
Report to Council

Date of Meeting: 23rd October 2014

Subject: Authorisation of Trading Standards Scotland

Report by: Head of Development & Environment

1.0 Purpose

- 1.1. To inform Members of the establishment of a Scotland-wide trading standards team, Trading Standards Scotland (“**TSS**”), forming part of COSLA. The team will complement the work of local trading standards services throughout Scotland dealing with national and cross border issues as well as crimes of a specialist nature such as illegal money lending and e-crime;
- 1.2. To seek the agreement of Council to the proposed mechanisms for delegating the Council’s functions and powers under trading standards and consumer protection legislation to Stirling Council who carry out the Trading Standards service for this Council and further to enable Stirling Council to authorise TSS staff;
- 1.3. To invite Members to approve changes to the Scheme of Delegation to give effect to the necessary delegation of functions and powers to Stirling Council.
- 1.4. The Scheme of Delegation forms part of the Council's Standing Orders. Notice was given at the Meeting of Council on 14 August 2014 of the intention to bring forward amendments to Standing Orders and this report benefits from that notice.

2.0 Recommendations

It is recommended that the Council:

- 2.1. appoints Stirling Council to discharge this Council's relevant trading standards and consumer protection functions as enabled by section 56(1) of the Local Government (Scotland) Act 1973; and further authorises them to appoint Trading Standards Scotland to discharge the functions under the relevant trading standards and consumer protection legislation falling within the remit of Trading Standards Scotland on behalf of this authority;
- 2.2. approves the proposed changes to the Scheme of Delegation in Appendix A to this report.

3.0 Background

- 3.1. Trading standards and consumer protection functions are currently performed by each of the 32 local authorities local authorities as local weights and measures authorities. For some time now they have been supported in their role by three national teams set up to target major scams and trading malpractices which individual authorities would not have the resources to deal with. These teams were initially set up within host Councils, the illegal money lending unit hosted by Glasgow City Council and the Scambusters/Ecrime units hosted jointly by North Lanarkshire and Dundee City Councils.
- 3.2. From 1 July 2014, a fully amalgamated national team (TSS) was set up within COSLA to replace the three separate teams. It is being funded by the UK Government, with the remit of providing a Scottish-wide service, delivered through COSLA. The new team will be overseen by COSLA's TSS Chief Officer and COSLA will have responsibility for the team's strategic and personnel management.
- 3.3. TSS staff will require powers to undertake enforcement action within the scope of their role, including (but not limited to) statutory powers enabling them to:
 - 3.3.1. investigate any suspected illegal activities;
 - 3.3.2. enter and inspect premises, and to inspect goods and equipment;
 - 3.3.3. require production of documents and other records and to take copies of documents;
 - 3.3.4. sample goods for analysis and testing;
 - 3.3.5. seize and detain goods and equipment for examination and testing;
 - 3.3.6. undertake test transactions of goods and services;
 - 3.3.7. serve enforcement notices; and
 - 3.3.8. impose civil penalties.
- 3.4. These powers are currently conferred on local weights and measures authorities and / or their duly authorised officers. Local authorities and their officers will retain these powers, as TSS operations will compliment existing local trading standards functions which will remain the function of the local authorities. It is simply a resource intended to add capacity to local authority trading standards teams in relation to the specialist functions of tackling illegal money lending and e-crime, and it also has a role in coordinating and enforcing cross-boundary and national casework. For TSS to be fully

effective in its role, its operational officers need to be properly authorised to undertake the full range of trading standards activities.

- 3.5. In establishing the new team TSS have indicated it is important that the delegation arrangements put in place are sufficiently robust, rather than being left to more informal arrangements between local authorities. It is also considered appropriate that delegation arrangements are sufficiently specific to avoid their being challenged on grounds for lack of clarity or lack of specification. To ensure that the authorisation process is correct and beyond any legal challenge COSLA sought independent legal advice which was then discussed with the Society of Local Authority Lawyers & Administrators in Scotland (SOLAR) and the process outlined below has been agreed.
- 3.6. The legal advice is that all 32 local authorities in Scotland take a co-ordinated approach to the delegation process and the suggested mechanism for delegation is in essence, that the various Councils will authorise the Chief Officer of TSS and through the principle of sub-delegation, to authorise individual officers, on their appointment to TSS, to carry out operational activities under the specific legislation identified within the schedule in each Council area.
- 3.7. The suggested way to do this is a two step process, firstly to appoint all TSS staff as officers of the relevant Council and then secondly to authorise those officers to discharge the appropriate functions of the local authority.
- 3.8. It is therefore proposed that local authorities will use section 56(1) to authorise their functions under the relevant trading standards legislation to be carried out by the Chief Officer of TSS. This means that all of the necessary authorisations of each authority will flow to the Chief Officer. In turn, the Chief Officer will also be granted the power by the local authorities to delegate further the functions of each authority to all TSS staff (each of whom would separately have been appointed as officers of the relevant local authority for this purpose). In this manner, TSS employees could acquire the whole suite of enforcement powers necessary for the fulfilment of their duties.

4.0 Considerations

- 4.1. As members know, the Trading Standards Service for Clackmannanshire Council, is carried out on our behalf by Stirling Council and to that end it is more appropriate to have Stirling Council authorise the TSS staff on our behalf rather than this Council authorising TSS staff directly. In order to do that it is recommended that we should follow the same process as outlined above to transfer Clackmannanshire Councils' trading standards and consumer protection functions to Stirling Council rather than to TSS. Once this has been done it will allow Stirling Council to transfer these in turn to TSS.
- 4.2. The effect of doing this means that this authority will have followed a legally robust process for authorising Stirling Councils' staff which is in line with how other Local Authorities will have gone about authorising staff that are not employees of their own Council. It also allows Stirling Council to fully manage all aspects of Trading Standards, including the authorisation of TSS staff and the maintaining of lists of such authorised officers.

- 4.3. In order to achieve this in practice, changes are required to the scheme of delegation. The amended wording for the scheme of delegation is provided in Appendix A.
- 4.4. Stirling Council have been consulted upon this proposal and are in agreement that this is the best solution to addressing not only the authorisation of Stirling Council staff but also TSS staff.

5.0 Sustainability Implications

- 5.1. There are no sustainability implications arising from this report

6.0 Resource Implications

6.1. *Financial Details*

- 6.2. There are no financial implication arising from this report

- 6.3. Finance have been consulted on the contents of this report.

Yes

6.4. *Staffing*

7.0 Exempt Reports

- 7.1. Is this report exempt? Yes (please detail the reasons for exemption below) No

8.0 Declarations

The recommendations contained within this report support or implement our Corporate Priorities and Council Policies.

- (1) **Our Priorities** (Please double click on the check box)

- | | |
|--|-------------------------------------|
| The area has a positive image and attracts people and businesses | <input checked="" type="checkbox"/> |
| Our communities are more cohesive and inclusive | <input type="checkbox"/> |
| People are better skilled, trained and ready for learning and employment | <input type="checkbox"/> |
| Our communities are safer | <input checked="" type="checkbox"/> |
| Vulnerable people and families are supported | <input type="checkbox"/> |
| Substance misuse and its effects are reduced | <input type="checkbox"/> |
| Health is improving and health inequalities are reducing | <input type="checkbox"/> |
| The environment is protected and enhanced for all | <input type="checkbox"/> |
| The Council is effective, efficient and recognised for excellence | <input checked="" type="checkbox"/> |

- (2) **Council Policies** (Please detail)

9.0 Equalities Impact

9.1 Have you undertaken the required equalities impact assessment to ensure that no groups are adversely affected by the recommendations?
Yes No

10.0 Legality

10.1 It has been confirmed that in adopting the recommendations contained in this report, the Council is acting within its legal powers. Yes

11.0 Appendices

11.1 Please list any appendices attached to this report. If there are no appendices, please state "none".

Appendix A

12.0 Background Papers

12.1 Have you used other documents to compile your report? (All documents must be kept available by the author for public inspection for four years from the date of meeting at which the report is considered)
Yes (please list the documents below) No

Author(s)

NAME	DESIGNATION	TEL NO / EXTENSION
Ian Doctor	Regulatory Services Manager	Extension : 2577
Andrew G Wyse	Legal Services Team Leader	Extension : 2088

Approved by

NAME	DESIGNATION	SIGNATURE
Gordon McNeil	Head of Development & Environment	Signed: G McNeil
Garry Dallas	Executive Director	Signed: G Dallas

Proposed amendment to Scheme of Delegation

1. Delete existing paragraph 11.16 and insert and re-number subsequent paragraphs 11.17 to 11.63 as 11.16 to 11.62
2. Insert new paragraph 14 as follows:-

14.0 Discharge of Functions by other local authorities

14.1 We have arranged that our duties under trading standards and consumer protection laws and any new laws or amendments that come into force shall be discharged by Stirling Council on our behalf in accordance with sections 56(1), (2), and (3) of the Local Government (Scotland) Act 1973

14.2 For the avoidance of doubt, in their discharge of our duties under trading standards and consumer protection laws set out in 14.1 we have authorised Stirling Council to arrange the discharge by officers of Trading Standards Scotland of those parts of our duties falling within the remit of Trading Standards Scotland

14.3 In this section trading standards and consumer protection laws includes

Agricultural Produce (Grading and Marking) Act 1928

Agriculture Act 1970

Agriculture (Miscellaneous Provisions) Act 1968

Animal Health Act 1981

Animal Health and Welfare Act 1984

Animal Health and Welfare (Scotland) Act 2006

Antisocial Behaviour Etc (Scotland) Act 2004

Children and Young Persons (Protection from Tobacco) Act 1991

Children and Young Persons (Scotland) Act 1937

Civic Government (Scotland) Act 1982

Clean Air Act 1993

Climate Change Act 2009

Companies Act 2006

Consumer Credit Act 1974

Consumers, Estate Agents and Redress Act 2007

Consumer Protection Act 1987
Control of Pollution Act 1974
Copyright, Designs and Patents Act 1988
Copyright etc and Trade Marks (Offences and Enforcement) Act 2002
Counter- Terrorism Act 2008
Customs and Excise Management Act 1979
Development of Tourism Act 1969
Education Reform Act 1988
Energy Act 1976
Energy Conservation Act 1981
Enterprise Act 2002
Estate Agents Act 1979
European Communities Act 1972
Explosives Act 1875 and 1923
Fair Trading Act 1973
Farm and Garden Chemicals Act 1967
Financial Services Act 2012
Financial Services and Marketing Act 2000
Fireworks Act 2003
Food and Environmental Protection Act 1985
Hallmarking Act 1973
Health and Safety at Work Etc Act 1974
Medicines Act 1968
Motor Cycle Noise Act 1987
Motor Vehicles (Safety Equipment for Children) Act 1991
Olympic Symbol Etc (Protection) Act 1995
Pesticides Act 1998
Petroleum (Consolidation) Act 1928 being replaced by Health and Safety at Work Etc Act 1974 and Petroleum (Consolidation) Regulations 2014
Petroleum (Transfer of Licences) Act 1936
Poisons Act 1972
Prices Acts 1974 and 1975
Protection of Animals (Scotland) Act 1912
Road Traffic Act 1988
Telecommunications Act 1984
Timeshare Act 1992
Tobacco Advertising and Promotion Act 2002

Tobacco and Primary Medical Services (Scotland) Act 2010

Trade Descriptions Act 1968

Trade Marks Act 1938 and 1994

Unsolicited Goods and Services Acts 1971 and 1975

Video Recordings Act 1984 and 1993 by virtue of Video Recordings Act 2010

Weights and Measures Acts 1979 and 1985

