

REPORT OF THE DIRECTOR CITY OPERATIONS

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HIGHWAYS LICENSING ENFORCEMENT FUNCTIONS

Reason for this Report

1. To enable the Committee to consider appropriate arrangements for the discharge of various highways licensing enforcement functions.

Background

2. The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2009 designated certain functions contained within the Highways Act 1980 as Local Choice Functions.
3. In September 2010 full Council resolved that these 'Local Choice' highways functions should be designated as Non-Executive functions, allocated to the Planning Committee, and noted that the Planning Committee may decide to delegate some of these functions, as appropriate, to officers (Council Minute No.73).
4. In June 2013, the Planning Committee delegated authority in respect of certain highways licensing enforcement functions to the Chief Officer with responsibility for such matters (minute reference P9).

Issues

5. This report concerns the arrangements for the Council to discharge a number of highways licensing enforcement functions (under Part IX of the Highways Act 1980), specifically the following:

*'the functions contained in the following provisions of Part IX of the Highways Act 1980 (lawful and unlawful interference with highways and streets)—*

- (i) section 130 – protection of public rights;*
- (ii) sections 139 – control of builders' skips;*
- (iii) section 140 – removal of builders' skips;*
- (iv) section 140A(1) – builders' skips: charges for occupation of the highway;*
- (v) section 142 – licence to plant trees, shrubs etc in a highway;*
- (vi) section 147 – power to authorise erection of stiles etc on footpath or bridleway;*
- (vii) section 147ZA(1) – agreements relating to improvements for benefit of persons with mobility problems;*
- (viii) section 149 – removal of things so deposited on highways as to be a*

*nuisance etc;*

*(ix) section 169 – control of scaffolding on highways;*

*(x) section 171 – control of deposit of building materials and making of excavations in streets;*

*(xi) section 171A(2) and regulations made under that section – works under s169 or s171: charge for occupation of the highway;*

*(xii) section 172 – hoardings to be set up during building etc;*

*(xiii) section 173 – hoardings to be securely erected;*

*(xiv) section 178 – restriction on placing of rails, beams etc over highways;*

*(xv) section 179 – control of construction of cellars etc under street;*

*(xvi) section 180 – control of openings into cellars etc under streets, and pavement lights and ventilators’*

6. It is considered that the functions listed in the paragraph above are essentially administrative functions relating to the enforcement or licensing of objects on the highway, which officers may properly discharge using professional judgement, rather than requiring a decision of the Committee. Accordingly, the Planning Committee has previously delegated these functions to the Chief Officer responsible for this area (Planning Committee, June 2013, minute reference P9). These functions include licensing of skips, hoardings, tables and chairs and scaffolding, which have been routinely exercised by officers in order to maintain the integrity of the public highways network.
7. This report recommends Planning Committee to confirm the delegation of all such functions under the Highways Act 1980 (as listed in paragraph 5 above) to the Director with responsibility for highways, with express provision for the Director to further sub-delegate the delegation to operational managers of the service area. The administration of those powers granted will then enable the Director and operational managers the delegated power to authorise officers to investigate and enforce breaches of the Highways Act 1980. The enforcement will take the form of investigations and the service of either fixed penalty notices or the consideration to recommend prosecution through the criminal courts for breaches of the Highways Act 1980. The authorisation of officers will include enforcement officers of both highways and waste management, that will move to a single Neighbourhood Service Enforcement team.

## **Legal Implications**

8. As noted in the body of the report, the functions listed in paragraph 5 of the report are designated as ‘Local Choice Functions’ under the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007, as amended. The Council is required to designate Local Choice Functions as either Executive Functions or Non-Executive (Council) functions (under section 13(4) of the Local Government Act 2000). As noted in paragraph 3 of this report, the Council resolved on 23 September 2010 that the functions listed in paragraph 5 be allocated as Non-Executive (Council) Functions and delegated to the Planning Committee (pursuant to section 101 of the Local Government Act 1972).

9. Under section 101 of the Local Government Act 1972, where any functions of a local authority may be discharged by a committee, then, unless the local authority otherwise directs, the committee may arrange for the discharge of any of those functions by an officer of the authority. The Council has made no contrary direction in this case, and therefore, it is within the power of the Planning Committee to delegate to an appropriate Council officer any of the functions listed in paragraph 5, provided Members are satisfied that it is appropriate to do so. It should be noted that any delegation so made does not prevent the Committee from exercising those functions in any case it considers appropriate. However, any such officer delegation may not be further delegated, unless expressly provided for in the Committee resolution (pursuant to the Scheme of Delegations, Section 4A, paragraph 1.6(ii)).
10. Accordingly, this report seeks approval from the Planning Committee to allow the Director with responsibility for this area to sub-delegate the powers previously delegated to the Chief Officer (by the Planning Committee in June 2013) to appropriate officers within his/her directorate in order to facilitate the efficient and effective discharge of those functions. A record of all such delegations to officers must be notified to the Monitoring Officer who maintains a record of all delegations in accordance with the requirements of section 100G of the Local Government Act 1972.

## **Recommendation**

The Planning Committee is recommended to:

- (i) delegate responsibility for the highways licensing enforcement functions listed in paragraph 5 of this report to the Director with responsibility for highways, with authority to sub-delegate to his/her staff as considered appropriate; and
- (ii) instruct the Director Governance and Legal Services and Monitoring Officer to make any necessary amendments to the Council's Constitution.

## **Background Papers**

Constitution Committee report 'Scheme of Delegations' dated 10 September 2010; and minutes in respect thereof

Council report 'Constitution Committee – 10 September 2010' dated 23 September 2010; and minutes in respect thereof.

Planning Committee report, 'Discharge of Various Highways Functions', 12<sup>th</sup> June 2013; and minutes in respect thereof