

SELECTION & CONSTITUTIONAL REVIEW COMMITTEE
17 FEBRUARY 2022
CABINET 24 FEBRUARY 2022
REPORT OF SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

ASHFORD PORT HEALTH – DELEGATIONS

1. Ashford Borough Council will provide a Port Health Service at the Sevington Inland Border Facility starting in 2022. It is expected to be one of the biggest facilities in the UK. It is intended by DEFRA that the Sevington facility will be designated as a Border Control Point/Post (BCP) following physical and other checks currently being undertaken by the relevant authorities
2. As a result of EU Transition, the Council will become responsible for checks on imports of products of animal origin (POAO), high risk foods not of animal origin (HRFNAO) and animal by-products not for human consumption, imported from the EU via the Channel Tunnel. Checks may also be required under legislation relating to organic products, certain plastic kitchenware and certain fish products, including under the IUU regime (Illegal, Unreported and Unregulated Fishing Order 2009). It is also possible the Council will be required to carry out all or any of the above checks for a period on imports to Dover or on behalf of other agencies pursuant to specific arrangements.
3. The Council has not exercised the above functions before. It is therefore necessary to formally delegate the necessary powers to the Head of Port Health. The attached ANNEX sets out the relevant provisions.
4. Regulatory and enforcement functions are normally “non-executive” functions under the relevant Functions Regulations. However in order to ensure all possibilities are covered I recommend that
 - (i) Cabinet approves the delegated powers set out in the Annex in so far as they relate to “executive functions”
 - (ii) S&CR Committee recommends to Council approval of the delegated powers set out in the ANNEX in so far as the powers relate to non-executive functions

Terry Mortimer
Solicitor to the Council and Monitoring Officer

ANNEX

Head of Port Health

Powers Relating to Functions, whether those are Executive, Non-Executive, Incidental to Either or Administrative

The power to exercise and perform on behalf of the Council any statutory or related power or duty vested in the Council as a competent authority or local authority (however so designated, including any power or duty arising from the designation of a port health authority or border control post, howsoever termed or done), or any power or duty vested in the Council by virtue of any arrangement with any other public body (whether done by delegation, by agreement under Section 78 of the Natural Environment and Rural Communities Act 2006, or otherwise) as to the discharge by the Council of any of that body's powers or duties, as regards:

- any sanitary, phytosanitary or similar (e.g. fish catch certificate or organic origin) checks (to include not merely the checks themselves, but the taking of any enforcement action, including by way of the issue of notices or other formal documents) and related functions to be done on imported consignments of food or of goods subject to checks similar to those on food (e.g. plastic kitchenware from China).

Without prejudice to the generality of the preceding paragraph and bullet point, the subject matter of the powers and duties which the Head of Port Health shall have power to exercise and perform shall extend to (but not be limited to) all steps which the Council may be empowered (by whatever means) to take under any of the following legislation, or such legislation as may replace or amend it:

- The Trade in Animals and Related Products Regulations 2011
- The Official Feed and Food Controls (England) Regulations 2009
- All retained EU legislation, including in particular, but not limited to:
 - All the legislation identified (or, alternatively, as once identified, should there be amendment) in Schedule 1 of the aforesaid 2009 Regulations, especially 'Regulation 2017/625' and 'The Regulation 2017/625 package' as there defined
 - Commission Implementing Regulation (EU) 2016/6
 - Commission Implementing Decision 884/2011/EU
- The Food Safety Act 1990 and any regulations made thereunder
- The Sea Fishing (Illegal, Unregulated and Unreported Fishing) Order 2009

- The Plastic Kitchenware (Conditions on Imports from China) (England) Regulations 2011
- The Organic Products Regulations 2009

Without prejudice to the generality of all the preceding paragraphs as to the powers and duties vested in the Head of Port Health, those powers shall extend to:

- authorising, directing, organising and superintending other officers of the Council to perform on a delegated basis the Council's powers and duties as to the said checks;
- appointing any officer of suitable qualification and experience to any position (including, but not limited to, appointment as an Official Veterinary Surgeon) by virtue of which appointment that officer would be empowered to exercise any power, or obligated or entitled to perform any duty, as to the types of checks under the types of legislation addressed in any part of the preceding two paragraphs, and directing, organising and superintending the work of any such appointed officers; and
- authorising and instructing legal services and/or external legal representatives to initiate or defend legal proceedings on behalf of the Council arising out of the checks and legislation in question.

Without prejudice to the generality of all the preceding paragraphs as to the powers and duties vested in the Head of Port Health, those powers and duties shall be exercisable in the event of that post holder's ill health or incapacity, or whilst that post is vacant, by the immediately deputy officer(s), or such other officers of the Council as the Chief Executive may nominate generally or in respect of specific elements of those powers and duties.