

REPORT OF THE HEAD OF DEMOCRATIC SERVICES

6.1 URGENT IMPLEMENTATION OF DECISIONS

RECOMMENDATION: That the Urgency decisions detailed below be noted.

Information

1. The Constitution allows a Cabinet or Cabinet Member decision to be implemented before the expiry of the 5 day call-in provided there is agreement from the Chief Executive and the Chairman of the Executive Scrutiny Committee to waive this. All such decisions are to be reported for information only to the next full Council meeting. Any Emergency Contract Decisions, which are ratified by Cabinet, are also reported for information only.
2. Since last reported, the following decisions have been made using urgency rules:

Date of Decision	Nature of Decision	Decision-Maker
06/09/2013	Ruislip Lido Enhancement Programme - Tender Acceptance - Perimeter Fencing and Variations: Toilet Block Contract	Leader of the Council and Cabinet Member for Finance, Property & Business Services (Special Urgency)
19/09/2013	Capital Release - HRA "Works to Stock" Programme 2013/14 - Replacement of Failed Domestic Boilers	Leader of the Council and Cabinet Member for Finance, Property & Business Services (Special Urgency)
19/09/2013	Capital Release - Uxbridge Library Refurbishment	Leader of the Council and Cabinet Member for Finance, Property & Business Services (Special Urgency)
19/09/2013	Clearance of Void Property Backlog	Leader of the Council and Cabinet Member for Finance, Property & Business Services (Special Urgency)
25/09/2013	Primary Schools Capital Programme Phase 3- Lake Farm & St Andrews Park (Formerly RAF Uxbridge) Primary Schools Delegated award of Professional Services Contracts and Capital Release	Leader of the Council and Cabinet Member for Finance, Property & Business Services (Special Urgency)
11/10/2013	Compensation: Property in High Road, Cowley, Uxbridge.	Leader of the Council, on behalf of the Cabinet Member for Social Services, Health & Housing (Special Urgency)

BACKGROUND PAPERS: None

6.2 AMENDMENTS TO COUNCIL CONSTITUTION

Scrap Metal Dealers Act 2013

1. On 1 October 2013 the Scrap Metal Dealers Act 2013 ('the Act') came into force creating a new regime under which both the scrap metal recycling and vehicle dismantling industries are to be regulated. The new regime is to be run and administered by local authorities, giving them the power regulate these industries by allowing them to refuse to grant a licence to 'unsuitable' applicants and the power to revoke licences if the dealer becomes 'unsuitable'. From 1 December 2013 it will be a criminal offence to carry on a business as a scrap metal dealer without a licence.
2. A summary of the Act and its implications for the Council is set out in Appendix 1.
3. For the Council to be able to manage the new regime it is recommended that the terms of reference of the Licensing Committee be amended to include the discharge of the Council's functions under the Act and, similarly, delegated authority be given to the Deputy Chief Executive and Corporate Director of Residents Services to administer and determine applications under the Act that are uncontested.

RECOMMENDATIONS: That:

- a) **The Terms of Reference for the Licensing Committee be amended to include responsibility of discharging the Council's functions under the Scrap Metal Dealers Act 2013, as set out in Appendix 2;**
- b) **Members of the Licensing Committee authorise the Head of Democratic Services to make the necessary changes to the Terms of References of the Licensing Sub-Committees, as set out in appendix 2, so they can take immediate effect.**
- c) **Officer Delegations to the Deputy Chief Executive and Corporate Director of Residents Services be amended, as set out in Appendix 3, so they can take immediate effect;**
- d) **Cabinet be requested to approve the necessary related guidance and fees for the Scrap Metal Dealers Act 2013.**
- e) **Authority be given to the Head of Democratic Services, in consultation with the Leader of the Council and the Licensing Committee where applicable, to make any further necessary changes to the Constitution, including officer delegations and Terms of Reference that may be required in respect of the full and proper implementation of the Scrap Metal Dealers Act 2013 and associated regulations.**

INTRODUCTION TO THE SCRAP METAL DEALERS ACT 2013

1. BACKGROUND

- 1.1 The Scrap Metal Dealers Act 2013 ('the Act') received Royal Assent earlier this year and its transitional arrangements took effect from 1 October 2013 with the full Act to be implemented on 1 December 2013.
- 1.2 The Act was introduced in response to the growth in metal theft offences, driven by increased commodity costs, which in addition to the direct impact on the victims of theft have also had a damaging and disruptive effect on the country's infrastructure. Within Hillingdon, entire churches and public amenities have been stripped of metal (especially lead), leading to calls for greater regulation.
- 1.3 Under the new legislation, local authorities remain the principal regulators but a new licensing regime provides stronger regulation, including the power to refuse to grant licenses to unsuitable applicants and a power to revoke licenses if the dealer becomes unsuitable. Dealers will also no longer be able to trade in cash. Other changes include a national register and a requirement for scrap metal dealers to verify the full names and addresses of sellers.
- 1.4 The Act provides that an application for a licence must be accompanied by a fee. A detailed fee structure is being agreed and this intended to be presented to Cabinet in November for approval.
- 1.5 The licensing regime introduced by the Act is similar to the issuing of personal licences under the Licensing Act 2003. The suitability of applicants is based on a number of factors outlined in the Act including any unspent relevant criminal convictions. It is therefore proposed that the administration of the new licences be centralised and integrated into the Licensing Service. The Act requires that a person is appointed by the Council determine any disputed decisions to issue a licence. It is recommended that the terms of the Licensing Committee and Residents Services, Licensing Services be expanded to encompass the Act.
- 1.6 The introduction of this new licensing regime, will require guidance to be set by the Council to deal with applications. Officers are currently working on a draft application guidance and fee setting exercise ahead of a report being prepared for Cabinet.

2. IMPLICATIONS FOR HILLINGDON

- 2.1 Impact on customers – the new Act is expected to reduce incidents of the anti-social and disruptive crime of metal theft and will benefit local residents and businesses. The new fee based licences will increase the cost of dealing in scrap metal which may impact on the viability of some small local businesses although this is expected to be offset by the creation of a fairer market place.
- 2.2 Impact on Equalities – an Equalities Impact Assessment has been undertaken to look at the implications of the Act. This has identified potential negative impacts on

groups with protected characteristics and the Licensing Service has put into place procedures to ensure that no groups are adversely affected by Council's implementation of the Act.

3. LICENCES

- 3.1 Every scrap metal dealer will be required to have a licence under the new Act, and operating without one will be a criminal offence. These licenses will last for three years. There are two different types of licences:
 - a. A Site licence and
 - b. A Collector's licence
- 3.2 A site licence will deal specifically with scrap metal disposal sites within the borough whilst a collector's licence will require that any scrap metal collector collecting within the Borough is licensed by the Council. This will result in collectors holding multiple licences in multiple boroughs; thus significantly increasing the number of licences issued.
- 3.3 The Council has already received 30 applications for collector's licences and 9 applications for site licences and estimate this may rise to around 70 applications once the Act is fully operational.

4. LICENCE APPLICATIONS

- 4.1 The Act sets out what information must accompany an application for a scrap metal dealer's licence and any application made must be accompanied by a fee.
- 4.2 Local authorities are entitled to request any further information they regard as relevant to considering the application. In the event the applicant does not supply the information that has been requested, the local authority can refuse to proceed with the application. This may be of relevance when considering the suitability of the applicant.
- 4.3 A local authority's ability to impose conditions on a licence are very limited. Conditions can only be imposed where the applicant or any site manager has been convicted of a relevant offence. Local authorities can only impose one or both of two conditions as specified in the Act.
- 4.4 The Act provides the licensing authority with the discretion to revoke a licence on particular grounds, including where the local authority is no longer satisfied that the licensee is a suitable person to carry on the business as a scrap metal dealer.
- 4.5 The Act also allows the local authority to vary a licence, imposing the conditions stipulated in the Act, if the licensee or site manager is convicted of a relevant offence.

5. ASSESSING THE SUITABILITY OF THE APPLICANT

- 5.1 A local authority must not issue a licence unless it is satisfied the applicant is a suitable person to carry on business as a scrap metal dealer – (the suitability test). In the case of a partnership this means assessing the suitability of each of the

partners of the partnership, while in the case of a company it means assessing the suitability of any directors, company secretaries or shadow directors.

- 5.2 In assessing an applicant's suitability the local authority can consider any information it considers relevant. Evidence of unsuitability can in particular be drawn from the information listed in the legislation that a local authority is specifically allowed to consider. The list includes whether the applicant or site manager has been convicted of a relevant offence or has previously been refused a scrap metal dealer's licence or an application to renew a licence has been refused.
- 5.3 As part of the application, the applicant would be required to provide a Basic Disclosure Certificate, which will reveal any unspent convictions on the Police National Computer, with the application form. Consultation may also be carried out with the police, other local authorities or the Environment Agency.

6. REPRESENTATIONS

- 6.1 Where the local authority proposes to reject an application (or revoke it or vary it) the applicant has to be notified what the local authority proposes to do and the reasons for it.
- 6.2. The notice from the local authority has to give the applicant (or licensee) the opportunity to make representations or let the local authority know they wish to do so. The notice must also specify a period of time in which the applicant does this, which cannot be less than 14 days from the date on which the notice is given to the applicant. If the applicant does not make any representations then the local authority can refuse the application or revoke or vary the licence.

7. APPLICATION HEARINGS

- 7.1 Where the applicant makes representations, the local authority has to consider them and if the applicant states they want to make oral representations, the local authority must provide them with the opportunity to appear before a person appointed by the local authority for this purpose. It is proposed that a sub-committee of the Licensing Committee determine these contested matters and that the Licensing Committee agree a protocol for these hearings.
- 7.2 Those applications where there are no questions about the suitability of the applicant, or uncontested applications, can, if agreed, be delegated to officers to make the decision. This is currently the process adopted for all licensing regimes within the Council.
- 7.3 Where a local authority has refused an application, revoked a licence or varied a licence it must give the applicant or licensee notice of the decision, which also sets out the reasons for the decision.

8. APPEALS

Appeals against a decision by the local authority to refuse an application, to impose a condition on the licence or to revoke or vary the licence are to the Magistrates' Court within 21 days from the day on which they were given notice of the decision

in which to appeal that decision. The Magistrates' Court then has the power to confirm, vary or reverse the local authority decision and issue any directions it considers appropriate, having regard to the Act.

9. NOTIFICATIONS TO THE NATIONAL REGISTER

The Act creates a national register of scrap metal dealer licences which will be open to the public. Establishing and maintaining this national register will be the responsibility of the Environment Agency and when local authorities issue a licence they will pass on information to enter on the register.

10. ENFORCEMENT

- 10.1 It is expected that the Council will liaise with partnership agencies including Metropolitan Police and the Environment Agency to ensure that the provisions of the Act are complied with. Non-compliance may result in enforcement action being taken.
- 10.2 The conviction of a licensed scrap metal dealer or site manager for one or more relevant offences, will usually result in the licence being reviewed, and may result in conditions being imposed or where appropriate, revocation.
- 10.3 The Act provides powers to the Council to issue closure notices for unlicensed sites being used for scrap metal dealing businesses and these powers are enforceable through the Courts.

8.04 LICENSING COMMITTEE (AND SUB-COMMITTEES APPOINTED BY THE COMMITTEE)

(a) Introduction

The Committee discharges the Council's functions under the Licensing Act 2003, Gambling Act 2005, Sex Establishment Venue Licences under the Local Government (Miscellaneous Provisions) Act 1982, Street Trading determination functions under the London Local Authorities Act 1990 **and the Scrap Metal Dealers Act 2013**, which are statutory in nature.

(b) Membership

(no change proposed)

(c) Terms of Reference

1. To oversee the discharge of all licensing functions of the Council as the licensing authority under the Licensing Act 2003, Gambling Act 2005, Local Government (Miscellaneous Provisions) Act 1982, London Local Authorities Act 1990 **and the Scrap Metal Dealers Act 2013**, except, in respect of each, the determination of the Council's Statement of Licensing Policy and the publication of that Statement.
2. To establish and appoint sub-committees to determine any applications requiring a hearing under the Licensing Act 2003, Gambling Act 2005, Local Government (Miscellaneous Provisions) Act 1982, London Local Authorities Act 1990 **and the Scrap Metal Dealers Act 2013** or otherwise the determination of any application not delegated to officers.
3. To arrange for the discharge of the functions governed by the Licensing Act 2003, Gambling Act 2005, Local Government (Miscellaneous Provisions) Act 1982, London Local Authorities Act 1990 **and the Scrap Metal Dealers Act 2013** by its sub-committees or by officers except where prohibited by the Licensing Act 2003 and Gambling Act 2005
4. To receive and consider reports, where appropriate, on the needs of the local tourist economy, employment and investment in the area and any other matter directly related to the licensing functions in the Borough.

Proposed additional Terms of References for the Licensing Sub-Committees

In relation to the Scrap Metal Dealers Act 2013, the Licensing Sub-Committee should hold a hearing to listen to representations of an applicant or licensee, and make a determination, in the following situations:

- Where an application for the issue of a site or collector's licence is proposed for refusal and the applicant has made relevant representations contesting the proposal.

- Where an application for a variation to a site or collector's licence is proposed for refusal and the applicant has made relevant representations contesting the proposal.
- Where the Licensing Service proposes to revoke a site or collector's licence and the licensee has made relevant representations contesting the proposal.
- Where the Licensing Service proposes to serve a closure notice, on a site that is being used for a scrap metal dealing business without a licence.

APPENDIX 3

It is proposed that the following amendments be made to the delegations given to the Deputy Chief Executive and Corporate Director of Residents Services, who may sub-delegate the day to day responsibility for discharging functions set out below to those officers who report to her. The sub-delegations are to be set out in the Deputy Chief Executive's Internal Scheme of Delegations.

- 1) Delete the existing delegation to the Food Health & Safety Team and Trading Standards Team to enforce and execute the duties and functions of the Council under the Scrap Metal Dealers Act 1964.
- 2) Add new delegations, to be discharged by the Licensing Services Manager, to:

To undertake functions under the Scrap Metal Dealers Act 2013 as follows:

 - i. To determine uncontested applications for site and collector's licences.
 - ii. To determine uncontested applications for site and collector's licences subject to conditions.
 - iii. To determine uncontested applications for variations to a site or collector's licence.
 - iv. To revoke a site or collectors licence where no relevant representations from the licensee have been received.