
EXCERPT FROM THE MINUTES OF THE EXECUTIVE HELD ON 30 SEPTEMBER 2013

EX.114/13 SCRAP METAL DEALERS ACT 2013
(Non Key Decision)

Portfolio Finance, Governance and Resources

Relevant Overview and Scrutiny Panel

Resources

Subject Matter

Pursuant to Minute RP.43/13, the Finance, Governance and Resources Portfolio Holder reported (GD.44/13) on impending changes to the regulatory regime for scrap metal dealers, which would be implemented through the provisions of the Scrap Metal Dealers Act 2013 (the Act) and would come into force progressively from 1 October 2013.

The 2013 Act replaced the Scrap Metal Dealers Act 1964, which was listed in Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ("the Functions Regulations"), along with the majority of other licensing matters, as not being the responsibility of the Executive. In effect that meant that it was a Council function as opposed to one which fell within the remit of the Executive. The City Council had to date delegated the function to the Regulatory Panel. In addition, the Director of Governance and Licensing Manager each had delegated powers to deal with such applications.

In accordance with normal practice it was expected that the Functions Regulations would be amended by the Government to include reference to the 2013 Act, therefore all local authorities had been working towards their licensing/regulatory committees dealing with that. A report was prepared for the Regulatory Panel on 11 September 2013 for their information and consideration of fees, a copy of which was attached.

The Finance, Governance and Resources Portfolio Holder explained that it had subsequently become apparent that the Home Office had not yet amended (and would not amend before the commencement date) the Functions Regulations to include the 2013 Act. The information was that they were aware it needed to be done, but did not have it programmed into their schedule. Subject to what was said below, contrary to how all other licensing matters operated, that may mean that responsibility for determining fees and applications under the Scrap Metal Dealers Act 2013 fell to the Executive.

Despite the above, there was an alternative position. Section 17 of the Interpretation Act 1978 provided that "Where an Act repeals and re-enacts, with or without modification, a previous enactment then, unless the contrary intention appears ... any reference in any other enactment to the enactment so repealed shall be construed as a

reference to the provision re-enacted". If the 2013 Act was taken to repeal and re-enact the 1964 Act, then, there was no requirement for an amendment to the Functions Regulations. At the time of writing the report, that was not the position which had been taken by Department for Communities and Local Government or the Local Government Association, who maintained that a change to the Functions Regulations would be needed.

The Finance, Governance and Resources Portfolio Holder added that a considerable number of Local Authorities had taken the opposing view, however, and had put pressure on the LGA to confirm its position. The LGA had met with the Department for Communities and Local Government on 13 September 2013 and the position remained unchanged.

Until the Functions Regulations were amended, the 2013 Act would be an Executive function, there would be no scheme of delegation in place and all applications would need to be brought to the Executive for consideration. This report was therefore being brought to Executive in order to protect the Council's position and enable it to effectively deal with applications, which would begin to be submitted on 1 October 2013.

Section 9E of the Local Government Act 2000 provided that, where a function was the responsibility of the Executive, the senior Executive Member (i.e. the Leader) may arrange for the discharge of any of those functions by another Member of the Executive or by an Officer of the Authority.

Accordingly, until the Government amended the Functions Regulations to include the 2013 Act, the Leader was asked to amend his Scheme of Delegation so as to:

(a) delegate power to determine (including the imposition of conditions) all types of applications regarding Site Licences and Collectors' Licences (where no objection was made) to each of the Licensing Manager and the Director of Governance;

(b) delegate power to determine (including the imposition of conditions) all types of applications regarding Site Licences and Collector's Licences (where an objection was made) to the Portfolio Holder for Finance, Governance and Resources and the Director of Governance acting together.

(c) delegate power to otherwise refuse or revoke Site Licences and Collectors' Licences to the Portfolio Holder for Finance, Governance and Resources and the Director of Governance acting together;

(d) delegate power to institute, defend or participate in any action or legal proceedings in respect of any matter relating to the 2013 Act (including but not limited to the service of any notice or order, the exercise of any power of entry or inspection; the commencement of a prosecution for any offence under the 2013 Act or the defence of any appeal against a decision of the Council made under the 2013 Act) in any case where the Director of Governance considered that such action was necessary to protect or progress the Council's interests, to the Director of Governance.

The Finance, Governance and Resources Portfolio Holder added that the Regulatory Panel had, on 11 September 2013, considered a report detailing the proposed charges to be levied, and made appropriate decisions.

The Executive was further asked to note the recommendation of the Regulatory Panel meeting of 11 September 2013 and determine the appropriate fees to be charged.

In conclusion the Finance, Governance and Resources Portfolio Holder moved that the Leader amend his Scheme of Delegation in the manner described; that the recommendations of the Regulatory Panel be noted and the fees be agreed as identified.

The Leader seconded the recommendations.

Summary of options rejected None

DECISION

1. That the Leader would amend his Scheme of Delegation in the manner described in paragraph 2.2 (a) – (d) of Report GD.44/13.
2. That the Executive noted the recommendations of the Regulatory Panel meeting of 11 September 2013 and agreed the fees to be charged as identified by the Panel.

Reasons for Decision

To ensure that the Council had the appropriate approvals and systems in place to administer the new arrangements