

REPORT TO THE EXECUTIVE

Report No. 10

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| Date of Meeting | 30 th August 2007 |
| Title of Report | Scheme of Delegation to Officers |
| Portfolio | Waste & Sustainability |
| Link to Corporate Priorities | Environment |
| Key Decision | No |
| Executive Workplan Ref | N/A |
| Public Report | Yes |

Summary of Report

To obtain delegated authority for officers to enforce the legislation relating to fly-tipping and related matters, including the duty of care.

Officer Recommendations

That the delegations to officers set out in Annex 1 to the Report be approved.

Other than those implications agreed with the relevant Officers and referred to below, there are no other implications associated with this report.

| Financial Implications | Legal Implications | Community & Environmental Implications | Human Resources Implications | Equality & Diversity Implications |
|------------------------|--------------------|--|------------------------------|-----------------------------------|
| None | Yes | Yes | None | None |

Contact Officer

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1. Introduction

- 1.1 At present officers have no delegated authority to deal with fly tipping and related matters.

2. Recommendations

- 2.1 To approve the delegations to officers set out at Annex 1 to the Report.

3. Options

- 3.1 To approve the delegations.
- 3.2 To refuse the delegations.
- 3.3 To amend the delegations

4. Fly Tipping

- 4.1 The relevant statutory powers relating to fly-tipping are contained in the Environmental Protection Act 1990 as amended by the Clean Neighbourhoods and Environment Act 2005.
- 4.2 Section 33 of the 1990 Act prohibits the depositing, treating, keeping or disposing of controlled waste in or on land except in accordance with a Waste Management Licence. There is also a provision that allows charges to be brought against the person who controls, or is in a position to control, the use of a vehicle, if that vehicle has been involved in fly-tipping. There are statutory defences available to persons charged with offences under this section.
- 4.3 Section 33A enables the court to make an order requiring a person convicted of an offence under Section 33 to pay the enforcing authority's investigation and enforcement costs and any costs associated with the seizure of vehicles involved in the offence.
- 4.4 Section 33B enables the court to make an order requiring a person convicted of an offence under Section 33 to pay any costs incurred by the authority in removing waste that has been illegally deposited or disposed of in or on land or in taking steps to eliminate or reduce the consequences of the deposit or both.
- 4.5 Section 33C enables the court to make an order depriving a person convicted of an offence under Section 33 of his rights to a vehicle (and its contents) if the court is satisfied that the vehicle was used in or for the purpose of the commission of the offence.

5. Duty of Care

- 5.1 S34 of the Environmental Protection Act 1990 as amended imposes a duty of care upon any person who imports, produces, carries, keeps, treats or disposes or controlled waste or who has control of such waste as a broker.
- 5.2 Those subject to the duty must try to achieve the following four things:-
- (a) To prevent any other person committing the offences of disposing of "controlled waste" or treating it, or storing it,
 - without a waste management licence; or

- breaking the conditions of the licence; or
- in a manner likely to cause pollution or harm to health;

- (b) To prevent the escape of waste, that is, to contain it;
- (c) To ensure that, if the waste is transferred, it goes only to an “authorised person” or to a person for “authorised transport purposes” these are listed in subsections (3) and (4) of section 34 of the Act.
- (d) When waste is transferred, to make sure that there is also transferred a written description of the waste, a description good enough to enable each person receiving it.
- to avoid committing any of the offences under (a) above; and
 - to comply with the duty at (b) to prevent the escape of wastes.

5.3 Those subject to the duty must also comply with regulations made by the Secretary of State under S34 (5) requiring records to be kept and made available for inspection.

5.4 It is an offence under S34 (6) to fail to comply with the duty of care or any regulations made under S34 (5).

6. Legal Implications

6.1 If approved, officers will be able to exercise all the powers set out in Annex 1, without further reference to Members.

6.2 The Executive will still be able to exercise the functions concurrently or on a referral back by officers.

7. Community & Environmental Implications.

7.1 The enforcement of the legislation will improve the quality of the environment especially in those areas where fly tipping has been a problem for some time.

8. Risk Analysis

8.1 There are no risks associated with this Report.

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| Appendices: | <ul style="list-style-type: none"> • Annex 1 – Proposed Scheme of Delegation |
| Background Documents Used in the Preparation of this Report: | <ul style="list-style-type: none"> • None |

Previous Decisions Connected with this Report

| Report | Committee & Date | Minute Reference |
|--|--------------------|------------------|
| <ul style="list-style-type: none"> • The Clean Neighbourhoods & Environment Act 2005 | Executive 20.04.06 | E221 |