

Report sponsor: Paul Simpson, Acting Chief Executive
Report author: Alex Hough, Acting Head of Democracy

Constitutional Amendments

Purpose

- 1.1 This report seeks to amend the Council Constitution, in order to provide the necessary authorisation for officers to discharge powers granted under a range of legislation relating to civil enforcement.
- 1.2 Officers in the Public Protection and Streetpride department have undertaken a review of the Council's Scheme of Delegations, in relation to the list of legislation under which the Director of Public Protection and Streetpride may appoint authorised or proper officers.
- 1.3 The exercise has recommended the removal of five obsolete pieces of legislation from Part F of the Scheme of Delegations, as well as the inclusion of twelve pieces of primary legislation not currently listed. Further details of the proposed changes are provided at Appendix 1; proposed amendments to the Scheme of Delegations are detailed at Appendix 2.
- 1.4 This work forms part of a wider review of the Scheme of Delegations contained within the Council Constitution, which will be presented to Council in due course.

Recommendation

- 2.1 To grant authority to the Director of Public Protection and Streetpride to appoint authorised or proper officers for the purposes of exercising statutory functions related to the primary legislation listed at 4.4 of the report.
- 2.2 To authorise the Monitoring Officer to make appropriate amendments to the Scheme of Delegations within the Council Constitution, as detailed at Appendix 2.

Reasons

- 3.1 To ensure legislation granting powers to officers within the Scheme of Delegations is up to date and accurate.

Supporting information

- 4.1 Officers in the Public Protection and Streetpride department have undertaken a review of both the statutory powers and functions listed under the responsibility of the Director of Public Protection and Streetpride within Part F of the Scheme of Delegations. Details of the proposed changes are listed at Appendix 1.
- 4.2 This work forms part of an on-going wider review of the Scheme of Delegations, however approval is necessary to allow officers to discharge powers related to the Acts listed as expediently as possible.
- 4.3 The review has recommended the removal of the following obsolete Acts from the Scheme of Delegations, highlighted in red at Appendix 2:
- Animal Boarding Establishments Act 1963
 - Breeding and Sale of Dogs (Welfare) Act 1999
 - Pet Animals Act 1951
 - Riding Establishments Act 1964 and 1970
 - Scrap Metal Dealers Act 1964
- 4.4 The exercise has recommended the addition and authorisation of powers associated with the following Acts, highlighted in green at Appendix 2:
- Accommodation Agencies Act 1953
 - Civil Contingencies Act 2004
 - Chronically Sick and Disabled Persons Act 1970
 - Companies Act 2006
 - Crime and Disorder Act 1998
 - Disabled Person Parking Badges Act 2013
 - Flood and Water Management Act 2010
 - Land Drainage Act 1991
 - Psychoactive Substances Act 2016
 - Scrap Metal Dealers Act 2013
 - Traffic Management Act 2004
 - Zoo Licensing Act 1981
- 4.6 Also included in Appendix 2 are four pieces of legislation where Council has recently granted approval for powers to be discharged, but that have yet to be reflected in the published version of the Scheme of Delegations. These changes, together with consequential amendments relating to job titles, have been highlighted in yellow.

Public/stakeholder engagement

- 5.1 The proposals contained in the report have been prepared in consultation with colleagues in the Public Protection and Streetpride department and Legal Services.

Other options

- 6.1 To maintain existing arrangements. This has been discounted on the basis that officers would be unable to exercise powers associated with the legislation listed at 4.4.

Financial and value for money issues

- 7.1 None directly arising.

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.

Other significant implications

- 9.1 None.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Olu Idowu, Head of Legal Services	13 February 2020
Finance		
Service Director(s)	Emily Feenan, Director of Legal, Procurement and Democratic Services	14 February 2020
Report sponsor	Paul Simpson, Acting Chief Executive	14 February 2020
Other(s)	Lewis Bryan, Project Manager	13 February 2020
	Rachel North, Strategic Director of Communities and Place	12 February 2020

Background papers:	None
List of appendices:	Appendix 1 – Summary of proposed amendments Appendix 2 – Draft extract from Scheme of Delegations

Public Protection and Streetpride – proposed amendments to Scheme of Delegations

Change	Comments
Add: Flood and Water Management Act 2010	To discharge the Council's functions, duties and powers under Part 1 and Schedule 1 of the Flood and Water Management Act 2010.
Add: Land Drainage Act 1991	To appoint suitable persons to exercise the Council's (Drainage Authority) powers and duties under this legislation.
Add: Disabled Person Parking Badges Act 2013	To enable suitable officers to inspect, retain and cancel disabled persons parking badges (blue badges).
Add: Chronically Sick and Disabled Persons Act 1970	To enable a suitable persons to approach a person in a vehicle displaying a Blue Badge and (or a person who appears to have been in or about to get into the vehicle) and require them to produce a badge.
Add: Civil Contingencies Act 2004	To appoint suitable persons to undertake the necessary plans, training and work on behalf of the Council to support the Derbyshire Local Resilience Forum.
Add: Companies Act 2006	To appoint suitable persons to exercise the Council's powers and duties under the legislation, in particular: Section 993(1) power to prosecute for fraudulent trading.
Add: Traffic Management Act 2004	To appoint suitable persons to enforce parking contraventions as identified within the legislation, namely under Part 6 of the Act.
Add: Accommodation Agencies Act 1953	To appoint persons to exercise the Council's powers and duties under the legislation, in particular section one, which makes it an offence for an agent to advertise a property without the express consent and instructions from the owner/landlord of the property.
Add: Crime and Disorder Act 1998	To appoint persons to exercise the Council's powers and duties under the legislation, namely to support the formulation and implementation of a strategy for reducing crime and anti-social behaviour within the local authority area.
Remove: Scrap Metal Dealers Act 1964 Add: Scrap Metal Dealers Act 2013	The Scrap Metal Dealers Act 1964 was repealed and replaced with the Scrap Metal Dealers Act 2013.

<p>Remove: Breeding and Sale of Dogs (Welfare) Act 1999</p> <p>Remove: Animal Boarding Establishments Act 1963</p> <p>Remove: Pet Animals Act 1951</p> <p>Remove: Riding Establishments Act 1964 and 1970</p>	<p>On 1 October 2018, the Government published the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 under Section 13 of the Animal Welfare Act 2006. The regulations replaced the proposed removed legislation.</p>
<p>Add: Zoo Licensing Act 1981</p>	<p>To appoint persons to exercise the Council's powers and duties under the legislation.</p> <p>The Act aims to ensure that zoos are safe for the public to visit, that high standards of welfare are maintained and that zoos make a contribution to conservation of wildlife.</p>
<p>Add: Psychoactive Substances Act 2016</p>	<p>To appoint persons to exercise the Council's powers and duties under the legislation, in particular enforcement offences such as the intentional supply a psychoactive substance.</p>
<p>Add: Together with:</p> <p>(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 or the European Union (Withdrawal) Act 2018 ;</p> <p>(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</p> <p>(c) any modification or re-enactment to the foregoing.</p>	<p>The insertion of this clause ensures that only primary legislation is listed within this section, as the regulations the Council enforces are made within the legislation.</p>
<p>Delete: Director of Communities, Environment and Regulatory Services</p> <p>Add: Director of Public Protection and Streetpride</p>	<p>Change of job title for all occurrences.</p>

Extract from Derby City Council Scheme of Delegations

PART F

MATTERS THAT ARE DELEGATED TO OFFICERS

OFFICERS' AREAS OF RESPONSIBILITY

DIRECTOR OF PUBLIC PROTECTION AND STREETPRIDE**B Areas of responsibility**

The **Director of Public Protection and Streetpride** is responsible for establishing the Domestic Homicide Review. The review looks into the circumstances in which the death of a person aged 16 or over has, or appears to have, resulted from violence, abuse or neglect.

The **Director of Public Protection and Streetpride** is responsible for appointing any members of staff to act as authorised or proper officers under the following Acts, insofar as the appointment relates to functions listed:

- **Accommodation Agencies Act 1953**
- Administration of Justice Act 1970
- Agriculture (Miscellaneous Provisions) Act 1968
- Agriculture Act 1970
- Agriculture Produce (Grading and Marking) Act 1928
- Animal Act 1971
- ~~Animal Boarding Establishments Act 1963~~
- **Animal Feed (Basic Safety Standards) (England) Regulations 2019**
- Animal Gatherings Order 2010
- Animal Health & Welfare Act 1984
- Animal Welfare Act 2006
- Anti Social Behaviour Act 2003
- Anti Social Behaviour, Crime and Policing Act 2014
- ~~Breeding and Sale of Dogs (Welfare) Act 1999~~
- Building Act 1984
- Burials Act 1957
- Business Names Act 1985
- Business Protection from Misleading Marketing Regulations 2008
- Caravan Sites and Control of Development Act 1960
- **Chronically Sick and Disabled Persons Act 1970**
- **Civil Contingencies Act 2004**
- Charities Act 2006
- Children & Young Persons (Protection from Tobacco) Act 1991
- Children & Young Persons Act 1933
- Cinemas Act 1985
- Classification, Packaging and Labelling of Dangerous Substances Regulations 1984
- Clean Air Act 1993

- Clean Neighbourhoods and Environment Act 2005
- **Companies Act 2006**
- Companies Act 1985
- Consumer Contracts (Information, Cancellation and additional Charges) Regulations 2013
- Consumer Credit Acts 1974 and 2006
- Consumers, Estate Agents and Redress Act (CEARA) 2007 (including Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 made under this Act)
- Consumer Protection Act 1987
- Consumer Protection from Unfair Trading Regulations 2008
- Consumers Right Act 2015
- Control of Dogs Order 1992
- Control of Horses Act 2015
- Control of Pollution Act 1974
- Control of Pollution (Amendment) Act 1989
- Copyright, Designs and Patents Act 1988
- **Crime and Disorder Act 1998**
- Criminal Attempts Act 1981
- Criminal Justice Act 1988
- Criminal Justice and Police Act 2001
- Dangerous Dogs Act 1991
- Dangerous Wild Animals Act 1976
- Data Protection Act 1998
- Disability Discrimination Act 1995
- **Disabled Person Parking Badges Act 2013**
- Dogs (Fouling of Land) Act 1996
- Dogs Act 1871 and 1906
- Education Reform Act 1988 Energy Conservation Act 1981
- Energy Act 2011
- Energy Act 2013
- Energy Efficiency (Private Rented Property) (England and Wales) regulations 2015 made under the Energy Act 2011
- Energy Information Regulations 2011
- Energy Performance of Buildings (England and Wales) Regulations 2012
- Environment Act 1995 – Parts II, IV, V
- Environmental Protection Act 1990
- Enterprise Act 2002
- Equalities Act 2010
- Estate Agents Act 1979
- European Communities Act 1972
- Explosives (Age of Purchase etc) Act 1976
- Explosives Act 1875
- Explosives Act 1923
- Factories Act 1961 Fair Trading Act 1973
- Farm and Garden Chemicals Act 1967
- **Flood and Water Management Act 2010**
- Food and Environmental Protection Act 1985

- Food Information to Consumers Regulation 2014
- Food Safety Act 1990
- Food Standards Act 1999
- Forgery and Counterfeiting Act 1981
- Fraud Act 2006
- Freedom of Information Act 2000
- Gambling Act 2005
- General Product Safety Regulations 2005
- Hallmarking Act 1973
- Health Act 2006
- Health and Safety at Work Etc. Act 1974
- Highways Act 1980
- House to House Collections Act 1939
- Housing Acts 1980, 1985, 2004
- Housing and Planning Act 2016 (Part 2)
- Insurance Brokers (Registration) Act 1977
- Insurance Companies Act 1981
- Intoxicating Substances (Supply) Act 1985
- Land Drainage Act 1991
- Landlord and Tenant Act 1985
- Licensing Act 2003
- Littering from Vehicles outside London (Keepers: Civil Penalties) Regulations 2018
- Local Government (Miscellaneous Provisions) Act 1976
- Local Government (Miscellaneous Provisions) Act 1982
- Local Government Act 2000
- Magistrates Courts Act 1980
- Medicines Act 1968
- Money Laundering Regulations 2007 – power under Regulation 46 for local authority to prosecute – also for Accredited Financial Investigators
- Motor Cycle Noise Act 1987
- National Assistance Act 1948
- Noise Act 1996
- Noise and Statutory Nuisance Act 1993
- Offensive Weapons Act 1996
- Offensive Weapons Act 2019
- Offices, Shops and Railway Premises Act 1963
- ~~Pet Animals Act 1951~~
- Petroleum (Consolidation) Act 1928
- Petroleum (Transfer of Licences) Act 1936
- Poisons Act 1972
- Pollution Prevention and Control Act 1999
- Prevention of Damage by Pests Act 1949
- Prices Acts 1974 and 1975
- Proceeds of Crime Act 2002
- Property Misdescriptions Act 1991
- Protection from Eviction Act 1977
- Protection of Animals (Amendment) Act 1954

- Protection of Animals Act 1911
- Public Health (Control of Disease) Act 1984
- Public Health Act 1961
- Public Health Act 1936
- Psychoactive Substances Act 2016
- Refuse Disposal (Amenity) Act 1978
- Regulatory Enforcement and Sanctions Act 2008
- ~~Riding Establishments Act 1964 and 1970~~
- Road Traffic (Foreign Vehicles) Act 1972
- Road Traffic Acts 1988 & 1991
- Road Traffic Regulation Act 1984
- Scotch Whisky Act 1988
- ~~Scrap Metal Dealers Act 1964~~
- Scrap Metal Dealers Act 2013
- Solicitors Act 1974
- Sunbed Regulations Act 2010
- Sunday Trading Act 1994
- Tenant Fees Act 2019
- Telecommunications Act 1984
- Theatres Act 1968
- Theft Acts 1968 and 1978
- Timeshare Act 1992
- Town and Country Planning, Churches and Places of Religious Town and Country Planning Act 1990 (as amended)
- Town Police Clauses Act 1847
- Trade Descriptions Act 1968
- Trade Marks Acts 1938 & 1994
- Trading Representations (Disabled Persons) Act 1958
- Trading Stamps Act 1964
- Traffic Management Act 2004
- Transmissible Spongiform Encephalopathies (England) Regulations 2010
- Transport Act 1985
- Unsolicited Goods and Services Act 1971 Vehicle (Crime) Act 2001
- Video Recordings Act 1984
- Weights and Measures Acts 1976 and 1985
- Wildlife and Countryside Act 1981
- Worship and Burial Grounds Regulations 1950
- Zoo Licensing Act 1981

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 or the European Union (Withdrawal) Act 2018;
- (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.

And for appointing Inspectors for all purposes under the:

- Health and Safety at Work Act 1974 including appointing people to accompany Health and Safety Inspectors pursuant to section 20 of the Act
- The Sunday Trading Act 1994
- The Bovine Products (Production and Dispatch) Regulations 1997
- The Petroleum (Consolidation) Act 1928