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Constitutional Amendments - new legislation enforced by Trading Standards

Purpose

- 1.1 This report seeks to provide the necessary authorisation for officers in the Trading Standards service to discharge duties and powers under newly introduced legislation.
- 1.2 Recent changes in legislation have also resulted in additional powers being granted which require authorisation before being added to warrants.
- 1.3 This report seeks to amend the Council Constitution to authorise officers to discharge powers granted under the following legislation:
 - Tenant Fees Act 2019
 - The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020
 - The Food Information (Amendment) (England) Regulations 2019

Recommendations

- 2.1 To grant authority to the Director of Public Protection and Streetpride to appoint authorised or proper officers for the purpose of enforcement of the Tenant Fees Act 2019; The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020; and The Food Information (Amendment) (England) Regulations 2019.
- 2.2 To authorise the Monitoring Officer to make appropriate amendments to the Scheme of Delegations within the Council Constitution.

Reasons

- 3.1 To ensure legislation granting powers to officers within the Scheme of Delegations is up to date and accurate.
- 3.2 Authorisation under the Tenant Fees Act 2019 was approved by Council on the 25th September 2019. However, the legislation now includes enactment of the Enterprise and Regulatory Reform Act 2013, Client Money Protection Regulations 2019, Housing and Planning Act 2016 and the Redress Scheme for Letting Agency Work and Property Management work (requirement to belong to the scheme etc (England) Order 2014. Trading Standards will be responsible for enforcing the new legislation.

Supporting information

4.1 **The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020**

This legislation restricts the supply of single-use plastic straws, single-use plastic-stemmed cotton buds and plastic drink stirrers.

The Government are committed to eliminating plastic waste and pollution. Single-use plastic items are increasingly common, and their use and inappropriate disposal continue to raise significant environmental issues.

4.2 **Tenant Fees Act 2019**

From 1 June 2020, it is illegal for landlords and letting agents to charge tenant fees. Landlords and Estate Agents can no longer charge for (not an exhaustive list):

- Property Viewing
- Referencing
- Administration charges
- Guarantors (this can be a condition of the tenancy, but you cannot charge fees for meeting this condition)
- Inventory checks (both check in and check out)
- Right to Rent checks (the landlord or agent are liable for this cost, unless the tenant fails the check)
- Pet fees/deposits
- Renewal/exit fees
- Interest on permitted payments
- Professional end of tenancy cleaning
- Third party fees
- Gardening Services

For a full list of permitted and prohibited fees please visit the GOV.UK website for guidance.

<https://www.gov.uk/government/publications/tenant-fees-act-2019-guidance>

It applies regardless of when the tenancy started. The provisions cover assured shorthold tenants, student lettings and lodgers living with a private landlord.

4.2a **Publication of fees**

Any person engaging in letting agency or property management work is required to display a list of the fee's tenants are required to pay. The lists have to be published at relevant premises and on owned or third-party websites. (Requirements under Consumer Rights Act 2015 and Tenant Fees Act 2019).

4.2b Redress Scheme Membership

Any person engaged in letting agency or property management work must be a member of an approved redress scheme. The agent has a duty to display a statement that indicates that the agent is a member of a redress scheme which gives the name of that scheme.

(Requirements under the Enterprise and Regulatory Reform Act 2013 and the Redress Scheme for letting agency work and property management work (requirement to belong to a redress scheme etc) (England) Order 2014).

4.2c Client Money Protection Scheme

A property agent who holds client money must be a member of an approved or designated client money protection scheme. Once they are registered, they become a Regulated Property Agent (RPA). RPA's must display a copy of their CMP membership at each premise they conduct face to face business, on their website and any third-party platform.

(Requirements under Tenant Fees Act 2019 and Client Money Protection Schemes for Property Agents (Requirement to belong to a scheme etc) Regulations 2019).

4.3 Food Information (Amendment) (England) Regulations 2019

The legislation will come into effect from October 2021. Recent fatalities involving allergens prompted the UK government to introduce more prescriptive requirements on businesses providing prepacked for direct sale foods, which come closer to the requirements for pre-packed foods.

The new law, also known as 'Natasha's Law', will require food businesses to include full ingredients labelling, including allergens information on pre-packed for direct sale foods.

Public/stakeholder engagement

- 5.1 The proposals resulting from legislative changes have been prepared in consultation with colleagues in Trading Standards and Legal Services.

Other options

- 6.1 None.

Financial and value for money issues

- 7.1 All additional work as a direct result of this report will be managed within current resources. Both Civil and Criminal sanctions are available and the recovery of costs will be sought for any prosecutions and enforcement action undertaken.

Legal implications

- 8.1 Ensuring officers are properly authorised protects the Council against the risk that use of the powers detailed in the report are challenged.

- 8.2 Legal Services will represent Trading Standards and the Council in the event of any enforcement action leading to a prosecution.
- 8.3 Where appropriate Counsel can be instructed.

Climate implications

9.1 The Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020

Unlike other materials, such as paper or wood, plastic can persist in the environment for hundreds of years. When released into the environment, items such as plastic straws can endanger wildlife and damage habitats, as small plastic items are often mistaken for food by animals. Furthermore, plastic will eventually break down into microplastics, ending up in our soils and seas and permeating our food chains.

The full impacts of the dangers of microplastics are still being uncovered.

Other significant implications

10.1 N/A

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Lionel Desa, Legal Services	16/03/2021
Finance	Amanda Fletcher, Head of Finance	15/03/2021
Service Director(s)	Samantha Dennis, Director of Public Protection and Streetpride	12/03/2021
Report sponsor	Rachel North, Strategic Director of Communities and Place	17/03/2021
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	Alex Hough, Head of Democracy	18/05/2021
Background papers:		
None		
List of appendices:		
None		