

DERBYSHIRE COUNTY COUNCIL

CABINET

01 September 2015

Report of the Strategic Director, Health and Communities

**AUTHORISATION TO CARRY OUT ENFORCEMENT RESPONSIBILITIES
(HEALTH AND COMMUNITIES)**

1. Purpose of Report:

- 1.1. To update and consolidate authorisations from Cabinet for nominated officers within the Trading Standards Service to undertake enforcement and administrative duties under the relevant provisions of the Acts specified in Appendix A to this report.
- 1.2. To note that the statutory appointment of Chief Inspector of Weights and Measures is discharged by the Assistant Director Trading Standards.
- 1.3. To authorise the Assistant Director Trading Standards to enforce and administer the legislation set out in Appendix A to this report.
- 1.4. To authorise such officers of the Trading Standards Service as may be nominated by the Assistant Director Trading Standards to enforce and administer the legislation set out in Appendix A to this report.
- 1.5. To authorise the Assistant Director Trading Standards in connection with matters listed in Appendix A, under s223 of the Local Government Act 1972, to look at the facts of a particular case, and if expedient for the protection of the inhabitants of the County, to institute, prosecute and appear in legal proceedings on behalf of the Derbyshire County Council, before any Court of summary jurisdiction, and to issue suspension notices, apply for forfeiture or destruction orders on goods, and to effect such other legal procedures as are commensurate with the discharge of the enforcement or administration of the above mentioned Acts, and of any Rules, Orders or Regulations made thereunder.
- 1.6. To authorise the Assistant Director, Trading Standards in connection with matters listed in Appendix A to nominate officers to fulfil the functions detailed in recommendation 8.5, including the power to institute, prosecute and appear in legal proceedings on behalf of Derbyshire County Council, before any court of summary jurisdiction.

- 1.7. To continue to provide regular reports to the Cabinet Member, Health and Communities in order to keep Members informed of those matters which are subject of legal proceedings.
- 1.8. To inform Cabinet of the intention to seek the authority of the Regulatory – Licensing and Appeals Committee (14 September 2015) for enforcement and administrative powers under the relevant provisions of the specified Acts which do not fall within the remit of Cabinet and are specified in Appendix B to this report.

2. Information and Analysis:

- 2.1 The Assistant Director, Trading Standards holds the statutory appointment of Chief Inspector of Weights and Measures.
- 2.2 As part of internal quality assurance procedures within the Trading Standards Service, a periodic review of existing legislation is undertaken to ensure that enforcement warrants held by staff are accurate and comprehensive. Following such a review a report is produced for Cabinet to ensure continuing proper delegation of enforcement responsibilities in all legislative areas.
- 2.3 The Acts specified in Appendices A and B to this report comprise some legislation which this Authority has a statutory duty to enforce and some legislation which is adopted because it is considered, in whole or in part, to be beneficial to the promotion or protection of the interests of the public in Derbyshire.
- 2.4 The only changes to the legislation listed in Appendix A, which was the subject of the last report to Cabinet on 30 July 2013, is the addition of the Control of Horses Act 2015 and Consumer Rights Act 2015. There have been no changes to the legislation listed in Appendix B.

Consumer Rights Act 2015

- 2.5 The Consumer Rights Act 2015 consolidates the main legal provisions covering consumer contracts for goods, services, digital content and unfair terms. The existing legislation was fragmented, and there were inconsistencies between the changes made as a result of EU legislation and the pre-existing UK legislation. It also consolidates the powers of Trading Standards to investigate potential breaches of consumer law, and allows us to operate across local authority boundaries. A summary of the main areas of the new legislation is as follows:
 - Part 1 sets out the rights and obligations concerning goods and services. Most of these reflect existing legislation. There are new rights about the quality of digital content (downloads etc.).
 - Part 2 brings together two existing pieces of legislation about unfair contract terms and includes a list of terms that are likely to be regarded as unfair.

- Part 3 consolidates and simplifies the investigatory powers of Trading Standards. Previously, the powers were contained in around 60 pieces of consumer legislation and were sometimes unclear, inconsistent, or overlapping. Schedule 5 now sets out a generic set of powers. There are some specific powers in weights and measures and product safety legislation which will be retained alongside the generic set. The powers include the right to ask for information, and to enter premises to inspect products, and to make test purchases. For routine inspections, there is a requirement to give written notice unless the notice would defeat the purpose of the visit.

2.6 The Act introduces new powers to seek redress for consumers who have been disadvantaged by breaches of consumer law, and to seek remedies from traders to improve compliance and reduce the likelihood of future breaches. These might include the requirement to appoint a compliance officer, to introduce a complaints handling process, or to improve the record keeping. We could ask businesses to publicise details of the breach and what they have done to put the situation right in the press or on social media. The new law imposes a duty on letting agencies to publicise fees and to say whether or not they are a member of a money protection scheme, and which redress scheme they have joined. There are also new requirement for the resale of tickets for recreational, sporting, and cultural events.

The Control of Horses Act 2015.

2.7 The Control of Horses Act is intended to address the problem of horses which are present unlawfully on land, whether they have strayed there or been placed there deliberately. It was enacted in response to the increased prevalence of “Fly-grazing”, namely the placing of horses on another person’s land to graze their grass without consent. This has become a significant problem in some parts of England. As such the law has been changed to make it easier for local authorities to take action in relation to horses in public places and for freeholders and occupiers of land to deal with the problem.

2.8 The Act introduces a new procedure to enable Local Authorities to detain and dispose of horses that are not lawfully permitted to graze in a timely manner. This streamlined procedure allows such horses to be disposed of 96 hours after detention. ‘Disposal’ includes sale, humane destruction or any other way (which could include gifting the horse(s) to a charity). The Animals Act 1971 only gave landowner’s the right to recover costs as a civil debt for damage caused by trespassing animals on their land through the detention and sale of such animals. In these cases animals had to be detained for fourteen days by the landowner before being sold at a market or an auction, which in relation to horses have little or no commercial value. Under the previous legislation, the Local Authority had no powers to take action

2.9 Whilst legal requirements exist for all horses to be identified by a horse passport and an implanted microchip, many low value horses kept by unscrupulous owners are not. Such owners are all but impossible to trace in practice unless they come forward voluntarily even then, if not correctly

passported the ownership of a horse may be extremely difficult to verify. Within the new framework; provided relevant notice has been served, the 96 hour period elapsed and a Local Authority has exhausted all reasonable steps to trace the owner, then the disposal of the horse may take place.

3 Legal and Human Rights Considerations:

- 3.1 Section 15 of the Local Government Act 2000 makes provision for the discharge of functions which are the responsibility of a Leader and Cabinet executive. Section 15(2) provides that the Executive may allocate functions to any Officers of the Authority.
- 3.2 Section 13 of the 2000 Act states that all functions of a Local Authority will be the responsibility of the Executive unless they are specified in Regulations or express provision to the contrary is made in any other legislation. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 specify functions not to be the responsibility of an Executive. The delegation of these functions, in respect of Public Protection Enforcement responsibilities (which are listed in Appendix B) is to be considered separately by the Regulatory – Licensing and Appeals Committee. Such functions, which remain the responsibility of the Local Authority, may be delegated to Officers under the provisions of section 101 of the Local Government Act 1972, which provides for local authorities to discharge their functions by Committees, Sub- Committees or Officers.
- 3.3 Section 222 of the Local Government Act 1972 enables Local Authorities to prosecute or defend legal proceedings where the Authority considers it expedient for the promotion or protection of the interests of the inhabitants of their area.
- 3.4 Section 223 of the Local Government Act 1972 enables an Officer of a Local Authority to be authorised to prosecute or defend or to appear in proceedings before a Magistrates Court.

4 Other Considerations:

In preparing this report the relevance of the following factors has been considered; financial, prevention of crime and disorder, equality of opportunity; environmental, health, human resources, property and transport considerations.

5 Background Papers:

Previous Cabinet Report: Authorisation to Carry Out Enforcement Responsibilities, 30 July 2013

6 Key Decision:

No

7 Call-in:

Is it required that call-in be waived for any decision on this report? No

8 Officer's Recommendations:

- 8.1 To note the intention to update and consolidate the authorisations from the Regulatory – Licensing and Appeals Committee (14 September 2015) for nominated officers within the Trading Standards Service to undertake enforcement and administrative duties under the relevant provisions of the Acts specified in Appendix B to this report.
- 8.2 To note that the statutory appointment of Chief Inspector of Weights and Measures is discharged by the Assistant Director, Trading Standards.
- 8.3 To authorise the Assistant Director, Trading Standards to enforce and administer the legislation set out in Appendix A to this report.
- 8.4 To authorise such officers of the Trading Standards Service as may be nominated by the Assistant Director, Trading Standards to enforce and administer the legislation set out in Appendix A to this report.
- 8.5 To authorise the Assistant Director, Trading Standards in connection with matters listed in Appendix A, under s223 of the Local Government Act 1972, to consider the facts of a particular case, and if expedient for the protection of the inhabitants of the County, to institute, prosecute and appear in legal proceedings on behalf of the Derbyshire County Council, before any Court of summary jurisdiction, and to issue suspension notices, apply for forfeiture or destruction orders on goods, and to effect such other legal procedures as are commensurate with the discharge of the enforcement or administration of the above mentioned Acts, and of any Rules, Orders or Regulations made thereunder.
- 8.6 To authorise the Assistant Director, Trading Standards to nominate officers to fulfil the functions detailed in recommendation 8.5, including the power to institute, prosecute and appear in legal proceedings on behalf of Derbyshire County Council, before any court of summary jurisdiction.
- 8.7 To continue to provide regular reports to the Cabinet Member Health and Communities in order to keep Members informed of those matters which are subject of legal proceedings.

David Lowe
Strategic Director
Health and Communities

**LEGISLATION TO BE ENFORCED BY THE TRADING STANDARDS SERVICE
UNDER DELEGATION BY THE EXECUTIVE**

ANIMAL HEALTH AND WELFARE

Animal Health & Welfare Act 1984
Animal Health Act 1981 & 2002
Animal Welfare Act 2006
Control of Horses Act 2015
Protection of Animals Act 1911

CONSUMER CREDIT

Administration of Justice Act 1970 (Section 40)
Consumer Credit Act 1974 & 2006
Malicious Communications Act 1988

FAIR TRADING

Accommodation Agencies Act 1953
Cancer Act 1939
Consumers, Estate Agents and Redress Act 2007
Consumer Rights Act 2015
Companies Act 1985 & 2006
Copyright, Designs and Patents Act 1988
Copyright, etc and Trade Marks (Offences & Enforcement) Act 2002
Criminal Attempts Act 1981
Customs & Excise Management Act 1979
Development of Tourism Act 1969
Education Reform Act 1988
Energy Act 1976
Energy Conservation Act 1981
Enterprise Act 2002
Estate Agents Act 1979
Fair Trading Act 1973
Forgery and Counterfeiting Act 1981
Fraud Act 2006
Hallmarking Act 1973
Housing Act 2004
Insurance Brokers (Registration) Act 1977
Insurance Companies Act 1981
Olympic Symbol etc (Protection) Act 1995
Prices Acts 1974 and 1975
Property Misdescriptions Act 1991
Solicitors Act 1974
Telecommunications Act 1984
Theft Acts 1968 and 1978
Timeshare Act 1992
Trade Descriptions Act 1968
Trade Marks Act 1938 and 1994

Unsolicited Goods and Services Act 1971
Unsolicited Goods and Services (Amendment) Act 1975
Video Recordings Act 1984, 1993 and 2010

METROLOGY

Weights and Measures Act 1976 and 1985

QUALITY STANDARDS

Agriculture Act 1970 (Part IV)
Agricultural Produce (Grading and Marking) Acts 1928-31
Farm and Garden Chemicals Act 1967
Food and Environmental Protection Act 1985
Food Act 1984
Food Safety Act 1990 (excluding s19)
Medicines Act 1968
Scotch Whisky Act 1988

ROAD TRAFFIC

Motor Cycle Noise Act 1987
Road Traffic Act 1988 & 1991
Road Traffic (Regulation) Act 1984
Road Traffic (Foreign Vehicles) Act 1972

SAFETY

Anti-Social Behaviour Act 2003
Children & Young Persons Act 1933 (excluding Part II and byelaws made under that Part)
Children & Young Persons (Protection from Tobacco) Act 1991
Clean Air Act 1993
Control of Pollution Act 1974,
Consumer Protection Act 1987
Intoxicating Substances (Supply) Act 1985
Knives Act 1997
Motor Vehicles (Safety Equipment for Children) Act 1991
Offensive Weapons Act 1996
Poisons Act 1972 (excluding sections 3(1)(b)(ii), 5, 6 and 11)
Road Traffic Act 1988 (Section 75)
Tobacco Advertising and Promotions Act 2002

OTHER

Criminal Justice Act 1988
Criminal Justice & Police Act 2001
Criminal Law Act 1977
European Communities Act 1972
Proceeds of Crime Act 2002

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; and
- 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

**LEGISLATION TO BE ENFORCED BY THE TRADING STANDARDS SERVICE
UNDER DELEGATION BY THE REGULATORY – LICENSING AND APPEALS
COMMITTEE**

PETROLEUM AND EXPLOSIVES

Explosives Act 1875

Fireworks Act 2003

Health and Safety at Work etc. Act 1974 (Part 1) Petroleum (Transfer of Licences)
Act 1936

Petroleum (Consolidation) Act 1928

Public Health Act 1961 (Section 73)

QUALITY STANDARDS

Food Safety Act 1990 (Section 19)

ANIMAL HEALTH AND WELFARE

Performing Animals (Regulation) Act 1925.

MISCELLANEOUS

Poisons Act 1972 (Sections 3(1) (b) (ii), 5, 6 and 11)

Licensing Act 2003

Together with:

a) any Orders of Regulations made thereunder or relating to any of the foregoing or having effect by virtue of the European Communities Act 1972; and

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