



City of Westminster

General Purposes Committee

Item No:

Date:

7 July 2010

Classification:

For General Release

Title of Report:

Scheme of Delegations

Report of:

Head of Legal Services

Wards involved:

Not applicable

Policy context:

A business like approach

Financial summary:

None

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1. Summary

- 1.1 Following the introduction of the new organisational model in October 2010, the City Council's existing Scheme of Delegations need to be updated. In the interim period the Chief Executive was delegated the authority to reallocate functions.
- 1.2 A new Scheme of Delegations, reflective of the new Council organisation, was considered and approved by Cabinet on 28 June 2010 and is due to be considered by Full Council at its meeting on 21 July 2010.

2. Recommendations

- 2.1 That full council approve the redrafted Scheme of Delegation, attached as Appendix 1.
- 2.2 That full Council be recommended to confirm, in relation to each of the "local choice" functions listed in Appendix 2 to this report, the designation of those functions as either executive or non-executive as indicated in column 2 of Appendix 2, the Committee or Cabinet Member responsible for the function and the Chief Officer empowered to exercise that function (where applicable), and that Appendix 2 to this report be added to Appendix 6 to the Council's Constitution with the second column of Appendix 6 to the Council's Constitution amended to read simply 'Executive / Non-executive',.
- 2.3 That in relation to the London Local Authorities Act 2007 the entries in Appendix 2 to this report be substituted for the entries pertaining to that Act in the existing Appendix 6 to the Council's Constitution.
- 2.4 That authority be delegated to the Chief Executive (acting in consultation with the Leader of the Council) to decide in the future whether local choice functions should be allocated to the Executive either to the Cabinet or a specific Cabinet Member or if treated as non executive to the Council, the Committee and/or Sub-Committee responsible for the function (and the Chief Officer responsible for the function if that is applicable).

3. Background

- 3.1 The current Scheme of Delegations is unwieldy (approximately 400 pages long) and often not understood by those who are required to operate it. Whether a matter requires a Member-level decision does not always depend on the importance of the issue, whether or not it is controversial, or whether or not it is of strategic importance. That can lead to a delay in decision-making and the perception that the City Council's decision-making processes are unduly bureaucratic. In the worst case a City Council decision may be invalid if it is taken by an officer without the necessary delegated power.

- 3.2 The proposed Scheme of Delegations involves a different and intrinsically less bureaucratic approach. It proceeds on the assumption that ultimate responsibility for the exercise of the City Council's functions, below member-level, rests with the Strategic Executive Board and its individual members. In some cases (for example the areas for which the Strategic Director of Children and Young People is responsible) there would be legal difficulties with a model under which the Strategic Director was not so responsible. This is consistent with a desire to create new and streamlined ways of working, reducing bureaucracy whilst maintaining good corporate governance.

4. Responsibility for the exercise of delegated powers

- 4.1 The proposed Scheme of Delegations is attached at Appendix 1. The allocation of delegated powers to Strategic Directors is not inconsistent with the strategic role of SEB, or the fact that it is the Delivery Units which are responsible for day-to-day delivery "on the ground".
- 4.2 The proposed Scheme of Delegations also enables delegated functions to be sub-delegated to a Chief Officer who may then exercise the function him or herself. Although the Strategic Director would retain the power to recall any matter for decision the Chief Officer receiving the delegated function would be responsible for the exercise of that function. The Chief Officer would be able to authorise any member of staff to exercise the function on his or her behalf.
- 4.3 Delegated powers do not have to be exercised by Strategic Directors personally. As has been the case in a Departmental context in the past, each Strategic Director will wish to authorise other officers to act on his or her behalf in relation to most or all of the powers delegated to them. However, the fact that the powers are delegated to the Strategic Director reflects that the Strategic Director will retain ultimate responsibility for the decision which is taken.
- 4.4 As an exception to the requirement that powers are only delegated to SEB It is suggested that certain powers, as set out in the Appendix, should be delegated to the Head of Legal Services in his capacity as the City Council's Monitoring Officer and Solicitor to the Council.
- 4.5 The proposed Scheme of Delegations has assumed that functions such as HR, IT, Transportation, Housing, Property, Libraries and others which have on occasions in the past been embodied in separate Director-level posts should now sit with the relevant Strategic Director.

5. Local Choice Functions

- 5.1 Regulation 3(1) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, as amended, stipulates that the functions specified in Schedule 2 to those Regulations may be (but need not be) the responsibility of the Executive of an authority. The list of functions in Schedule 2 to the regulations includes "any function under a local Act other than the functions specified or referred to in Regulation 2 or Schedule 1". Regulation 2

and Schedule 1 list the functions which are not to be responsibility of the Executive of an authority, i.e. they are “non-executive” functions.

- 5.2 It is therefore up to the City Council to decide, in relation to each function referred to in a local Act, whether it should be treated as executive or non-executive. Part 3 of the Council’s Constitution, which deals with responsibility for functions within the City Council, states in paragraph 3 that local choice functions have been allocated to the Executive or Council as indicated in Appendix 6 to the Council’s Constitution. Appendix 6 lists all those functions in local Acts which had been enacted prior to the adoption of the Council’s Constitution in 2001 (with the exception of the City of Westminster Act 1999), but is silent about subsequent local Acts. Appendix 2 to this report lists all the local choice functions which currently need to be added to Appendix 6 of the Constitution. The opportunity has been taken to amend the heading of the second column of Appendix 6 to the Council’s Constitution to read simply ‘Executive / Non-executive’, because the previous heading lacked clarity.
- 5.3 There have been 4 local Acts since the adoption of the Council’s Constitution, namely the London Local Authorities and Transport for London Act 2003, the London Local Authorities Act 2004, the London Local Authorities Act 2007 and the London Local Authorities and Transport for London Act 2008. Most of the functions within those Acts have been treated as executive functions since the Acts in question came into force, but the Council has never been asked to make a formal decision. This needs to be corrected.
- 5.4 Paragraph 4.02 of Article 4 of the Council’s Constitution lists those functions which are reserved to the full Council. Paragraph 4.02(k) reserves to the full Council “all local choice functions set out in Part 3 of this Constitution which the Council decides should be undertaken by itself rather than by the Executive, save to the extent that such functions are and may be delegated to non-executive committees”. There is nothing in that wording which precludes the full Council from delegating to the Chief Executive the power to decide whether a “local choice function should be executive or non-executive. It is therefore recommended that the power to do this be delegated to the Chief Executive to avoid the need for a report to the full Council whenever a new local Act is enacted.

6. Legal implications

- 6.1 The power for local authorities to delegate functions to officers is contained in section 101 of the Local Government Act 1972. The Proposed Scheme of Delegations will ensure that the City Council can correctly and legally exercise their powers and that decisions can be taken by officers on behalf of the City Council.

7 Staffing implications

- 7.1 There are no staffing implications for the City Council arising directly from this report.

8 Business plan implications

- 8.1 There are no business plan implications arising from this report.

9 Ward member comments

- 9.1 As this report covers all wards, comments were not sought.

10 Reason for decision

- 10.1 The reason for the recommended decision is that following the introduction of the new organisational model last year, the City Council's existing Scheme of Delegations requires updating.
- 10.2 The current Scheme of Delegations is unwieldy and can lead to a delay in decision-making. The proposed Scheme of Delegations involves a different and intrinsically less bureaucratic approach and is consistent with the approach to create new and streamlined ways of working, reducing bureaucracy whilst maintaining good corporate governance.
- 10.3 The City Council needs to decide, in relation to each local choice function referred to in a local Act, whether it should be treated as executive or non-executive. It is recommended that the power to do this be delegated to the Chief Executive to avoid the need for a report to the full Council whenever a new local Act is enacted.

If you have any queries about this report or wish to inspect any of the background papers please contact Rhian Davies on 020 7641 2729; Email: rdavies@westminster.gov.uk

Background Papers

- None.