

Agenda Item No. 8(m)

DERBYSHIRE COUNTY COUNCIL

CABINET

31 January 2017

Report of the Strategic Director, Economy, Transport and Communities

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

(1) **Purpose of Report** 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.

To note that the statutory appointment of Chief Inspector of Weights and Measures is discharged by the Assistant Director Trading Standards.

To authorise the Assistant Director Trading Standards to enforce and administer the legislation set out in Appendix A to this report.

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.

To authorise the Assistant Director Trading Standards in connection with matters listed in Appendix A, under Section 223 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 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.

To authorise the Assistant Director Trading Standards, in connection with matters listed in Appendix A, to nominate officers to fulfil the functions detailed in Officer's 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.

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.

To inform Cabinet that the authority of the Regulatory – Licensing and Appeals Committee was sought on 16 January 2017 for enforcement and administrative powers under the relevant provisions of the specified Acts contained within Appendix B to this report, which do not fall within the remit of Cabinet.

(2) **Information and Analysis** The Assistant Director Trading Standards holds the statutory appointment of Chief Inspector of Weights and Measures.

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 and the Regulatory – Licensing and Appeals Committee to ensure continuing proper delegation of enforcement responsibilities in all legislative areas.

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.

This report incorporates the consequential amendments to legislation since the last report on 1 September 2015, with no significant changes to the scope of legislation listed.

(3) **Financial Considerations** There are no financial considerations associated with this report.

(4) **Legal Considerations** 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.

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.

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.

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.

(5) **Social Value Considerations** The Local Authority has a duty to enforce, on behalf of local citizens, businesses and other stakeholders, a wide range of legislation that can be categorised as ‘trading standards’ or public protection. Active enforcement of legislation, in accordance with the Authority’s Compliance Policy, which was agreed by Members and takes into account the requirements of the Regulators’ Code, ensures that local businesses can compete on a fair and equitable basis and that local consumers are protected from unfair and unsafe trading practices. In addition to those pieces of legislation that the Authority has a duty to enforce, authority is also sought with regards to other similar legislation so as to better protect local citizens. Failure to enforce legislation could lead to local citizens being taken advantage of by unscrupulous traders and would leave the Authority at risk of complaints to the Local Government Ombudsman that it had failed to carry out a statutory duty.

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

(6) **Key Decision** No.

(7) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(8) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Robert Taylour, extension 38930.

(9) **OFFICER’S RECOMMENDATIONS** That Cabinet:

9.1 Notes the updating and consolidation of 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.

- 9.2 Notes that the statutory appointment of Chief Inspector of Weights and Measures is discharged by the Assistant Director Trading Standards.
- 9.3 Authorises the Assistant Director Trading Standards to enforce and administer the legislation set out in Appendix A to this report.
- 9.4 Authorises 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.
- 9.5 Authorises the Assistant Director Trading Standards in connection with matters listed in Appendix A, under Section 223 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 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.
- 9.6 Authorises 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 above, including the power to institute, prosecute and appear in legal proceedings on behalf of Derbyshire County Council, before any Court of summary jurisdiction.
- 9.7 Notes that regular reports will be submitted to the Cabinet Member - Health and Communities in order to keep Members informed of those matters which are subject of legal proceedings.
- 9.8 Notes that the authority of the Regulatory – Licensing and Appeals Committee was sought on the 16 January 2017 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.

**Mike Ashworth**  
**Strategic Director - Economy, Transport and Communities**

Appendix A

**Legislation to be Enforced by the Trading Standards Service**

**Under Delegation by the Executive**

**Animal Health and Welfare**

Animal Health and Welfare Act 1984

Animal Health Act 1981 and 2002

Animal Welfare Act 2006

Control of Horses Act 2015

**Consumer Credit**

Administration of Justice Act 1970 (Section

40) Consumer Credit Act 1974 and 2006

Malicious Communications Act 1988

**Fair Trading**

Accommodation Agencies Act 1953

Cancer Act 1939

Climate Change Act 2008

Consumers, Estate Agents and Redress Act 2007

Consumer Rights Act 2015

Companies Act 1985 and 2006

Copyright, Designs and Patents Act 1988

Copyright, etc and Trade Marks (Offences and Enforcement) Act 2002

Criminal Attempts Act 1981

Customs and Excise Management Act 1979

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

Olympic Symbol etc (Protection) Act 1995

Prices Acts 1974 and 1975

Solicitors Act 1974

Telecommunications Act 1984

Theft Acts 1968, 1978 and 1996

Timeshare Act 1992

Trade Descriptions Act 1968

Trade Marks Act 1938 and 1994

Unsolicited Goods and Services Act 1971

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

Food and Environmental Protection Act 1985

Food Safety Act 1990

Medicines Act 1968

**Road Traffic**

Motor Cycle Noise Act 1987

Road Traffic Act 1988 and 1991

Road Traffic Regulation Act 1984

Road Traffic (Foreign Vehicles) Act 1972

**Safety**

Anti-Social Behaviour Act 2003

Children and Families Act 2014

Children and Young Persons Act 1933

Children and 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

Tobacco Advertising and Promotions Act 2002

Psychoactive Substances Act 2016

**Other**

Criminal Justice Act 1988

Criminal Justice and 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;

- 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.

**Appendix B**

**Legislation to be Enforced by the Trading Standards Service**

**Under Delegation by the Regulatory Licensing and Appeals Committee**

**Petroleum and Explosives**

Fireworks Act 2003

Health and Safety at Work etc. Act 1974

Public Health Act 1961 (Section 73)

**Quality Standards**

Food Safety Act 1990 (Section 19)

**Animal Health and Welfare**

Performing Animals (Regulation) Act 1925.

**Miscellaneous**

Licensing Act 2003

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;
- 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.