



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

NEATH PORT TALBOT COUNCIL

CABINET
24th July 2024

Report of the Head of Planning and Public Protection
Ceri Morris

Matter for Decision

Wards Affected: All

Trading Standards, Food Hygiene & Health Protection Legislation – Changes to Officer Delegation Arrangements

Purpose of the Report

To seek approval to amend the Council's current delegation arrangements to officers in relation to the legislation enforced by the Trading Standards, Food & Health Protection Service.

Executive Summary

This report seeks to add the following legislation (by topic area) to the list that is enforced by the 'Trading Standards and Animal Health' Service:

Consumer Safety

Offensive Weapons Act 2019
Psychoactive Substances Act 2016

Environmental Protection

Environmental Protection (Single-use Plastic Products) (Wales) Act 2023
Environmental Protection (Single-use Plastic Products) (Civil Sanctions) (Wales) Regulations 2023
Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015
Environmental Protection (Microbeads) (Wales) Regulations 2018

Fair Trading

Equipment Theft (Prevention) Act 2023
Renting Homes (Fees etc.) (Wales) Act 2019

Powers & Authorisations

European Union (Withdrawal) Act 2018

Background

A recent review of Trading Standards authorisations has identified a number of Acts and Regulations that Trading Standards has a duty to enforce, but which are not listed on the Council's Constitution. This review has led to a system being implemented to review authorisations every 6 months, thereby preventing such a large number of authorisations being submitted in a single report in future.

Consumer Safety

Offensive Weapons Act 2019

The Act controls certain bladed articles, bladed products and corrosive substances, restricting purchase by and delivery to under 18s. It makes it an offence for the seller to deliver, or arrange the delivery of, bladed products to residential premises, unless certain conditions are met that would allow the seller to prove that they took all reasonable precautions and exercised all due diligence to prevent the item from being delivered to a person under 18. This would apply to sellers whether they have their own delivery arm or to those who arrange delivery to a residential address by a separate delivery company. The retail supply of bladed articles is already covered by the Criminal Justice Act 1988.

In respect of corrosive substances, the Act makes it an offence for a person to sell a corrosive substance to a person under the age of 18. The list of corrosive substances are presented in the following table.

Substance	May be present in
Ammonium Hydroxide	Household cleaners; disinfectants; stain treaters.
Formic Acid	Wart removers; household descalers; food preservatives.
Hydrochloric Acid	Household cleaners (toilet bowl, bathroom tile and other porcelain cleaners); brick and patio cleaners; limescale removers.
Hydrofluoric Acid	Aluminium wheel cleaners; wire cleaners; rust removers.
Nitric Acid	Drain cleaners; toilet bowl cleaners; descalers.
Phosphoric Acid	Bath cleaners; tile cleaners; sink cleaners; toilet bowl cleaners; rust removers.
Sodium Hydroxide	Drain cleaners; oven cleaners; paint strippers.
Sodium Hypochlorite	Drain cleaners; toilet bowl cleaners; bleach (low concentration); descalers.
Sulfuric Acid	Drain cleaners; brick cleaners; car wheel cleaners; acid for car batteries (sold as such).

Similarly to bladed articles, it makes it an offence to deliver to a locker, or a residential address, unless that address is also used as a business.

Each offence has a statutory defence of due diligence, this would include having systems in place to check the age of the recipient and that to ensure it is delivered to someone over the age of 18 and not delivered to a locker or residential address.

Local Weights & Measures Authorities (Trading Standards Departments) have the duty to enforce. On summary conviction on a breach of the corrosive substances provisions may lead to imprisonment for a term not exceeding 51 weeks, to a fine or to both.

The penalty for the delivery of bladed products is an unlimited fine.

Psychoactive Substances Act 2016

An Act to control psychoactive substances, previously controlled by other Trading Standards legislation – a psychoactive substance means any substance which can produce a psychoactive effect in a person who consumes it.

A substance produces a psychoactive effect in if, by stimulating or depressing the person's central nervous system, it affects the person's mental functioning or emotional state, following its consumption (including the inhalation of fumes).

A person guilty of an offence on summary conviction in England and Wales to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or to a fine.

Enforcement of this Act is by an officer of a local authority.

Environmental Protection

Environmental Protection (Single-use Plastic Products) (Wales) Act 2023 ***Environmental Protection (Single-use Plastic Products) (Civil Sanctions) (Wales) Regulations 2023***

This Act of Senedd Cymru is to prohibit supply of certain single-use plastic products and to enable supply of additional single-use plastic products to be prohibited, and for connected purposes.

The Act defines a plastic product as:

- (a) of which all or any of the main structural components are made wholly or partly of plastic; or
- (b) that has a lining or coating made wholly or partly of plastic.

“Single use” in relation to a plastic product, means a product that is not designed or manufactured to be used for the purpose for which it was designed or manufactured more than once (or on more than one occasion) before being disposed of.

The Act makes it an offence to supply or offer to supply a prohibited single use plastic product to a consumer who is in Wales, and this includes arranging for the delivery of the product to a consumer at an address in Wales, and the person guilty liable to a fine. However, the regulations permit the issuing of a fixed penalty notice to the value of £200, or £100 if paid within 28 days of the day on which the notice was received.

Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

The Regulations are intended to improve the standard of energy efficiency in both the domestic and non-domestic private rented sector in England and Wales.

The Regulations target properties that are currently rated F or G on their Energy Performance Certificates (EPCs), implementing measures to raise their rating to a minimum of E. This will reduce the emissions produced by heating and powering these buildings, which currently accounts for 12% of UK emissions.

The Regulations only apply to those properties let on assured, regulated and agricultural tenancies that are legally required to have an EPC. Since 2008, the majority of domestic properties have been required to have an EPC.

Enforcement of private rented properties is by a local authority. However, non-domestic private rented properties are enforced specifically by Weights & Measures Authorities (Trading Standards Departments).

Enforcement of breaches less than 3 months enforcement is via notice, imposing a financial penalty not exceeding £5,000 and 10% of the related value of the property and no more than £50,000. For breaches over 3 months, the penalty rises

to £10,000 and 20% of the rateable value of the property provided it must not exceed £150,000.

Misleading information or breaches of compliance notice are subject to penalties of no more than £5,000 each and are also subject to the publication penalty in the 'Private Rented Sectors Exemptions Register' with details of the name of the company, the details of the breach, address of the property and financial penalty that has been imposed.

Environmental Protection (Microbeads) (Wales) Regulations 2018

A 'microbead' means any water-insoluble solid plastic particle of less than or equal to 5mm in any dimension. These Regulations prohibit the use of microbeads as an ingredient in the manufacture of rinse-off personal care products and the sale of any such products containing microbeads.

A rinse off personal care product means any substance, or mixture of substances, manufactured for the purpose of being applied to any relevant human body part in the course of any personal care treatment, by an application which entails at its completion the prompt and specific removal of the product (or any residue of the product) by washing or rinsing with water, rather than leaving it to wear off or wash off, or be absorbed or shed, in the course of time.

Duty of enforcement lies with a Local Authority.

Persons guilty of breaches of the offence is liable on summary conviction to a fine. However, a civil sanctions regime is also introduced to enable the Regulator to impose a range of civil sanctions. These include variable monetary penalties, compliance notices and stop notices. The Regulator may also accept enforcement undertakings.

The Regulations make provision for the procedure relating to these sanctions and the available appeal mechanisms. Failure to comply with a stop notice is an offence, and there is an appeal process.

Fair Trading

Equipment Theft (Prevention) Act 2023

The Act make provisions to prevent the theft and re-sale of equipment and tools used by tradespeople (builders etc.) and agricultural and other businesses, and for connected purposes.

The Secretary of State may by regulations require that a person selling equipment of a kind falling within a description in the Act must record specified information in connection with the sale – this may include a name, address or telephone number, or other contact details, of the buyer, the make, model or colour of the equipment, a unique identifier, including details and its location and the date on which the contract of sale was entered into.

A person commits an offence if the person sells equipment in breach of regulations or fails to record or keep information in accordance with regulation and is liable to a fine.

Enforcement duty lies with a local Weights and Measures Authority.

Renting Homes (Fees etc.) (Wales) Act 2019

The Act creates the offence for a landlord or agency to require a person to make a payment which is prohibited, or to enter into a contract for services or to require the grant of a loan in consideration of the grant renewal or continuance of a standard occupation contract or pursuant to a term of a standard occupation grant, but is not retrospective.

This means that any payment a tenant is required to pay in relation to an assured shorthold tenancy, unless permitted by the Act, is banned and is a “prohibited payment”.

Landlords and agents cannot require the grant of a loan to them or require a person to enter into a contract for services with them as a condition of a tenancy.

This means any payments required after 1st September 2019 in relation to tenancy agreements, such as check-in fees, check-out (or ‘exit’) fees, administration fees, inventory fees, guarantor fees etc. are prohibited payments. If residents are uncertain as to whether or not a payment is permitted, they should consider contacting Citizens Advice Bureau, or obtaining independent legal advice. They could also contact their local authority’s Housing department or Rent Smart Wales.

It is an offence for a person to fail to do anything required of the person by a notice under the Act. However, there is the statutory defence that the person had a reasonable excuse for failing to comply with the notice.

A person who commits an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Where an authorised officer of an enforcement authority has reason to believe that a person has committed an offence in the authority's area, the officer may give that person a fixed penalty notice (£1,000) in respect of the offence. It is also an offence for a person to intentionally alter, suppress or destroy any document which the person has been required to produce by a notice.

Powers and Authorisations

European Union (Withdrawal) Act 2018

The European Union (Withdrawal) Act repeals the European Communities Act 1972 (ECA) on the day the United Kingdom left the European Union.

The Act ends the supremacy of European Union (EU) law in UK law, converts EU law as it stands at the moment of exit into domestic law, and preserves laws made in the UK to implement EU obligations.

It also creates temporary powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left, so that the domestic legal system continues to function correctly outside the EU.

The Act also enables domestic law to reflect the content of a withdrawal agreement under Article 50 of the Treaty on European Union once the UK leaves the EU, subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal.

This Act is listed for information only, there are no delegated powers.

Enforcement

Enforcement action for each of the above will be taken in accordance with the departmental enforcement policy to ensure consistency, proportionality and fairness.

Financial Impacts

The necessary resources are currently available within the Trading Standards, Food Hygiene & Health Protection service to enforce the legislation.

The legislation specifically mentions enforcement either through Weights and Measures Authorities (which is provided through the Trading Standards service), or via the Local Authority.

Failure to perform the responsibilities under this legislation, would detrimentally affect residents within Neath Port Talbot who would otherwise be protected from the introduction of this legislation.

Integrated Impact Assessment

A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016.

Having had due regard to the first stage Integrated Impact Assessment, a more in-depth assessment is not required. The Assessment is attached at Appendix 1.

Valleys Communities Impacts

No implications.

Workforce Impacts

The Trading Standards Service responds to intelligence and complaints received in investigating breaches of the above legislation. Enforcement investigations can be lengthy, however notwithstanding that the department has received little information in respect of contraventions of this legislation, it is important that the service is properly authorised to enforce when the need arises.

Legal Impacts

The relevant authorised officers will be given powers to operate under the Act.

Risk Management Impacts

It is a statutory requirement to implement this legislation and failure to do so will result in a high risk of legal challenge as well as reputational damage to the Authority at a strategic and operational level.

Crime and Disorder Impacts

In undertaking the provisions of the corrosive substances, equipment theft and offensive weapon legislation, the actions of the Authority may have a positive impact upon Crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment).

Consultation

There is no requirement for external consultation on this item.

Recommendations

That having considered the report and having due regard to the Integrated Impact Assessment, it is resolved to make the following recommendations for approval.

That the delegation arrangements in respect of the Trading Standards, Food Hygiene & Health Protection Service which are set out in the Authority's Constitution updated on 15th May 2024 [i.e. in Part 3 – Officer of the Council Delegation Arrangements: {c} Trading Standards, Food Hygiene & Health Protection – Schedule 1] are amended to:

- (a) Add the legislation described above delegated to the Director of Environment and Regeneration, the Head of Planning and Public Protection and the Trading Standards, Food & Health Protection Manager.
- (b) Delegate to those officers in [a] above the authority to authorise individual competent and qualified officers to act under that legislation.
- (c) Delegate to those officers in [a] above the authority to institute legal proceedings under the provisions contained in the legislation in conjunction with the Head of Legal Services [including the signing of any cautions in accordance with Home Office Guidelines] and, where an alleged offender is being held in custody in relation to an offence, to institute proceedings by way of charge.
- (d) That the Head of Legal Services be authorised to seek amendment of the Constitution by the Council in due course: in order to reflect the above changes to the authority's delegation arrangements.

Reasons for Proposed Decision

To enable the legislation to be implemented quickly and efficiently. The Trading Standards, Food & Health Protection service, located within the Planning and Public Protection department, has responsibility for the enforcement of the above-mentioned Housing and Trading Standards legislation.

Implementation of Decision

The decision is proposed for implementation after the three day call in period.

Appendices

Appendix 1– First Stage Integrated Impact Assessment

List of Background Papers

<https://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

Officer Contact

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Appendix 1 – First Stage Integrated Impact Assessment

1. Details of the initiative

<p>Initiative description and summary: Addition of the following legislation to the constitution:</p> <ul style="list-style-type: none">• Offensive Weapons Act 2019• Psychoactive Substances Act 2016• Environmental Protection (Single-use Plastic Products) (Civil Sanctions) (Wales) Regulations 2023• Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015• Environmental Protection (Microbeads) (Wales) Regulations 2018• Environmental Protection (Single-use Plastic Products) (Wales) Act 2023• Equipment Theft (Prevention) Act 2023• Renting Homes (Fees etc.) (Wales) Act 2019
<p>Service Area: Trading Standards</p>
<p>Directorate: Environment and Regeneration</p>

2. Does the initiative affect:

	Yes	No
Service users	X	
Staff	X	

Wider community	X	
Internal administrative process only	X	

3. Does the initiative impact on people because of their:

	Yes	No	None/ Negligible	Don't Know	Impact H/M/L	Reasons for your decision (including evidence)/How might it impact?
Age		X				It will have no direct impact on protected characteristics.
Disability		X				It will have no direct impact on protected characteristics.
Gender Reassignment		X				It will have no direct impact on protected characteristics.
Marriage/Civil Partnership		X				It will have no direct impact on protected characteristics.
Pregnancy/Maternity		X				It will have no direct impact on protected characteristics.
Race		X				It will have no direct impact on protected characteristics.
Religion/Belief		X				It will have no direct impact on protected characteristics.
Sex		X				It will have no direct impact on protected characteristics.
Sexual orientation		X				It will have no direct impact on protected characteristics.

4. Does the initiative impact on:

	Yes	No	None/ Negligible	Don't know	Impact H/M/L	Reasons for your decision (including evidence used) / How might it impact?
People's opportunities to use the Welsh language		X				No impact
Treating the Welsh language no less favourably than English		X				No impact

5. Does the initiative impact on biodiversity:

	Yes	No	None/ Negligible	Don't know	Impact H/M/L	Reasons for your decision (including evidence) / How might it impact?
To maintain and enhance biodiversity		X				It will have no effect on the biodiversity duty
To promote the resilience of ecosystems, i.e. supporting protection of the wider environment, such as air quality, flood alleviation, etc.		X				It will have no effect on the biodiversity duty

6. Does the initiative embrace the sustainable development principle (5 ways of working):

	Yes	No	Details
Long term - how the initiative supports the long-term well-being of people	X		Enforcement of these new requirements will help prevent persons under the age of 18 from being sold tobacco and nicotine products by retailers and contributes to the health agenda.
Integration - how the initiative impacts upon our wellbeing objectives	X		Enforcement of these new requirements is consistent with the Neath Port Talbot Well Being objectives and prevention of harm to children and protection of the environment.
Involvement - how people have been involved in developing the initiative	X		The legislation has been developed and implemented by Central Government.
Collaboration - how we have worked with other services/organisations to find shared sustainable solutions	X		The Local Weights and Measures (Trading Standards in NPTCBC) has a duty to enforce.
Prevention - how the initiative will prevent problems occurring or getting worse	X		The legislation seeks to control the availability of dangerous articles, prevent theft and damage to the environment.

7. Declaration - based on above assessment (tick as appropriate):

A full impact assessment (second stage) is not required	X
Reasons for this conclusion	
Welsh Government has implemented this legislation. The Trading Standards, Food Hygiene & Health Protection service located within the Planning & Public Protection department, has responsibility for the enforcement of Trading Standards legislation. This report puts the legislation on the constitution of NPTCBC to enable delegated authority to be authorised to the appropriate Officers within the Council.	

A full impact assessment (second stage) is required	
Reasons for this conclusion	

	Name	Position	Date
Completed by	Lucas Williams	Trading Standards & Animal Health Team Leader	28 th May 2024
Reviewed and authorised by	Mark Thomas	Trading Standards, Food & Health Protection Manager	29 th May 2024
Signed off by	Ceri Morris	Head of Planning & Public Protection	30 th May 2024