

ITEM 11 Amendments to the Scheme of Delegations to the Head of Housing & Environmental Health

Report of the Head of Housing & Environmental Health (Portfolio: Corporate)

Recommended:

- 1. That the Scheme of Delegations to the Head of Housing & Environmental Health, contained within Part 3 of the Council's Constitution, be amended in accordance with proposed changes set out in Annex 1 to this report.**
- 2. That the Head of Legal & Democratic Services be authorised to amend the Constitution accordingly.**

SUMMARY: This report seeks to amend the scheme of delegation of powers to the Head of Housing & Environmental Health. Specifically, it seeks to:

- Extend the powers of food inspectors to sign and serve notices so as to be able to respond promptly to urgent food safety law contraventions during inspections.
- Extend the powers of the Service's three Principal Environmental Health Officers and the Housing Development Manager to allow them to sign and serve notices in respect of statutory provisions relevant to the work of each team.
- Extend the powers of some additional officers to sign and serve notices in respect of statutory provisions that may be appropriate in respect of urgent action taken outside of office hours as part of the Environmental Health out-of-hours service.
- Formally appoint officers to exercise certain dog control functions in respect of seizing stray dogs and the enforcement of dog microchipping requirements.
- Make other minor updates, additions and alterations to the scheme.

1 Introduction

1.1 Changes are sought to Part 3 of the Council's Constitution (Delegations to Officers) in respect of some Housing & Environmental Health staff. The recommendations of this report relate to the following proposals:

- A. Food inspectors who satisfy requisite competency standards should be delegated the authority to exercise all powers under relevant food safety statutory provisions, including the service of notices such as hygiene improvement notices and hygiene emergency prohibition notices. The reasons for this change are that urgent action is sometimes required and also notices for technical food safety matters would in any case ideally be signed by the food inspector who would be best placed to justify such action, in accordance with the Food Law code of practice.

- B. Extend the powers of the three Principal Environmental Health Officers and the Housing Development Manager to sign and serve notices. The reason for this change is to improve accountability and minimise delays with regard to the service of urgent notices if and when the Environmental Health Manager and Head of Housing & Environmental Health are both unavailable.
- C. Extend the powers of officers who may participate in the Environmental Health Out-of-Hours Service to enable them to sign and serve notices in respect of a restricted list of statutory provisions that foreseeably could well be required to be taken urgently outside of office hours.
- D. Formally appoint officers for the purposes of Section 149(1) of the Environmental Protection Act 1990, in respect of discharging the functions under section 149 of the Environmental Protection Act 1990 for purposes of dealing with stray dogs, and also authorise nominated officers for purposes of the Microchipping of Dogs (England) Regulations 2015.
- E. Make other minor updates and amendments to the scheme, as shown in the changes in the Annex to this report including the correction of some job titles, the addition of statutory provisions to the existing list for some officers in order to ensure that officers are properly authorised to exercise their existing functions and the removal of non-relevant ones.

2 Background

- 2.1 Under paragraph 21 of the Scheme of Delegations to the Head of Housing and Environmental Health, the signing of most types of notices under Environmental Health legislation is delegated solely to the Environmental Health Manager, with other Environmental Health staff only authorised to report contraventions. In practice, this means that all formal notices prepared by other officers must be signed by either the Environmental Health Manager or the Head of Housing & Environmental Health.
- 2.2 Under Environmental Health law, there is a very wide range of legal provisions where notices may be required, for example:
 - Notices requiring corrective action to be taken following the identification of a contravention of law – for example food hygiene improvement notices, food hygiene emergency prohibition notices, or notices relating to the detention / seizure of unfit food.
 - Notices requiring action where there has not been a contravention of the law but for the purposes of correcting an unsatisfactory situation that exists – for example noise abatement notices, notices requiring remedial action to put right an unsatisfactory private water supply, or steps to be taken to address a pest infestation.
 - Notices requiring certain information to be provided.

- 2.3 Whilst in most circumstances the existing scheme will work well, ensuring that notices are only served if approved by the Environmental Health Manager or Head of Housing & Environmental Health, there are some circumstances where this scheme could prove problematic and/or restrictive in practice.
- 2.4 The first recommended change relates to the signing of notices under food safety law. The change is recommended because notices sometimes have to be served immediately by the food inspector present to remedy an urgent health risk. It may not always be possible for the Environmental Health Manager or the Head of Housing & Environmental Health to visit the premises and counter-sign the notice, and it is possible that existing arrangements could inhibit urgent corrective action being taken. Additionally, notices relating to food safety matters would in any case best be signed by the food inspector who would be best placed to justify such action. This would bring the scheme of delegation for food inspectors broadly in line with that which already exists for appointed health and safety inspectors. In practice, the service of notices will be monitored by, and subject to any limitations imposed by, the Environmental Health Manager and/or Lead Officer for Food.
- 2.5 The second recommended change relates to the role of the Housing Development Manager and also the three Principal Environmental Health Officers. These officers are technical specialists and also manage teams of professional staff. It is considered that these officers are well placed to check and sign notices and so ought to be delegated the authority to sign / serve notices also. Authorising these officers to sign notices would minimise delays when taking urgent action and reduce the chances of no officer within the Housing & Environmental Health Service being available to sign them.
- 2.6 The third change relates to the signing of notices that may be required to be served urgently as part of the Environmental Health out-of-hours service, when the Environmental Health Manager may not be readily available. Whilst it is not necessarily desirable to allow every post-holder to sign any type of notice, the statutory provisions that are most likely to be required in respect of urgent action outside of office hours have been identified and it is in this context that additional delegated powers are sought.
- 2.7 The fourth change relates to the appointment and authorisation of officers to carry out certain dog control functions. Under Section 149(1) of the Environmental Protection Act 1990, every local authority must nominate one or more appointed officers for the purposes of dealing with stray dogs. This includes seizure of stray dogs and, where there are indications of ownership of the dog, serve a notice upon that person giving notice that if not claimed the dog will be disposed of by the Council after seven days. It is necessary to nominate the relevant post-holders to fulfil these functions and it is appropriate for this to be specified in the delegations scheme. Additionally, local authorities may authorise in writing any person to enforce the Microchipping of Dogs (England) Regulations 2015, which now require dogs to be microchipped. It is considered appropriate to include these regulations within the delegations scheme.

The final change is to make some minor amendments, including amendments to some job titles, updates to reflect revised legislation and additions to the list of statutory provisions available to some post-holders, in order for a greater number of officers to be able to exercise relevant powers, thereby enabling officers to work more flexibly. This reflects the expanding technical skills of some officers to step in to new areas of work as pressures demand, for example the Animal Welfare Officer to be able to enforce the Breeding and Sale of Dogs (Welfare) Act 1999, the Scientific Officer to apply the intruder alarm provisions of the Clean Neighbourhoods and Environment Act 2005 and the Environmental Protection Officer to undertake inspections for purposes of the Environmental Permitting (England and Wales) Regulations 2016.

- 2.8 All of the proposed changes are provided in Annex 1 to this report, shown in red as ‘tracked changes’.

3 Corporate Objectives and Priorities

- 3.1 Implementation of the recommended changes would improve the Council’s ability to take regulatory action in appropriate circumstances, consistent with the Council’s objectives.
- 3.2 The recommendations fit with the Corporate Plan Priorities of “Live” by ensuring that standards are being met in the rented housing sector, “Work and do Business” by ensuring appropriate standards are being met in all commercial food premises, and with the “Enjoy the Natural and Built Environment” priority by improving our ability to respond to statutory nuisance issues quickly.

4 Consultations/Communications

- 4.1 The Housing & Environmental Health Service management team have engaged operational staff delivering the affected elements of the services to help shape the approach that is being proposed. The Head of Legal & Democratic Services has also been consulted.
- 4.2 This is an internal recommendation associated with the Council Scheme of Delegations and it is not considered necessary to seek views from any external stakeholders. The recommendations are not associated with matters of policy and are made in the interests of reflecting enforcement activity that can be administered effectively and efficiently, and in keeping with relevant national guidance.

5 Options

- 5.1 The recommendations in this report are to update and modernise the relevant aspects to the Scheme of Delegation so that the Housing & Environmental Health Service is able to operate its enforcement functions efficiently and effectively. The following options have been identified and should be understood in this context:

- 5.2 Option 1: Do Nothing – This option is not recommended because it would inhibit the Council’s ability to undertake certain types of enforcement work and/or respond promptly to urgent situations where regulatory action is considered necessary.
- 5.3 Option 2: Delegate all relevant legal powers to all Environmental Health post-holders – This is not recommended and is not necessary for operational reasons. It may not be desirable due to the increased risks of action being taken by an individual officer without appropriate checks and balances in place to support their judgement.
- 5.4 Option 3: Implement the proposed amendments set out in Annex 1 - This offers a compromise approach between the other two options, taking account of regulatory and practical considerations and offers the Council an appropriate set of amendments that will bring the existing Scheme of Delegations up to date with regard to these specific enforcement functions. The new delegations will be overseen and monitored by the Housing & Environmental Health Management Team.

6 Option Appraisal

- 6.1 For the reasons set out above, the recommended option is to approve the proposals set out in Annex 1.

7 Resource Implications

- 7.1 There are no resource implications associated with the recommendations contained within this report. It is expected that the adoption of Option 3 above would improve the response time of regulatory action, thereby improving efficiency and effectiveness.

8 Legal Implications

- 8.1 No adverse legal implications have been identified. A resolution of Council is required to amend the scheme of delegations.

9 Equality Issues

- 9.1 There are no equality issues that are relevant to the recommendation.

10 Other Issues

- 10.1 There are no Community Safety issues that are relevant to the recommendation.
- 10.2 There are no further Environmental Health issues that are relevant to the recommendation.
- 10.3 There are no relevant issues in respect of Sustainability and Addressing Changing Climate
- 10.4 There are no Property Issues that are relevant to the recommendation.

- 10.5 The changes would concern action throughout the borough and so no specific Wards/Communities issues are expected.

11 Conclusion

- 11.1 Implementation of the recommendations would help ensure that the correct level of delegated authority is provided in respect of Environmental Health regulatory work.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
None			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	1	File Ref:	N/A
(Portfolio: Corporate) Councillor Flood			
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Report to:	Council	Date:	27 June 2018