

Open Report on behalf of Richard Wills, Monitoring Officer

Report to:	County Council
Date:	20 May 2016
Subject:	Changes to the Constitution

Summary:

This Report seeks approval for changes to the delegated authority granted under Part 3 of the Constitution (pages 3/25 and 3/26) to the Head of Safer Communities to initiate and progress enforcement action in the exercise of the functions conferred on the County Council principally as trading standards and weights and measures authority.

Recommendation(s):

That the Council approve the changes to the Constitution attached to this Report at Appendix A

1. Background

The Council's Constitution contains a number of delegations to the Head of Safer Communities to initiate and progress enforcement action in the areas of trading standards and weights and measures. These are in Part 3 of the Constitution (Responsibility for Functions) at pages 3/25 and 3/26

These delegations have been reviewed in the light of new responsibilities and powers given to the County Council under the new Psychoactive Substances Act 2016 to deal with so-called "legal highs".

In reviewing the delegations it was considered necessary to make changes beyond those simply required to make provision for the new Act. In particular, the existing delegations do not make sufficiently clear provision for increasingly important activity relating to civil enforcement and the pursuit of various applications including in relation to proceeds of crime.

Furthermore the wording of the delegations was too specific in places making insufficient provision for changes in the law. The proposed changes are attached to this Report at Appendix A and marked in red. The aim of the changes is to provide sufficient flexibility to accommodate change whilst remaining within the bounds of the specific responsibilities of the Head of Safer Communities – i.e

trading standards, weights and measures, animal health and welfare, community safety generally and certain licensing functions.

The wording of delegations for the bringing of legal proceedings is important as any defect in the authority given for the proceedings can be a ground for defending the proceedings.

2. Conclusion

The Report recommends changes to the way in which delegations are worded for initiating proceedings in the areas of responsibility of the Head of Safer Communities to ensure that the wording is sufficient to cover the wide range of proceedings and statutory provisions under which the Council's enforcement work is carried out.

3. Legal Comments:

Approval to changes to the Constitution is reserved to the full Council.

4. Resource Comments:

There are no material financial implications arising from acceptance of the recommendation in this report.

5. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

No

c) Scrutiny Comments

The recommendation has not been subject to Scrutiny

d) Policy Proofing Actions Required

n/a

6. Appendices

These are listed below and attached at the back of the report	
Appendix A	Changes to the Constitution

7. Background Papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
Lincolnshire County Council Constitution	Democratic Services

This report was written by David Coleman, Chief Legal Officer, who can be contacted on 01522 552134 or david.coleman@lincolnshire.gov.uk.

APPENDIX A CHANGES TO THE CONSTITUTION

Safer Communities Service – Trading Standards

1. Without prejudice to General Powers, to exercise the functions and duties of the Council as local weights and measures authority, food authority, in connection with legislation relating to standards of trade in the county and for the purposes of the enforcement of animal health and welfare legislation, **community safety legislation and licencing functions** as part of which, for the correct discharge of these functions, the following direct delegations are made:

Head of Safer Communities

1. To institute/and or appear on behalf of the County Council in any legal proceedings including any preliminary or ancillary applications in the relevant Court or tribunal for the prosecution of offences or institution of civil action and the criminal or civil enforcement and administration of legislation relevant to standards of trade, community safety, food and animal health and welfare, **licencing or other functions from time to time conferred upon trading standards or weights and measures authorities by legislation** and which the Council has either a statutory duty or power to enforce or considers it expedient to enforce for the promotion or protection of the inhabitants of the county by virtue of Section 222 of the Local Government Act 1972.
2. To initiate restraint and/or confiscation proceedings under the Proceeds of Crime Act 2002 or any subsequent related or replacement legislation before the Criminal Courts and to enter into memoranda of understanding with Police Authority Financial Investigation Units for the purpose of taking such proceedings.
3. Responsibility to ensure that the duties associated with Section 72(1) (a) of the Weights and Measures Act 1985 is discharged within the service.
4. To issue notices with the effect of requiring the marking of, requiring warnings to be issued in respect of, suspending the supply of, requiring the withdrawal from the market of and requiring the recall from the market of products as provided for under legislation which is enforced by the County Council and is relevant to standards of trade, community safety, food or animal health and welfare, **or licencing functions or other functions from time to time conferred upon trading standards or weights and measures authorities by legislation.**
5. To act as Inspector/authorised officer or other enforcing officer role

as provided in, and to inspect enter and investigate for the purposes of enforcement of, legislation which is enforced by the County Council and is relevant to standards of trade, community safety, food or animal health and welfare, or licencing functions or other functions from time to time conferred upon trading standards or weights and measures authorities by legislation and authorise in writing officers to act in these capacities.

6. To appoint public analysts and agricultural analysts for the County Council for the purposes of the Food Act 1984, the Food Safety Act 1990 and the Agriculture Act 1970 or other functions from time to time conferred upon trading standards or weights and measures authorities by legislation.
7. To nominate in writing Officers for the purposes of enforcing the Food and Environment Protection Act 1985.
8. To enter into appropriate arrangements with other enforcement authorities for the purpose of the enforcement of any legislation which is enforced by the County Council and is relevant to standards of trade, community safety, food, animal health and welfare and licencing functions or other functions from time to time conferred upon trading standards or weights and measures authorities by legislation
9. To appoint suitable persons under the Health and Safety at Work etc Act 1974 for the purposes of enforcing the Explosives Acts 1875 to 1976 and subsequent legislation made under the Health and Safety at Work etc Act 1974 and otherwise in respect of the regulation of explosives including the Explosives Regulations 2014 and subsequent amendments.
10. To initiate appeals against the decisions of the relevant Court where, in the Head of Safer Communities professional opinion, it is proper so to do.
11. To initiate and co-ordinate all activities necessary for the Council to discharge its responsibilities under the Animal Health Act 1981 in order to prevent, control or deal with an outbreak of rabies or other animal disease in the county.
12. To conduct hearings and to give assent or otherwise under the Explosives Act 1875 1976 and subsequent legislation made under the Health and Safety at Work etc Act 1974 and otherwise in respect

of the regulation of explosives including the Explosives Regulations 2014 and subsequent amendments in relation to applications for the establishment of new factories or magazines.

13. To discharge the functions of the County Council as a responsible authority under the licensing Act 2003 or any subsequent related or replacement legislation and to appoint other officers of the authority to do so.

Service Manager – Safer Communities

1. In the absence of the Head of Safer Communities, the Service Managers Safer Communities are authorised to exercise the powers delegated to the Head of Safer Communities under 1, 2, 4, 7, 8, 9, 11, 12 and 13 above.

Duly Appointed Officers

1. At all times the duly appointed Officers of the service are, for the purpose of enforcing the relevant legislation, authorised to exercise the powers delegated to the Head of Safer Communities under 1, 2 and 4 above after having, in each case, obtained the permission of the Head of Safer Communities, or, in his absence, a Service Manager – Safer Communities.