

**From:** Bryan Sweetland, Cabinet Member for Commercial and Traded Services  
Paul Crick, Director of Environment, Planning & Enforcement  
Mike Overbeke, Head of Regulatory Services Group

**To:** Environment & Transport Cabinet Committee – 24 April 2014

**Subject:** 14/00046 - Authorisation of Trading Standards Officers

**Classification:** Unrestricted

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**Summary** This report updates Members on the process undertaken to seek authority to delegate legal authorisation for Trading Standards Officers to use the powers contained in various legislation to carry out statutory duties and to commence legal proceedings if appropriate.

The decision to grant authority has been taken by the Cabinet Member for Commercial and Traded Services.

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## **1. Background**

- (1) Trading Standards Officers fulfil the County Council's statutory responsibilities to protect commerce and the consumer. This is set out within a framework of protective legislation which is delegated to officers.
- (2) Previously delegation has been granted and annually renewed under the business planning process but, due to changes in this year's process, this route was no longer available from April 2014. The Chairman of the Scrutiny Committee and the relevant Corporate Director, Mike Austerberry, agreed that the decision to grant delegated authority to continue operational activity within the legislative framework could not reasonably be deferred in order to conform to the normal statutory procedures. The respective spokespersons of the Cabinet Committee and Scrutiny Committee were consulted and no comments were received.
- (3) A small number of the powers relied upon by Trading Standards Officers are "reserved decisions" under the terms of the Local Government Act and, as a result, the delegations for these tasks are contained within the KCC constitution.

## **2. Delegation**

- (1) The Trading Standards Service acts on behalf of the County Council under a wide range of legislation, nearly all of which is mandatory. The Schedule of Legislation at appendix 1 details the legislation under which Trading Standards currently has formal delegated authority from the County Council.
- (2) In relation to the Acts and any orders, rules, regulations or other subordinate legislation made under, or by virtue of those Acts, including any amendment

to such legislation, under which Trading Standards is authorised to act by the Kent County Council, the Director of Environment, Planning and Enforcement may:

- (a) Exercise all the powers of the council, including powers of enforcement, licensing, registration and prosecution – see Enforcement Policy at appendix 2
- (b) Appoint Trading Standards Officers which will include such inspectors, enforcement and sampling officers as may be designated in the aforesaid legislation, and other officers
- (c) Institute, take part in, respond to, or defend legal proceedings
- (d) Represent the County Council in any proceedings before any court (subject to having a legal 'right of audience' before that court)
- (e) Represent the County Council at any hearing under Sections 24 and 44 of the Health and Safety at Work Act 1974
- (f) Where a premise licence has effect, apply to the relevant licensing authority for a review of the licence under Section 51 of the Licensing Act 2003
- (g) Represent the County Council at any hearing held by a relevant licensing authority in relation to the review of a premise licence under the Licensing Act 2003
- (h) Authorise officers under his direction to carry out any of the above.

### **3. New items**

- (1) This year, three new items of legislation have been added to the delegation list. They are section 141a of the Criminal Justice Act 1988, the Intoxicating Substances (Supply) Act 1985 and the Knives Act 1997.
- (2) The first two of these add to the suite of tools available to Trading Standards Officers to deal with the sale of inappropriate and age restricted goods to children. The Criminal Justice Act prohibits the sale of knives to children and the Intoxicating Substances (Supply) Act prohibits the supply to children of any substance which is intended to be inhaled for the purpose of intoxication. The Knives Act prohibits the advertising of knives as weapons and, in any action in relation to illegitimate knife sales, would complement the underage sales provisions.
- (3) There are no resource implications or new business burdens linked to these additions; they are included to permit Trading Standards Officers, acting on intelligence and with our partners, to protect young people and their communities in the widest range of situations.

### **4. Risk**

Due to the fact that previous delegation was granted via the business planning process for the period of that plan only, any delay beyond 1<sup>st</sup> April would have meant that any powers exercised by Trading Standards Officers to protect the public or to secure evidence in investigations, would be open to challenge. This would, potentially, incur significant costs and, at worst, mean a loss of protection or the loss of court cases.

<h3><b>5. Recommendation</b></h3>
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The Cabinet Committee are asked to note the governance procedures applied to the delegation of authority to Trading Standards Officers via the Director of Environment, Planning and Enforcement as set out above.

## **6. Background documents**

Appendix 1 – Schedule of legislation  
Appendix 2 – Enforcement policy  
Appendix 3 – Signed Record of Decision

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