

AGENDA ITEM NO:

DERBYSHIRE COUNTY COUNCIL

CABINET

30 July 2013

**Joint Report of the Strategic Director, Cultural and Community Services
Department and the Director, Legal Services**

AUTHORISATION TO CARRY OUT ENFORCEMENT RESPONSIBILITIES

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 Head of Trading Standards Assistant Director Cultural and Community Services.
- 1.3. To authorise the Head of Trading Standards Assistant Director Cultural and Community Services 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 Head of Trading Standards Assistant Director Cultural and Community Services to enforce and administer the legislation set out in Appendix A to this report.
- 1.5. To authorise the Head of Trading Standards Assistant Director Cultural and Community Services 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 Head of Trading Standards Assistant Director Cultural and Community Services 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 for Health and Communities in order to keep the 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 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 Head of Trading Standards Assistant Director Cultural and Community Services holds the statutory appointment of Chief Inspector of Weights and Measures and this report recommends confirmation of this position.
- 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. There have been no changes to the legislation listed in Appendix A or B which was the subject of the last report to Cabinet on 3 August 2010.

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 authorities consider it expedient for the promotion or protection of the interests of the inhabitants of their areas.
- 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: the prevention of crime and disorder, equality of opportunity; and environmental, financial, health, personnel and property considerations.

5. Background Papers

Published legislation.

Contact Robert Taylour, Head of Trading Standards Assistant Director Cultural and Community Services

6. Key Decision

No

7. Call-in:

Is it required that call-in be waived for any decision on this report?

No

8. Strategic Director's Recommendations

- 8.1. To note the update and consolidation of the authorisations from the Regulatory – Licensing and Appeals Committee 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 Head of Trading Standards Assistant Director Cultural and Community Services.

- 8.3. To authorise the Head of Trading Standards Assistant Director Cultural and Community Services 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 Head of Trading Standards Assistant Director Cultural and Community Services to enforce and administer the legislation set out in Appendix A to this report.
- 8.5. To authorise the Head of Trading Standards Assistant Director Cultural and Community Services 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.
- 8.6. To authorise the Head of Trading Standards Assistant Director Cultural and Community Services 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.
- 8.7. To continue to provide regular reports to the Cabinet Member for Health and Communities in order to keep the members informed of those matters which are subject of legal proceedings.
- 8.8. To inform the Committee of the intention to seek authority from Cabinet for enforcement and administrative powers in relation to the relevant provisions of the specified Acts which do not fall within the remit of Regulatory – Licensing and Appeals Committee, and are specified in Appendix A to this report.

Martin Molloy
Strategic Director
Cultural and Community Services

John McElvaney
Director
Legal Services

**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
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
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 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

**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