

## RESOURCES PLANNING WORKING GROUP

11 JUNE 2010

ITEM NO 8

### STATUTORY POWERS AND DUTIES

**PORTFOLIO HOLDER :** Cllr E Woodburn

**LEAD OFFICER :** Brian Dinsdale, Interim Chief Executive

**REPORT AUTHOR:** Martin Jepson, Head of Legal and Democratic Services

#### ***Purpose***

The purpose of this report is to explain how use is to be made of the recent paper produced by the Head of Legal and Democratic Services on District Council's Statutory Powers and Duties.

#### ***Recommendation***

RPWG is asked to note the contents of this report.

### **1. Introduction**

1.1 The Resources Planning Working Group received a paper from the Head of Legal and Democratic Services on 29<sup>th</sup> January 2010 setting out District Councils' statutory powers and duties. The Group asked that the paper be used as part of the Service Review process by requiring Service Heads to consider the need for the services they provide and the level at which they provide them. This report has been produced to inform members of the Group how that paper will fit into the Service review process.

### **2. Service Review**

2.1 As part of Stage 2 of the Service Review timetable, to be completed by the end of June 2010 section 3 is headed " Minimum Service" and says as follows:-

" Using the list of statutory and discretionary functions and considering contract commitments, provide a description of the minimum functions/ service level that could be provided. An approximate budgetary cost should be given for staff, operating budget, contractual commitments and income."

2.2 It is envisaged that the paper will be used at this point to inform the process. Copies of the paper have been provided to all members of the Managers group to assist them. For ease of reference a copy is also attached to this report.

List of Background Papers- None

Appendices- List of powers and duties

Consultees- Interim Chief Executive, s.151 Officer



## **POWERS AND DUTIES OF DISTRICT COUNCILS**

### **Distinction between a Power and a Duty**

Councils' powers and duties come from legislation. A Power to do something is where a Council is able to carry out a function but does not have to. A typical word used in legislation is "may". In other words the Council does not have to carry out a Power. A duty to do something is where a Council must carry out a function. Typical words used in legislation are "must" and "shall". In other words the Council has to do something if there is a statutory duty to do it. This paper will concentrate on duties of District Councils but will also touch upon powers.

### **Statutory Officers**

Each District Council must appoint the following:-

A Head of Paid Service- s.4 Local Government and Housing Act 1989- " It shall be the duty of every relevant authority... to designate one of their officers as the head of their paid service; and... to provide that officer with such staff, accommodation and other resources as are,, in his opinion, sufficient to allow his duties... to be performed..."

Broadly, the duties are to report on staffing levels where the Head of Paid Service considers it appropriate.

A Monitoring Officer- s.5 Local Government and Housing Act 1989- " it shall be the duty of every relevant authority... to designate one of their officers ( to be known as " the monitoring officer") as the officer responsible for performing the duties imposed by this section."

Broadly, the duties are to report on contraventions of legislation and maladministration.

A s.151 Monitoring Officer-s.151 Local Government Act 1972- "... every local authority shall make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs". Under s.114 Local Government Finance Act 1988 there are overlapping duties with the Monitoring Officer for the " Chief Finance Officer"/ s.151 Monitoring Officer to report to members on contraventions.

### **Legal and Democratic Services**

- "Each of the following authorities.. the council of any district...shall be a registering authority for the purposes of this Act....There shall continue to be kept for the area of each registering authority... a local land charges register, and...an index whereby all entries made in that register can readily be traced." There is also a duty to register registrable charges.	<u>Local Land Charges</u> - s.3 Local Land Charges Act 1975
"...A Licensing authority must carry out its functions under this Act with a view to promoting the licensing objectives..." Functions include the granting of Personal and Premises Licences s.6 "Each Licensing authority must establish a Licensing Committee..." s.8"...each Licensing authority must keep a register..." s.10 "... A Licensing committee may arrange for the discharge of any functions exercisable by it... by a sub-committee established by it or... by an officer of the licensing authority."	<u>Licensing</u> - s.4 Licensing Act 2003

Duty on Council to issue Premises licences and gaming permits: duty to have Licensing Committee deal with such items. .Duty to supply information to Gambling Commission	<u>Gambling-</u> s.2 and s.29 Gambling Act 2005- Betting
Power/Duty to licence Hackney Carriages.	<u>Licensing-</u> S47 Local Government (Miscellaneous Provisions) Act 1976
Duty to licence drivers of hackney carriages and private hire vehicles.	S53 Local Government (Miscellaneous Provisions) Act 1976
Must send copies of byelaws to Parish Councils.	S236 Local Government Act 1972
Duty to process data fairly, legally, accurately and securely.	Data Protection Act 1998
Audit Commission can require any body subject to audit to provide such information as it might reasonably require.	Information to Audit Commission- -S48 Audit Commission Act
Duties in respect of House to House Collections Act and power to make regulations in respect of street collections. Both sets of legislation are in the process of being replaced by the Charities Act 2006 provisions which will impose a duty to issue permits in both cases.	Street and House to House Collections. House to House Collections Act 1939 and Police Factories etc ( Miscellaneous Provisions) Act 1916
Duty to compile an Electoral Register for the area.	Electoral Registration- Representation of the People Act 1983
Duty to respond to requests for information under the Freedom of Information Act	Freedom of Information Act 2000
Maintenance of list of politically restricted posts	Local Government and Public Involvement in Health Act 2007

### **Development Operations**

May carry out works as necessary to remove the danger from excavations.	S25 Local Government (Miscellaneous Provisions) Act 1976
Powers to remedy dangerous buildings in emergency and non-emergency situations.	s.78 and s.79 Building Act 1984

Power to develop land.	S2 Local Authorities (Land) Act 1963
Power to make advances in pursuance of building agreements.	S4 Local Authorities (Land) Act 1963
Power to provide garage accommodation.	S5 Local Authorities (Land) Act 1963
Power to make Tree Preservation Orders.	S198 Town & Country Planning Act 1990
Power to Compulsory acquire land for development and other planning purposes.	S226 Town & Country Planning Act 1990
May recover reasonable sums where a LA is empowered to carry out works or do anything on or in relation to any land or building.	S36 Local Government Act 1974
Where an application is made to a Local Planning Authority they can grant planning permission with or without conditions or refuse the application. They <u>must</u> have regard to the Development Plan, and other material consideration.	Planning Applications - S70 – Town and Country Planning Act 1990
The functions of a local planning authority if determining applications for planning permission shall be exercised by the district planning authority – except for County matters.	Planning Applications – Sch1, Para 3 Town and Country Planning Act 1990
It is the duty of local authorities to carry ‘this Act’ into execution in their area. It is the function of local authorities to enforce building regulations in their area.	Building Regulations – S.91 Building Act 1984
A duty to keep a register of prescribed information and documents.	Building Regulations -S.91A Building Act 1984
Power to provide Museums and Art Galleries. - note- many artefacts ( 35,000) held in trust on behalf of the community	Museum – S12 Public Libraries and Museums Act 1964
Duties to consider proposals in Listed Buildings and for Conservation Areas. Duty to review Conservation Areas Duty to enforce legislation	Listed Buildings and Conservation Areas - s 4, s 13 and s 14 Planning (Listed Buildings and Conservation Areas) Act 1990
Duty to compile and maintain the Planning Register	Section 69 Town and Country Planning Act 1990
Duty to compile and maintain the Advertisements Register	Town and Country Planning ( Control of Advertisements ) ( England) Regulations 2007
Duty to compile and maintain the Enforcement Register	Section 188 Town and Country Planning Act 1990
Duty to consider Planning Obligations	Section 106 Town and Country Planning Act 1990
Duty to consider screening opinions	Town and Country Planning ( Environmental Impact Assessment) ( England and Wales)

	<b>Regulations</b>
Duty to carry out statutory consultation	Article 10 Town and Country Planning (General Development Procedure) Order 1995
Conditional obligations re The Beacon	Council commitment to underwrite the operating costs of The Beacon for 10 years from re-opening. Potential claw-backs if closures
Conditional obligations re Whitehaven Tourist Information Centre	Commitment to remaining open to July 2014. Potential claw-backs if not

### **Leisure and Environmental**

Duty to appoint an officer to discharge functions regarding stray dogs.	SS 55-63 Clean Neighbourhoods and Environment Act 2005
May take steps to make dangerous trees safe.	S23 Local Government (Miscellaneous Provisions) Act 1976
Power to provide allotments.	Ss 25 & 39 Small Holdings and Allotments Act 1908
Power to purchase land for cemeteries.	S214 Local Government Act 1972
Power to establish or acquire a market.	S50 Food Act 1984
Power to discharge functions of Burial Authority.	S214 Local Government Act 1972
May provide indoor and outdoor facilities for recreational activities, including sports centre, athletic fields and including parking spaces.	S19 Local Government (Miscellaneous Provisions) Act 1976
May provide for dancing, maintenance of a band, development of the arts and anything incidental, including advertising events.	S145 Local Government Act 1972
May grant licenses for pleasure boats.	S94 Public Health Acts Amendment Act 1907
May encourage visits to its area for recreation, health or exhibitions.	S144 Local Government Act 1972
Power of local authorities to establish restaurants.	S1 Civic Restaurants Act 1947
Power to encourage visitors and provide conference and other facilities.	S144 Local Government Act 1972
Power to provide entertainment facilities.	S145 Local Government Act 1972

Power to establish restaurants.	S1 Civic Restaurants Act 1947
Power to incur expenditure to maintain war memorials.	S1 War Memorials (Local Authorities' Powers) Act 1923
Power to make arrangements for the supply of gas, electricity or water to any dwelling if the occupier fails to pay a sum due.	S33 Local Government (Miscellaneous Provisions) Act 1976
Duty to cause to be buried or cremated the body of any person found dead in our area where suitable arrangements are not being made.	S46 Public Health (Control of Disease) Act 1984
Duty to cause to be buried or cremated the body of any person who has died or been found dead in their area where it appears that no suitable arrangements are being made.	S50 National Assistance Act 1948
Duty to cleanse and disinfect premises where the proper officer has certified that it is required to prevent the spread of disease (can recover expenses).	S31 Public Health (Control of Disease) Act 1984
Duty to comply with directions issued by the Secretary of State in relation to promoting the welfare of those who are blind, deaf, dumb, or who suffer from a mental disorder or are substantially and permanently handicapped and maintain a register of disabled persons.	S29 National Assistance Act 1948
Duty to remove to suitable premises someone in need of care and attention who is unable to care for themselves.	S47 National Assistance Act 1948
Duty to provide temporary protection of property of persons admitted to hospital or provided with residential care (power to enter premises – must be a duly authorised person with document to prove it).	S48 National Assistance Act 1948
Power to recover sums due under the National Assistance Act as a civil debt.	S56 National Assistance Act 1948
Power to compulsorily purchase land.	S110 Food Act 1984
Duty to ensure the health, safety and welfare at work of all employees.	S2 Health & Safety at Work etc. Act 1974
Duty to persons other than employees.	S3 Health & Safety at Work etc. Act 1974
May provide off street accommodation for motor vehicles.	S5 Local Authority (Land) Act 1963
Power to acquire land: provision as to parking places.	S40 Road Traffic Regulation Act 1984
Power to provide off street parking.	S32 Road Traffic Regulation Act 1984
Power to designate on street parking spaces.	S 45 Road Traffic Regulation Act 1984
Duty to collect household waste	S 45 Environmental Protection Act 1990
Duty to make separate arrangements for collection of recyclable waste	S 45 A Environmental Protection Act 1990
Duty to deliver waste to sites directed by waste disposal authority	S 48 Environmental Protection Act 1990
Duty to keep lists of persons entitled to sell non-medicinal poisons	Poisons Act 1972
Duty to keep register of food business premises	Regulation 9 Food Premises (Registration) Regulations 1991
To act as a Category 1 responder under the Civil Contingencies Act 2004	Schedule 1 Civil Contingencies Act 2004



Must administer the financial affairs of the Council and appoint an officer to have responsibility for this.	S151 Local Government Act 1972
Power to enter into arrangements for the provision of spare capacity of computers.	S38 Local Government (Miscellaneous Provisions) Act 1976
Duty to supply financial Information to the Secretary of State.	Local Government, Planning & Land Act 1980
Audit Commission can require any body subject to audit to provide such information as it might reasonably require.	Information to Audit Commission- -S48 Audit Commission Act
Duty to consult NNDR ratepayers	Consult ratepayers -S65 Local Government Finance Act 1992
Duty to maintain an adequate and effective system of internal audit of its accounting records and of its system of internal control	Accounts and Audit ( Amendment) ( England) Regulations 2006
Duty to prepare a Statement of Accounts in accordance with proper accounting practices ( including the requirement to notify ratepayers of their statutory right to inspect the Statement of Accounts) within statutory deadlines	Accounts and Audit Regulations 2003 ( Regulation 7)  Local Government Act 2003 ( Section 21(3) Accounts and Audit Regulations 2003
Duty to publish a statement of internal control ( reflected in the Annual Governance Statement contained in the Annual Statement of Accounts) as part of the demonstration of governance arrangements within the Council	Accounts and Audit Regulations 2003
Duty on the part of the Council to consider the formal advice of the responsible financial officer on the robustness of the estimates included in the budget and the adequacy of the reserves	Local Government Act 2004 ( Section 25)
Duty to calculate a budget	SS.32 and following Local Government Finance Act 1992

### Customer Services

Duty to collect Council Tax	Schedule 2 Local Government Finance Act 1992 and Administration and Enforcement Regulations made under the Act
Duty to administer Housing Benefit scheme in Copeland	Social Security Contributions and Benefits Act 1992 and Housing Benefit Regulations
Duty to Administer Council Tax Benefit scheme in Copeland	Social Security Contributions and Benefits Act 1992

	and Council Tax Benefit Regulations
Duty to administer the National Non Domestic Rates ( NNDR) scheme	Local Government Finance Act 1988

### Policy and Performance

Must assist with applications under s1 Ordnance Survey Act 1841 (regarding boundaries).	S191 Local Government Act 1972
Audit Commission can require any body subject to audit to provide such information as it might reasonably require.	Information to Audit Commission- -S48 Audit Commission Act
A duty to appoint such officers as the Council thinks necessary for the proper discharge of its functions	Staffing S112 – Local Government Act 1972
Duty to monitor staff diversity	Race Relations (Amendment) Act 2000

### Development Strategy

Power to promote Economic Development. - Power now contained within the S2 well being power	Repealed by Local Government Act 2000
The local planning authority must prepare and maintain a scheme to be known as their local development scheme.	<u>Local Development Framework</u> Planning and Compulsory Purchase Act 2004, S15
A Duty to exercise its functions with due regard to the likely effect of the exercise of those functions, and the need to do all it can reasonably do to prevent crime and disorder and drugs and alcohol abuse	Crime and Disorder – Crime and Disorder Act 1998, S17
Duty to consider the housing needs of their district with respect to the provision of further housing accommodation, including the special needs of the disabled. provide housing.	S8 Housing Act 1985
Duty to review unfit houses, clearance areas, houses in multiple occupation, general improvement areas and housing action areas.	S605 Housing Act 1985
Power to provide housing.	S9 Housing Act 1985
Power of entry.	S54 Housing Act 1985
Duty to investigate overcrowding within the area of the Council as it becomes aware of it and submit abatement proposals to the Secretary of State.	S334 Housing Act 1985
Power to serve an abatement notice on an occupier where overcrowding exists and seek CC order if not complied with.	S338 Housing Act 1985
Power to permit temporary overcrowding by issue of licence for that purpose.	S330 Housing Act 1985
Power to acquire land for housing purposes.	S17 Housing Act 1985
Duty to house the homeless who are not intentionally homeless and are in priority need.	Part III Housing Act 1985 as amended by Part VII Housing Act 1996 and further modified by the Homelessness Act

	2002.
Power to deal with substandard housing (individual unfit houses).	Part VI Housing Act 1985
Power to clear unhealthy areas.	Housing Act 1985
Duty to Licence Houses in Multiple Occupation, selective licensing of other residential accommodation and enforcement of that legislation- “ Every HMO must be licensed under this Part...”	SS 61 and following -Housing Act 2004

### General and Constitutional

Power to renew areas.	Local Government and Housing Act 1989
Power to acquire and deposit records.	S2 Local Government (Records) Act 1962
Power to provide/receive services from/to another local authority.	S1 Local Authorities (Goods & Services) Act 1970
May make arrangements for the use by other persons of the authority’s computers.	S38 Local Government (Miscellaneous Provisions) Act 1976
Power to arrange for the discharge of functions through a committee or another local authority.	S101 Local Government Act 1972
Power to do anything which is calculated to facilitate or is conducive or incidental to the discharge of any local authority function.	S111 Local Government Act 1972
Power to appoint staff for the proper discharge of functions on terms and conditions as the authority thinks fit.	S112 Local Government Act 1972
Powers to acquire or dispose of land	SS121 – s123 Local Government Act 1972
Duty to inform public of their rights.	(Various)
Power to acquire land by agreement.	S22 Town & Country Planning Act 1959
Power of appropriation of Land.	S23 Town & Country Planning Act 1959
Power to dispose of Land.	S26 Town & Country Planning Act 1959
Duty to secure continuous improvement – Best Value.	S3 Local Government Act 1999
Duty to designate post of Head of Paid Service	S4 Local Government & Housing Act 1989
Duty to designate post of Monitoring Officer.	S5 Local Government & Housing Act 1989
Duty to make arrangement for the proper administration of financial affairs.	S151 Local Government Act 1972
Duty to make appointment of staff on merit.	S7 Local Government Act 1972
Duty to adopt standing orders with respect to staff.	S8 Local Government Act 1972
Power to enter into contracts for the purpose of or in connection with the discharge of a function.	S1 Local Government (Contracts) Act 1997
Duty to have Standing Orders in relation to Contracts.	S135 Local Government Act 1972
Power to promote economic social and environmental well-being.	S2 Local Government Act 2000

Power to produce and supply heat/electricity.	S11 Local Government (Miscellaneous Provisions) Act 1976
Power to incur expenditure for purposes not otherwise authorised which bring direct benefit to their area.	S137 Local Government Act 1972
Power to do anything calculated to facilitate, or is conducive to or incidental to the discharge of any function.	S111 Local Government Act 1972
Duty to appoint Returning Officer for District and Parishes elections within their area	S.35 Representation of the People Act 1983
Power to prosecute or defend legal proceedings.	S222 Local Government Act 1972
Duty to adopt procedural standing orders.	S20 Local Government & Housing Act 1989
Power to promote safety in the home.	S1 Home Safety Act 1961
General Provision for the transfer of functions.	S179 Local Government 1972
Functions to be discharged only by the authority.	S67 Local Government Finance Act 1992
Transfer of functions for listed buildings, conservation areas and ancient monuments.	S6 Local Government Act 1985
Transfer of functions for National Parks and countryside.	S7 Local Government Act 1985
Transfer of waste regulation and disposal functions.	S9 Local Government Act 1985
Transfer of miscellaneous functions.	S16 Local Government Act 1985
Functions which are the responsibility of an Executive.	S13 Local Government Act 2000
Duty not to discriminate on grounds of sex .	Sex Discrimination Act 1975
Duty not to discriminate on grounds of race.	Race Relations Act 1976
Duty not to discriminate on grounds of Disability.	Disability Discrimination Act 1995
May incur expenditure on war memorials.	S1 War Memorials Act (Local Authorities' Powers) Act 1923 / S133 Local Government Act 1948
Power to dispose of land.	S26 Town & County Planning Act 1959
Duty to appoint an Electoral Registration Officer	s.8 Representation of the People Act 1983