



REPORT TO: POLICY AND RESOURCES COMMITTEE ON 9 APRIL 2019

SUBJECT: DELEGATION OF TRADING STANDARDS POWERS TO EAST AYRSHIRE TRADING STANDARDS

BY: CORPORATE DIRECTOR (ECONOMIC DEVELOPMENT, PLANNING & INFRASTRUCTURE)

1. REASON FOR REPORT

- 1.1 The Committee is asked to consider the delegation of powers afforded to Moray Council Trading Standards to East Ayrshire Trading Standards for the purpose of acting as host authority for Trading Standards Scotland (TSS). The principal purpose of the delegation is to ensure that TSS can continue to process personal data for law enforcement purposes under Part 3 of the Data Protection Act 2018.
- 1.2 This report is submitted to Committee in terms of Section III (B) (39) of the Council's Scheme of Administration relating to the functions of the Council under the Local Government (Scotland) Act 1973.

2. RECOMMENDATION

- 2.1 **It is recommended that the Committee:**
- (i) notes the content of the report; and**
 - (ii) agrees the delegation of Trading Standards Powers to East Ayrshire Council Trading Standards.**

3. BACKGROUND

- 3.1 Trading Standards Scotland (TSS) is the national team for Trading Standards in Scotland. The team is funded by the UK Department for Business, Energy and Industrial Strategy and managed by the Convention of Scottish Local Authorities (COSLA). TSS coordinates and enforces cross boundary and national casework relating to Trading Standards Law. It also has an intelligence gathering and analysis function and hosts and administers Memex, the Trading Standards Intelligence database. TSS is a resource

intended to add capacity to local authority Trading Standards, not replace them.

- 3.2 Since May 2018, the processing of personal data for law enforcement purposes has been covered by Part 3 of the Data Protection Act 2018 (The Act). The Act only permits the processing of personal data for those purposes by bodies that qualify as a “competent authority”. Councils will qualify as a competent authority because they have law enforcement functions relating to matters such as trading standards and consumer protection. These functions include a duty to investigate and enforce potential offences under a variety of Trading Standards legislation including but not limited to the Consumer Protection from Unfair Trading Regulations 2010, the Trade Marks Act 1994 and the Tobacco and Primary Medical Services (Scotland) Act 2010. TSS has no statutory functions conferred directly on it, therefore its processing of personal data for law enforcement purposes could be challenged as unlawful.
- 3.3 In May 2018, Local Authorities received a letter from Brodies LLP Solicitors, acting on behalf of TSS. They proposed that all 32 Local Authorities in Scotland appoint all TSS Officers as an Officer of the Council, and then delegate the Council’s functions to each TSS officer (via the Chief Officer of TSS). This proposal was not widely accepted and subsequently rejected.

4. PROPOSAL

- 4.1 A second proposal has now been put forward. The proposal is that individual TSS Officers will only be authorised by one “lead” Council, namely East Ayrshire. All other Authorities would then delegate their powers to East Ayrshire. East Ayrshire would then appoint named Officers of TSS as Officers of East Ayrshire and then delegate the collective functions of all 32 Authorities to them. This allows TSS to say it is exercising statutory functions relating to law enforcement and therefore a competent authority for the lawful processing of data. The Memex database would consequently be deemed to be under the data control of all 32 Councils plus TSS jointly.

5. SUMMARY OF IMPLICATIONS

(a) Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))

The Corporate Plan prioritises the promotion of economic development and growth in Moray to ensure a thriving and vibrant economy for its citizens. Businesses flourish on a level playing field and the main function of Trading Standards is to ensure that businesses trade fairly. Similarly, LOIP prioritises growing a diverse and sustainable economy so that Moray can be recognised as an outward facing community with a thriving and well connected commercial base. Much of Trading Standards work is intelligence led and the continued use of Memex is an essential tool in identifying rogue traders.

(b) Policy and Legal

Section 56(1) of the Local Government (Scotland) Act 1973 allows a

Local Authority to delegate certain Trading Standards functions to another Local Authority in Scotland. Section 56(3) allows that Authority to delegate the powers in turn to an Officer. There would be no requirement to amend the current Moray Council Scheme of Delegation.

(c) Financial implications

None identified.

(d) Risk Implications

These delegated powers would not just solely facilitate TSS' role of data controller in respect of Memex but could also apply to operational purposes. They would not preclude Moray Council Trading Standards from exercising these functions. The risks however are small and the approach does not entail any expansion of TSS's operational remit. TSS will produce a memorandum of understanding or equivalent to set out how any operational engagement with local Trading Standards teams would work. They will also develop a competency framework for their Officers, many of which have been Trading Standards or Police Officers. There would also be an indemnity from COSLA to East Ayrshire against the possibility of liability being assigned to East Ayrshire, which would centralise the risk.

(e) Staffing Implications

None identified.

(f) Property

None.

(g) Equalities/Socio Economic Impact

No Equality Impact Assessment is required for this report.

(h) Consultations

The Corporate Director (Economic Development Planning & Infrastructure), the Head of Development Services, the Legal Services Manager, the Equal Opportunities Officer and Democratic Services Manager have been consulted and comments received have been incorporated into the report.

6. CONCLUSION

6.1 The hosting and administration of the Memex database by TSS is an essential tool for all Local Authority Trading Standards Services.

6.2 If the delegation is safely managed, then the benefits to both TSS and Local Authority Trading Standards are significant.

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Background Papers:

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