

## Appendix 2

### Amendments and Additions to the Constitution

<b>Section:</b>
<b>Executive Members: Responsibilities And Portfolios Cabinet Member For Health And Adult Social Care</b>
<b>Amendments / Additions</b>
Paragraph 1.3 - Replace 'The National Assistance Act' with 'The Care Act'.  Paragraph 1.8 - Replace 'health authorities' with 'CCGs'.

<b>Section:</b>
<b>Regulatory and other Committees - Terms of Reference Audit, Pensions and Standards Committee Terms of Reference</b>
<b>Amendments / Additions</b>
6.2 - Bullet point two replace 'acting as the Approval of Accounts Committee, to be held in June' with 'acting as the Approval of Accounts Committee.'  Add the following as paragraph 6.6:  <i>'The Council has nominated the Committee to be responsible for the effective scrutiny of anti-fraud arrangements and activities.'</i>

<b>Section:</b>
<b>General Functions Delegated to the Chief Executive, all Executive Directors/Directors</b>
<b>5. Legal Proceedings and property matters</b>
<b>Amendments / Additions</b>
<b>Regulation of Investigatory Powers Act 2000 (RIPA)</b> Paragraph 5.7 - Remove '(e.g under Part I and Part II Regulation of Investigatory powers Act 2000)'.

<b>Section:</b>
<b>Director of Law</b>
<b>Part 2 - Functions delegated to the Director of Law in consultation / conjunction with other officers</b>

**Amendments / Additions**

Paragraph 12.1 – Delete “in conjunction with the Head of Litigation” in column 2 and add “Chief Solicitor (Property and Planning)” in column 3.

**Section:****Responsibilities of the Chief Executive and Executive Directors / Directors****2. The Strategic Director for Financial Corporate Services****Amendments / Additions**

Replace 2.1 (d): ‘be responsible for the provisions of the Accounts and Audit Regulations 2003 (as amended) in respect of the need to maintain an adequate and effective system of internal audit of the Council’s accounting records and of its system of internal control in accordance with proper internal audit practices.’

With: ‘be responsible for the provisions of the Accounts and Audit Regulations 2015 which require the responsible authority to undertake an effective internal audit to evaluate the effectiveness of its risk management, control, and governance processes.’

**Section:****Executive Director of Adult Social Care And Health  
Adult Social Services Functions****Amendments / Additions**

Replace the current section with the following:

1. The Executive Director of Adult Social Care and Health is the statutory Director of Adult Social Care and therefore shall exercise those functions in respect of adults as set out in Schedule 1 of the Local Authority Social Services Act 1970 (as amended), other than those functions for which the Executive Director of Children’s Services is responsible, and may delegate them to another member of staff.
  - 1.1 To arrange for the effective operation of the Council’s responsibilities under the Care Act 2014 and all relevant social care legislation for the assessment, purchase and provision of social care services, with appropriate review processes, for adults including people with disabilities, older people, people with mental health needs, people with substance misuse problems, adults with learning disabilities (including people with autistic spectrum disorder and a dual diagnosis incorporating mental health needs and learning disability) and people with HIV/AIDS.
  - 1.2 To incur expenditure to limits imposed by the estimates, subject to:
    - (a) Statutory approval where required.
    - (b) Estimates being approved where necessary.
  - 1.3 To authorise officers to act in connection with the powers and duties

conferred on the Council to institute or defend on behalf of the Council proceedings before any court and to appear on behalf of the Council before such a court in any proceedings instituted by the Council, or on the Council's behalf, or against the Council.

- 1.4 To enter into arrangements with the private and voluntary sector for the provision of the facilities and services already the subject of delegation to the Director under this scheme.
- 1.6 In agreement with the Director of Law and the Chief Executive to enter into agreements with the Hammersmith & Fulham CCG and/or other NHS bodies in accordance with section 75 of the National Health Services Act 2006 including:
  - (a) the pooling of local authority and NHS funds
  - (b) agreeing to joint and/or lead agency commissioning arrangements
  - (c) agreeing to joint and/or lead agency integrated provision of services
  - (d) the sharing of information systems on such terms as he considers appropriate.
- 1.7 To administer a system of charging for residential care and domiciliary care services, if such charges have been approved by the Council, consistent with the Care Act 2014, the Care and Support (Charging and Assessment of Resources) Regulations and the Care Act statutory guidance
- 1.8 The Executive Director of Adult Social Care and Health may delegate the above functions to proper officers employed by the Royal Borough of Kensington and Chelsea and/or Westminster City Council to be exercised under agreed joint arrangements.

**The Director of Integrated Care, Adult Social Care, is responsible for the powers and duties set out below, unless otherwise specified.**

## **2. CARE ACT 2014**

- 2.1 To make arrangements whereby the Council meets its safeguarding responsibilities in accordance with the Care Act 2014 and accompanying statutory guidance, ensure that a borough Safeguarding Adults Board meets regularly and agrees multi-agency policies and procedures to protect vulnerable adults, and produces a yearly strategic plan and an annual report.
- 2.2 To promote the welfare and independence of, and ensure the protection of vulnerable adults through the assessment of needs, the arrangement of services and the provision of facilities and assistance, where appropriate, to meet those needs, for adults and their carers, including the making of direct payments.
- 2.3 To refer disputes with other local authorities over the ordinary residence of clients to the Secretary of State for resolution.

2.4 To take reasonable steps to prevent or mitigate the loss or damage where it appears to the Council that there is a danger of loss or damage to movable property of an adult's in the authority's area where an adult is having needs for care and support met by the provision of accommodation, or is admitted to hospital

### **3. MENTAL HEALTH ACT 1983**

5.1 To authorise officers to act as Approved Mental Health Professionals

5.2 To take such action as may be necessary for the administration of a person's affairs where that person is unable to do so by reason of mental disorder (within the meaning of the Mental Health Act 1983) and for managing his affairs in accordance with any direction which might be issued by the Court of Protection (for Deputyship under the Mental Capacity Act 2005 see para. 6.4 below).

5.3 To authorise an application by an approved mental health professional to the County Court for an Order substituting an approved mental health professional or any other specified person as the nearest relative of a person suffering from mental disorder (within the meaning of the Mental Health Act 1983).

5.4 To decide whether or not persons should be received into the Guardianship of the Council in accordance with the provisions of the Act.

5.5 To provide after care services under s117 Mental Health Act 1983.

### **6. MENTAL CAPACITY ACT 2005**

6.1 To appoint appropriate officers as best interest assessors.

6.2 To make decisions on behalf of the Council as the supervising body where a request is made by a managing authority for the authorisation of a deprivation of liberty.

6.3 To apply to the Court of Protection where authorisation of a deprivation of liberty is necessary but cannot take place under the Mental Capacity Act Schedule A1 process.

6.3 To apply to the Court of Protection under the Mental Capacity Act 2005 for Deputyship for Property and Affairs or for Welfare as necessary or to apply under the Court's inherent jurisdiction as appropriate.

#### **Section:**

**The Environmental Services 'Service Group' Directors  
Scheme of Delegation**

**Amendments / Additions****Amendments:-****8. Animal By Products (Enforcement) (England) Regulations 2011**

Add 'Animal By Products (Enforcement) (England) Regulations 2013'.

Add 'Animals and Animal Products (Import and Export) Regulations 2006 (as amended)'.

**65. European Communities Act 1972**

Add Environmental Health Officer to Proper Officer column.

**67. Explosive Regulations 2014**

Amend with 'Explosives Regulations 2014 (Amendment) Regulations 2016'

**202. Safety of Sports Grounds Act 1975**

Add Environmental Health Officer to Proper Officer column.

**Additions:-**

Add 'The Health and Safety and Nuclear (Fees) Regulations 2016'.

**Section:****The Environmental Services 'Service Group' Directors Scheme of Delegation****Amendments / Additions**

Add the following:

**Function**

**The Microchipping of Dogs (England) Regulations 2015**  
 These Regulations impose duties on the keepers of dogs:  
 Regulation 3, s1 – That a dog that is over 8 weeks old and is not a certified working dog must be microchipped and the details of the dog and the keeper kept on an authorised database.  
 Regulation 3, s3 – Any keeper who imports a dog must ensure it is microchipped within 30 days  
 Regulation 8, s1 – Where a dog is transferred to another keeper the new keeper must ensure that the details on the microchip are updated with the new keepers details.  
 Regulation 8, s2 – No keeper may transfer a dog to a new keeper unless it has been microchipped.  
 Regulation 3, s2 – The duty to ensure a dog over the age of 8 weeks is microchipped does not apply for as long as a veterinary surgeon certifies, on a form approved by the Secretary of State, that a dog should not be microchipped

**Proper Officer**

Director for Cleaner, Greener & Cultural Services, Director for Safer Neighbourhoods, Director of Housing Services  
 Head of Waste & Streetscene, Head of Community Safety, Head of Parks & Leisure, Head of Estate Services

for reasons of the animal's health.

**Regulation 11 – Authorised person**

s1 – The Secretary of State may authorise in writing any person (“an authorised person”) to act for the purposes of enforcing these Regulations.

s2 A local authority in whose area a dog is kept may authorise in writing any person (“an authorised person”) to act for the purposes of enforcing these Regulations in its area.

**Regulation 12 – Powers of an authorised person**

An authorised person may, on producing the written authorisation mentioned in Regulation 11 (1) or 11(2), if required:

- (a) Serve on the keeper of a dog which is not microchipped an notice requiring the keeper to have the dog microchipped within 21 days;
- (b) Where the keeper of a dog has failed to comply with a notice under paragraph 12 (a), without the consent of the keeper -
  - (i) Arrange for the dog to be microchipped; and
  - (ii) Recover from the keeper the cost of doing so;
- (c) Take possession of a dog without the consent of the owner for the purposes of checking whether it is microchipped or for the purpose of microchipping it in accordance with 12 (b)(i).

Any post incorporating the words “Streetscene Enforcement”, “Parks Constable”, “Community Safety”, “Housing Manager”, “Housing Officer”

**Section:**

**The Environmental Services ‘Service Group’ Directors Scheme of Delegation (Cont.)**

**Amendments / Additions**

Add the following:

Section 169 - Control of scaffolding on highways

Section 170- Control of mixing mortar, etc. on highways

Section 171 – Section Deposit of building materials on highway

Section 172 – Section Hoarding to be set up during building, etc.

Section 173 - Erection of hoarding during building etc.

Section 174 - Precautions to be taken when executing works in streets

Section 178 – Restrictions on rails, beams and cables over a highway etc.

**Public Health Act 1936**

Replace 'Deputy Head of Emergency Services' with 'Head of Emergency Services'.  
Add Deputy Mortuary Manager.

**Coroners Act 1988**

Add Head of Emergency Services

**Anti-Social Behaviour Crime and Policing Act 2014**

Replace entire section with the following:

Section 5 – Power to apply for civil injunction to prevent antisocial behaviour

Section 53 - To issue Community Protection Notices

Section 52 – To issue Fixed Penalty Notices for breach of Community Protection Notices

Section 68 – To issue Fixed Penalty Notices for breach of a Public Space Protection Order

Section 76 – Power to issue closure notice on a premises

Section 95 – Power to serve notice for absolute grounds for possession for ASB for secure tenancies.

Section 97 - Power to serve notice for absolute grounds for possession for ASB for assured tenancies.

Section 98 & 99 – Power to serve notice for discretionary grounds for possession for secure and assured tenancies.

**Proper officers:**

Director of Cleaner Greener & Cultural Services, Director for Safer Neighbourhoods, Director of Housing Services, Head of Waste & Street Enforcement

**Prevention of Damage by Pest Act 1949**

Replace entire section with the following:

'Section 1- 54 Prevention of Damage by Pest Act 1949 – Investigation and enforcement action on waste on private land and statutory duty to keep land free of rats and mice.'

**London Local Authorities Act 1990**

Replace section with the following:

'Section 28,29,30 & 32 - Revocation or Variation of Licences under Part 111 (includes non-payment of fees).

Section 34 & 38 - Offences of breach of a street trading licence and unlicensed street trading.'

**Proper Officers:**

Director for Safer Neighbourhoods, Director for Cleaner Greener & Cultural Services and Business, Head of Customer and Business Support Development, Sub-Licencing Committee

**Section:**

**The Environmental Services 'Service Group' Directors  
Shared Powers**

**Amendments / Additions**

Add the following:

Highways Act - S 178 – Restrictions on rails, beams and cables over a highway etc.