



WARDS AFFECTED: ALL WARDS

1. PURPOSE OF REPORT

- 1.1 To seek approval to proposed changes to the Constitution as detailed in the report below.

2. RECOMMENDATION

- 2.1 That Council agrees to the following changes to the existing Constitution:

- (i) The Deputy Chief Executive (Community Direction) and Environmental Health Manager (Commercial) be delegated to authorise qualified Environmental Health and Technical Officers to enforce the provisions of The Smoke-free (Private Vehicles) Regulations 2015.
- (ii) the delegation of functions under the `relevant statutory provisions` within the meaning of Part 1 of the Health and Safety at Work etc Act 1974 relating to enforcement duties, be reworded to specifically include "All qualified Environmental Health Officers and Technical Officers are appointed as Inspectors under Section 19 of the Act"

3. BACKGROUND TO THE REPORT

- 3.1 Council is requested to consider and agree to two amendments to the current version of its Constitution relating to the enabling officers to enforce the provisions of the new smoke free legislation and bringing clarity to an officer's appointment under the terms of the Health and Safety at Work etc. Act 1974.
- 3.2 On 1 October 2015 The Smoke-free (Private Vehicles) Regulations 2015 came into force. These regulations extend smoke-free legislation to now cover all private vehicles carrying more than one person and with a person under 18 also within the vehicle. Essentially it is now an offence to smoke in a private vehicle with someone under the age 18 present in order to protect children from the harm to their health caused by exposure to second hand smoke in vehicles.
- 3.3 Originally this extension of existing legislation was proposed to be enforced solely by Police alongside their powers to stop a vehicle. However, following consultation and subsequent introduction of the legislation authorised officers from local Councils, who enforce all other provisions of the Smoke-free legislation, have also been given the powers to enforce the regulations but without the power to stop vehicles. Enforcement is by way of a Fixed Penalty Notice of £50, although offenders could be prosecuted directly, for instance if persistent offenders. Council is requested to delegate enforcement of the Smoke –free (Private Vehicles) Regulations to qualified Environmental Health Officers and Technical Officers.
- 3.4 Additionally, following external legal advice, it is recommended that the current wording in the existing Constitution relating to the appointment of inspectors under Section 19 of the Health and Safety at Work etc. Act 1974, is amended to ensure there is no ambiguity. Presently the existing delegation (page 91 of the current Constitution, `Health & Safety at Work Functions` - is:

Health & Safety at Work Functions	Onward Limits of Delegation
Functions under any of the 'relevant statutory provisions' within the meaning of Part 1 of the Health and Safety at Work Etc Act 1974 relating to enforcement duties and not in the Authority's capacity as an employer	<ul style="list-style-type: none"> • Qualified Environmental Health and Technical Officers • Officers appointed under Section 19 of that Act

It is recommended that the Onward Limit of Delegation be amended to read "All qualified Environmental Health Officers and Technical Officers are appointed as Inspectors under Section 19 of the Act".

4. FINANCIAL IMPLICATIONS [AG]

4.1 None

5. LEGAL IMPLICATIONS [JB]

5.1 In order to amend the constitution this report will require approval of two thirds of those members in attendance of a meeting.

6. CORPORATE PLAN IMPLICATIONS

6.1 Will enable Smoke –free and health and safety legislation to be better enforced within the Borough and thereby contribute towards the Council aims of providing proactive services.

7. CONSULTATION

7.1 None

8. RISK IMPLICATIONS

8.1 The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Limitations on the ability of officers to be able to perform their duties and in a timely manner	Amend Constitution to allow proper delegation of appropriate functions	Steven Merry
Officers carry out actions which they have no legal authority to perform	Amend Constitution to allow proper delegation of appropriate functions	Steven Merry
Reputational damage of the Council because of delayed, illegal or lack of action	Amend Constitution to allow proper delegation of appropriate functions	Steven Merry

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

9.1 No implications, enforcement work is carried out consistently throughout the borough.

10. CORPORATE IMPLICATIONS

10.1 By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications

- ICT implications
 - Asset Management implications
 - Procurement implications
 - Human Resources implications
 - Planning implications
 - Data Protection implications
 - Voluntary Sector
-

Background papers: None

Contact Officer: Steven Merry Ext 5735

Executive Member: Councillor K Morrell
Councillor A Wright