

# REVISION TO DELEGATIONS

Council	<b>31 March 2022</b>
Previously considered by:	
Standards Committee	<b>10 March 2022</b>
Constitutional Review	<b>23 February 2022</b>
Working Party	
Report Author	<b>Director of Law and Democracy</b>
Status	<b>For recommendation</b>
Classification:	<b>Unrestricted</b>
Ward:	<b>All</b>

## Executive Summary:

Council is asked to agree to amend the scheme of delegations to authorise the Chief Executive to declare vacancies in office under Section 86 of the Local Government Act 1972.

This will avoid the artificial situation where Council is asked to consider and debate an administrative provision whereas the law requires that the matter be agreed.

## Recommendation(s):

That the Council amends its scheme of delegations by delegating to the Chief Executive (and in her absence the Director of Law and Democracy) the authority to declare vacancies in office under section 86 of the Local Government Act 1972.

## Corporate Implications

### Financial and Value for Money

There are no additional costs resulting from this recommendation.

### Legal

Section 85 of the Local Government Act 1972 states:

#### **85 Vacation of office by failure to attend meetings.**

1 Subject to subsections (2) and (3) below, if a member of a local authority fails throughout a period of six consecutive months from the date of his last attendance to attend any meeting

of the authority, he shall, unless the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority.

(2) Attendance as a member at a meeting of any committee or sub-committee of the authority, or at a meeting of any joint committee, joint board or other body by whom for the time being any of the functions of the authority are being discharged, or who were appointed to advise the authority on any matter relating to the discharge of their functions, and attendance as representative of the authority at a meeting of any body of persons, shall be deemed for the purposes of subsection (1) above to be attendance at a meeting of the authority.

Section 86 of the local Government Act 1972 states:

**86 Declaration by local authority of vacancy in office in certain cases.**

1 Where a member of a local authority—

- (a) ceases to be qualified to be a member of the authority; or
- (b) becomes disqualified for being a member of the authority otherwise than under section 80A(1)(c) of this Act, section 79 of the Local Government Act 2000 or section 34 of the Localism Act 2011 or by virtue of, a conviction or a breach of any provision of Part II of the Representation of the People Act 1983; or
- (c) ceases to be a member of the authority by reason of failure to attend meetings of the authority;

the authority shall, except in any case in which a declaration has been made by the High Court under this Part of this Act, forthwith declare his office to be vacant.

**Corporate**

The failure to declare vacancies forthwith, or as soon as possible, has the effect of delaying the necessary by-election and affecting local democracy.

**Equality Act 2010 & Public Sector Equality Duty**

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

There are no equality implications in respect of this report.

## **CORPORATE PRIORITIES**

This report relates to the following corporate priorities: -

- *Communities*

### **1.0 Introduction and Background**

1.1 Under Section 85 of the Local Government Act 1972 (“the Act”) if a councillor fails to attend a Council meeting for six consecutive months from the date of his last attendance, s/he ceases to be a member of the Council, unless the failure is due to a reason approved by the Council before the expiry of that period.

1.2 Section 86 of the Act states that the date of the vacancy is the date on which it is declared by the Council. At the moment, that function is not delegated. This means that there is a delay before the vacancy can be announced, until the date of the next Council meeting, whether that is scheduled or is called as an extraordinary meeting.

1.3 This delay causes difficulty both for the councillor concerned and the Council.

### **2.0 The Proposed Way Forward**

2.1 In order to avoid delays in future, it is recommended that the Council delegates responsibility for declaring vacancies in office under section 86 of the Local Government Act 1972 to the Chief Executive and in her absence, the Director of Law and Democracy.

2.2 In practice, if the situation arose, the Chief Executive would discuss the decision with the relevant councillor, the relevant group leader (if any), the Leader, and any other appropriate member, to ensure that the facts are correct, before making the decision. The decision would be by formal publication of an officer decision.

2.3 Other Councils have adopted this procedure and delegated the decision, in order to make the process as straightforward and smooth as possible.

### **3.0 Consideration by the Constitutional Review Working Party and the Standards Committee**

3.1 The Constitutional Review Working Party (CRWP) considered this report at its meeting on the 23 February 2022 and made the following recommendation to the Standards Committee:

“That CRWP recommends to the Standards Committee that Council amends its scheme of delegations by delegating to the Chief Executive (and in her absence the Director of Law and Democracy) the authority to declare vacancies in office under section 86 of the Local Government Act 1972.”

3.2 The Standards Committee considered a report and the above recommendation at its meeting of 10 March and made the following recommendation to Council:

“The Standards Committee recommends that Council amends its scheme of delegations by delegating to the Chief Executive (and in her absence the Director of Law and Democracy) the authority to declare vacancies in office under section 86 of the Local Government Act 1972.”

#### **4.0 Next Steps**

4.1 If Council agrees to the proposals then they will be incorporated into the Council’s Constitution.

Contact Officer: Estelle Culligan, Director of Law and Democracy  
Reporting to: Madeline Homer, Chief Executive

#### **Corporate Consultation**

**Finance:** Matthew Sanham Financial Services Manager

**Legal:** Estelle Culligan, Director of Law and Democracy