

Council – 2 July 2007

Review of the Council's Constitution with respect to changes in Public Protection

Service Area: Public Protection

Wards: All

Summary of report

To detail amendments to the Council's Constitution considered necessary in order to maintain and enhance the service. These include:

- Re-assignment of the authorisations of the former General Manager Environmental Health and Consumer Services to the Head of Public Protection.
- The delegation of authority, to the Head of Public Protection, for certain external organisations to investigate criminal offences within the Borough of Walsall.
- An update of the list of legislation enforced by the Public Protection service.
- Reallocation of authorisations necessary to reflect the new structure and duties carried out by the Public Protection service.

Recommendations

- (1) That Council approve the scheme of delegations as set out in the appendix to this report.
- (2) That these delegations take immediate effect.

Resource and legal considerations

The report has been written with support from officers in Legal Services. Such delegation is only permitted provided the function to be delegated is not an 'executive' one, and is in the interests of the citizens of the borough.

Part 2 of the Local Government Act 2000 provides for the discharge of a local authority's functions by an executive of the authority unless those functions are specified as functions that are not to be the responsibility of the authority's executive. Part 3.3(1) of the Constitution sets out the responsibility for executive functions.'

The Council's Legal Services team has been consulted on the delegation of authority, to the Head of Public Protection, for certain external organisations to investigate criminal offences within the Borough of Walsall and, they are of the opinion that those functions are not executive ones. Therefore, by virtue of Section 101 of the Local Government Act 1972, Walsall MBC may delegate those functions to Birmingham City Council and Solihull Metropolitan Borough Council.

Citizen impact

The amended Constitution takes into account Public Protection functions that have been the subject of a restructure. This will clarify its up-to-date functions and ensure we are able to continue serving the public interest.

Environmental impact

The scheme of delegations deals with, amongst other things, certain highways enforcement functions that have been transferred to Public Protection. These functions form part of a new "Licensing Enforcement Team", the remit of which will be to implement more effective controls over illegal highway obstructions and certain illegal parking. This will have a beneficial environmental impact in Walsall.

Performance and risk management issues

It is expected that the proposed changes will improve the Council's performance in carrying out its Public Protection functions more effectively.

If the Constitution is not updated, there is a risk to the Authority effectively and promptly delivering services without challenge.

Equality implications

The proposed changes do not raise any additional equality issues. By ensuring that all members, officers and stakeholders are aware of the Council's Constitution we can all contribute to ensuring that all matters dealt with by and on behalf of the Council are undertaken from a basis of equality.

Consultation

The report has been prepared following representation from Constitutional and Legal Service Officers.

Background papers

None



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Background

Re-assignment of Authorisations

The scheme of delegations for Public Protection was laid down in the Constitution which was approved on 15 May 2002. Those delegations related to the General Manager of Environmental Health and Consumer Services. This position was extinguished and replaced by the Head of Public Protection on 18 October 2004. Since that date, to carry out her duties, effective running of the Public Protection Service was delegated to the Head of Public Protection by the Chief Executive in pursuance of her powers under the Constitution.

It is considered that officer delegations ought to be clearly laid out so as to minimise the likelihood of legal challenge due to lack of authority.

Delegation of certain functions

In 2005, the Department of Trade and Industry established a pilot to test the ability of a dedicated and funded team within a local authority Trading Standards Service to undertake enforcement against illegal money lending. Birmingham City Council was identified as one of the two pilot authorities.

Birmingham City Council sought agreement amongst all of the West Midlands Local Authorities for authority to be delegated to the City Council to enforce Part III of the Consumer Credit Act 1974 for a period of two years throughout the region.

There were no financial implications for Walsall Council. All costs were funded by the Department of Trade and Industry. Walsall Council does not have sufficient resources to dedicate solely to the investigation and detection of illegal or unlicensed money lenders. The dedicated project team are able to provide additional resources and protection for the benefit of Walsall's citizens.

On 19 January 2005 Cabinet approved recommendations to:

- (1) Approve, by virtue of Section 101 of the Local Government Act 1972 and Section 13(7) of the Local Government Act 2000 the delegation of a function, namely, enforcement of Part III of the Consumer Credit Act 1974 to the Trading Standards Services of Birmingham City Council subject to those terms and conditions contained in the agreement to be entered into with Birmingham City Council relating to the said delegated function.
- (2) Agree the attached "Protocol for illegal Money Lending Team Investigations" (Appendix 1) and delegate officers to approve minor alterations as required to the ensure agreement.

The recommendation contained within this report will allow the Head of Public Protection to renew the delegation of this function and agree the working protocol.

Similarly, in August 2006 a government funded project called 'The Scambusters Pilot' was set up to be administered by Solihull Metropolitan Borough Council. The

Scambusters Pilot is a funded team of officers who deal with criminal activity that operates on a regional basis. This supports existing local authority resources.

The recommendation contained within this report will allow the Head of Public Protection to delegate relevant authorisations and agree the working protocol.

Update of Legislation

Since the Constitution was adopted in 2002 there have been many changes in legislation enforced by regulators in local authorities. These include, for instance, the Licensing Act 2003, the Gambling Act 2005 and the Clean Neighbourhoods and Environment Act 2005. These have all been subject of reports to Council or Cabinet previously. This report details all legislation that is currently enforced by Public Protection Services. More recently;

The Housing Act 2004 Part 5, requires that from 1st August 2007, those marketing residential properties with four or more bedrooms will be under a duty to have a Home Information Pack (HIP), and make a copy available on request. There will be a transitional period until 1st January 2008. This authority is under a duty to enforce this legislation, which provides for officers to give a penalty charge notice to someone failing to comply with any of their duties under this legislation. This penalty charge is currently set at £200.

The Fraud Act 2006 – The Act repeals the majority of the Theft Acts 1968 and 1978 and establishes a new general offence of fraud, which can be committed in three ways; fraud by false representation; fraud by failing to disclose information; and fraud by abuse of position. Officers are currently authorised to enforce the Theft Acts, and have previously used this legislation. Additionally, officers may use the Fraud Act in the future to tackle ‘door step crime’ involving itinerants who target society’s vulnerable people. The Act applies to offences committed wholly after the date of its implementation on 15th January 2007. The existing Theft Act laws remain applicable to any offence committed wholly or partly before that date.

The Consumer Credit Act 2006 is the biggest overhaul of consumer credit legislation since 1974. It will be a huge boost to consumer rights and redress where borrowing of money is concerned. The Act also introduces major changes to the licensing of consumer credit businesses and new powers to drive rogues out of the market.

The Animal Welfare Act 2006 introduces an extra level of protection for pet and farmed animals. It enables local authorities to intervene before an animal actually suffers (before we had to wait until the animal was suffering). It places a duty of care on any person responsible for the animal, allows Improvement Notices to be issued if the needs of an animal are not met, restricts the sale of animals to a person over 16 or a minor if accompanied by an adult, promotes good practice and introduces more severe levels of punishment.

The Companies Act 2006 will in the future repeal the Business Names Act 1985 which requires the disclosure of information if a business trades under a name other than their own, or true limited company name. This requirement to disclose information will be re-enacted under subordinate legislation under the Companies Act 2006 and is aimed at assisting consumers identify from whom they need to seek civil law redress.

New Structure

Within the past two years Public Protection has undergone certain changes in its responsibility for functions. The most significant increases in its duties include:-

- Registration Services
- Emergency Planning Services
- Responsibilities under the Licensing Act 2003
- Responsibility for a range of miscellaneous licenses
- Certain highway enforcement duties

The proposed scheme of delegations has been updated to provide for those extra services.

42. **Head of Service, Public Protection**

- (1) (1) To authorise members of staff employed in Public Protection to act on behalf of the Council from time to time in enforcing the following legislation.
- (2) To authorise, in the absence of the Head of Public Protection, the Divisional Managers of Environmental Health, Trading Standards, Bereavement Services and the Emergency Planning to act on behalf of the Council, including the serving of Notices, prosecutions, and such matters as may require attention.
- (3) To authorise officers from other authorities and public agencies working on regional projects, to exercise statutory powers within the borough from time to time.

- (2) Authority to take action under the following legislation including, where relevant:-

The service of Notices, issuing of licences, permits and authorisations, approval of registrations, prior consents and grants, authorisation of works in default, acceptance of statutory notifications, and to take any other action including the power to apply for warrants and to seize and detain goods and documents.

Accommodation Agencies Act 1953
Administration of Justice Act 1970
Agriculture Act 1970
Agriculture (Miscellaneous Provisions) Act 1968
Agriculture Produce (Grading and Marking) Acts 1928 and 1931
Animal Boarding Establishment Act 1963
Animal Health Act 1981
Animal Health and Welfare Act 1984
Animals Act 1971
Animal Welfare Act 2006
Anti-social Behaviour Act 2003
Betting Gaming and Lotteries Acts 1963-1971
Breeding of Dogs Act 1973 and 1993
Breeding and Sale of Dogs (Welfare) Act, 1999
British Telecommunications Act 1981
Building Act, 1984
Business Names Act 1985
Cattle Identification Regulations 1998
Celluloid and Cinematograph Film Act 1972
Charities Act 2006
Children and Young Persons Act 1933
Children and Young Persons (Protection from Tobacco) Act 1991
Chronically Sick and Disabled Persons Act, 1970
Cinemas Act 1985
Civil Contingencies Act 2004
Clean Air Act 1993

Clean Neighbourhoods and Environment Act 2005
Companies Act 1985
Companies Act 2006
Competition Act 1980
Consumer Credit Act 1974
Consumer Credit Act 2006
Consumer Protection Act 1987
Control of Pollution Act 1974
Control of Pollution Amendment Act 1989
Copyright Designs and Patents Act 1988
Courts and Legal Services Act 1990
Criminal Attempts Act 1981
Criminal Damage Act 1971
Criminal Justice and Public Order Act, 1994
Criminal Law Act 1977
Dangerous Dogs Acts 1989 and 1991
Dangerous Wild Animals Act 1976
Dairy Products (Hygiene) Regulations 1995
Defective Premises Act, 1972
Development of Tourism Act 1969
Dogs Act 1871
Dogs (Fouling of Land) Act 1996
Education Reform Act 1988
Egg Products regulations 1993
Employment Agencies Act 1973
Energy Act 1976
Energy Conservation Act 1981
Environment Act 1995
Environmental Protection Act 1990
Estate Agents Act 1979
European Communities Act 1972
Explosives Act 1875
Factories Act 1961 and 1998
Fair Trading Act 1973
Farm and Garden Chemicals Act 1967
Food Act 1984
Food and Drugs Act 1955 as amended by Slaughterhouse Act 1958
Food and Environment Protection Act 1985
Food Safety Act 1990
Food Safety (General Food Hygiene) Regulations 1995
Food Premises (Registrations) Regulations 1991
Forgery and Counterfeiting Act 1981
Fraud Act 2006
Gambling Act 2005
Game Act 1831 (Game and Game Dealers)
Game Licences Act 1860 (Game Dealers)
Gaming Act, 1968
Guard Dogs Act 1975
Hallmarking Act 1973
Health Act 2006
Health and Safety at Work etc. Act 1974
Highways Act 1980

Home Energy Conservation Act, 1995
Housing Act 2004
Intoxicating Substances (Supply) Act 1985
Land Compensation Act 1973
Late Night Refreshment Houses Act 1976
Licensing Act 2003
Litter Act 1983
Local Government Act, 1972
Local Government Acts, 1988 and 2000 and 2003
Local Government and Housing Act, 1989
Local Government (Miscellaneous Provisions) Acts 1976 and 1982
Lotteries and Amusements Act 1976
Meat Products (Hygiene) Regulations 1994
Medicines Act 1968
Minced Meat and Meat Preparation (Hygiene) Regulations 1995
Mock Auctions Act 1961
Motor Cycle Noise Act 1987
Noise and Statutory Nuisances Act 1993
Noise Act 1996
Nurses Agencies Act 1957
Offices, Shops and Railway Premises Act 1963
Performing Animals (Regulation) Act, 1925
Pet Animals Act 1951
Pigs (Records, Identification and Movement) Order 1995
Poisons Act 1972
Pollution Prevention Control Act, 1999
Powers of Criminal Courts Act 1973
Prevention of Damage by Pests Act 1949
Prices Acts 1974 and 1975
Private Hire Vehicles (Carriage of Guide Dogs etc) Act 2002
Private Places of Entertainment (Licensing) Act 1967
Property Misdescriptions Act 1991
Protection from Harassment Act 1997
Protection of Animals Act 1911
Protection of Birds Acts 1954 to 1976
Public Health Acts 1875, 1936, 1961 and 1969
Public Health (Control of Diseases) Act 1984
Regulation of Investigatory Powers Act, 2000
Refuse Disposal (Amenity) Act 1978
Riding Establishments Acts 1964 and 1970
Road Traffic Acts 1988 and 1991
Road Traffic (Consequential Provisions) Act 1988
Road Traffic (Foreign Vehicles) Act 1972
Road Traffic Offenders Act 1988
Road Traffic Regulation Act 1984
Slaughterhouse Act 1974
Slaughter of Poultry Act 1967
Sunday Trading Act 1994
Tattooing of Minors Act, 1969
Telecommunications Act 1984
Theatres Act 1968
Theft Acts 1968 and 1978

Timeshare Act 1992
Town Police Clauses Acts 1847 and 1889
Trade Descriptions Act 1968
Trade Marks Act 1994
Trading Representations (Disabled Persons) Acts 1958 and 1972
Trading Stamps Act 1964
Unsolicited Goods and Services Acts 1971 and 1975
Vehicle (crime) Act 2001
Video Recordings Act 1984
Waste Minimisation Act 1998
Water Act, 1989
Water Industry Act 1991
Weeds Act 1950, 1959, 1981
Weights and Measures Acts 1976 and 1985
West Midlands County Council Act 1980
Wildlife and Countryside Act 1981
Zoo Licensing Act 1981

- (3) To authorise the Head of Public Protection to appoint:, or recommend for appointment
- The Chief Inspector of Weights and Measures
 - The Deputy Chief Inspector of Weights and Measures
 - An Inspector to institute legal proceedings in respect of the Health and Safety at Work etc. Act 1974
 - Registrar of Crematorium
 - Lead Officer for Food
 - Medical Referee (and deputies) for the Crematorium
- (4) Institution of legal proceedings in respect of the enforcement of all legislation set out above and, in the following circumstances:
- (i) where the prosecution relates to a contentious/complex area of legislation and/or is likely to be considered as a "test case",
 - (ii) where significant costs are likely to be incurred in bringing the prosecution before the courts,
 - (iii) where the prosecution has serious national implications,
 - (iv) where the prosecution relates to a significant and/or sensitive local issue,
 - (v) any other matter which in the opinion of the Head of Service is of such a serious or sensitive nature that it would be inappropriate for him/her to act under delegated powers,
- may be referred for the consideration of the Executive Director in consultation with the Assistant Director of Legal Services.
- (5) Enforcement of the Customs and Excise Management Act 1979 and the Tobacco Products Act 1979 relating to fiscal marking of tobacco products.

- (6) Authorisation of Directed Surveillance and Covert Human Intelligence Sources in accordance with the requirements of the Regulation of Investigatory Powers Act, 2000.
- (7) To authorise the Bereavement Services Manager to administer the following legislation in relation to the disposal of the dead and to exercise all the powers and duties of the Council as a Local Authority, Burial and Cremation Authority, under, and to delegate this authority to officers in Bereavement Services from time to time:
- Burial Acts 1852, 1853, 1855, 1857, 1859, 1900 and 1906
 - Burial Laws Amendment Act 1880
 - Cemeteries Clauses Act 1847
 - Cremation Acts 1902 and 1952
 - Fees (Increase) Act 1923
 - Local Government Act 1972
 - Public Health (Control of Diseases) Act 1984
 - Environmental Protection Act 1990
 - Environment Act 1995
- (8) Authority to vary fees and charges not fixed by Statute.
- (9) To commence proceedings through the small claims procedure of the County Court for the recovery of outstanding debts.
- (10) Authority to determine and otherwise deal with the following matters, provided that controversial matters may be submitted to the Licensing & Safety Committee in accordance with that Committee's Scheme of Delegations:-
- (a) Stage Plays Licences;
 - (b) Game Dealers Licences;
 - (c) Scrap Metal Dealers Registration;
 - (d) Motor salvage operators' registration
 - (e) Lottery registration and Prize Bingo permits;
 - (f) Track Betting Licences;
 - (g) Amusements with Prizes permits with and without machines;
 - (h) Street Collection Licences and House to House collection permits;
 - (i) Street Trading Licences;
 - (j) Sporting Event Licences;
 - (k) Cinema Licences (including video juke box licences and video karaoke machine licences);

- (l) Certificates of Consent for all public exhibitions, demonstrations or performances of hypnotism;
- (m) Licences to hold civil marriage and civil partnership ceremonies on approved premises;
- (n) Licensing of Sex Establishments (including Sex Cinemas and Sex Shops);
- (o) Issue of permits under the Charities Act 2006;
- (p) Issue of Taxi Licences.