

LICENSING AND SAFETY COMMITTEE

31 AUGUST 2016

DELEGATION TO THE LICENSING SUB-COMMITTEE – SCRAP METAL DEALERS ACT 2013

Report from: Perry Holmes, Chief Legal Officer/Monitoring Officer

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Summary

The Council approved revisions to the Council's Constitution at its meeting on 28 April 2016. One of those changes was to clarify that the licensing of scrap metal dealers under the Scrap Metal Dealers Act 2013 is an executive function which must be the responsibility of the Leader and Cabinet. This report advises the Committee that the Leader has given delegated authority to the Chief Legal Officer to determine scrap metal licence applications and associated matters. With the agreement of the Leader and Cabinet, the Council has decided to give this Committee and the Licensing Sub Committee an advisory role in the determination of scrap metal licence applications, where representations have been received because it is proposed to refuse, vary or revoke a licence. The Committee's terms of reference have been amended accordingly. The Committee is asked to agree that this advisory role should be undertaken by the Licensing Sub Committee which would meet to hear representations as appropriate and then recommend a course of action to the Chief Legal Officer.

1. Budget and Policy Framework

1.1 Chapter 3, Part 2, paragraphs 8 and 8 (A) of the Council's Constitution specifies the functions of the Licensing and Safety Committee and the Licensing Sub-Committee respectively.

2. Background

2.1 The Scrap Metal Dealers Act 2013 repealed the Scrap Metal Dealers Act 1964 and Part 1 of the Vehicles (Crime) Act 2001 creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries in England and Wales.

2.2 The Act introduced two types of licence, a site licence and a collector's licence. A person is only permitted to hold one licence in a local authority's area but is permitted to hold a licence in more than one local authority.

- 2.3 Under the Act, the Council has the power to refuse to grant a licence and powers to revoke licences if the dealer is considered to be an unsuitable person to hold such a licence. Suitability checks are completed before a licence is granted.
- 2.4 Until such time as the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 are amended, the function of licensing scrap metal dealers has to be the responsibility of the Leader and Cabinet. This is now clearly reflected in the Council's Constitution with appropriate delegations from the Leader of the Council to the Chief Legal Officer as follows:

With regard to the Scrap Metal Dealers Act 2013, to determine:

- (i) Fee setting (when appropriate);
- (ii) Application for or renewal of a Site or Collector's licence, where no representations have been received from the applicant or where their representations have been withdrawn;
- (iii) Application for a variation to a licence, where no representations have been received from the applicant or where their representations have been withdrawn;
- (iv) To issue a closure notice on non-residential premises being used as a scrap metal dealer's site;
- (v) Application to the Magistrate's Court for a closure order;
- (vi) Termination of a closure order;
- (vii) Application to the Magistrate's Court to discharge a closure order;
- (viii) Revocation of a licence, where no representations have been received from the applicant or where their representations have been withdrawn;
- (ix) Consideration of an imposition of conditions;.
- (x) to determine applications, in consultation with the Licensing Sub-Committee, from applicants for licences under the Scrap Metal Dealers Act 2013 where the authority is minded to refuse, vary or revoke a licence and the applicant has given notice to the authority within the prescribed time that they require the opportunity to make representations about the proposal.

[Note: The functions outlined at (i) and (x) may not be sub-delegated, whilst those listed at (ii) to (ix) will be sub-delegated, in writing, to the appropriate licensing officer.

- 2.5 To secure the continued involvement of elected Members with licensing experience in the licensing of scrap metal dealers the Leader and Cabinet and the Council have agreed that this Committee and the Licensing Sub Committee should have authority to act in an advisory capacity to the Chief Legal Officer in the determination of scrap metal licence applications, where representations have been received, because it is proposed to refuse, vary or revoke a licence as set out in Paragraph 2.5 (x) above. The Committee's terms of reference have been amended as follows:

“To act in an advisory quasi-judicial capacity to the Chief Legal Officer, when considering representations from applicants for licences under the Scrap Metal Dealers Act 2013 where the authority is minded to refuse, vary or revoke a licence”

2.6 The Leader and Cabinet and Council considered that this advisory role should be undertaken by the Licensing Sub Committee as set out in (x) to avoid the need to convene a meeting of the full Committee for this purpose. This means that where the Chief Legal Officer is minded to refuse, vary or revoke a licence, any representations made by the applicant or licence holder against this proposed decision would be considered by the Licensing Sub Committee. This would include hearing any representations that the applicant or licence holder wish to make in person. The Sub Committee would then make a recommendation to the Chief Legal Officer who would determine the matter.

2.7 It is suggested that the terms of reference of the Licensing Sub Committee should be amended to clarify its role in relation to the licensing of Scrap Metal Dealers as set out below:

2.8 **Current Terms of Reference of the Licensing Sub Committee**

“To determine hackney carriage, private hire and other licensing issues not covered by the Licensing Act 2003 nor the Gambling Act 2005”

2.9 **Proposed Terms of Reference of the Licensing Sub Committee**

“To determine hackney carriage, private hire and other licensing issues not covered by the Licensing Act 2003 nor the Gambling Act 2005; and

To act in an advisory quasi-judicial capacity to the Chief Legal Officer, when considering representations from applicants for licences under the Scrap Metal Dealers Act 2013 where the authority is minded to refuse, vary or revoke a licence”

3. **Risk management**

3.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. Article 14 of the Council’s Constitution places an obligation on the Monitoring Officer to monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect. It is important that this is done on an ongoing and regular basis to minimise the risk of the Council failing to operate its governance arrangements in line with current legislation and best practice.

3.2 There is a risk that the Council may receive a legal challenge if the processes put in place for the licensing of scrap metal dealers do not comply with the relevant legislation. Recent changes to the Constitution and the arrangements proposed in this report clarify that licensing of scrap metal dealers must be the responsibility of the Leader and Cabinet with provision for the continued involvement of this Committee and the Licensing Sub Committee in an advisory

capacity when representations have been received because it is proposed to refuse, vary or revoke a licence.

4. Financial and legal implications

- 4.1 There are no financial implications arising from this report.
- 4.2 The licensing of scrap metal dealers is a statutory function which must be discharged in compliance with the Scrap Metal Dealers Act 2013 and the Local Authorities (Functions and Responsibilities (England) Regulations 2000.

5. Recommendation

- 5.1 That the Licensing and Safety Committee delegates to the Licensing Sub-Committee its function of acting in an advisory quasi-judicial capacity to the Chief Legal Officer, when considering representations from applicants for licences under the Scrap Metal Dealers Act 2013 where the authority is minded to refuse, vary or revoke a licence.
- 5.2 That the Licensing and Safety Committee agree to add the following paragraph to the terms of reference of the Licensing Sub Committee as set in paragraph 2.9 above:

"To act in an advisory quasi-judicial capacity to the Chief Legal Officer, when considering representations from applicants for licences under the Scrap Metal Dealers Act 2013 where the authority is minded to refuse, vary or revoke a licence."
- 5.3 That the Licensing and Safety Committee recommends that the Monitoring Officer, who has delegated authority to make minor changes to the Constitution, amends the terms of reference of the Licensing Sub Committee accordingly.

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Appendices

None

Background papers

None