



Agenda Item

**FOR PUBLICATION**

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**14 October 2021**

**Report of the Executive Director - Place**

**Trading Standards – Authorisation of Statutory Duties  
(Health and Communities)**

**1. Divisions Affected**

1.1 County-wide.

**2. Key Decision**

2.1 This is not a Key Decision.

**3. Purpose**

3.1 The purpose of this report is to seek Cabinet's approval to update and amend the current arrangements in place within the Council's Scheme of Delegation, detailed within the Constitution, to ensure the appropriate authorisation of the Trading Standards service and its officers to undertake enforcement of over 150 Acts, Regulations and Orders.

**4. Information and Analysis**

4.1 The Trading Standards Service enforces over 150 pieces of legislation on behalf of the Council. Each is essential in protecting the public and ensuring a safer, healthier and fairer society. These laws, both criminal and civil, cover a diverse range of subjects including areas such as food safety,

animal welfare, unfair trading, counterfeit goods, product safety, tenant's rights and environmental controls.

- 4.2 Appendix 2 of this report provides a full list of that legislation. In order for the Council to ensure that officers can administer and enforce those laws, the list is included as Appendix A to Appendix 1 within the Council's Constitution – Responsibility for Functions.
- 4.3 The Trading Standards Service subscribes to a vetted facility which provides an updated list of legislation on a six-monthly basis. A new and updated list has recently been provided and it is proposed that this update replaces that currently included at Appendix A of the Council's Constitution.
- 4.4 To ensure this update can be completed as speedily as possible in future, it is proposed that authority to update the list of legislation be delegated to the Director of Legal and Democratic Services.
- 4.5 As amendments to the Constitution are reserved to Council, and the role of the Governance, Ethics and Standards Committee is to advise the Council on amendments to the Constitution, Cabinet is also asked to recommend that both the Governance, Ethics and Standards Committee and full Council note the decisions made by Cabinet regarding these delegations and that Council agrees to amend the Constitution accordingly.
- 4.6 Appendix 1 of the Constitution delegates the responsibility for undertaking enforcement and administrative duties to the relevant Executive Director or Director. This is currently detailed in the Constitution as being the Director – Community Services. In July 2021, the Trading Standards Service moved into the Place Department and therefore, it is appropriate for the delegation *“to undertake enforcement and administrative duties detailed in the list at Appendix A; together with:*
  - (a) *any Orders or Regulations made thereunder or relating to any of the foregoing or having effect by virtue of the European Communities Act 1972 or the European Union (Withdrawal) Act 2018;*
  - (b) *any offence under any legislation, or at common law, which is of a similar nature or related to the foregoing, including offences of aiding, abetting, counselling and procuring, incitement, conspiracy, perverting the course of justice and criminal attempts; and*
  - (c) *any modification or re-enactment to the foregoing”*

to become the responsibility of Executive Director - Place.

- 4.7 A departmental scheme of sub-delegation, as permitted by the Constitution at paragraph A5 of section H of Appendix 1, further delegates this responsibility to the Head of Trading Standards (HoTS) who, in turn, provides specific authorisation to officers via warrants and/or credentials that are periodically updated. This arrangement was in place whilst the Service was aligned to the Commissioning, Communities and Policy Department and it is now proposed these principles be retained but reflected within the Place Department's Scheme of Sub-delegation.
- 4.8 One of the laws administered and enforced by Trading Standards is the Weights and Measures Act 1985. Part of this legislation defines the Local Weights and Measures Authority (LWMA) and in Derbyshire, this is the County Council. The Act requires the LWMA to appoint a Chief Inspector Weights and Measures (CIWM) who will ensure the maintenance of standards and equipment such that the Authority can undertake its statutory duties and ensure annual reporting to Government is undertaken. The role of HoTs incorporates the role of the CIWM.
- 4.9 The LWMA is also required to appoint '*such number of other inspectors of weights and measures as may be necessary for the efficient discharge in the Authority's area of the functions conferred or imposed on inspectors by the legislation*'. Therefore, an additional delegation is proposed to the Executive Director - Place to appoint inspectors of weights and measures; this will also be sub-delegated to the HoTS in accordance with the departmental scheme.

## 5. Consultation

- 5.1 N/A

## 6. Alternative Options Considered

- 6.1 **Do Nothing** – if the updated list of legislation is not included within the Constitution then the Council's Trading Standards Service would not have the authorisation to undertake its statutory duties in relation to the whole range of consumer protection legislation. This would create a situation where the Trading Standards Service was unable to exercise powers under the legislation, could not undertake enquiries or investigation into non-compliance and fail to take formal action, including prosecution against rogue businesses. Such a situation would create unacceptable risks to Derbyshire consumers and legitimate Derbyshire businesses.
- 6.2 **Authorise some but not all of the proposals** – this could result in Trading Standards being restricted in the carrying out its statutory duties

and would require undue reporting to Cabinet for approval of administrative changes to legislation enforced by the Council.

- 6.3 Cabinet may choose not to delegate the authority to update the list of legislation to the Director of Legal and Democratic Services. This responsibility could remain with Cabinet or be delegated to another officer. Should the responsibility remain with Cabinet, then each time there is an update to the legislation a report will be required. The responsibility could be delegated to another officer, however, on the basis that this is to enable the Constitution to remain up to date in a legislative context, it is proposed that the Director of Legal and Democratic Services is the most appropriate officer.

## **7. Implications**

- 7.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

## **8. Background Papers**

- 8.1 None identified.

## **9. Appendices**

- 9.1 Appendix 1 - Implications.
- 9.2 Appendix 2 – list of legislation to be enforced by Trading Standards

## **10. Recommendations**

- 10.1 That Cabinet:
- a) Agrees to the updating of the existing list of legislation within the Council's Constitution (as in Appendix 2 attached).
  - b) Notes the Departmental Scheme of Sub-delegation which provides for the delegation of the responsibility to undertake enforcement and administrative duties under the legislation detailed to the Head of Trading Standards (HoTS) which, in turn, provides for further delegation to individual officers within the Trading Standards Service.
  - c) Agrees to delegate authority to the Director of Legal and Democratic Services to update the Constitution as necessary and in response to changes in relevant legislation regarding Trading Standards enforcement or administration and, in particular, to update the list of legislation attached at

Appendix A to Appendix 1 of the Constitution – Responsibility for Functions, as necessary.

- d) Agrees that the postholder of the role of HoTs also be appointed as Chief Inspector Weights and Measures as required by Section 72 of the Weights and Measures Act 1985.
- e) Agrees that the responsibility to appoint additional inspectors of Weights and Measures is delegated to the Executive Director - Place.
- f) Agrees to recommend the necessary amendments to the Constitution to the Governance, Ethics and Standards Committee and to Council; and for Council to note the decisions and amend the Constitution.

## **11. Reasons for Recommendations**

- 11.1 To ensure that the relevant part of the Council's Constitution remains accurate and current.
- 11.2 To enable the County Council to meet its statutory duties and to enable the Council's Trading Standards Service to protect residents and businesses under various pieces of criminal and/or civil legislation.
- 11.3 To reduce the administrative demands upon Cabinet.

## **12. Is it necessary to waive the call-in period?**

- 12.1 No

**Report Author:** Steve Allen – Acting Head of Trading Standards

**Contact details:** [steve.allen@derbyshire.gov.uk](mailto:steve.allen@derbyshire.gov.uk)

## Implications

### Financial

- 1.1 There are no significant implications for the Council as the paper does not involve an expenditure or budgetary changes

### Legal

- 2.1 As described within the report within the report regarding the obligations under the Weights and Measures Act 1985 and other enforcement duties.
- 2.2 Trading Standards functions are executive functions and as such, decisions regarding them, including consideration regarding delegations, need to be made by Cabinet.
- 2.3 However, amendments to the Constitution are reserved to full Council. Therefore, although the decision regarding the delegations of Trading Standards are matters for Cabinet, Council must agree to amend the Constitution to reflect the decisions made by Cabinet.

### Human Resources

- 3.1 This is an administrative decision and as such, there are no Human Resources implications.

### Information Technology

- 4.1 N/A

### Equalities Impact

- 5.1 This is an administrative decision and as such, as Equalities Impact Assessment has not been undertaken.

### Corporate objectives and priorities for change

- 6.1 The Council Plan includes specific priorities linked to Trading Standards work. These cover the protection of vulnerable residents susceptible to scams and fraud, and the support for local businesses due to the EU Exit process. There would be implications for progress against these priorities if

associated enforcement to this work were hampered due the lack of authorisation to Trading Standards staff.

**Other (for example, Information Technology, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)**

- 7.1 Any lack of appropriate authorisation for the Trading Standards services and its officers may prejudice the ability of the Council to enforce legislation covering environmental controls and could increase risks to Derbyshire's residents if there are gaps in enforcement

**List of Legislation as at 30 June 2021****Part 1****Authorisation for officers enforcing legislation generally.**

Agriculture (Miscellaneous Provisions) Act 1968  
 Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020  
 Animal Health Act 1981  
 Animal Welfare Act 2006  
 Animals Act 1971  
 Anti-social Behaviour Act 2003  
 Brucellosis (England) Order 2015  
 Cancer Act 1939  
 Children and Families Act 2014  
 Children and Young Persons (Protection from Tobacco) Act 1991  
 Children and Young Persons Act 1933  
 Clean Air Act 1993 – Motor Fuel (Composition and Content) Regs.  
 Companies Act 2006  
 Consumer Credit Act 1974  
 Consumer Protection Act 1987  
 Consumer Rights Act 2015  
 Copyright, Designs and Patents Act 1988  
 Criminal Justice Act 1988  
 Criminal Justice and Police Act 2001  
 Customs & Excise Management Act 1979  
 Education Reform Act 1988  
 Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015  
 Enterprise Act 2002  
 Environmental Protection (Microbeads)(England) Regulations 2017  
 Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020  
 Estate Agents Act 1979

European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:

*Advanced Television Services Regulations 2003*  
*African Horse Sickness (England) Regulations 2012*  
*Animal By-Products (Enforcement)(England) Regulations 2013*  
*Avian influenza (Preventative Measures) (England) Regulations 2006*



*Avian Influenza (Vaccination)(England) Regulations 2006*  
*Beef and Veal Labelling Regulations 2010*  
*Biofuel Labelling Regulations 2004*  
*Bluetongue Regulations 2008*  
*Business Protection from Misleading Marketing Regulations 2008*  
*Cat and Dog Fur (Control of Import, Export and Placing on the Market) Regulations 2008*  
*Cattle Identification Regulations 2007*  
*Construction Products Regulations 2013*  
*Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013*  
*Consumer Protection from Unfair Trading Regulations 2008*  
*Consumer Rights (Payment Surcharges) Regulations 2012*  
*Cosmetic Products Enforcement Regulations 2013 and the EU Cosmetic Products Regulation 1223/2009*  
*Crystal Glass (Descriptions) Regulations 1973*  
*Detergents Regulations 2010*  
*Diseases of Swine Regulations 2014*  
*EC Fertilisers (England and Wales) Regulations 2006*  
*Eggs and Chicks (England) Regulations 2009*  
*Electrical Equipment (Safety) Regulations 2016*  
*Electromagnetic Compatibility Regulations 2016*  
*Energy Information Regulations 2011*  
*Energy Performance of Buildings (England and Wales) Regulations 2012*  
*Equine Identification (England) Regulations 2018*  
*Financial Services (Distance Marketing) Regulations 2004*  
*Fluorinated Greenhouse Gases Regulations 2015*  
*Foot-and-Mouth Disease (Control of Vaccination) (England) Regulations 2006*  
*Footwear (Indication of Composition) Labelling Regulations 1995*  
*Gas Appliances (Enforcement) and Miscellaneous Amendments Regulations 2018*  
*General Product Safety Regulations 2005*  
*Package Travel and Linked Travel Arrangements Regulations 2018*  
*Packaging (Essential Requirements) Regulations 2015*  
*Passenger Car (Fuel Consumption and CO2 Emissions Information) Regulations 2001*  
*Personal Protective Equipment (Enforcement) Regulations 2018*  
*Pressure Equipment (Safety) Regulations 2016*  
*Products of Animal Origin (Disease Control) (England) Regulations 2008*  
*Pyrotechnic Articles (Safety) Regulations 2015*  
*Quality Schemes (Agricultural Products and Foodstuffs) Regulations 2018*  
*Radio Equipment Regulations 2017*  
*REACH Enforcement Regulations 2008*  
*Recreational Craft Regulations 2017*  
*Registration of Establishments (Laying Hens )(England) Regulations 2003*

*Rights of Passengers in Bus and Coach Transport (Exemptions and Enforcement) Regulations 2013*  
*Simple Pressure Vessels (Safety) Regulations 2016*  
*Supply of Machinery (Safety) Regulations 2008*  
*Textile Products (Labelling and Fibre Composition) Regulations 2012*  
*Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010*  
*Tobacco and Related Products Regulations 2016*  
*Toys (Safety) Regulations 2011*  
*Trade in Animals and Related Products Regulations 2011*  
*Transmissible Spongiform Encephalopathies (England) Regulations 2018*  
*Veterinary Medicines Regulations 2013*  
*Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012*  
*Welfare of Animals at Time of Killing (England) Regulations 2015*  
*Zoonoses (Monitoring) (England) Regulations 2007*

Fireworks Act 2003  
Fraud Act 2006  
Hallmarking Act 1973  
Health Act 2006  
Knives Act 1997  
Legal Services Act 2007  
Licensing Act 2003  
Medicines and Medical Devices Act 2021  
Motor Cycle Noise Act 1987  
Offensive Weapons Act 2019  
Olympic Symbol etc. (Protection) Act 1995  
Prices Act 1974  
Protection of Animals Act 1911  
Psychoactive Substances Act 2016  
Registered Designs Act 1949  
Road Traffic Acts 1988 and 1991  
Road Traffic Regulation Act 1984  
Single Use Carrier Bags Charges (England) Order 2015  
Tenant Fees Act 2019 and the Housing and Planning Act 2016 as it relates to Client Money Protection Schemes  
Theft Act 1968  
Tobacco Advertising and Promotion Act 2002  
Trade Descriptions Act 1968  
Trade Marks Act 1994  
Unsolicited Goods and Services Acts 1971 and 1975  
  
Video Recordings Act 1984  
Vehicles (Crime) Act 2001

## **Part 2**

### **Additional List of Legislation for officers with qualification/competency in: Food Law**

European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:

*Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015*

*Country of Origin of Certain Meats (England) Regulations 2015*

*Food for Specific Groups (Food for Special Medical Purposes for Infants, Infant Formula and Follow-on Formula) (Information and Compositional Requirements) (Amendment etc.) (England) Regulations 2020*

*Food for Specific Groups (Information and Compositional Requirements)(England) Regulations 2016*

*Food Information Regulations 2014*

*Food Safety and Hygiene (England) Regulations 2013*

*Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004*

*Materials and Articles in Contact with Food (England) Regulations 2012*

*Novel Foods (England) Regulations 2018*

*Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019 in so far as it relates to food law*

*Official Feed and Food Controls (England) Regulations 2009 in so far as it relates to food law*

*Olive Oil (Marketing Standards) Regulations 2014*

*Organic Products Regulations 2009*

*Poultrymeat (England) Regulations 2011*

*Quick-frozen Foodstuffs (England) Regulations 2007*

*Scotch Whisky Regulations 2009*

*Specified Products from China (Restrictions on First Placing on the Market) (England) Regulations 2008*

*Spirit Drinks Regulations 2008*

*Wine Regulations 2011*

Food Act 1984

Food and Environment Protection Act 1985 [Note: Authorisation must be issued directly to the officer by the FSA.]

Food Safety Act 1990

### **Part 3**

#### **Additional List of Legislation for officers with qualification/competency in: Feed Law**

Agriculture Act 1970

Animal Feed (Composition, Marketing and Use) (England) Regulations 2015

Animal Feed (Hygiene, Sampling etc. and Enforcement) (England) Regulations 2015

European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:

*Animal Feed (Basic Safety Standards) (England) Regulations 2019*

*Genetically Modified Organisms (Traceability and Labelling) (England) Regulations 2004*

*Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations 2019 in so far as it relates to feed law*

*Official Feed and Food Controls (England) Regulations 2009 in so far as it relates to feed law*

#### **Part 4 Additional List of Legislation for officers with qualification in: Weights and Measures Law**

European Union (Withdrawal) Act 2018 as it continues to give effect to the following Regulations or Orders under which this local authority has an enforcement duty:

*Measuring Container Bottles (EEC Requirements) Regulations 1977*

*Measuring Instruments Regulations 2016*

*Non-automatic Weighing Instruments Regulations 2016*

*Weights & Measures (Packaged Goods) Regulations 2006*

Weights and Measures Act 1985

### **Part 5**

#### **A separate authorisation is required under the Health and Safety at Work etc. Act 1974 referring to the following:**

- i) Sections 20, 21, 22 and 25 of the 1974 Act;
- ii) The following Regulations made under the 1974 Act:

The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003

The Biocidal Products and Chemicals (Appointment of Authorities and Enforcement) Regulations 2013

The Chemicals (Hazard Information and Packaging for Supply) Regulations 2009

The Dangerous Substances and Explosive Atmospheres Regulations 2002,

The Explosives Regulations 2014,

The Petroleum (Consolidation) Regulations 2014; and

iii) The provisions of the following Acts mentioned in Schedule 1 to the 1974 Act;

Explosives Act 1875

Public Health Acts 1936 and 1961