

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 19th September 2013
Report of: Public Protection and Health Manager
Subject/Title: Scheme of Delegation for the Implementation of the Scrap Metal Dealers Act 2013

1.0 Report Summary

- 1.1 This report contains proposals for a Scheme of Delegation for the Implementation of the Scrap Metal Dealers Act 2013 which comes into force on 1 October 2013.

2.0 Recommendation

- 2.1 That subject to the detail being worked up and approved by Licensing Committee on 30 September, Constitution Committee recommends to Council that:

2.1.1 in so far as it is necessary as a matter of local choice, this function is specified as a non-executive function; and

2.1.2 procedures and a scheme of delegation be set up to implement the Scrap Metal Dealers Act 2013 and to determine applications for licenses under the Act consider and approve, taking account of the following principles:

- policy is delegated to the Licensing Committee
- the ability to set fees and charges is delegated to the Licensing Committee
- a member decision making body (e.g. a licensing sub-committee) shall determine any applications where the applicant has indicated he/she is taking advantage of their opportunity for a hearing (i.e. after a notice has been given under Section 7 of the Act by the licensing authority stating it proposes to refuse the application, the applicant may ask for a hearing and the opportunity to make written or oral representations)
- a member decision making body only may initiate a revocation of a licence.
- a member decision making body only may impose conditions on a licence.
- An officer should be empowered to make decisions in respect of approvals of licences and may refuse a licence in circumstances where the applicant has not expressed the wish to make representations within the specified time after a notice has been served under Section 7 stating the licensing authority proposes to refuse the application.

3.0 Reasons for Recommendations

- 3.1 To ensure that the Council meets its statutory obligations under the Scrap Metal Dealers Act 2013 and that the Licensing Committee and Officers of the Council are able to undertake the full range of roles and responsibilities due to be imposed by the Act.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 None

7.0 Financial Implications

- 7.1 The implementation of the proposed Scheme of Delegations will allow the authority to implement a system of fees and charges to cover the licensing of scrap metal dealers in accordance with the scope of the Act.
- 7.2 Fees and charges are to be set locally rather than nationally and officers are currently working on full cost recovery based charges with the Finance Team.

8.0 Legal Implications

- 8.1 The current legislation, (the Scrap Metal Dealers Act 1964) requires scrap metal dealers to register. The Scrap Metal Dealers Act 2013 is designed to provide a more robust scheme of monitoring the scrap metal industry. A scheme of delegation needs to be put in place to allow for full implementation of the Scrap Metal Dealers Act 2013, by the time the first applications under it are made to the Council. All current registered scrap metal dealers will be required to make application to the council for a licence between 1st and 15th October 2013. Guidance indicates that these applications should be determined by 1st December 2013.
- 8.2 The current function, under the Scrap Metal Dealers Act 1964, is specified in Regulations as a Council ("non executive") function. The Scrap Metal Dealers Act 2013 repeals the 1964 legislation and implements the new licensing system. It was expected that Regulations would be made to specify that this function is a Council function, or a local choice function, i.e. one where the council can decide whether it wants the function to be a council (non executive) or an executive function. The implementation regulations, which were made at the beginning of September, do not make any statement to this effect. The latest information is that the Department of Communities and Local Government

will make it a local choice function, but will not be consulting on regulations for this until October 2013, which is after the first tranche of licence applications are received.

- 8.3 In the absence of regulations making a function a Council (non-executive) function, the default position is that it is an Executive function. However, all other licensing functions are currently Council (non-executive) functions and whilst it is still likely that regulations will be issued to this effect in respect of the licensing of Scrap Metal Dealers, it should be noted that Section 17 of the Interpretation Act 1978 already provides that where an Act repeals and re-enacts, with or without modification, a previous enactment, then unless the contrary intention appears, in so far as any subordinate legislation made or other thing done under the enactment so repealed, or having effect as if so made or done, could have been made or done under the provision re-enacted, it shall have effect as if made or done under that provision. The effect of this is that the new regulatory provisions should, even if no new confirmatory Regulations emerge, be capable of being done through the Council's non-Executive framework.
- 8.4 It is recommended that decisions on fees and charges and on a policy need to be made by both the Licensing Committee (as delegated by Council) and by the Portfolio Holder for Communities and Regulatory Services.
- 8.5 The Scrap Metal Dealers Act 2013 states that in determining licences the licensing authority has to be satisfied that the applicant is a suitable person to hold a licence. It requires the Council to give an applicant for a licence the opportunity of a hearing if the Council sends that person a notice to indicate that the Licensing Authority is minded to refuse the licence. The applicant can then make written or oral representations at a hearing.

9.0 Risk Management

- 9.1 Consideration of the legal provisions relating to the proper process for the carrying out of this statutory function mitigate the risk of an incorrect route being chosen.

10.0 Background

- 10.1 In order to set up the necessary procedures and the scheme of delegation for the licensing functions under the Scrap Metal Dealers Act 2013 Licensing Committee will need to consider detailed processes based upon the following principles which mirrors the delegations for other licensing functions:
- policy is delegated to a member body
 - the ability to set fees and charges are delegated to a member body
 - a member decision making body (e.g. a licensing sub-committee) shall determine any applications where the applicant has indicated he/she is taking advantage of their opportunity for a hearing (i.e. after a notice has been given under Section 7 of the Act by the licensing authority stating it proposes to refuse the application, the applicant may ask for a hearing and the opportunity to make written or oral representations)

- a member decision making body only may initiate a revocation of a licence.
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10.2 The delegations as outlined above would address the risks and difficulties which arise from the lack of regulations.

11.0 Access to Information

11.1 The Scrap Metal Dealers Act 2013, the Scrap Metal Dealers Act 1964 and the Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013 can all be found on the www.legislation.gov.uk website.

11.2 The Council's Constitution can be found on the Council's website: www.cheshireeast.gov.uk

The background papers relating to this report can be inspected by contacting the report writer:

Name: Tracey Bettaney

Designation: Public Protection and Health Manager

Tel No: 01270 686596

Email: tracey.bettaney@cheshireeast.gov.uk