



Report of the Head of Legal and Democratic Services

Purpose of the Report

1. To seek approval to proposed amendments to the Constitution to reflect changes to the law.

Proposed Amendments

2. Article 4 of the Constitution sets out at paragraph 4.01a) the Council's Policy Framework. This is a list of plans and strategies to be adopted or approved by Full Council. The correct title for the Youth Justice Plan is the County Durham Youth Justice Plan and therefore an amendment is required to the title of the plan. The Crime and Disorder Reduction Strategy (known as the Safe Durham Partnership Plan) is not required to be adopted or approved by Council and therefore it is proposed that this is removed from the policy framework. The proposed changes are highlighted in Appendix 2.
3. The Counter Terrorism and Security Act 2015 places a general duty on specified authorities which must, in the exercise of their functions, have due regard to the need to prevent people from being drawn into terrorism. It is proposed that Article 12 of the Constitution is updated accordingly. The proposed changes are highlighted in Appendix 3.
4. The Health and Social Care Act 2012 sets out the statutory transfer of functions relating to public health to local authorities with effect from 1 April 2013. The transfer of responsibility of the Heathy Child Programme 0-5 will occur on 1 October 2015. The delegations to the Director of Children and Adults Services contained in Part 3, C, Table 3 of the Constitution require a new delegation which is in addition delegated to the Director of Public Health to ensure that the Council complies with its statutory obligations. The proposed changes are highlighted in Appendix 4.
5. The delegations to the Director of Neighbourhood Services, which are in addition delegated to the Head of Environment Health and Consumer Protection at paragraphs 20 and 21 of Part 3, C, Table 5 of the Constitution have been updated. The tables of legislation contained in Appendices 1 and 5 to the Director's delegations have been updated to include new legislation and legislation which is necessary to ensure that the Council can carry out its functions. The proposed changes are highlighted in Appendix 5.

6. Constitution Working Group agreed at its meeting on 4 September 2015 to recommend that Council agree the changes proposed to the Constitution.

Next Steps

7. To amend Articles 4 and 12 of the Constitution, the delegations of the Director of Children and Adults Services and delegations of the Director of Neighbourhood Services for the reasons set out in paragraphs 2 to 5.

Recommendations and reasons

8. To approve the proposed changes to Articles 4 and 12 of the Constitution and to the delegations of the Corporate Director, Children and Adults Services at Part 3, C, Table 3 of the Constitution and the delegations to the Director of Neighbourhood Services contained in Part 3, C, Table 5 of the Constitution.

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Appendix 1: Implications

Finance – None specific within this report

Staffing – None specific within this report

Risk - None specific within this report

Equality and Diversity / Public Sector Equality Duty - None specific within this report

Accommodation - None specific within this report

Crime and Disorder - None specific within this report

Human Rights - None specific within this report

Consultation - None specific within this report

Procurement - None specific within this report

Disability Issues – None specific within this report

Legal Implications – None specific within this report

Appendix 2: Article 4 – The Full Council

4.01 Meanings

(a) **Policy Framework.** The policy framework means the following plans and strategies:-

- Council Plan
- Sustainable Community Strategy
- County Durham Local Development Framework (Plans and alterations that together form the Development Plan)
- County Durham Youth Justice Plan
- ~~Crime and Disorder Reduction Strategy (known as the Safe Durham Partnership Plan)~~
- Housing Strategy
- Licensing Authority Policy Statement
- Statement on Gambling Policy
- Any other plan or strategy which the Council determines should be adopted or approved by them.

(b) **Budget.** The budget includes the allocation of financial resources to different services and projects, proposed contingency funds, setting the council tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure and the setting of virement limits.

Appendix 3: Article 12 – Decision Making

12.01 Responsibility for decision making

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

12.02 Principles of decision making

All decisions of the Council will be made in accordance with the following principles:

- (a) proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) due regard to all relevant and material considerations and disregard of irrelevant considerations;
- (c) due consultation and the taking of professional advice from officers;
- (d) respect for human rights;
- (e) a presumption in favour of openness;
- (f) clarity of aims and desired outcomes;
- (g) the giving of reasons for decisions; and
- (h) ~~of due regard to~~ equality legislation and the Disability Discrimination Act 1995; ~~and~~
- (i) ~~due regard to the need to prevent people from being drawn into terrorism.~~

12.03 Types of decision

- (a) Decisions reserved to full Council. Decisions relating to the functions listed in Article 4.02 will be made by the full Council and not delegated.
- (b) Key decisions. A key decision means an executive decision which is likely:
 - to result in the Council incurring expenditure which is, or the making of savings which are, significant, having regard to
 - the Council's budget for the service or function to which the decision relates, or
 - to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the Council

- (c) For the purposes of paragraph 12.03(b) above, the incurring of expenditure is not a key decision, if it is:-
 - (i) to implement or give effect to a provision of the Council's Budget or Policy Framework and, where appropriate, for which financial provision has been made;
 - (ii) to implement nationally or provincially agreed pay awards for officers of the Council in accordance with the terms of such award;
 - (iii) expenditure incurred by the Corporate Director, Resources in the exercise of Treasury Management powers delegated to him.
- (d) For the purposes of paragraph 12.03(b) above, any decision taken for the purpose of implementing an approved plan or strategy is not a key decision if it relates to a matter for which the plan or strategy makes provision.

12.04 Decision making by the full Council

Subject to Article 12.08, the Council meeting will follow the Council Procedure Rules set out in Part 4 of this Constitution when considering any matter.

12.05 Decision making by the Executive

Subject to Article 12.08, the Executive will follow the Executive Procedure Rules set out in Part 4 of this Constitution when considering any matter.

12.06 Decision making by Overview and Scrutiny Committees

The Overview and Scrutiny Management Board and the Scrutiny Committees will follow the Overview and Scrutiny Procedure Rules set out in Part 4 of this Constitution when considering any matter.

12.07 Decision making by other Committees and Sub-Committees established by the Council

Subject to Article 12.08, other Council committees and sub-committees will follow those parts of the Council Procedure Rules set out in Part 4 of this Constitution as apply to them.

12.08 Decision making by Council bodies acting as tribunals

The Council, a councillor or an officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

Appendix 4: Table 3 – Delegations to the Corporate Director, Children and Adults Services

3. The matters set out below are, in addition, **delegated to the Director of Public Health**;
- 3.1 To take responsibility for the management of the Council's Public Health Services, with professional responsibility and accountability for their effectiveness, availability and value for money.
 - 3.2 To contribute to and influence the work of the NHS Commissioners, ensuring a whole system approach across the public sector and ensuring NHS commissioners receive the public health advice they need.
 - 3.3 To provide leadership, expertise and advice to Senior Officers and Elected Members on a range of issues from outbreaks of disease and emergency preparedness through to improving local people's health concerns around access to health services.
 - 3.4 To provide the public with expert, objective advice on health matters.
 - 3.5 To promote action across the life course, working together with council colleagues such as the Director of Children and Adults Services and with NHS colleagues.
 - 3.6 To work with local Criminal Justice Partners and Police and Crime Commissioners to promote safer communities, including cooperating with the police, the probation service and the prison service to assess the risk posed by violent or sexual offenders.
 - 3.7 Under the NHS Act 2006 and the Health & Social Care Act 2012, to discharge any functions in relation to the corporate public health duties of the Council including responsibility for writing the annual report on the health of the local population. (The Council has a duty to Publish this report under section 73B (5) & (6) of the 2006 Act and Section 31 of the 2012 Act).
 - 3.8 Under Section 73A(1) of the 2006 Act inserted by section 30 of the 2012 Act;
 - To undertake duties to take steps to improve public health
 - To undertake such other public health protection or health improvement functions that the Secretary of State delegates to Local Authorities either by arrangement or under regulations- these include services mandated by regulations under Section 6C of the 2006 Act Inserted by section 18 of the 2012 Act

- To respond as a responsible authority under the Licensing Act 2003, such as making representations about licensing applications
- To provide Healthy Start Vitamins (under the Healthy Start and Welfare Food Regulations 2005) for maternity or child health clinics
- To consult and make decisions on Fluoridation Schemes

3.9 Under section 6C of the NHS Act 2006;

- To ensure appropriate access to sexual health services
- To take responsibility for the National Child Measurement Programme
- To take responsibility for the NHS Health Check Assessment

3.10 To act as either as lead or supporting Director of Public Health chairing or co- chairing the Local Health Resilience Partnership (LHRP) for County Durham, Darlington and Tees Valley.

3.11 To oversee the NHS screening programmes, both cancer and non-cancer, ante-natal and children's screening programmes, ensuring the health of the population is adequately protected and raising issues and concerns appropriately.

3.12 To oversee the NHS immunisation programmes including children 0-5 years, HPV and seasonal flu and any other that the Secretary of State instructs, including catch up programmes, raising issues and concerns appropriately.

3.13 To discharge the Council's responsibilities in relation to communicable and infectious diseases, including healthcare acquired infections.

3.14 Implementing or determining, subject to any rights of review or appeal which may apply, all matters concerning the Statutory Public Health complaints procedure.

3.15 Setting, varying and recovering charges in respect of certain steps taken in the exercise of health improvement duties.

3.16 To advise and contribute to the preparation of the Pharmaceutical Needs Assessment

3.17 The commissioning of services in relation to 0-5 children's public health.

**Appendix 5: Table 5 – Delegations to the Corporate Director,
Neighbourhood Services**

**The following matters are, in addition delegated to the Head of
Environment, Health and Consumer Protection**

15. To exercise all of the Council's functions including licensing, registration, making of orders, issue of notices and enforcement in respect of the following matters referred to in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) 2000 Regulations:
 - a. Performances of hypnotism;
 - b. Premises for acupuncture, tattooing, ear piercing and electrolysis;
 - c. Pleasure boats and pleasure vessels;
 - d. Night cafes and take-away food shops;
 - e. Sale of non-medicinal poisons;
 - f. Premises for the preparation of food including registration;
 - g. Scrap yards;
 - h. Pet shops and the breeding and boarding of dogs or other animals;
 - i. Animal trainers;
 - j. Knackers' yards;
 - k. Charitable collections;
 - l. Operation of loudspeakers;
 - m. Street works licences;
 - n. Movement and sale of cattle and pigs;
 - o. Storage of celluloid;
 - p. Meat, fish, dairy and egg product establishments and butchers' shops;
 - q. Motor salvage operations;
 - r. Health and safety at work;
 - s. Smoke-free premises;
 - t. Caravan and camping sites and moveable dwellings

16. To exercise the Council's functions in relation to:
 - a. The control of pollution and the management of air quality;
 - b. Statutory nuisances, as referred to in Schedule 2 to the Local Authorities (Functions and Responsibilities) (England) 2000 Regulations;
 - c. Contaminated land;
 - d. Port health;

17. To exercise, in consultation with the Head of the Legal and Democratic Services the Council's licensing, approval, registration and enforcement functions, including the institution of legal proceedings under legislation set out in Appendix 1 to this Table and all associated secondary legislation as amended from time to time.

18. In consultation with the Head of Legal and Democratic Services to review and update the list of relevant legislation contained within Appendix 1 to this Table to reflect new or modified statutory provisions.

19. Subject to Appendices 2, 3 and 4 to this Table to authorise, suspend, vary, transfer, extend or revoke permits, licences, certificates, registrations and approvals issued under the legislation set out in the Appendix 1 to this Table including all relevant statutory provisions.
20. To issue simple and conditional cautions to persons guilty of criminal offences under the legislation ~~as~~ referred to in ~~Appendix 1 paragraph 17 above~~ and in accordance with PACE and the Home Office Guidance.
21. To authorise suitably qualified and competent staff within the Environment, Health and Consumer Protection Division and other persons acting on behalf of the Council, for the purposes of discharging duties and powers under the legislation referred to in Appendix 1 ~~paragraph 20 above.~~
22. To authorise another local authority to institute legal proceedings in respect of a contravention of the legislation set out in Appendix 1 to this Table where related contraventions are being investigated by that authority.
23. To grant authorisations in relation to illegal money lending and unfair trading practices.
24. Power to agree transfers and assignments under health and safety legislation to change Enforcing Authority responsibilities.
25. Power to appoint Proper Officers and alternate Proper Officers for the Authority for matters relating to Public Health, Port Health and the Control of Infectious Disease.
26. Power to appoint Public Analyst, Agricultural Analyst and Food Examiner for the Council.
27. To authorise Officers to institute and or defend on behalf of the Council any legal proceedings which the Council by itself, or by a duly empowered Committee, may decide to take. In this respect, nominated staff are hereby authorised to appear in Court in person, or to be represented by a duly appointed officer of the Council in accordance with Section 223 of the Local government Act 1972 or to be represented by a duly instructed solicitor.
28. To determine those applications and matters in relation to Licensing and Gambling as are referred to in Appendices 2, 3 and 4 to this Table.
29. To agree terms of conditions and licences in accordance with published best practice and/or guidance.

Appendix 1 to Table 5

Administration of Justice Act 1970
Agriculture Act 1970
Agriculture (Miscellaneous Provisions) Act 1968
Agricultural Produce (Grading and Marking) Acts 1928 and 1931
Animal Act 1971
Animal Boarding Establishments Act 1963
Animal By Products (Enforcement) (England) Regulations 2013
Animal Feed (England) Regulations 2010
Animal Health Act 1981
Animal Welfare Act 2006
Anti-Social Behaviour Act 2003
Anti-Social Behaviour, Crime and Policing Act 2014
Breeding of Dogs Act 1973
Breeding of Dogs Act 1991
Breeding and Sale of Dogs (Welfare) Act 1999
Building Act 1984
Caravan Sites and Control of Development Act 1960
Caravan Sites Act 1968
Cattle Identification Regulations 1998 (Amended)
Children and Young Persons Act 1933
Children and Young Persons (Protection from Tobacco) Act 1991
Clean Air Act 1993
Clean Neighbourhoods and Environment Act 2005
Companies Act 1985 and 2006
Consumer Act 2015
Consumer Contracts (information, Cancellation and Additional Charges) Regulations 2013
Consumer Credit Act 1974
Consumer Protection (Distance Selling) Regulations 2000
Consumer Protection Act 1987
Consumer Protection from Unfair Trading Regulations 2008
Control of Horses Act 2015
Control of Pollution (Amendment) Act 1989
Control of Pollution Act 1974
Copyright, Design and Patents Act 1988
Crime and Disorder Act 1998
Criminal Justice Act 1988
Criminal Justice and Police Act 2001
Criminal Justice and Public Order Act 1994
Courts and Legal Services Act 1990
Dangerous Substances and Explosive Atmospheres Regulations 2002
Dangerous Wild Animals Act 1976
Deregulation Act 2015
Development of Tourism Act 1969
Education Reform Act 1988
Employment of Women, Young Persons and Children Act 1920
Energy Act 1976
Enterprise Act 2002
Environmental Damage (Prevention and Remediation) (Regulations) 2009
Environmental Protection Act 1990
Environment Act 1995

Estate Agents Act 1979
European Communities Act 1972
Explosives Act
Explosives (Age of Purchase etc) Act 1976
Fair Trading Act 1973
Farm and Garden Chemicals Act 1967
Feed (Hygiene and Enforcement) (England) Regulations 2005
Food Act 1984
Food Safety and Hygiene (England) Regulations 2013
Food and Environment Protection Act 1985
Food Safety Act 1990
Fraud Act 2006
Gambling Act 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 Act 2004
Housing Grants, Construction and Regeneration Act 1996
Hypnotism Act 1952
International Health Regulations 2005
Intoxicating Substances (Supply) Act 1985
Land Drainage Act 1976
Land Drainage Act 1991
Land Drainage Act 1994
Legislative and Regulatory Reform Act 2006
Licensing Act 2003
Local Authorities Goods and Services Act 1970
Local Government Act 1972
Local Government (Miscellaneous Provisions) Act 1976
Local Government (Miscellaneous Provisions) Act 1982
Local Government (Review of Decisions) Act 2015
Localism Act 2011
Medicines Act 1968
Mines and Quarries Act 1954
Mobile Homes Act 2013
Motor Cycle Noise Act 1987
Motor Salvage Operators Regulations 2002
National Assistance Act 1948
Noise Act 1996
Noise and Statutory Nuisance Act 1993
Official Feed and Food Controls (England) (Amendment) Regulations 2011
Performing Animals (Regulation) Act 1925
Pesticides Act 1998
Pesticides (Fees and Enforcement) Act 1989
Pet Animals Act 1951
Pet Animals Act 1951 Amendment Act 1983
Petroleum (Consolidation) Regulations 2014
Pigs (Records, Identification and Movement) Order 1995
Poisons Act 1972
Police, Factories etc. (Miscellaneous Provisions) Act 1916
Pollution Prevention and Control Act 1999
Pollution Prevention and Control (England and Wales) Regulations 2000

Prevention of Damage by Pests Act 1949
Prices Acts 1974
Proceeds of Crime Act 2002
Protection of Animals Act 1911
Public Health Act 1936
Public Health Act 1961
Public Health (Control of Diseases) Act 1984
Public Health (Ships) Regulations 1979
Public Health (Ships) (Amendment) (England) Regulations 2007
Public Health Acts Amendment Act 1907
Riding Establishments Acts 1964 and 1970
Road Traffic (Foreign Vehicles) Act 1972
Road Traffic Acts 1988 and 1991
Road Traffic Offenders Act 1988
Road Traffic (Consequential Provisions) Act 1988
Scrap Metal Dealers Act 2013
Sheep Scab Order 1997
Slaughter of Poultry Act 1967
Slaughterhouse Act 1974
Solicitors Act 1974
Sunbeds (Regulations) Act 2010
Sunday Trading Act 1994
Telecommunications Act 1984
Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010
Tobacco Advertising and Promotion Act 2002
Town and Country Planning Act 1990
Town Police Clauses Act 1847
Trade Descriptions Acts 1968
Trade Marks Act 1994
Trading Stamps Act 1964
Traffic Management Act 2004
Unsolicited Goods and Services Acts 1971
Unsolicited Goods and Services Amendment Act 1975
Video Recordings Acts 1984, 1993 and 2010
Water Industries Act 1991
Weights and Measures Act 1985
Zoo Licensing Act 1981

Appendix 5 to Table 5

Administration of Justice Act 1970
Allotments Act 1922, 1925 and 1950
Animal Act 1971
Animal Welfare Act 2006
Anti-Social Behaviour Act 2003
Anti-Social Behaviour, Crime and Policing Act 2014
Burial Act 1853
Burial Act 1857
Civic Amenities Act 1967
Clean Neighbourhoods and Environment Act 2005
Coast Protection Act 1949
Conservation of Habitats and Species Regulations 2010
Construction, Design and Management (CDM) Regulations 2015
Control of Horses Act 2015
Control of Pollution Act 1974
Control of Pollution (Amendment) Act 1989
Copyright, Designs and Patents Act 1988
Countryside Act 1968
Countryside and Rights of Way Act 2000
Cremation Act 1902 and 1952
Criminal Damage and Police Act 2001
Criminal Justice and Public Order Act 1994
Criminal Damage Act 1971
Crime and Disorder Act 1998
Dangerous Dogs Act 1991
Deregulation Act 2015
Disability Discrimination Act 2005
Durham City Council Act 1985
Electricity at Work Act 1989
Environment Act 1995
Environmental Protection Act 1990
Firearms Act 1968
Flood and Water Management Act 2010
Hazardous Waste (England and Wales) Regulations 2005
Health and Safety at Work Act 1974
Highways Act 1980
Household Waste Recycling Act 2003
Housing Grants, Construction and Regeneration Act 1996
Land Drainage Act 1991 and 1994
Landfill (England and Wales) Regulations 2002
Local Democracy, Economic Development and Construction Act 2009
Local Government Act 1972
Local Government (Miscellaneous Provisions) Act 1976
Local Government (Miscellaneous Provisions) Act 1982
Localism Act 2011
Local Authorities' Cemeteries Order 1977
Local Transport Act 2008
Management of Health and Safety at Work Act Regulations 1999
Museums and Galleries Act 1992
National Parks and Access to the Countryside Act 1949
Natural Environment and Rural Communities Act 2006

New Roads and Street Works Act 1991
Occupiers Liability Act 1984
Offender Management Act 2007
Open Spaces Act 1906
Parochial Registers and Records Measure 1978
Police Reform Act 2002
Public Health Act 1925
Public Health Act 1936
Public Health Act 1961
Public Health Acts Amendment Act 1907
Refuse Disposal (Amenity) Act 1978
Registration of Burials Act 1864
Road Traffic Act 1988
Road Traffic Regulation Act 1984
Road Traffic (Temporary Restrictions) Act 1991
Road Traffic Regulation (Special Events) Act 1994
Safety Sports Ground Act 1975
Small Holdings and Allotments Act 1908
Sporting Events (Control of Alcohol etc) Act 1985
Theatres Act 1968
Town and Country Planning Act 1990
Town Improvement Clauses Act 1847
Town Police Clauses Act 1847
Traffic Calming Act 1992
Traffic Management Act 2004
Transport Act 1968, 1981, 1985 and 2000
Waste Minimisation Act 1998
Waste Batteries and Accumulators Regulations 2009
Waste Electrical and Electronic Equipment Regulations 2013
Waste (England and Wales) Regulations 2011
Weeds Act 1959
Wildlife and Countryside Act 1981