

CABINET MEETING

4th SEPTEMBER 2013

PROPOSED AMENDMENTS TO THE COUNCIL'S DELEGATION SCHEME

Report of Deputy Chief Executive and the Head of Law and Governance

1. Purpose of the Report

1.1 To seek approval to amend the Council's Delegation Scheme for the following:

to authorise the Deputy Chief Executive to exercise the Council's full enforcement powers in respect of trees under Part VIII of the Town and Country Planning Act 1990

and also

to authorise the Regulatory Committee, Deputy Chief Executive and Head of Street Scene to exercise functions under the Scrap Metal Dealers Act 2013.

2. Description of Decision

2.1 That Cabinet recommend to Full Council that the Council's Delegation Scheme in Part 3 of the Constitution be amended as follows:-

Paragraph 2.22 (Deputy Chief Executive) be deleted and substituted as follows:-

"2.22 To authorise the making of Tree Preservation Orders (including any variation or revocation Order) (provided that if any statutory representations or objections are received to any such Orders which the Council is required to consider they shall be reported to the Planning and Highways Committee for consideration) and to exercise the Council's enforcement powers in respect of trees under Part VIII of the Town and Country Planning Act 1990".

and

The further amendments set out in the Schedule to this report be made in relation to the exercise of functions under the Scrap Metal Dealers Act 2013.

And that the Head of Street Scene be appointed as the person to whom oral representations are to be made under paragraph 7(8) of Schedule 1 to the Scrap Metal Dealers Act 2013.

3. Introduction and Current Position

Town and Country Planning Act 1990

- 3.1 Under the Council's Delegation Scheme, the authorisation of enforcement action in respect of breaches of planning, advertisement and listed building control is delegated to the Deputy Chief Executive to ensure that operational enforcement decisions can be made expeditiously where necessary in the public interest.
- 3.2 It is important to ensure that Chief Officers are authorised to exercise the full scope of statutory enforcement powers under the Town and Country Planning Act 1990 (as amended).
- 3.3 The existing Delegation Scheme requires updating so that the Deputy Chief Executive has the following additional powers:-
 - (a) to vary and revoke existing Tree Preservation Orders (TPO) (provided that if any statutory representations or objections are received which the Council is required to consider they shall be reported to the Planning and Highways Committee for consideration);
 - (b) to serve tree replacement notices under Section 207 of the 1990 Act in respect of trees that have been removed, uprooted or destroyed either in contravention of a TPO or without consent (express or deemed) in a conservation area and to carry out replanting works in default under Section 209 of the Act.
- 3.4 The Council has not previously served any notices under Section 207 of the Act. However it is important to ensure that the Deputy Chief Executive has authority to serve such notices in the event they are required in the future.

Scrap Metal Dealers Act 2013

- 3.5 On 28 February 2013 the Scrap Metal Dealers Act 2013 ('the Act') received Royal Assent. The Act revises the regulatory regime for scrap metal dealing and vehicle dismantling. The aim of the Act is to revise the regulatory regime for scrap metal dealing and vehicle dismantling and to give Councils and Police more powers to refuse and revoke licences as well as granting greater rights of entry and inspection. The Scrap Metal Dealers Act 1964 is revoked and also Part I of the Vehicles (Crime) Act 2001, which previously conferred powers and duties upon local authorities in respect of the registration of motor salvage operators.
- 3.6 The Scrap Metal Dealers Act 2013 creates two types of licence. Namely a site licence which will allow a dealer to operate from the sites named on the licence and a collector's licence which will allow dealers to operate as mobile collectors in a council area. An application for a site licence must also name a site manager for each site to be covered by the licence. Each licence lasts for a period of three years. A number of new offences are also created by the Act, such as operating as a scrap metal dealer without a licence, failure to notify changes affecting a licence, failure of a licensee to verify the address of a person selling scrap metal to the dealer and paying for scrap metal in cash. As enforcers of the provisions of the Act, the Police and local authorities are given powers to enter and inspect, powers to issue (and subsequently cancel) closure notices in respect of unlicensed sites and power to apply to the magistrates' court for a closure order.

- 3.7 On 6 August 2013 the Government issued the Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013 (SI2013/1966) which requires the council to accept and process applications from 1 October 2013.
- 3.8 The existing Delegation Scheme therefore also requires updating so that the necessary delegated powers are in place in relation to the enforcement of the provisions of the Scrap Metal Dealers Act 2013, including the issue, revocation, refusal and variation of licences. In relation to the refusal, revocation and variation of licences, the Act allows applicants/licence holders to make representations where the local authority proposes to take any of those steps. Such representations may be in writing or, alternatively, the applicant/licence holder may ask to make oral representations. In the latter case, they must be given the opportunity of appearing before, and being heard by, “a person appointed by the authority.” This mirrors a similar provision in the Vehicles (Crime) Act 2001, which the 2013 Act repeals and replaces. In the case of the 2001 Act, the Council’s current Delegation Scheme authorises the Head of Street Scene as the person to whom oral representations may be made and it is proposed that this authorisation be continued in relation to the new legislation. With regard to the licensing provisions of the Act, therefore, it is proposed that the power to issue licences, and to revoke, refuse or vary licences in any cases where no representations are received, be delegated to the Deputy Chief Executive. Any proposal to revoke, refuse or vary a licence in cases where representations are received would be referred to the Regulatory Committee for determination. In cases where representations are made orally, the Head of Street Scene will receive these in accordance with the requirements of the Act and subsequently prepare a written report for consideration by members.
- 3.9 The changes proposed to the Delegation Scheme in relation to the Scrap Metal Dealers Act 2013 are set out in the Appendix to this report.

4. Reasons for Decision

- 4.1 To ensure that the Deputy Chief Executive is authorised to exercise all necessary operational enforcement powers expeditiously under the Town and Country Planning Act 1990 in respect of trees that are either subject to Tree Preservation Orders or situated in a conservation area.
- 4.2 To ensure that the Council is able to accept and process applications for Site Licences and Collector’s Licences from 1 October 2013 and that the Deputy Chief Executive is authorised to exercise all necessary operational enforcement powers expeditiously under the Scrap Metal Dealers Act 2013.

5. Alternative Options

- 5.1 There are no viable alternative options to ensure the Council is able to exercise its full statutory enforcement powers in respect of trees or in relation to processing licence applications or serve notices relating to the Scrap Metal Dealers Act 2013 in an expeditious manner.

6. Impact Assessment

- 6.1** The purpose of this report is to seek approval to amend the Council's Delegation Scheme so that the Deputy Chief Executive is authorised to exercise the full scope of enforcement powers in respect of trees as contained in the 1990 Act and also that the Regulatory Committee, the Deputy Chief Executive and Head of Street Scene are authorised to exercise functions under the Scrap Metal Dealers Act 2013. . Any proposal to take action would then be subject to an individual decision by the Deputy Chief Executive in appropriate cases and in light of the statutory grounds for taking action.

SCHEDULE

AMENDMENTS TO DELEGATION SCHEME IN RELATION TO THE SCRAP METAL DEALERS ACT 2013

Powers delegated to the Deputy Chief Executive

Paragraph 2.96

Currently reads:

“To undertake the enforcement of all legislation relating to the Council’s powers, duties and functions in connection with the following areas [including the issuing of certificates, licences, notices (including fixed penalty notices), consents and orders, the authorisation of registration and the maintenance of registers and lists]:

- ...
 - Control of the following trades:
 - ...
 - Scrap metal dealers

and without prejudice to the generality of the foregoing specifically in connection with current provisions:”

In the list of current provisions that then follows, **insert** as a new paragraph (s)(s):
(s)(s) Scrap Metal Dealers Act 2013
and re-letter the remainder of the list accordingly.

Paragraph 2.100

Currently reads:

“To authorise the registration of scrap metal dealers and to grant exemption to the keeping of records by itinerant collectors under the Scrap Metal Dealers Act 1964.”

This paragraph to be **deleted** and **replaced** by the following:

“To undertake the Authority’s powers, duties and functions under the Scrap Metal Dealers Act 2013, including – in addition to the powers set out in paragraph 2.96 and without prejudice to the generality thereof or to the power delegated to the Head of Street Scene in paragraph 8.1 below – the power to refuse applications for licences and to revoke or vary licences and to apply to the magistrates’ court for closure orders.

Paragraph 2.106

Currently reads:

“To undertake the Authority’s powers, duties and functions under Part I of the Vehicles (Crime) Act 2001 in relation to the registration of Motor Salvage Operators, including the granting and renewal of registrations, the refusal of applications for registration or renewal of registration and the cancellation of registrations.”

This paragraph to be **deleted** and subsequent paragraphs re-numbered accordingly.

Powers delegated to the Head of Street Scene

Paragraph 8.1

Currently reads:

“The Head of Street Scene, within the Deputy Chief Executive’s Directorate, shall be the person to whom oral representations may be made for the purposes of section 5(6) of the Vehicles (Crime) Act 2001 and is authorised to determine whether or not the registration of the operator concerned should be refused or cancelled in the light of such representations.”

This paragraph to be **amended** to read as follows:

“The Head of Street Scene, within the Deputy Chief Executive’s Directorate, shall be the person to whom oral representations may be made for the purposes of paragraph 7(8) of Schedule 1 to the Scrap Metal Dealers Act 2013.”

Powers delegated to the Regulatory Committee

Constitution – Responsibility for Council Functions

C – Licensing and Registration Functions

Currently reads (in relation to the Regulatory Committee):

“The Regulatory Committee shall exercise ... the functions of considering the grant, refusal, amendment and cancellation of licences, certificates, permits or registration (except insofar as such matters have been delegated to Chief Officers) in respect of:

1. ...
2. ...
3. ...
4. ...
5. ...
6. ...
7. ...
8. ...”

Add to the list of matters 1-8:

9. Scrap Metal Dealers