

Agenda Item	16
Report No	HC/21/17

THE HIGHLAND COUNCIL

Date: 29 June 2017

Report title: Proposed amendments to Part IV of the Council's Scheme of Delegation

Joint Report by: The Director of Community Services and the Head of Corporate Governance

1. Purpose/Executive Summary

- 1.1 This Report seeks amendments to Part IV of the Council's Scheme of Delegation to amend the powers of officers in both Community Services and the Corporate Development Service to reflect
- the Council's new duty to appoint "Civic Licensing Standards Officers" to enforce civic government licence conditions, and
 - the new requirement that the Council refuse taxi and private hire car driver licence applications where an applicant is disqualified by reason of immigration status from working in the UK.
 - The Environmental Health team's formal enforcement powers to deal with the ban on smoking in cars with children present and to make some minor updates in relation to housing.

2. Recommendations

- 2.1 Members are asked to approve the amendments to Part IV of the Scheme of Delegation which are set out in Appendices 1, 2 and 3 to this Report.

3. Proposed amendments to Part IV: Powers Delegated to Officers

- 3.1 Amendments to the powers delegated to certain grades of Environmental Health officer and also to certain grades of Trading Standards officer are sought to authorise them to act as Civic Licensing Standards Officers under sections 45G and 45H of the Civic Government (Scotland) Act 1982.

These are new sections of the 1982 Act which came into force on 1 May 2017 and which require local authorities to appoint one or more Civic Licensing Standards Officers (CLSOs) for their area to deal principally with enforcement of conditions of licences granted under the Act.

This enforcement role is already undertaken by the Council by various grades of Environmental Health officers and, for taxi and private hire car licensing, by various grades of Trading Standards officers. The proposed amendments accordingly merely recognise the Council's current practice, but also officially confer, on the existing grades of officer concerned, the authority and powers, which the 1982 Act confers on CLSOs.

These amendments in respect of Environmental Health officers' powers (with the exception of taxi and private hire car driver licensing) are included in **Appendix 1**. The equivalent amendments in respect of powers delegated to Trading Standards officers in respect of taxi and private hire car licensing are set out in **Appendix 2**.

- 3.2 Amendments to the powers delegated to various grades of officers within the Legal team of the Council's Corporate Development Service are sought because of recent changes to the 1982 Act brought about by the Immigration Act 2016.

The 2016 Act has introduced a new provision in the 1982 Act prohibiting a licensing authority from granting a taxi driver or private hire car driver licence to any person unless satisfied that the person is not disqualified by reason of his or her immigration status from driving a taxi or private hire car.

As a person's disqualification by reason of immigration status is a question of fact (which can be verified, where necessary, by enquiry with the Home Office Evidence and Enquiry Unit) it is considered unnecessary that applications which must automatically be refused on this ground be referred to the Highland Licensing Committee for determination. Licensing authorities have no discretion in the matter and have no power to re-open/re-decide the question of whether or not the applicant has the appropriate immigration status. That is entirely a matter for the Home Office.

The amendments sought to give certain officers within Legal Services power to issue such automatic refusals, without referral to the Highland Licensing Committee, are set out in **Appendix 3**.

- 3.3 Amendments to the powers delegated to various officers within the Environmental Health team are set out in **Appendix 1** to this report with the

proposed changes indicated by use of italics. These proposed changes include:

- adding enforcement powers relating to the Council's duties in respect of the ban on smoking in cars with children present under the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016, and the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 (Fixed Penalty Notices) Regulations 2016. Enforcement is by Police and Environmental Health and Scottish Government are requesting an educative approach to implementation.
- Minor amendments to update housing legislation, remove old references to RIPSAs, and remove duplication.

4. Implications

- 4.1 There are no Legal, Equalities, Climate Change/Carbon Clever, Risk, Gaelic or Rural implications arising from this report.

Authors: Alan Yates, Environmental Health Manager
Susan Blease, Principal Solicitor – Regulatory Services

Appendices: **Appendix 1** – Community Services amendments (Environmental Health team)
Appendix 2 – Corporate Development Service amendments (Trading Standards team)
Appendix 3 – Corporate Development Service amendments (Legal team)

APPENDIX 1 – COMMUNITY SERVICES AMENDMENTS

AMEND the existing Environmental Protection section and the Environmental Health section of the Scheme to read as follows (amendments shown in bold italics)

Community Services: Statutory Powers and Duties of the Council which are Exercisable by Officers of the Authority

Key :- Staff: Environmental Health
Waste Management
Housing & Property

Delegation Banding Codes	Service Section	Description and indicative posts
1		-----
2		Waste Management Officer (Operations), Community Warden, Education & Enforcement Officer, Pest Control Officer / Dog Warden, Waste Awareness Officer, Foreperson, Environmental Health Technical officer
3		Waste Management Officer (Strategy), Environmental Health Officer
4		Principal Waste Management Officer, Senior Environmental Health Officer, Environmental Health Manager, Head of Environmental and Amenity Services

Statute	Description of Power or Duty	Title of Officer/Level of Post to which delegated (See key)
Environmental Protection		
Anti-Social Behaviour etc. (Scotland) Act 2004	s.58 – power to issue and enforce the provisions of graffiti removal notice.	2
	s. 60 Graffiti removal notice: content and service	2
Civic Government (Scotland) Act 1982	s.99 to s.109 Powers of entry, execution of works, etc	2
Control of Dogs (Scotland) Act 2010	s.1 – power to issue dog control notice	2
	s.4 – duty to monitor effectiveness and of, and enforce, dog control notice.	2
	s.6 – power to discharge or vary dog control notice.	3
Dog Fouling (Scotland) Act 2003	s.5 – power to issue fixed penalty notices	2
Microchipping of Dogs (Scotland) Regulations	Reg 12. Powers of an authorised person	2

Statute	Description of Power or Duty	Title of Officer/Level of Post to which delegated (See key)
2016		
Environment Act 1995	s.108 – power to authorise in writing persons to gain entry in respect of certain pollution offences.	4
	s.108 – power to act in accordance with written authorisation issued under s.108	2
Environmental Protection Act 1990	s.33 – (as amended by s.55 of the Anti-Social Behaviour etc. (Scotland) Act 2004) – power to enforce provisions concerning the unauthorised deposit, storage, treatment and/or disposal of controlled waste.	3
	s33A – power to issue fixed penalty notices in respect of offence under s33 (1) (a) and (c).	3
	s.34 – power to enforce the provisions concerning the duty of care as respects waste.	2
	s.46 – power to serve notice imposing requirements regarding household waste.	2
	s.47 – power to serve notice imposing requirements regarding commercial / industrial waste.	2
	s.59 – power to serve and to enforce provisions of notice requiring removal of waste from land	3
	s. 60 Interference with waste sites and receptacles for waste	3
	s80 – service of abatement notice in respect of statutory nuisance	3
	s.87 – power to enforce provisions concerning the offence of leaving litter.	2
	s.88 – Nominate officer to issue litter/fixed penalty notices	4
	s.88 – power to issue fixed penalty notices in respect of the offence of leaving litter.	2
	s. 90 Litter control areas	3
	s. 92 Summary proceedings by litter authorities	3
	ss.93 & 94 – power to issue and to enforce the provisions of street litter control notices	3
	s.99 Power in relation to abandoned trolleys.	3
	s.149 Seizure of stray dogs.	2
Prevention of Damage by	s2 – duties of local authorities in	4

Statute	Description of Power or Duty	Title of Officer/Level of Post to which delegated (See key)
Pests Act 1949	respect of rats and / or mice.	
	s4 – power to serve notice requiring action in respect of rats and / or mice.	2
	s5 – remedies for failure to comply with notice under s4.	3
	s6 – additional powers of local authorities in relation to groups of premises	3
	s7 – recovery of expenses	3
	s9 – power to require information as to interests in land	3
	s22 – powers of entry for the purposes of Part I of the Act.	2
Refuse Disposal Amenity Act 1978	s.2 – power to enforce provisions concerning abandonment of a motor vehicle or any other thing in the open air without lawful authority	2
	ss.3 & 4 – power to remove and dispose of abandoned vehicles	2
	s5 – recovery of expenses connected with removed vehicles	2
	s.6 – power to remove and dispose of other refuse	2
Control of Pollution Amendment Act 1989	s.5 Duty to produce authority to transport controlled waste	2
Environmental Protection (Duty of Care) Regulations 1991 (as amended by the Environmental Protection (Duty of Care) (Scotland) (Amendment) Regulations 2003	R4 – power to serve notice requiring furnishing of documents	2
Town and Country Planning (Scotland) Act 1997; Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (as amended)	R24 – power to serve an enforcement notice in respect of an advertisement displayed without a consent / failure to comply with a condition or limitation on the display of an advertisement	3

ENVIRONMENTAL HEALTH

The following delegations are subject to any limitations in the Environmental Health Scheme of Authorisation

Statute	Description of power or duty	Title of officer/level of post to which delegated
Animal Boarding Establishments Act 1963 Breeding of Dogs Act 1973	To grant, but not refuse, applications, renewals or	Senior Environmental

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The following delegations are subject to any limitations in the Environmental Health Scheme of Authorisation

Statute	Description of power or duty	Title of officer/level of post to which delegated
Breeding of Dogs Act 1991 Caravan Sites and Control of Development Act 1960 Cinemas Act 1985 Dangerous Wild Animals Act 1976 Deer (Scotland) Act 1996 Guard Dogs Act 1975 Performing Animals (Regulations) Act 1925 Pet Animals Act 1951 Riding Establishments Acts 1964/70 Theatres Act 1968 Zoo Licensing Act 1981	transfers of licences, registrations, approvals and other permissions sought (including variation thereof), where:- a) the application has attracted no relevant objection or relevant adverse representation; b) no member of the Council has requested that the application be decided by a Committee; and c) the application is one which the officer concerned considers should be granted, either without conditions or with conditions which are of a straightforward nature.	Health Officer
Animal Boarding Establishments Act 1963 Breeding of Dogs Act 1973 Breeding of Dogs Act 1991 Caravan Sites and Control of Development Act 1960 Cinemas Act 1985 Dangerous Wild Animals Act 1976 Deer (Scotland) Act 1996 Guard Dogs Act 1975 Performing Animals (Regulations) Act 1925 Pet Animals Act 1951 Riding Establishments Acts 1964/70 Theatres Act 1968 Civic Government (Scotland) Act 1982, Sections 87, 90, 92 and 97 Zoo Licensing Act 1981	To exercise the appropriate duties of office under the relevant provisions of the listed legislation, including any related orders, regulations, or other instruments:- a) made thereunder, or b) having effect by virtue of the European Communities Act 1972, or c) any modification or re-enactment of the foregoing	Technical Officer Animal Health & Welfare Officer
Health and Safety at Work etc. Act 1974 Environmental Protection Act 1990 Mines and Quarries Act 1954 Food Safety Act 1990 Prevention of Damage by Pests Act 1949 Public Health (Scotland) Act 1897	To exercise the appropriate duties of office under the relevant provisions of the listed legislation, including any related orders, regulations, or other	Technical Officer

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The following delegations are subject to any limitations in the Environmental Health Scheme of Authorisation

Statute	Description of power or duty	Title of officer/level of post to which delegated
<p>Water (Scotland) Act 1980 Water Act 1989 Private Water Supplies (Scotland) Regulations 2006</p> <p>Refuse Disposal (Amenity) Act 1978 Noise and Statutory Nuisance Act 1993 Pesticides (Fees and Enforcement) Act 1989 Radioactive Substances Act 1993 Food Safety Act 1990 Water (Scotland) Act 1980 Local Government in Scotland Act 2003 Prevention of Damage by Pests Act 1949</p> <p>Control of Pollution Act 1974 Control of Pollution (Amendment) Act 1989 Environment Act 1995 Refuse Disposal (Amenity) Act 1978 Noise and Statutory Nuisance Act 1993 Sewerage (Scotland) Act 1968 Water Services etc. (Scotland) Act 2005 Clean Air Act 1993</p> <p>The Bathing Water Regulations 2008 The Bathing Waters (Scotland) Amendment Regulations 2012</p>	<p>instruments:-</p> <p>a) made thereunder, or</p> <p>b) having effect by virtue of the European Communities Act 1972, or</p> <p>c) any modification or re-enactment of the foregoing</p>	
<p>Public Health (Scotland) Act 1897 Public Health (Scotland) Act 1945 Health Services and Public Health Act 1968 National Assistance Act 1948 International Health Regulations 1969 Public Health (Ships)(Scotland) Regulations 1971, 1974 & 1978 Public Health (Aircraft)(Scotland) Regulations 1971, 1974 & 1978</p> <p>Smoking, Health and Social Care (Scotland) Act 2005</p> <p>Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016</p> <p>The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016</p>	<p>To exercise the appropriate duties of office under the relevant provisions of the listed legislation, including any related orders, regulations, or other instruments:-</p> <p>a) made thereunder, or</p> <p>b) having effect by virtue of the European Communities Act 1972; or</p> <p>c) any modification or re-enactment of the foregoing</p>	<p>Technical Officer</p>

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The following delegations are subject to any limitations in the Environmental Health Scheme of Authorisation

Statute	Description of power or duty	Title of officer/level of post to which delegated
<p><i>(Fixed Penalty Notices) Regulations 2016</i></p> <p>Food and Environmental Protection Act 1985</p> <p>Public Health etc (Scotland) Act 2008</p>		
<p>Animal Health Act 1981</p> <p>Animal Health and Welfare Act 1984</p> <p>Animal Health and Welfare (Scotland) Act 2006</p>	<p>To exercise the appropriate duties of office under the relevant provisions of the listed legislation, including any related orders, regulations, or other instruments relating to Animals or Animal Health:-</p> <p>a) made thereunder, or</p> <p>b) having effect by virtue of the European Communities Act 1972; or</p> <p>c) any modification or re-enactment of the foregoing</p>	<p>Technical Officer</p> <p>Animal Health & Welfare Officer</p>
<p>Environmental Protection Act 1990 Part IIA</p> <p>Environment Act 1995</p> <p>Contaminated Land (Scotland) Regulations 2000</p> <p>Contaminated Land (Scotland) Regulations 2005</p>	<p>To exercise the appropriate duties of office under the relevant provisions of the listed legislation, including any related orders, regulations, or other instruments:-</p> <p>a) made thereunder, or</p> <p>b) having effect by virtue of the European Communities Act 1972; or</p> <p>c) any modification or re-enactment of the foregoing</p>	<p>Scientific Officer</p>
<p>Environment Act 1995</p>	<p>s.108 – power to act in accordance with written authorisation issued under s.108</p>	<p>Scientific Officer, Environmental Health Information Officer</p>

ENVIRONMENTAL HEALTH

The following delegations are subject to any limitations in the Environmental Health Scheme of Authorisation

Statute	Description of power or duty	Title of officer/level of post to which delegated
Climate Change (Scotland) Act 2009 Sections 88, 89, 90 The Single Use Carrier Bags Charge (Scotland) Regulations 2014	Powers to enforce regulations	Technical Officer
Health and Safety at Work, etc Act 1974	Section 20(2)(c)(i) – to authorise persons to accompany inspectors Section 19 – to appoint inspectors for the purposes of Sections 20, 21, 22 and 25.	Senior Environmental Health Officer
Health and Safety (Enforcing Authority) Regulations	To agree transfers of responsibility for enforcement.	Senior Environmental Health Officer
Food Safety Act 1990 including any related orders, regulations, or other instruments:- (a) made thereunder, or (b) having effect by virtue of the European Communities Act 1972, or (c) any modification or re-enactment of the foregoing	Power to grant, suspend, or withdraw, the approval or conditional approval of a food establishment subject to approval under food safety legislation	Senior Environmental Health Officer
Housing Scotland Act 1987, Housing Scotland Act 2006 and Housing (Scotland) Act 2014	To exercise the functions of authorised officers under Housing legislation in relation to housing grants, houses falling below the tolerable standard, houses in disrepair, repairing standard, closing, demolition, works notices and maintenance orders , overcrowding, houses in multiple occupation.	Technical Officer
Housing Scotland Act 1987 and Housing Scotland Act 2006	To approve applications for grants, insofar as the applications relate to financial assistance in respect of the improvement of property or the repair of property; to determine housing improvement orders and	Senior Environmental Health Officer

ENVIRONMENTAL HEALTH

The following delegations are subject to any limitations in the Environmental Health Scheme of Authorisation

Statute	Description of power or duty	Title of officer/level of post to which delegated
	revoke closing orders.	
Safety of Sports Grounds Act 1975	Section 10 – to issue Prohibition Notices, after consultation with the Chief Constable and the Chief Fire Officer Section 10A – to arrange periodic inspection of designated sports grounds.	Senior Environmental Health Officer
Fire Safety and Safety of Places of Sport Act 1987	Sections 26, 28, 29, 34 and 35 – to determine whether a stand is a regulated stand, and to issue safety certificates; associated procedures in respect of safety certificates; enforcement, including inspections, and authorisation of entry.	Senior Environmental Health Officer
<i>Regulation of Investigatory Powers (Scotland) Act 2000</i>	<i>To authorise action to undertake directed surveillance or the use of covert human intelligence sources.</i>	<i>Senior Environmental Health Officer</i>
Building (Scotland) Act 2003 (Section 28)	To serve notice and take all necessary action in respect of defective buildings.	Environmental Health Officer
Civic Government (Scotland) Act 1982	s.87(3) in the interests of health or safety or to prevent damage to any property powers to repair immediately a building s.87(4) powers to recover expenses s.99 to s.109 Powers of entry, execution of works, etc <i>s45G and s45H to carry out the duties and exercise the powers of Civic Licensing Standards Officers except in respect of taxi and private hire car licensing</i>	Environmental Health Officer
Various Acts	To increase fees and charges as follows:- Increases to be reported to	Environmental Health Manager

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The following delegations are subject to any limitations in the Environmental Health Scheme of Authorisation

Statute	Description of power or duty	Title of officer/level of post to which delegated
	Members annually:- a) fees and charges payable under the Miscellaneous Licensing legislation to be increased annually by factor agreed by Council, b) fees and charges for other services to be increased annually by factor agreed by Council or by other agreed national scheme.	

AMEND the existing Housing section of the Scheme to read as follows (amendments shown in bold italics)

Statutory Powers and Duties of the Council which are Exercisable by Officers of the Authority Statute	Description of Power or Duty	Title of Officer to whom/level of post to which delegated
Housing		
Housing (Scotland) Act 1987, <i>Housing (Scotland) Act 2006</i>	Sections 28-35 - to perform the Council's duties in respect of applicants who claim to be homeless or threatened with homelessness.	Area Managers
"	Section 36 - to authorise Officers to enter premises and to deal with moveable property of homeless persons or persons threatened with homelessness; to decline to take action, and to impose conditions.	Area Managers
"	Section 39 - to give assistance to voluntary organisations concerned with homelessness.	Director of Community Services
"	Sections 61-64 – to determine applications under "Right to Buy"	Area Managers

	Section 65 - to determine applications to vary conditions of sale of Council houses to tenants, on tenants' request.	Area Managers
"	Section 68 - to instruct refusal of applications to purchase, where the tenant's right to purchase is disputed.	Area Managers
"	Part IV-VIII - sub-standard houses - to appoint, in consultation with the Director of Community Services authorised officers for the purposes of duties and functions in relation to housing grants, houses not meeting the tolerable standard, houses in disrepair, closing, demolition, improvement and Repairs Notices or Orders, Works Notices and Maintenance Orders , overcrowding, and houses in multiple-occupation.	Director of Community Services
"	Parts XIII-XV – of the Housing Scotland Act - to determine applications for – (i) improvement grants, (ii) repairs grants and (iii) improvement grants relating to works for a disabled occupant in accordance with Committee policies as agreed from time to time (Category 1 applications up to the limits of 100% of £15,000 £20,000 and approval of Category 1 applications up to the limit of 100% of £20,000 £25,000 in consultation with the Chairman of the Community Services Committee	Area Managers

**APPENDIX 2 – CORPORATE DEVELOPMENT SERVICE AMENDMENTS
(Trading Standards)**

ADD THE FOLLOWING NEW SECTION to the list of existing powers delegated to officers in Trading Standards:

Civic Government (Scotland) Act 1982	In respect of taxi and private hire car licensing, to carry out the duties and exercise the powers of Civic Licensing Standards Officers under sections 45G and 45H of the Act	Trading Standards Team Leader Trading Standards Officer Enforcement Officer (Trading Standards) Assistant Trading Standards Officer
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APPENDIX 3 – CORPORATE DEVELOPMENT SERVICE AMENDMENTS (Legal Team)

AMEND THE EXISTING TEXT in the following existing section of the Scheme to add the words shown in bold italics below

<p>Civic Government (Scotland) Act 1982 Gambling Act 2005, Housing (Scotland) Act 2006 – Part 5</p>	<p>To grant, but not refuse, applications, exemptions, renewals or transfer of licences where:-</p> <p>(a) the application has attracted no relevant objection or relevant adverse representation;</p> <p>(b) no Member of the Council has requested that the application be decided by a Committee;</p> <p>(c) the application is one, which the Officer concerned considers should be granted, either without conditions, or with conditions which are of a straightforward nature, and</p> <p><i>(d) in the case of applications and renewal applications for taxi driver or private hire car driver licences, the applicant has demonstrated that he/she is not disqualified by reason of his/her immigration status from driving a taxi or private hire car.</i></p> <p><i>To refuse applications and renewal applications for taxi driver or private hire car licences where the applicant has failed to demonstrate that he/she is not disqualified by reason of his/her immigration status from driving a taxi or private hire car and this has been verified by the Home Office.</i></p>	<p>Head of Corporate Governance, Principal Solicitor (Regulatory Services) and Solicitor (Regulatory Services)</p>
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