

Regulatory Committee

Meeting to be held 29 January 2020

Part I

Electoral Division affected:
All

Amendments to the Terms of Reference – Regulatory Committee and Amendments to the Scheme of Delegation to Chief Officers - Delegation of Functions relating to dealing with Applications for Public Path Orders under the Highways Act 1980

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Executive Summary

This report relates to the addition of restricted byways into the terms of reference of the Committee and possible amendments to the Scheme of Delegation, the effect of which would provide for the delegation of functions relating to dealing with applications for public path orders for the diversion or extinguishment of footpaths, bridleways and restricted byways under the Highways Act 1980.

Recommendation

The Committee is asked:

(i) To approve that Section 2 of the terms of reference of the Regulatory Committee be amended to reflect the powers in connection with restricted byways and therefore read:

2. To exercise the following functions, duties and powers of the Council under the Highways Act 1980:
 - (a) to authorise creation of footpaths, bridleways or restricted byways by agreement under Section 25;
 - (b) to decide whether to make and promote to confirmation Orders for the creation of footpaths, bridleways and restricted byways under Section 26;
 - (c) to decide whether to make and promote to confirmation Orders for the extinguishment of footpaths, bridleways and restricted byways in accordance with Section 118;
 - (d) to decide whether to make and promote to confirmation rail crossing extinguishment orders under Section 118A;
 - (e) to decide whether to make and promote to confirmation special extinguishment orders for the purpose of preventing or reducing

- (f) crime or of protecting school pupils or staff under Section 118B; to decide whether to make and promote to confirmation public path extinguishment orders (Section 118ZA) and special extinguishment orders (Section 118C);
- (g) to decide whether to make and promote to confirmation Orders for the diversion of footpaths, bridleways and restricted byways in accordance with Section 119;
- (h) to decide whether to make and promote to confirmation rail crossing diversion orders under Section 119A;
- (i) to decide whether to make and promote to confirmation special diversion orders for the purpose of preventing or reducing crime or of protecting school pupils or staff under Section 119B;
- (j) to decide whether to make and promote to confirmation SSSI diversion orders under Section 119D;
- (k) to decide whether to make and promote to confirmation public path diversion orders (Section 119ZA) and a special diversion order (Section 119C(4));

(ii) Whether it would wish to delegate the power to refuse to make public path diversion or extinguishment orders under Sections 119 and 118 of the Highways Act 1980, to the Head of Service for Planning and Environment in the circumstances as set out within the report.

(iii) That, if approved, the decision to not make an Order in the circumstances listed below be no longer a function power or responsibility solely reserved to the Regulatory Committee, but instead able to be made by the Head of Service for Planning and Environment under the county council's Scheme of Delegation to Heads of Service (Appendix B in the Constitution), noting that the power to decide to make such an Order would still rest only with Regulatory Committee.

(iv) That, if approved, Section 2 of the terms of reference of the Regulatory Committee be further amended to read:

2. To exercise the following functions, duties and powers of the Council under the Highways Act 1980:

(c) to decide whether to make and promote to confirmation Orders for the extinguishment of footpaths, bridleways and restricted byways in accordance with Section 118, **with the exception of those which are delegated to the Head of Service for Planning and Environment.**

(g) to decide whether to make and promote to confirmation Orders for the diversion of footpaths, bridleways and restricted byways in accordance with Section 119, **with the exception of those which are delegated to the Head of Service for Planning and Environment.**

(v) That Full Council be asked to ratify the necessary changes to the Constitution as a result of the above.

Background and advice

Some specific county council functions rest with Regulatory Committee which can, under the Highways Act 1980, decide whether to approve agreements or make or not make Orders under the sections of the Highways Act 1980 referred to in its terms of reference. At present, the terms of reference refer to these various powers only referring to footpaths and bridleways. Since 2006, the various statutory provisions have also referred to restricted byways. Restricted byways are a type of highway introduced by the Countryside and Rights of Way Act 2000 being a right of way on foot, on horseback or leading a horse and a right of way in or on vehicles other than mechanically propelled vehicles.

It is therefore advised that the various powers in respect of restricted byways be added to the terms of reference.

In addition to the above change, a further change is suggested in connection with the powers in paragraphs (c) and (g) of Section 2 of the terms of reference, in connection with the power to decide to not make Orders under Sections 118 and 119 of the Highways Act 1980. Sometimes, applications raise significant difficulties in meeting the statutory and policy requirements for public path orders, and therefore would be unable to be recommended for approval by Committee in any case. It has previously been unclear at what point requests becomes applications which the current terms of reference require the Committee to consider these anyway. It is proposed that duly made applications (i.e. those made by submitting a completed current Lancashire County Council application form) raising any of the issues listed below, be properly considered instead by the Head of Service for Planning and Environment, and that he be delegated to decide that an Order not be made, if he considers it appropriate after taking relevant officer advice. As is currently the case, only Committee would be able to decide to make an Order. Any duly made application for which the Head of Service does not decide not to make an Order would be decided by Committee following a report by officers. The change removes unnecessary bureaucracy, without impacting on the Committee's powers to exercise its responsibilities and provides clarity for applicants.

The issues referred to above are as follows:

- Where a new route for a diversion under S119 would be, for a significant distance, less than Lancashire County Council's standard minimum width of 2m for footpath, 3m for bridleway or restricted byway;
- Where a new route for a diversion under S119 would be subject to the right to have unnecessary structures or unnecessarily restrictive structures;
- Where a new route for a diversion under S119 would be substantially less convenient in terms of alignment or gradient;
- Where a new route for a diversion under S119 would result in the enjoyment of the path as a whole being significantly reduced because a feature visible from the old route would no longer be visible;

- Where a footpath, bridleway or restricted byway proposed to be extinguished under S118 is currently used to more than a trivial extent and no new public route is proposed as an alternative;
- Where a footpath, bridleway or restricted byway proposed to be extinguished under S118 has only recently become available to the public and no new public route is proposed as an alternative;
- Where a footpath, bridleway or restricted byway proposed to be extinguished under S118 is unavailable to the public or there has been significant deterrent to public use and no new public route is proposed as an alternative.

Implications: e.g. Financial, Legal, Personnel, Human Rights, Crime and Disorder or Other

Legal

Any decision taken by the authority can be challenged but many decisions are delegated to the appropriate officer, and so long as matters are properly considered there is no increased risk for decisions being taken by a Head of Service.

If the Head of Service had any concerns about using this proposed delegation he could refer the matter to the Committee in any event.

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Ext
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None		
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Reason for inclusion in Part II, if appropriate

N/A