

Report to:	Audit and Governance Committee Adjourned Annual Council	Date of Meeting:	Wednesday 17 March 2021 Thursday 20 May 2021
Subject:	Amendments to the Constitution - Highways Act 1980 and Counter Terrorism and Security Act 2015		
Report of:	Executive Director of Corporate Resources and Customer Services	Wards Affected:	(All Wards);
Portfolio:	Locality Services and Communities and Housing		
Is this a Key Decision:	No	Included in Forward Plan:	N/A
Exempt / Confidential Report:	No		

Summary:

The report recommends amendments to the Council's Constitution to allow for the authority to enter into s38 and s278 Highways Act 1980 agreements and to make and amend Traffic Regulation Orders with regards to Disabled Parking Places outside people's homes, to be delegated to the Head of Service for Highways and Public Protection.

The report also seeks to amend the Council's Constitution to detail that the Council's responsibilities under the Counter Terrorism and Security Act 2015 are to be the responsibility of the Cabinet Member for Communities and Housing.

Audit and Governance Committee

Recommendations:

(1) That Committee recommend to Council that the Constitution be amended to allow for the authority to enter into agreements under s38 and s278 Highways Act 1980 and the making and amending Traffic Regulation Orders in regards to Disabled Parking Places outside an individual's property to be delegated to the Head of Service for Highways and Public Protection.

(2) That Committee recommend to Council that the Constitution be amended to provide that the Council's responsibilities under the Counter Terrorism and Security Act 2015 be the responsibility of the Cabinet Member for Communities and Housing.

Council

Recommendations:

(1) That the Constitution be amended to allow for the authority to enter into agreements under s38 and s278 Highways Act 1980 and the making and amending of Traffic Regulation Orders with regards to Disabled Parking Places outside an individual's property to be delegated to the Head of Service for Highways and Public Protection.

(2) That the Constitution be amended to provide that the Council's responsibilities under the Counter Terrorism and Security Act 2015 be the responsibility of the Cabinet Member for Communities and Housing.

Reasons for the Recommendation(s):

It is considered more expedient and efficient for the Head of Service for Highways and Public Protection to have delegated authority to enter into agreements under s38 and s278 Highways Act 1980 and the making and amending Traffic Regulation Orders in regards to Disabled Parking Places outside an individual's property.

To comply with the 2020 statutory guidance issued pursuant to the Counter Terrorism and Security Act 2015.

Alternative Options Considered and Rejected:

The option to make no changes was rejected as it would hamper good decision making within the Council with respect to recommendation (1) and the Council would not be adhering to statutory guidance with respect to recommendation (2).

What will it cost and how will it be financed?

(A) Revenue Costs

None

(B) Capital Costs

None

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets):
None
Legal Implications:
Counter Terrorism and Security Act 2015 Highways Act 1980

Equality Implications:
There are no equality implications.

Contribution to the Council's Core Purpose:

Protect the most vulnerable: Compliance with the Council's statutory duties under the Counter Terrorism and Security Act 2015 will help protect and prevent people from being drawn into terrorism.
Facilitate confident and resilient communities:
Commission, broker and provide core services: To improve the decision making processes for the Council in relation to the provision of core services in relation to the Highways Act 1980 and Traffic Regulation Orders.
Place – leadership and influencer:
Drivers of change and reform:
Facilitate sustainable economic prosperity:
Greater income for social investment:
Cleaner Greener

What consultations have taken place on the proposals and when?

(A) Internal Consultations

The Executive Director of Corporate Resources and Customer Services (FD.6332/21.) and the Chief Legal and Democratic Officer (LD.4433/21) have been consulted and any comments have been incorporated into the report.

Cabinet Member – Locality Services <http://smbc-modgov-03/mgIssueHistoryHome.aspx?Id=63884&Opt=0>

(B) External Consultations

None

Implementation Date for the Decision

Immediately following the Committee meeting.

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Appendices:

There are no appendices to this report

Background Papers:

There are no background papers available for inspection.

1. Section 38 & section 278 Highways Act 1980 and Disabled Parking Places.

- 1.1. The Council's current scheme of delegation, lies with the Cabinet Member to grant approval for the Council to enter into agreements pursuant to section 38 & section 278 of the Highways Act 1980. The Cabinet Member also has the authority to approve new or amendments to existing Traffic Regulation Orders in respect to Disabled Parking Places outside an individual's home.
- 1.2. The nature of these agreements follow standard procedures and are seldom controversial. In the case of section 38 & section 278, the agreements merely facilitate approvals already gained through the planning process.
- 1.3. Matters within the Cabinet Member portfolio for Locality Services are dealt with in different ways dependent on whether they are considered to be executive or non-executive functions and/or whether they significant in terms of budget or policy.
- 1.4. The decision to approve entering into Agreements between the Council and a developer, pursuant to section 38 and section 278 of the Highways Act 1980, are currently considered to be executive with the delegated powers falling to Cabinet Member.
- 1.5. Section 38 Highways Act 1980 Agreements enable a local highway authority to enter into an agreement with a developer to adopt a highway, provided that the highway has been constructed to a specified standard and to the satisfaction of the local highway authority. A Section 278 Highways Act 1980 Agreement is an agreement between the Council and a developer that enables modifications to the existing highway network to facilitate or service a development.

- 1.6. Both agreements set out the financial liabilities and implications and stipulate that all costs will be borne by the applicant. This includes fees for the supervision and construction of the respective site. There are also protections added to any agreement in the form of bonds or surety's that should the developer cease trading ensures the cost of completing the works does not fall to the Authority.
- 1.7. The Councils scheme of delegation must follow that prescribed in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended). Under this legislation, 'Local Choice Functions' (which include section 38 and 278 agreements) are functions that the Council can decide whether it is executive (Cabinet) or non-executive. In Sefton, the Constitution has put the decisions as those of the Executive.
- 1.8. Therefore, if it was considered appropriate, it would be legally permissible to delegate the authority to approve the entering into section 38 and section 278 agreements to Head of Service under the 2000 Regulations. However, as it stands, this would require amending the Constitution to make it permissible within the authority.
- 1.9. The Council receives frequent requests for Disabled Parking Places to be established outside of individuals' homes. Checks are made to ensure that a vehicle is registered to a disabled person at the property. A letter is requested from the applicant's doctor to confirm their mobility range and visits are made to assess if the bay is required. On these visits an officer will assess if parking is an issue which could mean that the resident is not able to park close to their home within their mobility range. If the applicant's vehicle is observed to always be parked close to their property then it is unlikely that a bay would be provided, but if they are unable to park within their mobility range of the property then the bay would be approved.
- 1.10. Cabinet Member approval has been required in order to advertise these proposals, but it is now proposed that this approval be given by the Head of Service through a Chief Officer's report.
- 1.11. Any objections received would still be reported in the normal way through the Licensing and Regulatory Committee.
- 1.12. Should the authorisation be delegated to Head of Service, officers will continue to advise Cabinet Member on a quarterly basis of approvals granted, and also discuss any particularly sensitive issues on an ad hoc basis prior to approval through the Chief Officer Report process.

2. Counter Terrorism and Security Act 2015

- 2.1. Section 26 of the Counter Terrorism and Security Act 2015 (CT&S) Act 2015 places a duty on certain bodies in the exercise of their functions to have '*due regard to the need to prevent people from being drawn into terrorism*'.

2.2. Section 36 of the CT&S Act sets out the duty on local authorities and partners of local panels to provide support for people vulnerable to being drawn into terrorism. In England and Wales, this duty is met through Channel panels.

2.3. In recognition of the importance of this duty the statutory guidance *Channel Duty Guidance: Protecting people vulnerable to being drawn into terrorism*, 2020 states that as a designated statutory duty, the requirements of Channel should be reflected in relevant local policy, guidance and the local authority's constitution.

2.4. The Community Safety Partnership has governance responsibility for the Channel Panel and the Community Safety officer reports on Prevent activity at each meeting.

3. Channel Panel responsibilities

3.1. Channel is designed to work with individuals of any age who are at risk of being exploited by extremist or terrorist ideologies. For those cases where it is assessed there is a risk of radicalisation, a multi-agency Channel panel chaired by the local authority will meet to discuss the referral and decide on what tailored package of support can be offered to the individual. Participation in Channel is voluntary and confidential and is not a criminal sanction.

3.2. The Channel panel is chaired by the local authority and includes a variety of statutory partners such as the police, children's services, social services, education professionals and mental health care professionals. If a Channel intervention is required, the panel works with local partners to develop an appropriate tailored support package. The type of support available is wide-ranging, and can include help with education or career advice, dealing with mental or emotional health issues, drug/alcohol abuse, online safety training for parents and specialist mentoring from a Channel Intervention Provider. The support package is monitored closely and reviewed regularly by the Channel panel.

3.3. The CT&S Act is intended to secure effective local cooperation and delivery of Channel in all areas, and build on the good practice already operating in many areas. In practice this means:

- local authorities will have a Channel panel in their area
- the local authority will provide the panel chair and deputy chair
- the panel will develop a support plan for individuals adopted as Channel cases
- where Channel is not appropriate, the panel will consider alternative forms of support, including health care and social care services
- the panel will ensure accurate records are kept detailing the support plan, agreed actions and decision-making and outcomes
- all partners of a panel as far as is appropriate and reasonably practicable, will cooperate with the police and the panel in the carrying out of their functions

4. To adhere to the statutory guidance it is recommended that the Constitution be amended to reflect that the Cabinet Member – Communities and Housing has the responsibility for the Council's responsibilities under the CT&S Act 2015.