

Regulatory Committee
Meeting to be held on 21 April 2009

Part I - Item No. 10

Electoral Division affected:
All

Urgent Business

Commons Act 2006 –
Lead Responsibility for Enforcement Action under S41

Contact for further information:
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Executive Summary

This report, details the consultation undertaken with the District Councils and the Lancashire Local Access Forum regarding lead responsibility for enforcement action under S41 Commons Act 2006. Their responses are also contained within the report.

Due to the Lancashire Chief Executive's Group meeting being held on 17 April, their response to the consultation could only be received after the despatch date for this agenda. It is also the last meeting of the Committee before the Elections in June 2009. Therefore, because of these circumstances the Chair has agreed that the item be considered at the meeting as a matter of urgency.

Recommendation

The Committee is asked to:

- i. Note the responses of the District Councils and the Lancashire Local Access Forum regarding lead responsibility for enforcement action under S41 Commons Act 2006.
- ii. Note that a further report will be presented to the Committee on the delegation of the duties, functions and powers of the County Council under S41 and S45 of the Commons Act 2006.

Background and Advice

The Full Council at its meeting held on 11 December 2008, agreed that the duties, functions and powers of the County Council under S41 and S45 of the Commons Act 2006 be delegated to the Regulatory Committee. A copy of the revised Terms of Reference in respect of these additional duties, functions and powers was presented to the Committee on 4 March 2009. The Committee was asked to determine its preference on lead responsibility for enforcement action under S41 Commons Act 2006 and resolved that:

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- i. The revised Terms of Reference be noted.
- ii. The County Council prefers that it takes lead responsibility for action under S41 and that consultation take place with all District Councils via the Lancashire Chief Executives' Group on 17 April 2009 and the Lancashire Local Access Forum on 7 April 2009.
- iii. A further report be presented to the Committee presenting the outcome of the consultation.
- iv. A further report be presented to the Committee seeking a decision to be made in respect of which duties, functions and powers of the County Council under S41 and S45 of the Commons Act 2006 should be delegated to the Commons and Town Greens Sub Committee and/or Chief Officer as applicable."

The Committee will note that consultation has now taken place with the two bodies mentioned above and their responses are set out below.

The Committee is also asked to note that a further report on the delegation of duties, functions and powers under S41 and S45 of the Commons Act 2006 to the Commons and Town Greens Sub-Committee and/or the appropriate Chief Officer will be presented to a future meeting of the Committee.

Consultations

The Lancashire Local Access Forum received a report seeking their views on this matter on 7 April 2009. It was their opinion that as Lancashire County Council held the maps for Common Land it would therefore be appropriate for the County Council to take lead responsibility.

On Friday 17 April 2009, the Lancashire Chief Executive's Group also received a report seeking their opinion regarding this matter. They agreed that the County Council should take lead responsibility for action, subject to clarification as to the rationale behind the recommendation as presented to them. Clarification has now been provided.

Implications:

Risk management

No significant risks have been identified in relation to the proposals contained within this report.

Local Government (Access to Information) Act 1985
List of Background Papers

Paper	Date	Contact/Directorate/Tel
Report to Full Council	11 December 2008	Gary Halsall, County Secretary and Solicitor's Group, (01772) 533 419
Report to Regulatory Committee	4 March 2009	
Report to Lancashire Local Access Forum	7 April 2009	Jane Turner, County Secretary and Solicitor's Group, (01772) 532 813
Report to Lancashire Chief Executive's Group	17 April 2009	

Reason for inclusion in Part II, if appropriate

N/A

Extract from Minutes

Urgent Business

The Chair was of the opinion that the following item be considered at the meeting as a matter of urgency as the information presented in the report could only be received after the agenda despatch date and that this was the last meeting of the Committee before the Elections in June 2009:

Commons Act 2006 – Lead Responsibility for Enforcement Action under S41

The Committee received a report which detailed the consultation undertaken with the District Councils and the Lancashire Local Access Forum regarding lead responsibility for enforcement action under S41 Commons Act 2006.

It was reported that at their meeting on 7 April 2009, the Lancashire Local Access Forum was of the opinion that the County Council should take lead responsibility as the County Council held the maps in respect of Common Land.

At their meeting on 17 April 2009, the Lancashire Chief Executive's Group agreed that the County Council should take lead responsibility subject to clarification as to the rationale behind the recommendation as presented to them. The Committee was informed that clarification had since been provided.

A further report on the delegation of duties, functions and powers under S41 and S45 of the Commons Act 2006 to the Commons and Town Greens Sub Committee and/or appropriate Chief Officer would be presented at a future meeting of the Regulatory Committee.

62. Resolved:

That,

- i. The responses of the District Councils and the Lancashire Local Access Forum regarding lead responsibility for enforcement action under S41 of the Commons Act 2006 be noted.
- ii. A further report be presented to the Committee on the delegation of duties, functions and powers of the County Council under S41 and S45 of the Commons Act 2006.*

** A report was subsequently presented to the Committee in November 2009 – see next page for report and extract from Minutes.*

Part I - Item No. 11

Electoral Division affected:
All

Change to Scheme of Delegation re Functions and Powers under the Commons Act 2006: Unauthorised works on Common Land – Enforcement

Contact for further information: Roy Jones, (01772) 533394, Office of the Chief Executive, Roy.jones@lancashire.gov.uk

Executive Summary

A proposal for an addition to the Scheme of Delegation to Chief Officers in relation to the functions and powers of the County Council under S41 of the Commons Act 2006.

Recommendation

The Committee is asked to delegate the functions and Powers under S41 of the Commons Act 2006 for the enforcement of unauthorised works on Common Land to the Executive Director for the Environment in consultation with the County Secretary and Solicitor.

Background and Advice

The Full Council at its meeting held on 11 December 2008, agreed that the functions and powers of the County Council under S41 of the Commons Act 2006 be delegated to the Regulatory Committee.

S41 states that where works are carried out on registered Common Land without consent from the Secretary of State or not in accordance with such a consent, “any person” may apply to the County Court. The Court may make an Order for removal of the works and restoration of the land or for the works to be carried out in a particular manner and subject to particular conditions. This power to apply for an enforcement order against unlawful works on Common Land is therefore able to be exercised by the County Council.

The powers under S41 are available to all tiers of authorities and guidance from DEFRA advised Registration Authorities that in areas without unitary government, district and county councils should co-operate to ensure lead responsibility for enforcement action is clearly assigned and understood.

The Regulatory Committee in considering this matter in January 2009 resolved that it preferred that it took lead responsibility for action under S41 and that consultation take place with all District Councils via the Lancashire Chief Executives' Group on 17 April 2009 and the Lancashire Local Access Forum on 7 April 2009.

In April 2009, the Committee received a report which detailed the consultation undertaken with the District Councils and the Lancashire Local Access Forum regarding lead responsibility for enforcement action under S41 Commons Act 2006.

It was reported that at their meeting on 7 April 2009, the Lancashire Local Access Forum was of the opinion that the County Council should take lead responsibility as the County Council held the maps in respect of Common Land.

At their meeting on 17 April 2009, the Lancashire Chief Executive's Group agreed that the County Council should take lead responsibility subject to clarification as to the rationale behind the recommendation as presented to them. The Committee was informed that clarification had since been provided.

In noting these responses the Committee asked that a further report on the delegation of functions and powers under S41 of the Commons Act 2006 to the Commons and Town Greens Sub Committee and/or appropriate Chief Officer would be presented at a future meeting of the Regulatory Committee.

As reported to the Committee in April 2009, it has been agreed that Lancashire County Council should be the lead authority, within the 2 tier system in Lancashire, for enforcement matters relating to common land. It is suggested that to ensure that enforcement action is taken in appropriate cases and without unnecessary delay, the Enforcement Function should be delegated to officers. This could include any decisions following officer investigations to take court action.

If an alleged encroachment or other works is brought to the attention of the County Council there is a need to: consult the Commons Registers and Maps, to assess whether unauthorised works do affect common land; to contact the landowner and others and discuss with a view to resolving the matter; to assess whether action be taken, and if appropriate seek the Order from the court. It may be considered that officers in the Environment Directorate together with Commons Registration officers in Legal Services will be appropriate officers to carry out these functions and powers.

Following discussions with the relevant officers within the Environment Directorate and Property Group it is suggested that the functions and Powers under S41 of the Commons Act 2006 for the enforcement of unauthorised works on Common Land be delegated by the Regulatory Committee to the Executive Director for the Environment in consultation with the County Secretary and Solicitor.

Consultations

The Lancashire Local Access Forum and the Lancashire Chief Executive's Group have been consulted on this proposal as outlined in the report.

Alternative Options to be Considered

- i. To not delegate power and functions.
- ii. To delegate to the Commons and Town Greens Sub-committee.
- iii. To delegate the functions to Chief Officers save the decision to take court action which could be taken by the Committee.
- iv. To delegate the functions and power to take court action including the decision to take such action to Chief Officers as suggested in the report.

Implications:

This item has the following implications, as indicated:

Nil

Risk management

If the function and power to take court action is not delegated, it will remain with the Regulatory Committee, and investigating and taking action in respect of unauthorised work on common land will be more difficult. It is noted that the Districts are looking to the County Council to take the lead in these matters.

Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
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Nil

Reason for inclusion in Part II, if appropriate

N/A

Extract from Minutes

Change to Scheme of Delegation re Functions and Powers under the Commons Act 2006: Unauthorised works on Common Land – Enforcement

A report was presented on a proposal for an addition to the Scheme of Delegation to Chief Officers in relation to the functions and powers of the County Council under S41 of the Commons Act 2006.

The Full Council at its meeting held on 11 December 2008, agreed that the functions and powers of the County Council under S41 of the Commons Act 2006 be delegated to the Regulatory Committee.

S41 stated that where works were carried out on registered Common Land without consent from the Secretary of State or not in accordance with such a consent, “any person” could apply to the County Court. The Court could make an Order for removal of the works and restoration of the land or for the works to be carried out in a particular manner and subject to particular conditions. This power to apply for an enforcement order against unlawful works on Common Land was therefore able to be exercised by the County Council.

The powers under S41 were available to all tiers of authorities and guidance from DEFRA advised Registration Authorities that in areas without unitary government, district and county councils should co-operate to ensure lead responsibility for enforcement action was clearly assigned and understood.

The Regulatory Committee in considering this matter in January 2009 resolved that it preferred that it took lead responsibility for action under S41 and that consultation took place with all District Councils via the Lancashire Chief Executives' Group on 17 April 2009 and the Lancashire Local Access Forum on 7 April 2009.

In April 2009, the Committee received a report which detailed the consultation undertaken with the District Councils and the Lancashire Local Access Forum regarding lead responsibility for enforcement action under S41 Commons Act 2006.

It was reported that at their meeting on 7 April 2009, the Lancashire Local Access Forum was of the opinion that the County Council should take lead responsibility as the County Council held the maps in respect of Common Land.

At their meeting on 17 April 2009, the Lancashire Chief Executive's Group agreed that the County Council should take lead responsibility subject to clarification as to the rationale behind the recommendation as presented to them. The Committee was informed that clarification had since been provided.

In noting these responses the Committee asked that a further report on the delegation of functions and powers under S41 of the Commons Act 2006 to the Commons and Town Greens Sub Committee and/or appropriate Chief Officer would be presented at a future meeting of the Regulatory Committee.

As reported to the Committee in April 2009, it had been agreed that Lancashire County Council should be the lead authority, within the 2 tier system in Lancashire, for enforcement matters relating to common land. It was suggested that to ensure that enforcement action was taken in appropriate cases and without unnecessary delay, the Enforcement Function should be delegated to officers. This could include any decisions following officer investigations to take court action.

If an alleged encroachment or other works was brought to the attention of the County Council there was a need to: consult the Commons Registers and Maps, to assess whether unauthorised works did affect common land; to contact the landowner and others and discuss with a view to resolving the matter; to assess whether action be taken, and if appropriate seek the Order from the court. It would be considered that officers in the Environment Directorate together with Commons Registration officers in Legal Services would be appropriate officers to carryout these functions and powers.

Following discussions with the relevant officers within the Environment Directorate and Property Group it was suggested that the functions and Powers under S41 of the Commons Act 2006 for the enforcement of unauthorised works on Common Land would be delegated by the Regulatory Committee to the Executive Director for the Environment in consultation with the County Secretary and Solicitor.

The Lancashire Local Access Forum and the Lancashire Chief Executive's Group had been consulted on this proposal as outlined in the report.

Alternative options to be considered were as follows:-

- i. To not delegate power and functions.
- ii. To delegate to the Commons and Town Greens Sub-committee.
- iii. To delegate the functions to Chief Officers save the decision to take court action which could be taken by the Committee.
- iv. To delegate the functions and power to take court action including the decision to take such action to Chief Officers as suggested in the report.

31. Resolved: That the Committee decided to delegate the functions and Powers under S41 of the Commons Act 2006 for the enforcement of unauthorised works on Common Land to the Executive Director for the Environment in consultation with the County Secretary and Solicitor.