

Licensing Committee

Thursday, 26th September,
2013

at 12.30 pm

PLEASE NOTE TIME OF MEETING
Conference Room 3 - Civic Centre

This meeting is open to the public

Members

Councillor Cunio (Chair)
Councillor Parnell
Councillor Thomas
Councillor Mrs Blatchford
Councillor B Harris
Councillor Vassiliou
Councillor Laming
Councillor Lewzey (Vice-Chair)
Councillor Lloyd
Councillor Spicer
Councillor L Harris
Councillor Fitzhenry
Councillor Pope

Contacts

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Head of Legal, HR and Democratic Services
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PUBLIC INFORMATION

Terms of Reference

The Committee publishes and implements a statement of licensing policy. It appoints Sub-Committees to deal with individual licensing applications and associated matters for which the Council as Licensing Authority is responsible.

Public Representations

At the discretion of the Chair, members of the public may address the meeting about any report on the agenda for the meeting in which they have a relevant interest.

Southampton City Council's Priorities:

- **Economic:** Promoting Southampton and attracting investment; raising ambitions and improving outcomes for children and young people.
- **Social:** Improving health and keeping people safe; helping individuals and communities to work together and help themselves.
- **Environmental:** Encouraging new house building and improving existing homes; making the city more attractive and sustainable.
- **One Council:** Developing an engaged, skilled and motivated workforce; implementing better ways of working to manage reduced budgets and increased demand.

Smoking policy – The Council operates a no-smoking policy in all civic buildings.

Mobile Telephones – Please turn off your mobile telephone whilst in the meeting.

Fire Procedure – Should the fire alarm sound during the meeting leave the building by the nearest available exit and assemble in the Civic Centre forecourt car park.

Access – Access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year 2013/14:

Meetings of the Committee are held as and when required.

CONDUCT OF MEETING

TERMS OF REFERENCE

The terms of reference of the Licensing Committee are contained in Part 3 (Schedule 2) of the Council's Constitution.

Rules of Procedure

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

Quorum

The minimum number of appointed Members required to be in attendance to hold the meeting is 5.

DISCLOSURE OF INTEREST

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Personal Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PERSONAL INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship:
Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.
- (iv) Any beneficial interest in land which is within the area of Southampton.
- (v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.
- (vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.
- (vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:
 - a) the total nominal value fo the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
 - b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

Other Interests

A Member must regard himself or herself as having a, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

Agendas and papers are available via the Council's website

1 **APOLOGIES**

To receive any apologies.

2 **DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS**

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

NOTE: Members are reminded that, where applicable, they must complete the appropriate form recording details of any such interests and hand it to the Democratic Support Officer.

3 **STATEMENT FROM THE CHAIR**

4 **SCRAP METAL DEALER LICENSING**

Report of the Head of Legal, HR and Democratic Services, introducing a new licensing scheme from 1 October 2013, for The Scrap Metal Dealers Act 2013, replacing the previous simple registration requirements for scrap metal dealers and motor salvage operators, attached.

Wednesday, 18 September 2013

HEAD OF LEGAL, HR AND DEMOCRATIC
SERVICES

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Agenda Item 4

DECISION-MAKER:	LICENSING COMMITTEE			
	CABINET			
	COUNCIL			
SUBJECT:	SCRAP METAL DEALER LICENSING			
DATE OF DECISION:	26 SEPTEMBER 2013 (Licensing Committee)			
	15 OCTOBER 2013 (Cabinet)			
	20 NOVEMBER 2013 (Council)			
REPORT OF:	HEAD OF LEGAL, HR & DEMOCRATIC SERVICES			
<u>CONTACT DETAILS</u>				
AUTHOR:	Name:	John Burke	Tel:	023 8083 3002
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Director	Name:	Mark Heath	Tel:	023 8083 2371
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STATEMENT OF CONFIDENTIALITY				
Not applicable				

BRIEF SUMMARY

The Scrap Metal Dealers Act 2013 introduces a new licensing scheme from 1 October 2013, replacing the previous simple registration requirements for scrap metal dealers and motor salvage operators.

Legal difficulties in the implementation by central government have resulted in a very tight timescale and the function being deemed to fall to the Cabinet pending anticipated changes to the Local Authorities (Functions and Responsibilities) Regulations 2000.

RECOMMENDATIONS:

Licensing Committee:

- (i.) To note the contents of this report;
- (ii.) To note the fees associated with the function determined under delegated powers by the Head of Legal, HR and Democratic Services;
- (iii.) The Committee recommends to Cabinet to delegate to the Head of Legal, HR and Democratic Services:
 - the administration and enforcement of the function and;
 - the power to request further information of applicants (paragraph 4, schedule 1);
 - to determine applications (including refusal), revoke licences or to impose conditions under section 3(8);
 - the power to issue or cancel a closure notice for unlicensed sites,

and, where appropriate, to apply for closure orders (schedule 2) and take such other action in this respect as may be required.

- (iv.) The Committee recommends to Council to delegate the function to the Licensing Committee, when the power to do so is available.

Cabinet:

- (v.) That Cabinet resolves to delegate to the Head of Legal, HR and Democratic Services:

- the administration and enforcement of the function and;
- the power to request further information of applicants (paragraph 4, schedule 1);
- to determine applications (including refusal), revoke licences or to impose conditions under section 3(8);

the power to issue or cancel a closure notice for unlicensed sites, and, where appropriate, to apply for closure orders (schedule 2) and take such other action in this respect as may be required

Council:

- (vi.) That Council resolves to delegate the function to the Licensing Committee, when the power to do so is available.

REASONS FOR REPORT RECOMMENDATIONS

1. The legislation gives the Council new statutory licensing powers replacing existing registration powers with effect from 1 October 2013.
2. The Council is required to carry out the function, although, at the date of this report, it has not been made clear whether this will be an executive or non-executive function.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

Given the statutory nature of the function, there are no alternative options.

DETAIL (Including consultation carried out)

1. In recent years metal theft has been one of the fastest growing crimes in the UK. It affects communities, businesses and Councils themselves and a Local Government Association (LGA) survey shows that metal theft cost Councils over £5.25 million in 2010/2011.
2. Since 2011 a number of organisations including the Police, Councils and the Environment Agency through “Operation Tornado” have been successful in reducing the amount of metal theft in the UK. This led to the LGA along with other bodies pressing the Government to update the regulations relating to scrap metal dealers.
3. Scrap Metal is defined in the Act as “*any old, waste or discarded metal or metallic material or any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life. But gold, silver and any alloy of which 2 per cent or more by weight is attributable to gold or silver is not considered scrap metal*”.

4. The Scrap Metal Dealers Act 2013 comes into force from 1 October 2013 and repeals the Scrap Metal Dealers Act 1964 and Part 1 of the Vehicles (Crime) Act 2001 (motor salvage operators), replacing them with a new system of licensing to be administered by local authorities.
5. Significant differences between this and the previous scrap metal dealer and motor salvage operator functions are as follows:
 - Licences, as opposed to registrations, with a consequent power to consider suitability of applicants
 - Scrap metal dealer and motor salvage operators are now both regulated by the same legislation
 - Requirement not to issue a licence unless the Council is satisfied as to the applicant's suitability and power to revoke a licence
 - Power to impose licence conditions in case of conviction as to the times when scrap may be received and that scrap metal must be kept in its original form for a specified period following receipt
 - Two categories of licence – sites and collectors
 - No cash payments for scrap metal, although an exception remains for the purchase of vehicles in limited circumstances
 - Power to give notice to close unauthorised sites
 - Licences are for a three year period
 - The holder of a licence can only hold one licence in each local authority's area, but may hold licences in multiple local authority areas. Thus the holder of a site licence in one area might hold a collector's licence in another.
 - The legislation requires that an application for a licence is accompanied by a fee set by the local authority.
 - Specific compliance and enforcement powers for the council and police
6. The following fees have been calculated in accordance with the legal requirements and recent Home Office guidance to ensure, so far as is possible, that the costs of administering the function and ensuring compliance by licence holders can be met.

Site licence - grant and renewal	£450.00
Site licence variation	£100.00
Collector's licence - grant and renewal	£300.00
Collector's licence variation	£100.00
Replacement licence	£25.00
7. These fees have been set by the Head of Legal, HR & Democratic Services under delegated powers after consultation with the Leader of the Council and will be reviewed on a periodic basis..
8. Under the scheme of delegation, it is proposed that the function be delegated to the Head of Legal, HR and Democratic Services, save that where it is proposed that an application should be refused, a licence revoked, or

conditions imposed and the applicant or licence holder exercises their right to make representations, such hearings should be dealt with by the Licensing (General) Sub-Committee, when the legal power to delegate the function to that sub-committee is available.

9. Determinations of applications will be subject to guidance by the Home Office, which had not been made available at the date writing this report.
10. Where an application is refused or a licence revoked, there will be a right of appeal to the Magistrates' Court against the decision.
11. Currently, because the government has yet to amend the Local Authorities (Functions and Responsibilities) Regulations 2000, the default responsibility for this function is with the Executive.
12. When these regulations have been amended, it is recommended that Council should delegate the function to the Licensing Committee as a non-executive matter.

RESOURCE IMPLICATIONS

Capital/Revenue

13. None, save that the proposed fees are intended to ensure that the costs of carrying out the function are met, in respect of administration and compliance, in their entirety.

Property/Other

14. It is anticipated that this function will be carried out within the Licensing Team within existing resource constraints.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

15. The Scrap Metal Dealer's Act 2013 comes into effect from 1 September 2013 in respect of setting fees, from 1 October 2013 in respect of the remainder of the legislation, save for the offences and powers of closure, which come into effect on 1 December 2013.
16. The Act imposes a duty on the Council to carry out the various functions it provides.

Other Legal Implications:

17. Section 17 of the Crime and Disorder Act 1998 requires that:
"Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all it reasonably can prevent crime and disorder in its area (including anti social behaviour and other behaviour adversely affecting the local environment) ..."
18. The licensing of scrap metal dealers clearly engages with this requirement and it is considered that the requirement will be met if the course of action indicated in this report is followed.

POLICY FRAMEWORK IMPLICATIONS

19. None.

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	Not applicable
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SUPPORTING DOCUMENTATION

Appendices

1.	None.
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Documents In Members' Rooms

1.	None
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Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None	
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