

Agenda Item No. 4(a)

DERBYSHIRE COUNTY COUNCIL

REGULATORY – LICENSING AND APPEALS COMMITTEE

16 January 2017

Report of the Strategic Director, Economy, Transport and Communities

AUTHORISATION TO CARRY OUT ENFORCEMENT RESPONSIBILITIES

(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 B 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 B 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 B to this report.

To authorise the Assistant Director Trading Standards in connection with matters listed in Appendix B, 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 B, to nominate officers to fulfil the functions detailed in the 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 the Committee that authority is being sought from Cabinet on 31 January 2017 for enforcement and administrative powers under the relevant provisions of the specified Acts contained within Appendix A to this report which do not fall within the remit of this Committee.

(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 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 14 September 2015, with no significant changes to the scope of legislation listed.

(3) **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.

(4) **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: financial, prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(5) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Robert Taylour, extension 39830.

(6) **OFFICER’S RECOMMENDATIONS** That the Committee:

6.1 Notes the proposed updated and consolidated authorisations to be considered by Cabinet (31 January 2017) 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.

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

- 6.3 Authorises the Assistant Director Trading Standards to enforce and administer the legislation set out in Appendix B to this report.
- 6.4 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 B to this report.
- 6.5 Authorises the Assistant Director Trading Standards, in connection with matters listed in Appendix B, 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 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.
- 6.6 Authorises the Assistant Director Trading Standards, to nominate officers to fulfil the functions detailed in recommendation 6.5 above, including the power to institute, prosecute and appear in legal proceedings on behalf of Derbyshire County Council, before any Court of summary jurisdiction.
- 6.7 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.

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 & 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 & 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; 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.