

<b>Report to:</b>	QSMTM Q3 2021-22
<b>Report by:</b>	Margaret Keyse, Head of Enforcement (HOE) and Helen Gardner-Swift, Head of Corporate Services (HOCS)
<b>Meeting Date:</b>	3 February 2022
<b>Subject/ Title:</b> (and VC no)	Proposed changes to key documents: C1 Scheme of Delegation and C2 Investigations Handbook (VC162780)
<b>Attached Papers</b> (title and VC no)	n/a

## Purpose of report

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- At the Investigations Performance Meeting (IPM) on 16 December 2021, it was agreed that some minor changes should be made to our internal procedures to allow the investigation of applications to be further streamlined.
- As the changes would require amendments to two key documents, i.e. the Scheme of Delegation (VC95043) and the Investigations Handbook (VC123335), the approval of the Senior Management Team (SMT) is required before the changes can be made.

## Recommendation and actions

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- We recommend that:
  - SMT agree the proposed changes to the key document, C1 Scheme of Delegation
  - SMT agree the proposed changes to the key document, C2 Investigations Handbook; and
  - this report and accompanying papers are published in line with the “Publication” section below.

## Executive summary

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- The Enforcement Team is constantly looking at ways of streamlining the investigations process. This is particularly important at the moment, given the very high number of open applications.
- At the December IPM, it was agreed some change to our processes should be made to allow validation officers, investigators and deputy heads of enforcement to sign particular notices. The Appendix to this report contains an extract of the Scheme of Delegation with, in red, the changes which it is recommended should be made.
- The proposed changes will allow certain notices to be issued by validation officers and investigators without the approval of a line manager. The notices are all based on templates which are kept under review. The HOE comments that it is exceptionally rare for a line manager to make a change to a notice submitted to them for approval, which suggests that the approval of the line manager is not needed.

7. A risk-based approach has been taken when recommending the changes to be made. For example, when both validation officers and investigators would be given the ability to sign off correspondence notifying an applicant that their application has been closed on the basis that it has been deemed to have been withdrawn. However, line managers will still be required to sign off correspondence notifying an applicant that their application has been closed on the basis that it has been deemed to have been abandoned; these cases involve more of a judgement call than withdrawn case and it assists to have another person review the decision behind treating the application as abandoned.
8. In addition to allowing various notices to be signed without approval of a line manager, the recommendations would also allow the deputy heads of enforcement to sign off an enforcement notice relating to an authority's failure to adopt a publication scheme and to accept a late application to the Commissioner where it is deemed appropriate to do so in line with section 47(5) of the Freedom of Information (Scotland) Act 2002.

### **Risk impact**

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9. As noted above, a risk-based approach has been taken to the recommendations which, if agreed, will mitigate against strategic and operational risks of not having effective and robust investigation and governance arrangements in place
10. The recommendations, if agreed, will also help to mitigate the risk of not meeting the Commissioner's standards and targets for case journey times, as far as possible.

### **Equalities impact**

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11. There are no direct equalities impacts arising from this report.

### **Privacy impact**

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12. There is no direct privacy impact arising from this report. We have strict protocols and procedures in place to ensure we continue to comply with data protection laws.

### **Resources impact**

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13. It is hoped that this will streamline the work of the Enforcement Team.

### **Operational/strategic plan impact**

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14. The Strategic Plan 2020/-24 recognises our vision to be recognised as an organisation which is run efficiently.

### **Records management impact (including any key documents actions)**

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15. The recommendations in this report require minor revisions to be made to two key documents.
16. The proposed changes have already been tracked on the key documents:
  - (i) v1.42 of the C1 Scheme of Delegation and
  - (ii) v2.54 of the C2 Investigations Handbook.

17. If the recommendations are agreed, the Responsible Managers (HOCS for the C1 Scheme of Delegation; HOE for the C2 Investigations Handbook) will arrange for the usual key documents actions to be carried out and for the revised versions of the key documents to be published.

### **Consultation and Communication**

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18. The proposed changes have already been discussed with the Enforcement Team and with the Commissioner and HOCS.

### **Publication**

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19. We recommend that this committee report and appendix are published in full.

## Appendix: Extract from Scheme of Delegation

(The proposed changes are in red.)

ITEM	AUTHORISED SIGNATORY (OR ANY MORE SENIOR OFFICER)
Enforcement notices	<ul style="list-style-type: none"> <li>• Scottish Information Commissioner</li> <li>• Head of Enforcement (in relation to failure to comply with s.23(1) of FOISA only)</li> <li>• Deputy Head of Enforcement (in relation to failure to comply with s.23(1) of FOISA only)</li> </ul>
Notices under s.49(1) – frivolous or vexatious	<ul style="list-style-type: none"> <li>• Head of Enforcement</li> <li>• Deputy Head of Enforcement</li> </ul>
Notices under s.49(2) – withdrawn	<ul style="list-style-type: none"> <li>• Head of Enforcement <sup>1</sup></li> <li>• Deputy Heads of Enforcement</li> <li>• Freedom of Information Officer (E)</li> <li>• Validation Officers (for cases not yet allocated to an FOIO(E))</li> </ul>
Notices under s.49(2) – abandoned	<ul style="list-style-type: none"> <li>• Head of Enforcement</li> <li>• Deputy Heads of Enforcement</li> </ul>
Accepting a late application in terms of s.47(6)	<ul style="list-style-type: none"> <li>• Head of Enforcement</li> <li>• Deputy Head of Enforcement</li> </ul>

<sup>1</sup> The HOE already has the authority to issue these notices. The change is recommended purely for clarity.