

# ITEM 11 FOR MEETING ON 31 MARCH 2020

## North Yorkshire County Council

### Report to the Chief Executive Officer

31 March 2020

### Changes required to the Constitution

#### Report of the Assistant Chief Executive (Legal and Democratic Services)

<b>1.0</b>	<b><u>Purpose of report</u></b>
1.1	To ask the Chief Executive Officer, under his delegated emergency decision making powers during the Coronavirus pandemic, to approve certain changes to the Council's Constitution.

#### **2.0** **Background**

2.1 The Officers' Delegation Scheme in the County Council's Constitution provides a specific delegation to the Chief Executive Officer "In cases of emergency to take any decision which could be taken by the Council, the Executive or a committee."

2.2 As the Coronavirus pandemic is considered to be an 'emergency', on 24 March 2020 the Leader, due to the ongoing pandemic, endorsed the approach being undertaken by officers of following the emergency decision making process in the Constitution to allow the Chief Executive Officer to make all appropriate decisions and to allow for relevant consultation during the pandemic. The Chief Executive Officer subsequently formally decided to implement his emergency decision making powers during the pandemic, in order to ensure that appropriate decision making continues for the County Council during the pandemic whilst ensuring that Government guidance on social/physical distancing is followed.

2.3 The details of the proposed changes to the Constitution are the subject of separate sections below in this report.

2.4 Relevant Officers and Members have been consulted on the proposed changes. A record of the decision of the Chief Executive Officer will be circulated to all Members.

#### **3.0** **Enforcement under the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020**

3.1 The Secretary of State has made emergency regulations "in response to the serious and imminent threat to public health which is posed by the incidence and spread of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)" regarding the closure of certain premises and businesses during the pandemic.

3.2 The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (the "First Regulations") were made under the Public Health (Control of Disease) Act 1984 and came into force on 21 March 2020. Regulation 3 of the 2020

Regulations deals with offences under the Regulations and Regulation 4 makes provision for enforcement of restrictions and prosecution by “a person” designated by the Secretary of State. The County Council (along with environmental health service colleagues in district/borough councils and the Police) is permitted under the legislation and designation letter issued by the Secretary of State on 22 March 2020 to undertake such enforcement action.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/875104/DH\\_SOS\\_Designation\\_Letter.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875104/DH_SOS_Designation_Letter.pdf)

3.3 The First Regulations were revoked on 26 March 2020 and replaced with the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (the “Second Regulations”). The Second Regulations were made under the same Public Health (Control of Disease) Act 1984 and last for six months. Regulation 8 makes provision for enforcement of restrictions to a “relevant person” which includes:

3.3.1 “a person designated by a local authority for the purposes of this regulation, or

3.3.2 A person designated by the Secretary of State for the purposes of this regulation”.

The designation made under the First Regulations remains in force for the Second Regulations. Regulations 4 and 5 set out the relevant provisions that local authority officers may enforce. The County Council (along with environmental health service colleagues in district/borough councils and the Police) is permitted under the legislation and designation letter to undertake such enforcement action: whilst the Council does not have powers to enforce the Public Health (Control of Disease) Act 1984, the Designation Letter is adequate in the circumstances to place an enforcement duty on the County Council.

3.4 It is recommended that the following changes be made to the specific delegations to the Corporate Director Business and Environmental Services in paragraph 4.4 of the Officers’ Delegation Scheme in the Constitution to make explicit reference to these powers:

...

(m) To exercise the functions as weights and measures and food authority and for trading standards and consumer protection, animal health, sports grounds and explosives licensing, listed in Part B of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 which are functions of County Councils and the powers under any ‘relevant statutory provision’ within the meaning of Part 1 of (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc Act 1974 to the extent that those functions are discharged otherwise than in the authority’s capacity as an employer in Part C of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 which are functions of County Councils, together with Parts III and IV of the North Yorkshire County Council Act 1991 (including any necessary enforcement action and the power to authorise any Trading Standards Officer, Enforcement Officer, Animal Health Inspector or other officer of the Trading Standards and Regulatory Services Unit to prosecute and to appear on the Council's behalf before a Magistrates’ Court).

- (n) To exercise all other functions for trading standards and consumer protection not included in (m) above including, but not limited to, the Council's functions under the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and associated Secretary of State Designation Letter dated 22 March 2020 (including the power to bring proceedings and take enforcement action).

...

#### **4.0 Financial Implications**

- 4.1 There are no significant financial impacts and this report simply seeks to allow appropriate and timely decision-making to take place whilst the Country is following a policy of Social Distancing.

#### **5.0 Legal Implications**

- 5.1 The legal impacts are highlighted in the report and this report seeks to ensure the continuance of appropriate legal decision making in light of the current circumstances.

#### **6.0 Equalities Implications**

- 6.1 There are no specific equality implications in this report.

#### **7.0 Reasons for Recommendations**

- 7.1 For the reasons set out in the body of this report, it is recommended that the changes to the Constitution set out below be approved.

#### **8.0 Recommendations**

For the reasons set out in the body of this report:

- 8.1 That the Chief Executive Officer amends the Officers' Delegation Scheme as set out in paragraph 3.4 of this report.

BARRY KHAN

Assistant Chief Executive (Legal and Democratic Services) and  
Monitoring Officer

County Hall  
NORTHALLERTON

30 March 2020

Author of report – Moira Beighton  
Presenter of report – Barry Khan