

Appendix 1 – Proposed amendments to the CET Scheme of Delegation

C. Director of Communities, Economy and Transport

1. To authorise, pursuant to the powers contained in the Highways Act 1980 (as amended):

(a) the erection and siting of buildings or structures (including but not limited to seats, signs, notice boards and bollards) or the carrying out of works **(including, but not limited to maintenance):**

(i) within, over or under the highway **and public rights of way;**

(ii) in front of the prescribed building line;

(iii) of a private nature over or under the public highway, subject to securing appropriate bonding arrangements and commuted maintenance payments.

(b) interference with or obstruction to highways;

(c) the grant of permissions and licences;

(d) the grant of permissions and licences including but not limited to skips; trees/shrubs; scaffolding; builders materials and hoardings.

2. After consultation with the Assistant Chief Executive to serve any notices and to exercise the powers of the County Council to authorise direct action or institute legal proceedings relating to:

(a) interference with or obstruction to or nuisance on any highway or land adjoining a highway; and

(b) a failure to comply with any prohibition or requirement of the Highways Act 1980, New Roads and Works Act 1991 (Part 3), the Traffic Management Act 2004, National parks and access to the Countryside Act 1949, Wildlife and Countryside Act 1981, Dangerous Dogs Act 1989 or Builders' Skips (Markings) Regulations 1984.

3. (a) After consultation with the Assistant Chief Executive, appropriate District Council and local member (save in the case of temporary traffic restrictions), to make, give consent or object to the making of, apply or confirm any order under the provisions of the Highways Act 1980 (as amended), the Wildlife and Countryside Act 1981, the Road Traffic Regulation Act 1984 (as amended), the Town and Country Planning Act 1990, the Parking Act 1989 and the Rights of Way Act 1990, the Traffic Management Act, New Roads Works and Streets Act 1991, Countryside and Rights of Way Act 2000, **Cycle Track Act 1984**.

Comment [ES1]: Paragraph 1(a)
Additional text added for clarification purposes.

Comment [ES2]: Paragraph 3(a)
Currently, the Scheme of Delegation has no provision for allowing Orders under the Cycle Track Act to be sealed under delegated authority. This means that all such decisions currently have to be considered and determined by the Lead Member for Transport & Environment. With the decision to be taken not being contentious, it results in an inefficient use of officers and Members time and delay in the process. Such a change will ensure consistency with Orders made under other Acts.

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- (b) To make provision for the regulation of traffic, pursuant to the County Council's statutory powers, where formal orders are not required.
 - (c) To authorise the Assistant Chief Executive to make temporary traffic orders without recourse to the consultation procedure.
- 4. To approve, from time to time, a schedule of prospectively maintainable highways under the New Roads and Street Works Act 1991.
- 5. To authorise the entering into of agreements with developers under Sections 38 and 228 of the Highways Act 1980 and to exercise the powers of the County Council with respect to the formal adoption of private streets generally.
- 6. To authorise the entering into of any agreements under the Highways Act 1980 including (but not limited to) agreements under Sections 6 and 278 of that Act
- 7. To authorise entry onto any land, including for the purpose of survey and to place or leave on or in that land any apparatus for use in connection with that survey.
- 8. To exercise the discretionary powers of the County Council under the Land Compensation Act 1973 (as amended) and the Noise Insulation Regulations.
- 9. After consultation with the Assistant Chief Executive to serve notices of exemption from the Advance Payments Code (Private Street Works) in appropriate cases where this would not prejudice the County Council.
- 10. To object, when appropriate on highway grounds, to applications to local licensing authorities for licences for goods vehicle operating centres.
- 11. To undertake the powers and duties of the County Council as Enforcement Authority under the Reservoirs Act 1975, including the service of formal notices and the authorisation of legal proceedings.
- 12.
 - (a) In consultation with the Assistant Chief Executive, to grant permits under Section 115(E) of the Highways Act 1980 for the carrying out of trading and similar activities on footways and pedestrianised areas, in cases of unopposed applications.
 - (b) To deal with consultations by district councils exercising their own powers under Section 115(E) of the Highways Act 1980 and to give consent to the exercise of such powers.
 - (c) To authorise payment terms and associated conditions where permits are issued under Section 115(E) of the Highways Act 1980 for trading and similar activities on footways and

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pedestrianised areas, in cases where the Highways Authority is the owner of the land.

13. After consultation with the Chief Operating Officer, to ~~amend~~~~increase~~ the fee for the service provided by the County Council in answering highway enquiries on the CON29 Enquiries of Local Authority Form, based upon current costs.
14. To determine the need for on-street parking bays for blue badge holders close to their residences, in terms of traffic problems.
15. To sign controlled waste transfer notes under the Environmental Protection Act 1990 and the Environmental Protection (Duty of Care) Regulations 1991 in respect of waste transferring between the County Council and another party.

~~xx. After consultation with the Assistant Chief Executive, to determine claimed public rights of way pursuant to Section 53(5) of the wildlife and Countryside Act 1981.~~

Public Transport

16. (i) To arrange such consultations as appear to him to be appropriate following the notification by an operator of an intention to change a local bus service.
- (ii) To take steps to provide for the provision at short notice of temporary gap filling journeys where an operator withdraws from a route.
- (iii) To award contracts, within established guidelines and policy, to the lowest tenderer.
- (iv) On behalf of the County Council, to enter into a 'de minimis' arrangement with an operator, subject to being satisfied that the particular arrangement is both appropriate and the most cost effective means of securing the provision of a journey.
- (v) To approve requests for fares increases on supported services which are broadly in line with the general level of inflation.

Development Control

17. To determine all applications for planning permission which fall to be determined by the County Council where the proposal is considered to be in accordance with the development plan and current planning policies except where two or more objections on planning grounds have been received within the ~~statutory~~ consultation period ~~from neighbouring occupiers or from statutory consultees.~~

Comment [ES3]: Paragraph 13 From time to time, the questions asked through the CON29 Enquiries are amended. Time recording exercises are then undertaken to attribute a cost in answering each question. This can result in the fees for responding to the CON29 Enquiries being increased or decreased, hence the change being made.

Comment [ES4]: Additional paragraph This has been moved from the delegated powers that sat with the Assistant Chief Executive as it is a function that sits within the CET directorate. This has been agreed with Legal Services.

Comment [ES5]: Paragraph 17 Changes made to reflect current practice. The Council considers and treats representations made after the statutory consultation period, but prior to a decision being taken, in the same manner as representations made within 21 days – hence the deletion of the word "statutory". In addition, planning applications that receive two or more objections are referred to the Planning Committee, irrespective of who has made the representation. These changes will also ensure consistency with the delegated arrangements for applications for Listed Building Consent.

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18. (a) To determine applications for planning permission amounting to minor variations to applications already granted.
- (b) To determine applications for non-material amendments to planning permissions made under the Town and Country Planning Act 1990
- ~~(c) To determine particulars submitted pursuant to conditions attached to planning permissions.~~
19. To determine any matter arising under the provisions of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017~~4~~ and associated legislation and any legislation which amends or replaces it.
20. (a) To determine, where there are less than 2 objections relating to siting and/or appearance, the determination of (a) whether or not prior approval is required and (b) whether or not prior approval is granted in relation to applications made under Part ~~1624~~ of Schedule 2 of the Town and Country Planning (General Permitted Development) Order ~~20154995~~.
- (b) To determine applications for developments ancillary to mining operations made under part ~~179~~ of Schedule 2 of the Town and Country Planning (General Permitted Development) Order ~~20154995~~
- (c) To determine applications under Part ~~1134~~ of Schedule 2 of the Town and Country Planning (General Permitted Development) Order ~~20154995~~ for the prior approval of the demolition of buildings
- ~~xx. To determine applications for a periodic Review of Old Mineral Permissions made under Paragraph 4 of Schedule 14 of the Environment Act 1995.~~
21. To determine applications for certificates of appropriate alternative development under Section ~~232 (3) of the Localism Act 201147 of the Land Compensation Act 1964~~, in respect of decisions which fall to be made by the County Planning Authority.
22. To determine applications for Certificates of Lawfulness of Existing or Proposed Use or Development under Sections 191 and 192 respectively of the Town and Country Planning Act 1990 (as amended).
- ~~xx.~~ To determine applications for Listed Building consent for alterations, extension or demolition of a Listed Building under the Planning (Listed Buildings and Conservation Areas) Act 1990, where the proposal is considered to be in accordance with the development plan and current planning policies, except where two or more objections have been received within the consultation period.”
- ~~23.—To provide observations on behalf of the County Planning Authority to the~~

Comment [ES6]: Paragraph 18 This has been added for clarification purposes. Applications to discharge planning conditions are currently determined under delegated authority in accordance with paragraph 17. However, this provision has been added in order to make it explicitly clear that delegated authority is provided for determining applications to discharge planning conditions.

Comment [ES7]: Additional paragraph The Environment Act requires the periodic review of all extant minerals planning permissions. The principle of these schemes are not reviewed (i.e. whether planning consent should have been granted or not), but the conditions attached to the permission are. Currently, such applications are determined under the delegated powers set out in paragraph 17. However, this provision has been added in order to make it explicitly clear that delegated authority is provided for such determinations.

Comment [ES8]: This additional paragraph was inserted into the Scheme of Delegation following consideration and approval by the Governance Committee (19 September) and Full Council (17 October). Its inclusion is therefore not subject to this report.

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~~appropriate government department in respect of the County Council's applications which entail demolition in a Conservation Area and/or alterations to Listed Buildings.~~

Comment [ES9]: Delete paragraph 23 Such applications are no longer referred to the Government.

24. To assess whether a proposal which is a departure from the Development Plan requires referral to the Secretary of State and, when deemed necessary, make the referral.

Comment [ES10]: Paragraph 24
Added for completeness purposes.

~~25. To assess consultations received from District Councils submitted under paragraph 7, Schedule 1 to the Town and Country Planning Act 1990 and to seek agreement from the District Planning Authority for their withdrawal if the submission does not appear to be required by paragraph 7.~~

~~26. To assess whether a consultation submitted under paragraph 7, Schedule 1 to the Town and Country Planning Act 1990 relates to a proposal substantially the same as one previously considered under paragraph 7, Schedule 1 to the Town and Country Planning Act 1990 by the Planning Committee and in respect of which there are no new strategic planning issues and to respond to the consultation.~~

Comment [ES11]: Delete paragraphs 25 and 26 These provisions were relevant to when the County Council had a strategic planning function, in terms of producing and reviewing the implementation of the County Structure Plan. Such a function no longer exists and therefore these responsibilities are no longer exercised.

27. To respond to consultations ~~under paragraph 7 Schedule 1 to the Town and Country Planning Act 1990~~ by District/Borough Planning Authorities on applications for development in areas which have been notified to them as mineral consultation areas or waste consultation areas.

~~28. To respond to consultations which relate to one or more of subparagraphs 3(c) – (g) inclusive of paragraph 7, Schedule 1 Town and Country Planning Act 1990.~~

Comment [ES12]: Delete paragraph 28 See previous comment for the reason for deletion.

29. To respond to the appropriate government department on applications made under the Environmental Impact Assessment and Habitats (Extraction of Minerals by Marine Dredging) Regulations 2001 unless the proposal raises issues of strategic importance.
30. To submit observations on behalf of the County Planning Authority and the Highway Authority in respect of proposals for development by District Councils.
31. To respond to the relevant District Planning Authority on behalf of the Highway Authority in respect of any statutory or other consultations in relation to proposals for development.
32. To submit observations on proposals for development by local authorities and government departments not involving formal consultation.
33. To give observations, if appropriate, on behalf of the County Council on applications to the Secretary of State for deemed planning permission under Section 90(1) of the Town and Country Planning Act 1990 for the erection of poles, pole mounted equipment and overhead electricity lines below 33kv.

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34. To give observations, if appropriate, on behalf of the County Council on proposals for minor diversions or temporary routes on power lines up to 400kv where no objection is being raised.
35. After consultation with the Assistant Chief Executive, to decide whether to take and/or to discontinue formal enforcement action or initiate any other legal proceedings in any case where they consider it appropriate to do so; any action taken to be reported to a subsequent meeting of the Planning Committee.
36. In consultation with appropriate Directors to authorise the County Council to participate in planning obligations under Section 106 Town and Country Planning Act 1990.

37. To consider requests for variations to agreements made under S106 of the Town and Country Planning Act 1990, in consultation with relevant Directors, the local Members and the Chair of Planning Committee where this materially affects the obligations of, or to the County Council, and to enter into such variation agreements as appropriate.

38. To exercise the powers delegated to the Council by another Planning Authority~~the South Downs National Park Authority~~ to provide the planning service for matters detailed in Paragraphs 17 – 22, 24, 35 – 37 above for sites and proposals that are which fall within the South Downs National Park, in accordance with arrangements agreed with the other Planning Authority~~South Downs national park Authority.~~

Development Plans and Consultation

39. To respond to consultations by other Planning Authorities on Draft Structure and~~Local Plans and any other Development Plan.~~

xx To respond to consultations by Town and Parish Council's and other Qualifying Bodies on Neighbourhood Development Plans, Neighbourhood Development Orders and Community Right to Build Orders.

40. To respond on behalf of the Council as County Planning Authority to consultations from government departments and other statutory and non-statutory organisations.

41. To agree briefs for joint County and District Local Plan studies.

xx To agree to publish the Waste and Minerals Monitoring Reports and Local Aggregate Assessments.

xx To publish amendments to the Council's Local Development Scheme.

Other Matters

Comment [ES13]: Paragraph 37
Currently there are a number of incidences where consultation is required with the relevant Local Member and Chair of the Planning Committee to agree to changes to s106 agreements (normally regarding Affordable Housing) that do not affect the County Council's interests and statutory functions. Such consultation can delay the process of agreeing to the changes, which is deemed unreasonable where the provision does not affect the County Council.

Comment [ES14]: Paragraph 38
The changes made here reflect the cessation of the Agency Agreement with the South Downs National Park Authority, but provide for any necessary delegated authority should a similar such agreement be put in place with another Planning Authority at any point in the future. Such an example could include determining school applications, which would not be considered County Council developments, on behalf of the relevant District and Borough Council's in East Sussex.

Comment [ES15]: Paragraph 39 and additional paragraph
Changes have been made to reflect the abolition of Structure Plans and the introduction of Neighbourhood Planning, as part of the statutory Development Plans, through the Localism Act.

Comment [ES16]: Additional paragraph
Both of these documents are required to be produced on an annual basis and report on data and information collated for a prescribed monitoring period. They do not propose Council policy and are not subject to any formal consultation. Hence, it is deemed appropriate that approval to publish the documents is made under delegated authority.

Comment [ES17]: Additional paragraph
The Local Development Scheme (LDS) sets out the timetable for producing/reviewing plans that will become part of the County Council's Waste and Minerals Development Plan. Periodically the LDS needs to be updated to reflect changes to the timetable. In order to expedite this process, it is recommended that delegated authority is provided to publish such updates and amendments.

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42. To make new Tree Preservation Orders and modify existing Orders.
43. To determine applications for consent to fell, top or lop trees included in a Tree Preservation Order (where this is the responsibility of the County Planning Authority).
44. To submit observations when consulted on applications for felling licences.
45. To authorise the planting of trees, subject to funds being available within the agreed budget.
46. To authorise the service of Notices under Section 207 of the Town and Country Planning Act 1990, requiring the replacement of trees.
47. To exercise the County Council's powers and duties under orders and regulations made under the Plant Health Act 1967 (includes Dutch Elm Disease).
48. After undertaking appropriate consultations, to decline the offer of an access agreement between the County Council and the landowner in respect of woods which clearly have insignificant recreational value.
49. To make arrangements for the transport of pupils and students to school or college where there is a statutory duty or it is the policy of the County Council to provide such transport.
50. To discharge any function relating to the control of pollution or the management of air quality.
51.
 - (a) To discharge the powers, duties and responsibilities of the County Council under the legislation in respect of trading standards and animal welfare, which shall include but not be limited to the legislation listed in 51 below ('the trading standards and animal welfare legislation').
 - (b) To appoint and designate officers in Trading Standards as ~~inspectors, sampling officers or~~ authorised officers ~~as the case may be~~ in respect of the trading standards and animal welfare legislation. The Team Manager - Trading Standards is designated the Chief Inspector of Weights and Measures.
 - (c) To grant, amend, refuse, suspend and transfer licenses or certificates, and to register persons or premises, pursuant to the trading standards and animal welfare legislation.
 - (d) To authorise the institution of proceedings brought under the trading standards and animal welfare legislation.

Comment [ES18]: Paragraph 51(b)
This sentence previously appeared at the end of this section of the Scheme of Delegation. It has been moved to this paragraph as it relates to these particular delegated functions.

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52. The legislation set out below includes also any enabling enactment, statutory instrument, order in council, byelaw or other order, and any enactment repealing, amending or extending the provisions thereof.
- Accommodation Agencies Act 1953
 - Administration of Justice Act 1970 – Section 40
 - Administration of Justice Act 1985
 - Agricultural Produce (Grading & Marking) Acts 1928
 - Agriculture Act 1970
 - Animal Health Act 1981
 - Animal Welfare Act 2006
 - Anti-Social Behaviour Act 2003
 - Cancer Act 1939
 - Celluloid & Cinematograph Film Act 1922
 - Children & Young Persons (Protection from Tobacco) Act 1991
 - Children & Young Persons Act 1933
 - Clean Air Act 1993
 - Companies Acts 1985/2006
 - Consumer Credit Act 1974
 - Consumer Protection Act 1987
 - Copyright, Designs & Patents Act 1988
 - Courts and Legal Services Act 1990
 - Criminal Damage Act 1971
 - Criminal Justice Act 1988
 - Customs & Excise Management Act 1979
 - Education Reform Act 1988
 - Energy Act 1976
 - Enterprise Act 2002
 - Environmental Protection Act 1990
 - Estate Agents Act 1979
 - European Communities Act 1972
 - Explosives Act 1875
 - Fair Trading Act 1973
 - Farm & Garden Chemicals Act 1967
 - Fireworks Act 1951
 - Fireworks Act 2003
 - Food and Environment Protection Act 1985
 - Food Safety Act 1990
 - Forgery & Counterfeiting Act 1981
 - Fraud Act 2006
 - Hallmarking Act 1973
 - Health & Safety at Work etc Act 1974
 - Housing Act 2004
 - Intoxicating Substances (Supply) Act 1985
 - Knives Act 1997
 - Legal Services Act 2007 (S198)
 - Licensing Act 2003
 - Local Government (Miscellaneous Provisions) Act 1976 (S16)
 - Malicious Communications Act 1988

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Medicines Act 1968
Merchant Shipping Act 1995
Motor Cycle Noise Act 1987
Motor Vehicles (Safety Equipment for Children) Act 1991
Olympic Symbol etc (Protection) Act 1995
Performing Animals (Regulation) Act 1925
Poisons Act 1972
Prices Act 1974
Property Misdemeanors Act 1991
Protection of Animals Act 1911
Public Health Act 1961
Road Traffic (Foreign Vehicles) Act 1972
Road Traffic Act 1988 and 1991
Road Traffic Regulation Act 1984
Solicitors Act 1974
Telecommunications Act 1984
Theft Acts 1968 and 1978
Tobacco Advertising and Promotions Act 2002
Trade Descriptions Act 1968
Trade Marks Act 1994
Unsolicited Goods & Services Acts 1971 & 1975
Video Recordings Act 1984
Weights & Measures Act 1985

53. To authorise officers of the East Sussex Fire and Rescue Service or another Local Authority to act as licensing officer and petroleum inspectors, under sections 18 and 19 of the Health and Safety At Work (etc) Act 1974 and the Petroleum Consolidation Act 1928, on behalf of the County Council.
54. In liaison with Action in Rural Sussex and the Chief Operating Officer to agree arrangements for the consideration of applications for assistance to Village Halls and to determine applications, subject to keeping the Lead Cabinet Member, opposition Group Spokespersons and the local member informed.
55. To determine applications for ~~drainage approval and~~ ordinary watercourse consent, under and enforcement proceedings to be taken against contraventions under the Flood and Water Management Act (2010) and the Land Drainage Act (1991) as amended.
- xx After consultation with the Assistant Chief Executive, to decide whether to take formal enforcement action or initiate legal action under the Land Drainage Act 1991 or the Flood and Water Management Act 2010 in any cases it is deemed appropriate to do so.
56. To respond to the relevant planning authorities on behalf of the County Council as Lead Local Flood Authority in respect of any statutory or other consultation in relation to the drainage and local flood risk aspects of

Comment [ES19]: Paragraph 53
Additional text added to reflect current arrangements.

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proposals in applications for planning permission (including Notifications for Prior Approvals) and Development Plans.

57. To designate features which affect flood risk and, to determine applications to alter or remove designated features under the Flood and Water Management Act 2010, ~~and take enforcement action against unconsented activity affecting designated features~~

xx To update the Preliminary Flood Risk Assessment for East Sussex, in accordance with the requirements of the Flood Risk Regulations 2009.

58. Under the Safety of Sports Grounds Act 1975 (as amended):

(a) after consultation with the East Sussex Fire Authority, to carry out inspections and issue Safety Certificates subject to any matters of particular relevance being reported to the Regulatory Committee.

(b) to issue, serve and enforce prohibition notices.

59. Under the Fire Safety and Safety of Places of Sport Act 1987:

(a) after consultation with the East Sussex Fire Authority, to undertake the County Council's powers and duties: (i) in respect of inspections, determinations and the issue, amendment and cancellation of certificates under Part III of the Fire Safety and Safety of Places of Sport Act 1987; and (ii) to enforce and institute proceedings under this legislation.

(b) to charge applicants for certificates up to the statutory maximum

60. In relation to libraries:

(a) to fix the opening and closing hours; and

(b) to set the fees and charges made by the Business Information Services.

61. To take the lead role in Arts related work, including determining ~~in consultation with the relevant Cabinet member,~~ applications for grant aid for support for the Arts where the sum applied for is £2,000 or less.

xx To amend the Commons Register following an application under section 15(8) of the Commons Act 2006.

xx Registration

a) To exercise the powers of the County Council under the Marriage Act 1994 and the Marriage (Approved Premises) Regulations 1994, save

Comment [ES20]: Paragraphs 55 to 57 and additional paragraphs These paragraphs relate to the duties performed by the Lead Local Flood Authority, a role that the County Council was given through the Flood and Water Management Act 2010. These additions and amendments reflect how this role has evolved over the previous few years and what is now a thorough understanding of what is required (e.g. the need for updates to be prepared to the Preliminary Flood Risk Assessment). The delegated authority concerning matters to do with enforcement and planning consultations has been made consistent with those delegated powers provided to the County Planning Authority.

Comment [ES21]: Paragraph 61 ESCC manage the East Sussex Arts Partnership grant scheme, which is a flat rate grant of £500. These are the only grants that ESCC award for the Arts. However, the fund is a cross local authority pot which ESCC no longer contribute to. With this being the case, consultation with the relevant ESCC Cabinet Member is not considered to be appropriate as ESCC is only acting as administrator.

Comment [ES22]: Additional paragraph This addition would be in the case of where an owner of land applies to ESCC to register land as Town or Village Green. ESCC, as registration authority, simply accept that application and have no powers to refuse it. In addition, no consultation, or investigation is included in the process. At present, all such decisions have to be referred to The Village Green Panel (made up of Members from the ESCC Regulatory Committee), even though there are no choices for what decision is taken.

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where a review has been sought which falls to be determined by the Approved Marriage Premises Review Panel.

(b) To convene a panel of three members, drawn from the membership of the Regulatory Committee, to review decisions made by the Proper Officer for Registration under the Marriage (Approved Premises) Regulations 1995.

Note: ~~The Head of Trading Standards is the Chief Inspector of Weights and Measures.~~

Comment [ES23]: Moving existing paragraphs This section has been moved from the delegated powers to the Chief Executive to the delegated powers to the Director of CET. This is to reflect that Registration Services is now part of the CET directorate