



FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

**REPORT TO THE MONITORING OFFICER AND DIRECTOR OF LEGAL
AND DEMOCRATIC SERVICES**

25th November 2022

Report of the Principal Solicitor

**Minor change to the Constitution: Trading Standards – Legislation
Update**

1. Divisions Affected

1.1 County- wide

2. Key Decision

2.1 This is not a key decision

3. Purpose

3.1 To seek approval to updated the list of enforcement legislation for trading standards enforcement for inclusion in the Constitution.

4. Information and Analysis

4.1 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 the list currently included in the Constitution at Appendix A to Appendix 1 – Responsibility for Functions of the Council's Constitution.

4.2 Due to the regularity of the updates the updating of the list of legislation, on 14 October 2021, Cabinet agreed 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.

- 4.3 In accordance with paragraph 2 of Article 22 of the Constitution – Review and Revision of the Constitution, the Monitoring Officer is authorised to make changes to the Constitution which:
- amount to legal or technical amendments that do not materially affect the Constitution; or
 - are required to be made so as to put into effect any decision of the Cabinet, Cabinet Member, Committee, sub-Committee or Officer exercising delegated powers
- 4.4 Delegation 18 to the Director of Legal and Democratic Services also authorises the Director of Legal and Democratic Services to undertake any revisions or amendments to the constitution required as a consequence of amendments or variations to legislation or the implementation of new legislation.
- 4.5 Any such amendments must be reported retrospectively to the Governance, Ethics and Standards Committee and to Full Council for noting.

5. Consultation

- 5.1 Not applicable

6. Alternative Options Considered

- 6.1 Not to approve the updated list and include it within the Constitution. 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.

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 – Updated list of legislation

10. Recommendation(s)

That the Monitoring Officer and Director of Legal and Democratic Services agrees to:

- a) update the existing list of legislation within the Council's Constitution as set out in Appendix 2;
- b) include this updated list of legislation in Appendix A to Appendix 1 of the Constitution – Responsibility for Functions;
- c) report the amendment to the Governance, Ethics and Standards Committee and full Council for noting.

11. Reasons for Recommendation(s)

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.

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

12.1 No

Report Author: Elizabeth Wild – Principal Solicitor
Contact details: Elizabeth.wild@derbyshire.gov.uk

Implications

Financial

- 1.1 There are no significant implications for the Council as this does not involve any expenditure or budgetary changes.

Legal

- 2.1 As described within the report.

Human Resources

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

Information Technology

- 4.1 This is an administrative decision and as such, there are no Information Technology implications

Equalities Impact

- 5.1 This is an administrative decision and as such, there are no equalities implications

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 to the lack of authorisation to Trading Standards staff.
- 6.2 This also links to the Council Priority of High Performing Value for Money and Resident Focused Services. The changes proposed will enable efficient and up to date functioning of the Council as a corporate body.

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

- 7.1 None