council's Occupational Health and Safety Policy, and statutory Health and Safety legislation.

#### **5 Tenders**

Acceptance of tenders and entering into contracts for works for the supply of goods and services, subject to the provisions of Standing Order 20.

## **6 Contracts**

- \* Payment of final instalment of contracts, subject to Financial Directive 17.8.
- \* Signing of contracts where it is not necessary to append the Council seal.
- \* Subject to Standing Orders, all Chief Officials can appoint consultants to provide specialist expertise on specific projects in approved spending programmes.

## **7 Determination of Single Objection Statutory Proposals**

Unless otherwise prevented by law, authority to determine single objections to statutory proposals, following consultation with the relevant Cabinet portfolio-holder.

## **2 APPLICATION OF DELEGATION**

Each Chief Official can arrange for other senior officers in their Division to use their delegated powers, unless they cannot do so by law or because of this Scheme. A list of such senior officers and the delegated powers that they can use shall be maintained by Director, Resources.

## **SCHEME OF DELEGATION TO OFFICIALS**

### **(PARTICULAR DELEGATIONS)**

#### **1 CHIEF EXECUTIVE**

- 1 Implementation of National Circulars, except Circulars detailing national pay awards.
- 2 Making minor changes in Divisional staff structures or gradings, within approved budgets.
- 3 To act as and discharge the functions of the Returning Officer at elections of Councillors of the Midlothian Council in terms of Section 41 of the Representation of the People Act 1983 as amended.
- 4 Representing the views of the Council in relation to the work of the Midlothian Community Planning Steering Group.
- 5 Dealing with and taking action accordingly on all issues relating to the Scottish Public Services Ombudsman.
- 6 Exercising powers under Sections 18A, 18B, 18C and 18E of the Representation of the People Act 1983, as amended, to designate Polling Districts and Polling Places for the purpose of Parliamentary Elections in the Midlothian area.
- 7 The appointment of a professionally qualified officer at Head of Service level or above from within the existing establishment of the Council to fulfil the functions and responsibilities of the role of Chief Social Work Officer in accordance with the requirements of Section 3 of the Social Work (Scotland) Act 1968.
- 8 Taking the appropriate action necessary to ensure the continued momentum of Shared Services with other bodies whilst ensuring continued effective service delivery, subject to the requirements of the Council's Standing Orders and Scheme of Delegation.

#### **2 JOINT DIRECTOR, HEALTH AND SOCIAL CARE**

- 1 Carrying out Housing functions and responsibilities within the terms of the relevant Acts of Parliament and Regulations.
- 2 In consultation with the Cabinet Portfolio-holder (with responsibility for housing), disposing of appeals and special cases as exceptions to the Council's allocations policy.

(Notes: (a) Prior to reaching this stage appellants will have the right of appeal firstly to the Allocations and Homeless Manager, and thereafter to the Head of Customer and Housing Services; and (b) When an appeal relates to the Ward of the Cabinet Portfolio-holder (with responsibility for housing), the Director will consult on a whom failing basis instead with the Leader, the Deputy Leader or the Provost.)

- 3 Settlement of disputes between tenants and disposal of problems associated with anti-social tenants (after consultation with the local Members).
- 4 Action to be taken on the expiry of a Notice to Quit or a Notice of Proceedings for the Recovery of Possession arising out of breaches of conditions of Tenancy, excluding breaches arising from arrears of rent. NB Local Members to be kept informed.
- 5 Disposal of applications to operate businesses from Council houses.
- 6 Authority to deal with routine requests for Feu Superiors consent for former Housing Revenue Account properties.
- 7 Authority to deal with applications for licences, authorisations and registrations etc, which are of a non-controversial nature and which are in compliance with model codes or standards and where no objections have been received and to issue consents (legislation concerning housing which the Council has a statutory duty to enforce).
- 8 Authority to serve Notices and Orders and any subsequent action, including seizure, forfeiture etc, where there is a contravention of relevant statute or regulation (legislation concerning housing which the Council has a statutory duty to enforce).
- 9 Authority to refer contraventions of statutes or regulations to the Procurator Fiscal for prosecution and to the Sheriff Court for other applications (legislation concerning housing which the Council has a statutory duty to enforce).
- 10 Authority to deal with appeals by groups against the refusal or removal of registration under paragraph 7.5 of the Tenant Participation Strategy. (Note: Should any group be dissatisfied with the response, a further appeal can be made to the Cabinet).
- 11 Carrying out all functions and responsibilities in terms of all relevant legislation, in particular environmental and public health, food, health and safety, consumer protection, business advice, trading standards, animal welfare, private sector housing legislation and Private Sector Landlord Registration provisions under the Antisocial Behaviour etc (Scotland) Act 2004 (including notification of decision arising from consideration at the General Purposes Committee).
- 12 In consultation with the Chair of the General Purposes Committee, to consider and grant applications for Landlord Registration applicants as “fit and proper persons” in accordance with the legislative criteria, with power to refer any to Committee for consideration if thought appropriate.
- 13 Authority to maintain a list of a sufficient number of named persons, designated as “competent persons” under the Public Health etc (Scotland) Act 2008 who, in turn, will designate staff as investigating officers.
- 14 Disposal of individual cases of outstanding arrears of rent, including eviction. NB Local Members to be kept informed.

- 15 Carrying out Library functions and responsibilities within the relevant Acts of Parliament and Regulations.

### **3 DIRECTOR, RESOURCES**

- 1 Carrying out the Roads Authority's responsibilities under the Roads (Scotland) Act 1984, the Road Traffic Regulation Act 1984, the New Roads and Street Works Act 1991 and related Acts, Regulations and Orders.

(Note: matters which are subject to statutory consultation and raise objections which cannot be satisfactorily resolved must be reported to the Cabinet, except as provided for under paragraph 1, sub-paragraph 7, of the General Delegation to Chief Officials.)

- 2 Carrying out the Roads Authority's responsibilities under the Local Government (Omnibus Shelters and Queue Barriers) (Scotland) Act 1958.

(Note: matters which are subject to statutory consultation and raise objections which cannot be satisfactorily resolved must be reported to the Cabinet, except as provided for under paragraph 1, sub-paragraph 7, of the General Delegation to Chief Officials.)

- 3 Entering into agreements in respect of the issuing of Taxicards.

- 4 Agreeing to the placing of seats and other street furniture on footways (Section 30 of the Local Government and Planning (Scotland) Act 1982).

- 5 In consultation with the local Members and in accordance with the Council's regulatory scheme, to grant permits for the placing of tables and chairs on the public footway on the basis that any applications which attract objections or representations be referred to the General Purposes Committee for deliberation. (NB Any approvals so granted will not override the byelaws on the prohibition of the consumption of alcohol in designated public places.)

- 6 Authority to issue licences, permits, approvals, permissions etc, except in cases where there are objections or when there is a recommendation by an official for refusal (Civic Government (Scotland) Act 1982, Housing (Scotland) Act 2006, Theatres Act 1968, Game Licences Act 1860, Zoo Licensing Act 1981, Marriages (Approval of Places)(Scotland) Regulations 2002).

- 7 Authority to consider applications under the Civic Government (Scotland) Act 1982 so that the requirements of section 3(1) of the Act are met in cases where not all of the necessary information is available within the 3 month period referred to therein.

- 8 Authority to make all necessary arrangements in connection with tests of applicants' knowledge of the Midlothian area under section 13(5) of the Civic Government (Scotland) Act 1982 and to refuse to grant a taxi driver's licence to anyone who fails such test.

9 Authority, following consultation with the Chair of the General Purposes Committee, to order the immediate temporary suspension of licences under the Civic Government (Scotland) Act 1982 and thereafter arrange hearings to consider suspension.

10 Authority, subject to:-

- (a) consultation with the Chair of the General Purposes Committee; and
- (b) compliance with the requirements of the Civic Government (Scotland) Act 1982;

to delay consideration of the following until the applicant or licence holder has had their case dealt with in Court:-

- (i) applications for licences where pending cases have been labelled by the Chief Constable; or
- (ii) requests for the suspension of licences, with the exception of cases under paragraph 12 of Schedule 1 of the Civic Government (Scotland) 1982 Act, where immediate suspension (pending a hearing) is required due to there being a serious threat to public order or public safety.

11 Authority, in consultation with the Chair of the General Purposes Committee, to confirm the Council's views in the following circumstances on applications for Betting Office Licences, etc made to the Midlothian Licensing Board. Any intimation received will first be referred to the local Members for their comments. If any comments are received they will be subject to further investigation and reported back to the Members concerned. If concerns remain then a report will either be submitted to the General Purposes Committee if necessary or the matter remitted to the Director, Resources, in consultation with the Chair of the General Purposes Committee, to take whatever action is deemed appropriate, including referral to an Ad Hoc Sub-Committee of the General Purposes Committee comprising the local members and the Chair, with powers to confirm the Council's views if circumstances dictate.

12 Making such arrangements as are necessary to facilitate Council compliance, and implementation through Directorates, with the requirements of the Re-use of Public Sector Information Regulations 2005, including identification of documents, fixing of charges, setting of licence conditions and operation of a complaints system.

13 Signing Notices and Orders under the Roads Acts and Road Traffic Regulation Acts.

14 Signing missives and other conveyancing documents and signing notices and orders about compulsory purchase orders.

15 Starting and defending legal proceedings, instructing Counsel, engaging private legal firms and Sheriff Officers when appropriate.

16 Naming of Streets (after consultation with the Provost).

- 17     Numbering of streets.
- 18     Disposal of disputed accounts (with referral to the Cabinet for approval to write-off any account in excess of £500). NB Local Members to be kept informed.
- 19     Managing or leasing out Council community buildings, working with locally elected Management Committees and for wider buildings transfers.
- 20     Carrying out all functions and responsibilities in terms of the provision of Sports and Leisure Services and ensuring all health and safety regulations with regard to these services are complied with.
- 21     Representing the Roads Authority in responding to consultations on planning applications (Town and Country Planning (General Development) (Scotland) Order 1981).
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  - (a)     Negotiating, agreeing and signing all offers to let property and take on properties where the length of lease is up to twenty five years and where the rent is no more than £25,000 per annum.
  - (b)     Negotiating rent reviews of up to £25,000 a year.
  - (c)     Negotiating and concluding terms to renew or extend leases where it is beneficial to the Council.
  - (d)     Authorising the assignation of leases where the Council is Landlord.
  - (e)     Negotiating and concluding all applications for licences, servitudes, wayleaves and waivers and other agreements to provide clean title and to assist in the acquisition and disposal of property interests.
  - (f)     Negotiating the purchase of land and property up to a value of £750,000 where appropriate provision has been made in an approved Capital or Revenue Budget.
  - (g)     In conjunction with the relevant Cabinet portfolio-holder and Members within whose interest the land or property is held, for property authorised to be sold, market, negotiate and agree terms of sale up to a value of £750,000.
  - (h)     In conjunction with the Members/Director(s) within whose interest the land or property is held, negotiate and agree terms of sale for small areas of land (less than 0.1 acres) associated with residential premises, up to a value of £10,000.
  - (i)     In situations that require urgency, negotiating and agreeing terms for the purchase and sale of land, property and property rights up to a value of £25,000 to assist with the acquisition and disposal of other land and property.



- 23 In relation to let premises:-
- (a) approval of assignments; and
  - (b) approval of requests for alterations or changes of use.
- (NB both after consultation with the Local Members.)
- 24 Pursuing recovery against an individual or their legal carer of the cost of vandalism to Council property.
- 25 Making arrangements for receptions and the provision of appropriate hospitality on behalf of the Council.
- 26 Arranging the allocation of council accommodation to outside bodies.
- 27 Providing appropriate support services to Members.

#### **4 DIRECTOR, EDUCATION, COMMUNITIES AND ECONOMY**

- 1 Carrying out Education functions and responsibilities within the terms of the relevant Acts of Parliament and Regulations.
- 2 Employment of children (Children and Young Persons (Scotland) Act 1937).
- 3 Licensing stage or theatrical performances by children (Children and Young Persons (Scotland) Act 1937).
- 4 Referring young people in medically unsuitable employment to the Employment Medical Advisory Service of the Department of Employment.
- 5 Making 'ex gratia' payments to foster carers, up to £500.
- 6 Providing, from staff employed in the Division, the education authority's representatives on the Appointment Committees for all Head Teacher and Depute Head Teacher appointments in Schools.
- 7 Carrying out all functions and responsibilities in terms of town and country planning and building control legislation, in accordance with the Council's policies and practices.
- 8 Granting authority to enter land for purposes associated with the Development Plans and related activities.
- 9 Representing the views of the Council in relation to the work of the Edinburgh and the Lothians Structure Plan Joint Liaison Committee and the Edinburgh and South East Scotland Strategic Development Plan Joint Liaison Committee.

## **5 CHIEF SOCIAL WORK OFFICER**

- 1 Carrying out Social Work functions and responsibilities within the terms of the relevant Acts of Parliament and Regulations, with the exception of those functions which are required to be carried out by the appointed Mental Health Officers.
- 2 Approving maintenance rates for residential and day care establishments after consultation with the relevant Cabinet Portfolio-holder(s).
- 3 Authority to deal with applications for licences, authorisations and registrations etc, which are of a non-controversial nature and which are in compliance with model codes or standards and where no objections have been received and to issue consents (legislation concerning social work which the Council has a statutory duty to enforce).
- 4 Authority to serve Notices and Orders and any subsequent action, including seizure, forfeiture etc, where there is a contravention of relevant statute or regulation (legislation concerning social work which the Council has a statutory duty to enforce).
- 5 Authority to refer contraventions of statutes or regulations to the Procurator Fiscal for prosecution and to the Sheriff Court for other applications (legislation concerning social work which the Council has a statutory duty to enforce).

## **SCHEME FOR APPOINTMENTS AS PROPER OFFICER ETC**

The function of Proper Officer may be exercised by such other named official(s) as the Proper Officer may nominate. A list of these officials shall be kept by the Director, Resources, and the appropriate Proper Officer.

### **1 CHIEF EXECUTIVE**

- 1 Appropriate legislation and regulations relative to this role.
- 2 Local Government (Scotland) Act 1973      Section 34 – Receiving resignations of Councillors.

### **2 ALL DIRECTORS**

Authorised to act as “Proper Officer” in the absence of the Chief Executive.

### **3 DIRECTOR, HEALTH AND SOCIAL CARE**

- 1 Appropriate legislation and regulations relative to this role.
- 2 The Antisocial Behaviour etc (Scotland) Act 2004
- 3 Legislation concerning housing      Administration and enforcement, including power of entry.

### **4 DIRECTOR, RESOURCES**

- 1 Appropriate legislation and regulations relative to this role.
- 2 Dutch Elm Disease (Amendment) (Local Authorities) Order 1975 and Dutch Elm Disease (Restriction on Movement of Elms) Order 1975      Dutch Elm Disease – “Appointed Officer”.
- 3 Land Reform (Scotland) Act 2003: Part 1 Access      Sections 13, 14, 15, 19, 23 and 26. Delegated powers including the appointment of “Authorised Officer” to enter land to remove obstructions, signs etc and maintain access routes where appropriate.
- 4 Local Government (Scotland) Act 1973      All proper Officer appointments under this Act unless otherwise allocated within this Scheme including without prejudice to the generality the signing of documents under section 193 and the signing of deeds and affixing the Common Seal of the Council to documents under section 194 (as amended by the requirements of the Writing (Scotland) Act 1995).

5	Local Authority Mortgages (Scotland) Regulations 1975 and Local Authority Stocks and Bond (Scotland) Regulations 1975	“Registrar” – mortgages, stocks and bonds.
6	Local Government (Contracts) Act 1997	Certifying Contracts.
7	Local Government (Scotland) Act 1973	Section 145 – Checking boundaries of local government areas on ordnance survey plans and signing relevant certificates.

## 5 DIRECTOR, EDUCATION, COMMUNITIES AND ECONOMY

Appropriate legislation and regulations relative to this role.

Town and Country Planning (Scotland) Acts, associated legislation and Regulations – Administration and Enforcement, including power of entry, signing of decision notices, orders (Including those relating to Tree Preservation Orders and Enforcement actions), and certificates relating to the town and country planning function of the Council and including decisions on planning and other applications.

Town and Country Planning (Scotland) Act 1997 – Section 265 – Rights of Entry upon land

Building (Scotland) Acts, Regulations and associated legislation – Administration and enforcement including powers of entry

Education Acts	Administration and other functions.
Safety of Sport Grounds Act 1975	Section 11 – Authorised person for purposes of entering, inspecting and reporting as necessary on sports grounds including examining and copying records relating to attendances and maintenance of safety.
Environmental Protection Act 1990 and Dog Fouling (Scotland) Act 2003	“Authorised Officer” including the appointment of designated officers to issue penalties
Licensing (Scotland) Act 2005	Authority to sign and issue Section 50 certificates (Planning, Building Standards and Environmental Health)
Environmental and public health, food, health and safety, trading standards and animal welfare legislation	Administration, licensing and enforcement, including power of entry and signing of improvement notices and prohibition notices

## **6 ALL CHIEF OFFICERS**

Local Government (Scotland) Act 1973	Section 50D – Identification of background papers for reports which they have prepared and which members of the public can inspect.
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## **7 MONITORING OFFICER AND DEPUTE MONITORING OFFICER**

Local Government (Scotland) Act 1973	Section 33A – Receiving Declarations of Acceptance of Office.
Local Government and Housing Act 1989	Section 2 – Politically Restricted Posts.
Ethical Standards in Public Life etc (Scotland) Act 2000	Section 5 – liaising with the Standards Commission and Public Standards Commissioner, as necessary  Section 7 - Receiving Notices of Registrable Interests and establishing and maintaining a register of councillors interests, gifts and hospitality.

## **8 HEAD OF FINANCE AND INTEGRATED SUPPORT SERVICES**

Local Government (Scotland) Act 1973	Section 95 – Responsibility for the proper administration of the authority's financial affairs.
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## **9 CHIEF SOCIAL WORK OFFICER**

Social Work (Scotland) Act 1968	Section 3 – Ensure the provision of effective, professional advice to the Council in relation to the discharge of social work services.
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## **10 MENTAL HEALTH OFFICER**

Mental Health (Care and Treatment) (Scotland) Act 2003	Section 32 – Responsible for discharging Council functions in relation to the provision of services to persons who have or have had a mental disorder.
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