

# Agenda



## Meeting of Sub-Committee on Scheme of Delegation

**Date:** Monday, 11 June 2018

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**Time:** 11:30

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**Venue:** Brock Meeting Room, 16 Church Street, Dumbarton G82 1QL

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**Contact:** Christine McCaffary  
Tel: 01389 737186– [christine.mccaffary@west-dunbarton.gov.uk](mailto:christine.mccaffary@west-dunbarton.gov.uk)

Dear Member

Please attend a meeting of the **Sub-Committee on Scheme of Delegation** as detailed above. The business is shown on the attached agenda.

Yours faithfully

**JOYCE WHITE**

Chief Executive

Distribution:-

Bailie Denis Agnew  
Councillor Jim Bollan  
Provost William Hendrie  
Councillor Jonathan McColl  
Councillor John Millar  
Councillor John Mooney  
Councillor Sally Page

Chief Executive  
Strategic Director of Transformation & Public Service Reform  
Strategic Director of Regeneration, Environment & Growth  
Chief Officer of West Dunbartonshire Health & Social Care Partnership

Date of issue: 29 May 2018

**SUB-COMMITTEE ON SCHEME OF DELEGATION**

**MONDAY, 11 JUNE 2018**

**AGENDA**

**1 APOLOGIES**

**2 DECLARATIONS OF INTEREST**

Members are invited to declare if they have an interest in the item of business on this agenda and the reasons for such declarations.

**3 MINUTES OF PREVIOUS MEETING 5 - 7**

Submit for approval as a correct record, Minutes of Meeting of the Sub-Committee on Scheme of Delegation held on 6 February 2018.

**4 PROPOSALS TO AMEND THE SCHEME OF DELEGATION TO OFFICERS 9 - 17**

Submit report by the Strategic Lead – Regulatory on the above.



**WEST DUNBARTONSHIRE COUNCIL  
SUB-COMMITTEE ON SCHEME OF DELEGATION**

At a Meeting of the Sub-Committee on Scheme of Delegation held in Committee Room 3, Council Offices, Garshake Road, Dumbarton on Tuesday, 6 February 2018 at 2.00 p.m.

**Present:** Bailie Denis Agnew, Provost William Hendrie, Councillors Jim Bollan, Jonathan McColl, John Mooney and Sally Page.

**Attending:** Angela Wilson, Strategic Director of Transformation & Public Service Reform; Peter Hessem, Strategic Lead – Regulatory; and George Hawthorn, Manager of Democratic and Registration Services.

**APPOINTMENT OF CHAIR**

The Strategic Lead – Regulatory welcomed everyone to the meeting and invited the Sub-Committee to nominate a Chair.

Bailie Agnew, seconded by Provost Hendrie, moved that Councillor Jonathan McColl should be appointed as Chair of the Sub-Committee.

As an amendment, Councillor Bollan, seconded by Councillor Page, moved that Councillor John Mooney should be appointed as Chair of the Sub-Committee.

On a vote being taken, 3 Members voted for the amendment, and 3 for the motion.

In terms of Standing Order 17 (c), Councillor Mooney, seconded by Councillor Bollan, moved that the meeting be adjourned to a later date.

On a vote being taken, 2 Members voted for the adjournment and 4 against and accordingly the meeting continued.

There being an equality of votes as to the appointment of a Chair, the Strategic Lead – Regulatory informed the Sub-Committee that the matter would be determined by the toss of a coin. Following the toss of a coin, Councillor Jonathan McColl was appointed as Chair of the Sub-Committee.

**Councillor Jonathan McColl in the Chair**

**Apologies:** An apology for absence was intimated on behalf of Councillor John Millar.

## DECLARATIONS OF INTEREST

It was noted that there were no declarations of interest in any of the items of business on the agenda.

### WEST DUNBARTONSHIRE COUNCIL SCHEME OF DELEGATION

A report was submitted by the Strategic Lead – Regulatory on the Council’s Scheme of Delegation.

The Strategic Lead - Regulatory was heard in further explanation of the report and in answer to Members’ questions.

Councillor McColl informed the Sub-Committee that it was his intention to go through the Scheme page by page and record all questions and proposals raised with a view to officers preparing a report on these issues for consideration at a future meeting.

The Sub-Committee agreed to proceed on this basis.

Having heard the Strategic Lead – Regulatory and the Strategic Director of Transformation & Public Service Reform in answer to Members’ questions and following discussion, the Sub-Committee agreed to instruct officers to bring a report back to its next meeting answering the queries and providing information on the implications of the proposed changes to the Scheme of Delegation as follows:-

- (1) Page 10, Paragraph 1.4 - remove the first sentence or replace with ‘All powers are reserved to Council unless otherwise specified in this scheme, standing orders or legislation.’
- (2) Page 10, paragraph 1.5 - amend to reflect proposed changes to paragraph 1.4 above.
- (3) Page 11, paragraph 1.10 – add the following wording to the end of the paragraph: ‘Council reserves the right to change any non-operational decision taken by officers, with adherence to Standing Orders and paragraph 2.1(iv) of this scheme’.
- (4) Page 11, paragraph 2.1 (iv) - change 'Chief Executive' to 'the Sub-Committee on Scheme of Delegation'.
- (5) Page 12, paragraph 2.2, line 1 - replace the word 'should' with 'will'.
- (6) Page 13, paragraph 2.2.2 (I) – the Sub-Committee seeks further clarification from officers on the meaning and implications of this paragraph.
- (7) Page 14, paragraph 2.3.3 – add the following wording to the end of the paragraph: ‘A special meeting may be called for this purpose at the discretion of the Convener’.

- (8) Page 16, paragraph 2.5.2 – replace ‘Strategic Lead – Regulatory’ with ‘Chief Legal Officer’.
- (9) Page 17, paragraph 3.11 – after the words ‘subsequent committee’ on line 8 of this paragraph, add ‘and the Council Leader, Leader of the Opposition and relevant Spokesperson should be informed as soon as practicable’.
- (10) Page 18, paragraph 3.13 – officers to provide the Sub-Committee with more information about the consultation protocol.
- (11) Page 19, Section 4(A), paragraph 18 – officers to provide the Sub-Committee with more information about the process for changing contracts and job descriptions.
- (12) Page 19, Section 4(A), paragraph 21 – replace the word ‘defalcation’ with a plain English alternative form of wording.
- (13) General point – officers to provide the Sub-Committee with information on the Planning Scheme of Delegation, relating to the number of houses that an application can include before the Planning Committee must determine the application, and confirm that this is consistent with this Scheme of Delegation.

Note: For ease of reference all page references stated above relate to the Scheme of Delegation as published as an Appendix to the report contained within the Agenda of this meeting.

Following further discussion, it was noted that the Sub-Committee could receive deputations from any interested groups and that the Chair would consult with all Members of the Sub-Committee prior to setting the date of the next meeting.

The meeting closed at 3.50 p.m.



**WEST DUNBARTONSHIRE COUNCIL****Report by Strategic Lead - Regulatory****Sub-Committee on Scheme of Delegation: 11 June 2018**

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**Subject: Proposals to amend the Scheme of Delegation to Officers**

**1. Purpose**

- 1.1** To inform the Sub-Committee of responses provided by officers in relation to issues which were highlighted at the last meeting of the Sub-Committee.

**2. Recommendations**

- 2.1** The Sub-Committee is asked to consider the responses detailed in Appendix 1 of this report and agree on the way forward.

**3. Background**

- 3.1** At its meeting on 6 February 2018, the Sub-Committee discussed the content of the Scheme of Delegation to Officers and asked officers to respond to its proposed amendments to the Scheme and where necessary provide further information. The officers' responses and the further information requested are detailed in Appendix 1.

- 3.2** The Sub-Committee also requested that the Council's Protocol on Consultation be circulated to all Members of the Sub-Committee. An updated copy of the Protocol has been circulated, a copy of which is also attached as Appendix 2 to this report.

**4. Main Issues**

- 4.1** The majority of the Sub-Committee's proposals are straightforward and do not have any major implications for the Council. However, two of the proposals (referred to at paragraphs 4.2 and 4.3 below) will require a change to Standing Orders which will mean they would need to be supported by at least two-thirds of those Members in attendance.

- 4.2** The proposed change to paragraph 2(1) (iv) of the Scheme concerns the question of who should determine whether an issue is operational or otherwise. It has been proposed that in future, such decisions should be made by the Sub-Committee and not the Chief Executive. However, the full Council agreed in October 2017 that 'Where clarification is required, the Chief Executive, in consultation with the Monitoring Officer and Leader of the Council will determine which matters are operational or otherwise'.

The Sub-Committee is therefore asked to consider whether it is happy with the current position as is stated within the Council's Standing Orders and that the Scheme of Delegation be updated to reflect this. It should also be noted that this proposed change does not represent best value as there will be a cost involved in arranging meetings of the Sub-Committee to decide on such matters. In addition, the current timescales for calling meetings will mean that there would be a two week delay in determining the matter which may not be in the best interest of the Council.

**4.3** In respect of Paragraph 2.3.3 of the Scheme which states: 'Where appropriate matters of a controversial nature should be referred to Council or the appropriate Committee for decision', it is proposed that the following wording be added to the end of the paragraph: 'A special meeting may be called for this purpose at the discretion of the Convener'. However, the current Standing Order No. 3 allows a special meeting to be called as matter of urgency, not controversy. Therefore, this change will also require Standing Orders to be suspended to allow consideration of the amendment to include matters of controversy.

**4.4** The Sub-Committee also requested additional information from officers on a number of issues including the process for changing contracts/job descriptions and planning matters and this information has also been included in the responses shown under Appendix 1.

## **5. People Implications**

**5.1** There are no staffing implications arising from this report, but if the Sub-Committee recommends and Council approves the proposal that the Sub-Committee should determine whether a matter is operational or otherwise, then this will increase the workload of Committee Services and other officers involved the administering the meetings of the Sub-Committee.

## **6. Financial and Procurement Implications**

**6.1** There are no financial implications arising from this report, but if the Sub-Committee recommends and Council approves the proposal that the Sub-Committee should determine whether a matter is operational or otherwise, there will be some additional costs in terms of printing and delivery of committee papers and in terms of officers' time.

## **7. Risk Analysis**

**7.1** As stated in paragraph 4.2 above, there is a risk of delay if the Sub-Committee recommends and Council approves the proposal that the Sub-Committee should determine whether a matter is operational or otherwise and therefore this may not be in the best interests of the Council.

## **8. Equalities Impact Assessment (EIA)**

**8.1** There is no requirement for an equalities impact assessment to be carried out as all matters referred to in the report relate to the internal processes of the Council.

## **9. Consultation**

**9.1** Officers from Legal and Finance Services have been consulted on the contents of this report.

## **10. Strategic Assessment**

**10.1** This report does not directly impact on any of the Council's objectives. However, an effective scheme of delegation is essential to enable the Council to achieve its strategic objectives.

**Name:** Peter Hessett  
**Designation** Strategic Lead - Regulatory  
**Date:** 16 April 2018

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**Person to Contact:** George Hawthorn, Manager of Democratic and Registration Services, Municipal Buildings, College Street, Dumbarton. Telephone 01389 737204 or email: [george.hawthorn@west-dunbarton.gov.uk](mailto:george.hawthorn@west-dunbarton.gov.uk)

**Appendices:**

1. Officers' responses to proposed changes to the Scheme of Delegation to Officers.
2. West Dunbartonshire Council - Protocol on Consultation.

**Background Papers:** West Dunbartonshire Council's Scheme of Delegation to Officers (April 2016).  
West Dunbartonshire Council's Standing Orders (March 2018).  
West Dunbartonshire Council's Job Evaluation Policy and procedures (June 2012)

**Wards Affected:** All wards.

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**Responses to Proposed Changes to Scheme of Delegation to Officers**

| <b>Scheme of Delegation Proposals by Sub-Committee</b>   | <b>Officers' responses</b>  |
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| Paragraph 1.4 - remove the first sentence or replace with 'All powers are reserved to Council unless otherwise specified in this scheme, standing orders or legislation.'  | The Scheme will need to be kept as up to date as possible otherwise matters which should be determined by a Committee or an officer will be referred to Council by default thus resulting in a larger agenda.   |
| Paragraph 1.5 - amend to reflect proposed changes to paragraph 1.4 above.  | Proposed change of wording:<br><br>'Every attempt has been made to list the specific powers which are available to officers. However, if a specific power is not mentioned in this Scheme of Delegation or Standing Orders, the matter will be referred to Council. The powers referred to Council are detailed in Section 2.'  |
| Paragraph 1.10 – add the following wording to the end of the paragraph: 'Council reserves the right to change any non-operational decision taken by officers, with adherence to Standing Orders and paragraph 2.1(iv) of this scheme'. | Officers should not take non-operational decisions and Council already has the right to change non-operational decisions so this proposed change has no effect on the current position.   |
| Paragraph 2.1 (iv) - change 'Chief Executive' to 'the Sub-Committee on Scheme of Delegation'.  | <p>According to Paragraph 3.4 of the Councillors' Code of Conduct, the role of a councillor is ' to determine policy and to participate in decisions on matters placed before you, not to engage in direct operational management of the Council's services; that is the responsibility of the Council's employees.' The proposed change would effectively make Councillors responsible for judging their own conduct.</p> <p>A situation could therefore arise where a councillor is referred to the Standards Commission for a potential breach of the code whereby they engaged in an operational matter that the Sub-Committee had previously deemed to be non-operational. It is therefore possible that the Standards Commission could agree that the matter was operational and the elected member sanctioned even though the Sub-Committee formed a different view. Such a situation should be avoided to protect the reputation of the Council.</p> <p>In addition to a potential breach of the code, this proposed change does not represent best value as there will be a cost involved in arranging</p> |

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|   | <p>meetings of the Sub-Committee to decide on such matters. The current timescales for calling meetings will mean that there would be a two week delay in determining the matter which may not be in the best interest of the Council.</p> <p>It should be noted that this proposed change is also contrary to the current decision by Council in October whereby, after clarification having been sought by the Strategic Lead – Regulatory, ‘Councillor Bolland confirmed that the sub-committee would be short lived, reflecting the political make-up of the Council with the purpose of specifically looking at the delegation of powers to senior officers’. Council will therefore need to suspend Standing Order 20 (a) to allow this change of decision to be made.</p> <p>Council will also need to amend Standing Order 35 (v) if it decides to support this proposed change as it contradicts the current wording: ‘Where clarification is required, the Chief Executive, in consultation with the Monitoring Officer and Leader of the Council will determine which matters are operational or otherwise.’ In terms of Standing Order No 28, this requires at least two-thirds of Members present and voting to change this Standing Order.</p> <p>For the above reasons, it is proposed that the Sub-Committee agrees to recommend to Council that the Scheme of Delegation be amended to match the wording within Standing Orders.</p> |
| <p>Paragraph 2.2, line 1 - replace the word 'should' with 'will'.</p>   | <p>Minor word change. Not significant.</p>  |
| <p>Paragraph 2.2.2 (l) – the Sub-Committee seeks further clarification from officers on the meaning and implications of this paragraph.</p> | <p>This paragraph refers to the provisions of s35 of the Local Government (Scotland) Act 1973 and relates to a member ceasing to be a member if for a period of 6 months the member fails to attend a meeting of the Local Authority. Council may approve, in advance, the reason for the non-attendance allowing the member to continue as a member.</p>   |

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| <p>Paragraph 2.3.3 – add the following wording to the end of the paragraph: ‘A special meeting may be called for this purpose at the discretion of the Convener’.</p>   | <p>Paragraph 2.3.3 states: ‘Where appropriate matters of a controversial nature should be referred to Council or the appropriate Committee for decision’</p> <p>The current Standing Order No.3 allows a special meeting to be called as matter of urgency, not controversy. Therefore, this change will require Standing Orders to be amended and would require the support of at least two-thirds of those Members present and voting.</p>  |
| <p>Paragraph 2.5.2 – replace ‘Strategic Lead – Regulatory’ with ‘Chief Legal Officer’.</p>  | <p>Agree.</p>   |
| <p>Paragraph 3.11 – after the words ‘subsequent committee’ on line 8 of this paragraph, add ‘and the Council Leader, Leader of the Opposition and relevant Spokesperson should be informed as soon as practicable’.</p> | <p>No comment.</p>  |
| <p>Paragraph 3.13 – officers to provide the Sub-Committee with more information about the consultation protocol.</p>  | <p>A copy of the protocol was circulated and is attached as an appendix to the report.</p> <p>Members are asked to note that this protocol refers to the procedure for dealing with responding to incoming consultations and does not address consultations which the Council undertakes.</p> <p>It is proposed that that paragraph 3.13 be amended to read as follows:</p> <p>‘To respond to consultation papers in accordance with the Council’s Consultation Protocol.’</p>  |
| <p>Section 4(A), paragraph 18 – officers to provide the Sub-Committee with more information about the process for changing contracts and job descriptions.</p>  | <p>In terms of development of job profiles, the process for any changes is done in conjunction with the affected employees and the trades unions. This would then go to our joint evaluation panels in accordance with the agreed policy. Members can access the policy and procedures here: <a href="http://intranet.west-dunbarton.gov.uk/media/9129/job-evaluation-policy-and-procedure-final.pdf">http://intranet.west-dunbarton.gov.uk/media/9129/job-evaluation-policy-and-procedure-final.pdf</a></p> <p>In respect of any new roles, the profile is developed by the manager and then, at least 6 months into the role (to allow bedding in), the postholder/ manager will review and can seek a re-evaluation if aspects have changed or are now better known. This was put in place a number of years ago and works well. There is a clear appeals procedure contained within the policy (and notably which aligns with the national guidance) and this is open to employees subject to the criteria being met. This is</p> |

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|   | <p>well used and again, works well.</p> <p>The outcome from Job Evaluation is communicated and the manager would then be responsible for triggering the contractual confirmation. This would come from our HR Connect team (as they deal with all such contractual matters) and would be issued for agreement to the employee(s).</p>  |
| <p>Section 4(A), paragraph 21 – replace the word ‘defalcation’ with a plain English alternative form of wording.</p>  | <p>Replace with ‘Business Irregularity Procedure’ which is the current terminology used to describe this procedure.</p>  |
| <p>General point – officers to provide the Sub-Committee with information on the Planning Scheme of Delegation, relating to the number of houses that an application can include before the Planning Committee must determine the application, and confirm that this is consistent with this Scheme of Delegation</p> | <p>The Planning Scheme of Delegation is consistent with this Scheme of Delegation.</p> <p>All major applications go to committee, which in relation to housing is over 50. All elected members receive the weekly list of applications received and anticipated route of decision. If an elected member wants an application to go to Planning Committee they can speak to the Planning Manager who, in consultation with the Planning Convener, will take a decision.</p> |

### Consultation Protocol

- Consultation papers should continue to be sent to the relevant Strategic Director who will decide whether a response is to be submitted to the consultation paper. This reflects the fact that many consultation papers are about issues which have little, if any, impact on the Council or West Dunbartonshire.
- If the Consultation is technical or operational, and not politically controversial, then a response on behalf of the Council can be prepared by officers acting under delegated powers. Exceptions are where this would represent a departure from Council policy or procedure or would be contrary to a standing instruction of Council or committee or would represent a significant development of policy or procedure or relates to a matter which is political in the sense of differing political parties having a clearly different position on the issue. Officers may choose to consult the Leader or their Service Spokesperson or Convener regarding the issue of whether such a consultation is political or the terms of its response. However the decision on what goes into the response is for the officer.
- In relation to other consultation papers (i.e. those which are extremely major and would benefit from a full political decision, or where parties have differing political views, or which represents departure from Council policy or procedure, are contrary to a standing instruction of Council or committee or would represent a significant development of policy or procedure), these would previously have gone to Council or committee. The following procedure applies:
  - If the consultation paper comes out shortly before the relevant committee meeting and there is not time to prepare a response, then a short report should go to the relevant committee recommending a process to deal with the consultation paper. Depending on the consultation paper involved, this process could either involve delegating the response to officers, in consultation with the Leader and the Leader of the Opposition, setting up a short life committee or working group to agree a response or giving broad direction to officers as to the terms of the response.
  - If there is just time to get the consultation response to Council or committee before expiry of the response deadline, then for major consultations it would be advisable to include these in an earlier Member's Bulletin, inviting Members to comment to officers to inform the development of the draft response. If the meeting is immediately after closure of the consultation period, officers could check if the Scottish Government was willing to extend the consultation period to allow a late response.
  - Where there is insufficient time to get the consultation paper or response to Council or committee then officers could respond on

behalf of the Council using the urgency power contained in Standing Order 35b(iv) subject to reporting this to the next Council or committee. It would however be advisable to get as much democratic input to help finalise a response. This could be achieved through a number of routes including (a) include the consultation document in the Members' bulletin and invite comments from Members with a final consultation with the Leader and Leader of the Opposition on the response; (b) recommend to Council or committee that it makes provision for a working group to deal with such consultation papers, comprising the relevant Service Spokesperson, Shadow Spokesperson and Strategic Director; (c) submit an officer's response, with the Groups doing their own thing. The Administration could of course endorse the officer's response.

- There will be issues where there is no consensus and where officers feel uncomfortable in submitting a Council response under delegated powers without clear political direction. In these cases it may be necessary to call a Special Meeting of Council or the relevant committee to finally determine the response. The aim should be to try and achieve as much consensus as possible, to avoid such Special Meetings being called.