

EAST RENFREWSHIRE COUNCIL

CABINET

4 December 2014

Report by Director of Environment

AUTHORISATION OF TRADING STANDARDS SCOTLAND OFFICERS

WITHIN EAST RENFREWSHIRE

PURPOSE OF REPORT

1. The purpose of this report is to inform the Cabinet 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 services and deal with national and cross border issues as well as crimes of a specialist nature such as illegal money lending and e crime.

RECOMMENDATIONS

2. It is recommended that Cabinet approves:
- (a) the proposed mechanisms for delegating the Council's functions and powers under trading standards and consumer protection legislation to TSS staff; and
 - (b) the proposed changes to the Council's Scheme of Delegation to give effect to the necessary delegation of functions and powers to TSS as specified in the attached appendix

BACKGROUND

3. Trading standards and consumer protection functions are currently performed within East Renfrewshire as it is the named local weights and measures authority - this is known as Level 1 enforcement. However it was realised that major scams, trading malpractices and e-crime were no respecter of local authority boundaries. Three teams consisting of a central team based in COSLA, an operational unit dealing with illegal money lending hosted by Glasgow City Council, and the Scambusters/E crime unit hosted jointly by North Lanarkshire and Dundee City Councils were set up to deal specifically with these matters. The remit of these teams was to investigate Level 2, cross-boundary activity, and level 3, national and international activity.

4. From 1 July 2014, a fully amalgamated national team Trading Standards Scotland (TSS) was be set up within COSLA to replace the three separate teams. It is 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.

5. TSS staff will require powers to undertake their Level 2 and 3 enforcement action within the scope of their role, including (but not limited to) statutory powers enabling them to:

- investigate any suspected illegal activities;
- enter and inspect premises, and to inspect goods and equipment;
- require production of documents and other records and to take copies of documents;
- sample goods for analysis and testing;
- seize and detain goods and equipment for examination and testing;
- undertake test transactions of goods and services;
- serve enforcement notices; and
- impose civil penalties.

6. These powers are in relation to the specialist functions of tackling illegal money lending, e-crime, and its role in coordinating and enforcing cross-boundary, Level 2, and national casework, level 3. .

REPORT

7. In order to be fully effective in its role TSS staff need to be properly authorised to undertake the full range of trading standards activities as specified in Schedule 1 of the attached appendix. Once appointed as local authority officers, some of the necessary powers will flow to TSS staff automatically by virtue only of their appointment. For the remaining powers (i.e. those granted to weights and measures authorities only, or those conferred on “authorised officers”, local authorities would have to delegate their functions to appointed officers for the authorisations to take effect. Delegation to TSS staff may be made under section 56(1) of the Local Government (Scotland) Act 1973 (the “**1973 Act**”). This provision allows local authorities to arrange for the discharge of their functions by their officers

8. Once a local authority has delegated its weights and measures functions to officers, the necessary enforcement powers will automatically follow. The person to whom functions have been delegated is automatically deemed to be able to exercise the powers relating to the delegated functions in the same manner as the delegating authority.

9. It is proposed that each local authority in Scotland will use section 56(1) to delegate its functions under the relevant trading standards legislation to 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 each local authority to delegate further the functions of each authority to all TSS staff (each of whom would separately have been appointed as officers of every local authority). In this manner, TSS employees could acquire the whole suite of enforcement powers necessary for the fulfilment of their duties.

10. The Chief Officer will maintain a list of officers to whom further delegation had been made of the functions delegated by each authority. This list will be kept under review and provided to local authorities. It will not be made available for public inspection, due to the sensitive nature of the work TSS staff are engaged in. However, there will be a process allowing individuals or businesses subject to enforcement action to have a means of checking that TSS enforcing officers are properly authorised.

FINANCE AND EFFICIENCY

11. Among the duties of the Trading Standards Service is the maintenance of the integrity of the trading environment within East Renfrewshire. There are no additional resource or savings implications as TSS will only operate within East Renfrewshire in the event that it is also affected by cross boundary major scams, trading malpractices and e-crime.

CONSULTATION

12. Consultation was undertaken with Democratic Services on delegated powers.

PARTNERSHIP WORKING

13. We will work in partnership with TSS, when the need arises, to deal with cross boundary major scams, trading malpractices and e-crime that are also operating within East Renfrewshire. This will help in protecting consumers and traders nationally using a coordinated approach to dealing with an international problem.

IMPLICATIONS OF THE PROPOSALS

14. TSS are committed to be located within East Renfrewshire's boundaries for the next 3 years and by agreeing to delegate the relevant enforcement powers it may safeguard them remaining here after this period and provide valuable resource when dealing with cross boundary issues. Within the present work of Trading Standards there are no staffing, equalities, IT, financial or other implications associated with this report.

CONCLUSIONS

15. TSS need to have delegated enforcement powers to be able to legally conduct investigations within East Renfrewshire when the need arises. The most efficient method of doing so is to permit the Chief Officer of TSS to have powers to authorise officers appropriately

RECOMMENDATIONS

16. It is recommended that Cabinet approves:
- (a) the proposed mechanisms for delegating the Council's functions and powers under trading standards and consumer protection legislation to TSS staff; and
 - (b) the proposed changes to the Council's Scheme of Delegation to give effect to the necessary delegation of functions and powers to TSS as specified in the attached appendix

Director of Environment

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KEY WORDS

TSS, delegation, Cosla

APPENDIX

Proposed amendment to scheme of delegation to officers (for insertion at appropriate point in existing scheme)

1. With effect from 4th December 2014, all trading standards officers employed by Trading Standards Scotland will be appointed as officers of the East Renfrewshire Council. Individuals becoming employed by Trading Standards Scotland after that date will automatically, by virtue of their appointment as trading standards officers of Trading Standards Scotland, be appointed as officers of the Council.
2. Pursuant to section 56(1) of the Local Government (Scotland) Act 1973, the Council authorises the Chief Officer of Trading Standards Scotland: (i) to discharge the Council's functions as a local weights and measures authority under the legislation set out in Schedule 1; and (ii) to act as an authorised officer for the purposes of that legislation in fulfilment of all functions granted to local weights and measures authorities thereunder.
3. The Council further authorises the Chief Officer of Trading Standards Scotland to delegate the functions delegated to her by virtue of clause 2(i) above to grant authorisations to all or any trading standards officers employed by Trading Standards Scotland to act as authorised officers for the purposes of the legislation set out in Schedule 1; provided that the authorisations of individual officers shall not take effect until such time as their names appear on the list of authorised officers maintained by the Chief Officer of Trading Standards Scotland, a copy of which shall be provided to the Council and kept up-to-date at all times.

Schedule 1

- Trade Descriptions Act 1968
- European Communities Act 1972 (section 2)
- Consumer Credit Act 1974
- Prices Act 1974
- Consumer Protection Act 1987
- Copyright, Designs and Patents Act 1988
- Trade Marks Act 1994
- Unfair Terms in Consumer Contracts Regulations 1999
- Consumer Protection (Distance Selling) Regulations 2000

- Financial Services and Markets Act 2000
- Enterprise Act 2002
- Electronic Commerce (EC Directive) Regulations 2002
- Financial Services (Distance Marketing) Regulations 2004
- Counter-Terrorism Act 2008
- Business Protection from Misleading Marketing Regulations 2008
- Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008
- Consumer Protection from Unfair Trading Regulations 2008
- Consumer Rights (Payment Surcharges) Regulations 2012
- Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013

Financial Services Act 2012 (Consumer Credit) Order 2013