

Portfolio Holder Decision

Changes to the Powers Delegated to Trading Standards in line with amendments to the legislation

Portfolio Holder	Leader of the Council
Date of decision	9 July 2021
	Signed

Decision taken
That the Leader of the Council agrees to the proposed amendments to the delegated powers afforded to the Strategic Director for Communities and the Assistant Director (Environment Services) to accord with the changes in legislation enforced by the Trading Standards Service

Reasons for decisions
<p>1.1 The delegations to the Trading Standards Service were last reviewed in January 2016. Since that time some of the legislation has been amended or repealed and new legislation has been introduced.</p> <p>1.2 This report identifies the legislation which should be removed from or amended within the Constitution.</p> <p>1.3 The report also seeks to identify new legislation introduced since the last review, which includes powers that the Trading Standards Service requires in order to fulfil its duties and to correct some errors whereby certain powers have been omitted.</p> <p>1.4 Any reference in this report to a paragraph refers to the numbered paragraph in the table of delegations to the Strategic Director for Communities as it is currently in Part 2 Section10 of the Constitution, unless otherwise indicated.</p>

Background information
<p>2.0 Proposals</p> <p><u>2.1 Powers and Duties – Paragraph 1</u></p>

2.1.1 The reference to the European Communities Act 1972 needs to be updated by including reference to the European Union (Withdrawal) Act 2018, by virtue of which legislation made under the European Communities Act 1972 which the council has a duty to enforce continues to have effect.

2.2 Powers and Duties – Paragraph 2

2.2.1 The reference to the European Communities Act 1972 needs to be updated by including reference to the European Union (Withdrawal) Act 2018, by virtue of which legislation made under the European Communities Act 1972 which the council has a duty to enforce continues to have effect.

2.3 Powers and Duties – Paragraph 3

2.3.1 No changes are proposed.

2.4 Powers and Duties - Paragraph 4

2.8.1 The following legislation has been repealed or amended such that it is no longer relevant to Trading Standards, so it is proposed that these statutory provisions be removed from the Constitution:

- (i) The Agricultural Produce (Grading & Marking) Acts 1928-1931
- (ii) Agricultural (Miscellaneous Provisions) Act 1968
- (iii) Control of Pollution Act 1974
- (iv) Horse Passport Regulations 2009
- (v) Poisons Act 1972
- (vi) Transport Act 1968
- (vii) Road Traffic (Foreign Vehicles) Act 1972

2.8.2 In addition, there is a mistake in the current delegation which needs to be corrected as follows:

- (i) Criminal Justice Act 1988 Part IX should be replaced by Part XI, which deals with the prohibition on the sale of knives to persons under 18.

2.8.3 The following legislation confers powers on the Council and it is proposed should that these should be added to the Constitution in paragraph 4, for the reasons stated:

- (i) Air Quality (Domestic Solid Fuels Standards) (England) Regulations 2020 - make provision restricting the sale of certain solid fuels, and provide for the enforcement of breaches of the Regulations by a county council.
- (ii) Birmingham Commonwealth Games Act 2020 Part 3 - Touting, advertising and trading offences enforced by the Council as Local Weights & Measures Authority. Warwickshire is hosting two games sites.
- (iii) Criminal Justice and Police Act 2001 – sections 50 and 52 confer powers of seizure additional to those specified in Schedule 1 to the Act, which

includes Trading Standards powers such as the Consumer Protection act 1987 and the Consumer Rights Act 2015.

(iv) Crossbows Act 1987 – covers sale of crossbows etc. to persons under the age of 18. These provisions can now be enforced by the Council as Weights and Measures Authority by virtue of section 64 of the Offensive Weapons Act 2019.

(v) Equine Identification (England) Regulations 2018 – replace the Horse Passport Regulations 2009.

(vi) Housing and Planning Act 2016, the Tenant Fees Act 2019 and The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 – the Council as Local Weights & Measures Authority has a duty to enforce these regulations and the prohibitions relating to landlords and letting agents under the Tenant Fees Act 2019 which permit certain tenant fees to be charged whilst prohibiting all others.

(vii) Knives Act 1997 – the Act covers the marketing of knives for combat purposes and can now be enforced by the Council as Weights and Measures Authority by virtue of section 64 of the Offensive Weapons Act 2019.

(viii) Legal Services Act 2017 – provides for enforcement by the Council as local Weights and Measures Authority of provisions relating to reserved legal activities.

(ix) Offensive Weapons Act 2019 - brought in underage sales provisions to stop sale of corrosive products to under 18s and for control of online sales and subsequent deliveries of knives to those under 18 years.

(x) Restriction of Offensive Weapons Act 1959 – now enforceable by the Council as Weights and Measures Authority by virtue of section 64 of the Offensive Weapons Act 2019

2.4 Powers and Duties – Paragraph 5

2.4.1. The suggested amendment includes wording intended to “future-proof” the delegation by including reference to re-enactments, or variations or extensions to existing legislation, to avoid the need to obtain a fresh delegation.

Financial implications

No financial implications

Environmental implications

No Environmental implications

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Assistant Director	Assistant Director for Communities
Lead Director	Strategic Director for Communities
Lead Member	Leader of the Council

Urgent matter?	<i>No</i>
Confidential or exempt?	<i>No</i>
Is the decision contrary to the budget and policy framework?	<i>No</i>

List of background papers
N/A

Members and officers consulted and informed
<p>Portfolio Holder – Councillor I Seccombe</p> <p>Corporate Board –</p> <p>Legal –</p> <p>Finance –</p> <p>Equality – n/a</p> <p>Democratic Services – Helen Barnsley</p> <p>Councillors – n/a</p> <p>Local Member(s): n/a</p>