

Decision Maker: Leader of the Council

Date: 26th November 2014

Decision Type: Non-Urgent Executive Non-Key

Title: DELEGATIONS OF AUTHORITY

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Chief Officer: Nigel Davies, Executive Director of Environment & Community Services

Ward: All

Reason for report

1.1 This report seeks approval for the Leader of the Council to delegate to the Chief Executive, Executive Director of Environment and Community Services, and the Director of Corporate Services authority to undertake certain additional functions related to:

- Administration of the Scrap Metal Dealers Act 2013; and
- The Anti-social Behaviour, Crime and Policing Act 2014;

1.2 The Leader is also asked to delegate to the Executive Director of Environment and Community Services authority to convey the L B Bromley's agreement for the London Council's Transport and Environment (TEC) Joint Committee to continue providing an appeals service for parking on private land for the British Parking Association under contract.

RECOMMENDATIONS

2.1 The Leader is asked to:

(a) delegate to the Executive Director of Environment and Community Services functions and powers set out at paragraph 3.4 related to administration of the Scrap Metal Dealers Act 2013;

(b) delegate to the Chief Executive, Executive Director of Environment and Community Services, and the Director of Corporate Services, functions related to The Anti-social Behaviour, Crime and Policing Act 2014 as detailed at Appendix 2;

(c) delegate to the Executive Director of Environment and Community Services authority to convey the agreement of the L B Bromley for the London Council's Transport and Environment (TEC) Joint Committee to continue providing an appeals service for parking on private land for the British Parking Association under contract; and

(d) approve the change to Delegation (91) in the Scheme of Delegation as outlined at paragraph 3.21 below.

Corporate Policy

1. Policy Status: Not Applicable:
 2. BBB Priority: Excellent Council:
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Financial

1. Cost of proposal: Not Applicable:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Democratic Services
 4. Total current budget for this head: £373,410
 5. Source of funding: 2014/15 Revenue Budget
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Staff

1. Number of staff (current and additional): 10 posts (8.75fte)
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected):
 - Approximately 50 individuals and business requiring a permit in respect to administration of the Scrap Metal Dealers Act 2013;
 - All residents and businesses would be protected by the Anti-social behaviour provisions; and
 - London Councils TEC Joint Committee undertaking an appeals service for parking on private land would be a continuation of current practice
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

(i) Functions related to administration of the Scrap Metal Dealers Act 2013

3.1 The Scrap Metal Dealers Act 2013 came into force on 1st December 2013. A report (ES 13098) was presented to General Purposes and Licensing Committee (GP&L) on 25th September 2013 and the Committee agreed the delegation of authority as follows:

- a. Licensing Sub Committee to determine applications where refusal to grant a licence is being considered.
- b. The Executive Director of Environment and Community Services was authorised:
 - (i) to grant licences where there is no prospect of refusal;
 - (ii) impose conditions as set out in section 4(9) where the site manager has relevant convictions;
 - (iii) revoke licences under specific conditions;
 - (iv) exercise the rights of entry and inspection;
 - (v) apply to a Magistrates Court for warrants of entry; and
 - (vi) close unlicensed sites.

3.2 The scheme of delegation replicated that which previously applied to the Scrap Metal Dealers Act 1964 which was consistent with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended. These regulations specify the specific licensing provisions which are non-Executive functions.

3.3 Unfortunately, the Regulations were not updated with the new Scrap Metal Dealers Act 2013. As a consequence, the new Act is an Executive function so cannot be delegated to GP&L Committee to deal with as previously. It therefore follows that GP&L Committee did not have the appropriate authority to deal with applications under the Act, or delegate the functions to the Executive Director of Environment and Community Services .

3.4 The Leader of the Council is therefore asked to approve a revised scheme of delegation and agree that the Executive Director of Environment and Community Services:

1. determine applications where refusal is being considered;
2. grant licences where there is no prospect of refusal;
3. impose conditions as set out in section 4(9) where the site manager has relevant convictions;
4. revoke licences under specific conditions;
5. exercise the rights of entry and inspection;
6. apply to a Magistrates Court for warrants of entry; and
7. close unlicensed sites.

A copy of the original report reference ES 13098, setting out background to the Act and details of its operation, is attached as **Appendix 1**.

(ii) Functions related to The Anti-social Behaviour, Crime and Policing Act 2014

3.5 The Anti-social Behaviour, Crime and Policing Act 2014, establishes a new multiagency legal framework to tackle anti-social behaviour, putting the victim at the centre of all decision making. The main provisions of the Act are outlined below and approval from the Leader is sought to delegate functions to the Chief Executive, Executive Director of Environment and Community Services, and the Director of Corporate Services, as detailed at **Appendix 2**.

3.6 The Anti-social Behaviour, Crime and Policing Act 2014 came into force on 20 October 2014, introducing a significantly changed tool kit for Councils, Police, and other local bodies, to tackle anti-social behaviour. The Act places the victim of anti-social behaviour at the centre of decision making. The Act enables local priorities to shape the response to anti-social behaviour and put the needs of the victim first.

3.7 Detailed local procedures have been developed and reported to the Public Protection and Safety PDS and Portfolio Holder for approval. The following paragraphs provide a simple overview of the Act, seeking agreement for the delegation of specific functions to allow officers to discharge the Council's responsibilities.

3.8 The Anti-Social Behaviour, Crime and Policing Act 2014 simplifies 19 existing powers down to six. Brief details of these are set out below:

Civil injunctions are aimed at preventing individuals from engaging in ASB, ideally nipping the activity in the bud, before it escalates and causes more nuisance or harm. Civil injunctions can be for housing and non-housing related ASB and are tested on the balance of probabilities. While all injunctions issued by the county or high court will have prohibitions attached, some may also include positive requirements aimed at addressing the underlying causes of the individual's anti-social behaviour. While breach of the injunction is not a criminal offence, it can carry an unlimited fine or up to two years in prison for an adult. Applicants for civil injunctions can include local councils and they can now be used for under 18s.

Criminal Behaviour Orders are issued by a criminal court to people convicted of an offence, to prevent them from engaging in anti-social behaviour. In most cases the applicant for the criminal behaviour order will be the Crown Prosecution Service, though this can be at the request of the local council. A breach of this order is a criminal offence and must be proved to a criminal standard of proof, which is beyond reasonable doubt. As with Civil injunctions, Criminal Behaviour Orders have the scope to specify positive requirements, to focus on long-term solutions. Unlike the old Anti-Social Behaviour Orders, there is no longer a need to prove "necessity" to issue an order.

Dispersal powers enable police and police community support officers to direct people committing or likely to commit anti-social behaviour, crime or disorder to leave a public place for up to 48 hours. A police chief constable must designate the power to uniformed police officers and police community support officers; there is however no requirement for the police to consult the local council in implementing the dispersal power. A breach of a dispersal order is a criminal offence and can carry a penalty of three months in prison for adults.

Community Protection Notices (CPN) are designed to deal with environmental anti-social behaviour which spoils the quality of life for a community, which could include the state of a premises, noise emitting from machinery, noise caused by a vehicle or insects emanating from a business premises. CPNs may be used against individuals as well as organisations and businesses. A breach of a CPN is a criminal offence and may carry fine of up to £20,000 for

businesses or £2,500 for individuals. Local authorities (and social landlords if designated by the council) may issue CPNs, as may police officers and police community support officers.

Public space protection orders (PSPO) are designed to stop individuals or groups from committing anti-social behaviour in a public space. This can include restrictions on consuming alcohol in a public place or controlling the presence of dogs such as excluding them from playgrounds or restricting the number of dogs that can be walked by one person at any one time. Local authorities can issue a PSPO after consultation with the police (this is likely to be at Borough Commander level in London), and other relevant bodies. Council officers may enforce PSPOs, a breach of which is a criminal offence. Importantly, more than one restriction can be added to the same PSPO that means that, a single Order can deal with a wider range of behaviours than the orders it replaces.

Closure powers allow the local authority or police to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder. This power can be used for up to 48 hours out of court and is intended to cover a wide range of behaviours in a quick and flexible way. A breach of a closure notice is a criminal offence.

3.9 The ASB, Crime and Policing Act 2014 is designed to shift the focus from centrally set targets, and the type of behaviour, to looking at the impacts on the lives of victims. The legislation also aims to move away from a “one size fits all” approach to enabling local professionals to implement more tailored responses. Key components in the “putting victims first” approach are the Community Trigger and Community Remedy. These two tools also carry statutory duties for the Police and Crime Commissioner (PCC), which in London’s case is carried out by the Mayor’s Office for Policing and Crime (MOPAC).

3.10 The Community Trigger gives victims and communities the right to request a review of their case, where they feel they did not get a satisfactory response, and bring agencies together to take a joined up approach to find a solution. The relevant agencies, including the local authority, are required to carry out a case review if an application for a review has been made and the local threshold for a review has been met. The review threshold is set by relevant partners, which may include councils, the police, Clinical Commissioning Groups and registered providers of social housing.

3.11 Local agencies are able to define the Community Trigger threshold level for their area, in consultation with the PCC, and as long as it is not more than three complaints in the previous six-month period. London boroughs have been working with MOPAC to scope out the potential for a shared level for the Community Trigger across London, and have agreed on the following:

The Trigger is activated if an individual has reported ASB to the Council, police and or a Registered Housing Provider three times about separate incidents in the last six months and they consider that no action has been taken.

3.12 The Community Remedy gives victims a say in the out-of-court punishment for low-level crime and anti-social behaviour. The Community Remedy document is a list of actions which may be chosen by the victim for the perpetrator to undertake in consequence of their behaviour or offending. The Community Remedy document must be published. There is a duty on the PPC to consult with members of the public and community representatives on what they would consider appropriate to be included in the document. The Mayor’s Office for Policing and Crime has written to borough leaders as a part of this consultation process, with the following possible menu:

1. apology (face-to-face or by letter);
2. agreement (e.g. acceptable behaviour contract, parenting contract);

3. structured diversionary activity such as educational/training courses (self-funded or otherwise);
4. targeted intervention – alcohol treatment or anger management courses;
5. restorative Justice or mediation – third party to bring together both parties to reach common agreement;
6. reparation direct to the victim for any damage caused (financial or otherwise);
7. reparation direct to the community (unpaid work for a limited time); and
8. counselling.

3.13 The Community Remedy maybe applied by a police officer for low-level offences, where the individual has admitted to the behaviour, and as an alternative to court proceedings. The actual menu used by each borough will depend on local availability for implementing the actions.

3.14 **Appendix 2** sets out the specific powers being requested for delegation to officers.

(iii) Provision of an appeals service by the London Council's Transport and Environment (TEC) Joint Committee for parking on private land for the British Parking Association

3.15 Attached at **Appendix 3** is a report agreed by the London Councils Transport and Environment Committee Executive on 11th September 2014. The report refers to decision(s) agreed by the full London Councils Transport and Environment Committee in 2012 to build on the existing Parking and Traffic Appeals Service to provide an independent appeals service in respect of parking on private land. The service is provided under contract to the British Parking Association (BPA) at no net cost to individual borough members making up London Councils.

3.16 The London Councils Transport and Environment Committee (LCTEC) Executive resolved that each individual borough take the decision to:

- formally confirm that the functions delegated to LCTEC to enter into the arrangements with the British Parking Association were and continue to be delivered pursuant to section 1 of the Localism Act 2011;
- expressly delegate the exercise of section 1 of the 2011 Act to LCTEC for the purpose of providing an appeals service for parking on private land under contract on a full cost recovery basis; and
- amend the LCTEC Governing Agreement to this end.

3.17 London Councils agreed with their external auditors to seek this individual delegation from all individual member authorities to enable the issue of an objection to the London Councils' accounts to be settled. This delegation would put beyond doubt the legality of providing the Parking on Private Land Appeals Service.

3.19 Providing such a delegation is without prejudice to the question of whether the contract is extended beyond the end of its current life in autumn 2015, and the LCTEC will consider that issue next year, as would the BPA. Regularising the position would help settle the current issue with London Councils external auditors and help protect the position of London Councils and its individual members.

3.20 A letter from the London Councils legal advisers at the City of London is attached at **Appendix 4** along with an associated Deed of Variation to the TEC Agreement needing agreement at **Appendix 5** and a Memorandum of Participation at **Appendix 6**. The Council has been asked by London Councils to advise on the point reached with decision taking by the end of November.

(iv) Change to Delegation (91) related to Wilful Obstruction of the Highway in the Scheme of Delegation

3.21 The Leader is also asked to agree a change to the wording of delegation (91) in the Scheme of Delegation. This delegation authorises the Director of Environment and Community Services to remove unauthorised things on the highway. The change proposed below will enable the delegation to apply to all highways and not just maintained highways. The current delegation reads:

Wilful Obstruction of the Highway

DECS (91) Operate the provisions of Section 148 of the Highways Act 1980 for the removal of unauthorised things on the highway which are on the Council's statutory list of maintained highways and rights of way in the Definitive Map.

This would be changed to;

Wilful Obstruction of the Highway

DECS (91) Operate the provisions of Section 148 of the Highways Act 1980 for the removal of unauthorised things on the highway which are on the Council's statutory list of highways and rights of way in the Definitive Map.

4. POLICY IMPLICATIONS

4.1 In regard to The Anti-social Behaviour, Crime and Policing Act 2014, details of the Council's procedures including the Community Trigger and Community Remedy have been the subject of reports to the Public Protection and Community Safety PDS and Portfolio Holder.

5. FINANCIAL IMPLICATIONS

5.1 Functions undertaken by existing staff related to the Anti-social Behaviour Crime and Policing Act 2014 will have a cost associated with them which will be met from within existing budgets.

6. LEGAL IMPLICATIONS

6.1 The Council is responsible for the administration and enforcement of the Scrap Metal Dealers Act 2013. This report clarifies and revises the delegation of functions to the Executive Director for the Environment and Community Services.

6.2 The Council is has a wide range of responsibilities and powers under The Anti-Social Behaviour, Crime and Policing Act 2014. To enable the Council to effectively discharge its responsibilities various powers need to be delegated as set out in **Appendix 2**.

6.3 Concerning an appeals service by the London Council's Transport and Environment (TEC) Joint Committee for parking on private land, the letter from the London Councils legal advisers at the City of London (**Appendix 4**) sets out the means by which the delegation from London Boroughs is to be effected for provision of the appeals service on a full cost recovery basis.

Non-Applicable Sections:	PERSONNEL IMPLICATIONS
Background Documents: (Access via Contact Officer)	<p>Scrap Metal Dealers Act 2013, Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended. Report to GP&L 25 September 2013 Ref ES13098. LGA Guide to the Scrap Metal Dealers Act 2013</p> <p>Anti-social Behaviour, Crime & Policing Act 2014.</p> <p>Anti-social Behaviour, Crime & Policing Act 2014. Reform of anti-social behaviour powers. Statutory guidance for frontline professionals – Home Office July 2014</p> <p>London Councils Member Briefing. Anti-social behaviour: New Powers. October 2014</p>

Report No.
ES13098

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: GENERAL PURPOSES AND LICENSING COMMITTEE

Date: Wednesday 25 September 2013

Decision Type: Non-Urgent Non-Executive Non-Key

Title: SCRAP METAL DEALERS ACT 2013

Contact Officer: Paul Lehane, Head of Food Safety, Occupational Safety and Licensing
Tel: 020 8313 4216 E-mail: Paul.Lehane@bromley.gov.uk

Chief Officer: Nigel Davies, Executive Director of Environment & Community Services

Ward: (All Wards);

- Reason for report

To outline the provisions of this new Act and seek delegated authority for the Executive Director of Environment and Community Services.

- **RECOMMENDATION(S)**

Members are asked to

- 2.1 Note that the Scrap Metal Dealers Act 2013 is being brought in to force between 1 October and 1 December 2013 and that the Council has a duty to enforce it.**
- 2.2 Agree that Licensing Sub Committee retain authority to determine applications where refusal to grant a licence is being considered.**
- 2.3 Agree that the Executive Director of Environment and Community Services be authorised as set out in this report**

Corporate Policy

1. Policy Status: Not Applicable
 2. BBB Priority: Excellent Council Quality Environment Safer Bromley:
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Financial

1. Cost of proposal: Not Applicable:
 2. Ongoing costs: Income of up to £3k per annum
 3. Budget head/performance centre: Public Protection & Community Safety
 4. Total current budget for this head: £3.5m
 5. Source of funding: Existing revenue budget 2013/14
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Staff

1. Number of staff (current and additional): 59 fte
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Not Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): We anticipate issuing about 6 site licences and between 10-20 collectors licences. All residents and businesses should benefit from the provisions as they are designed to reduce the theft of metals
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 Theft of metal has had a significant impact on communities, businesses and councils over the last few years. A survey by the Local Government Association conducted in early 2012 showed that seven out of ten councils had been the victims of metal theft, and that this cost councils over £5.25 million in 2010/11.
- 3.2 The Local Government Association, along with a range of other bodies, pressed the government to reform the regulation of scrap metal dealers. The result was the Scrap Metal Dealers Act 2013, taken through Parliament by Richard Ottaway MP as a private members' bill.
- 3.3 The Scrap Metal Dealers Act 2013 replaces the previous registration system for scrap metal dealers created by the 1964 Scrap Metal Dealers Act. In its place it establishes a new licensing regime. This scheme will be run and administered by local authorities. Every scrap metal dealer will be required to have a licence, and operating without one will be a criminal offence. Under the new legislation the definition of scrap metal dealers is extended so it now includes motor salvage operators, and the provisions in the Vehicles (Crime) Act 2001 under which they operate will end once the new Act comes into effect.
- 3.4 The transition timeline is:
- The Commencement Order will be made in August 2013
 - This will allow local authorities to set a licence fee from 1 September.
 - The main provisions of the Act commence on 1 October including the offence of buying scrap metal for cash.
 - Dealers and motor salvage operators registered immediately before 1 October will be deemed to have a licence under the Act from 1 October.
 - Provided the dealer submits an application for a licence on or before 15 October their deemed licence will last until the council either issues them with a licence or gives them notice of the decision to refuse them a licence, although they will be able to continue trading pending an appeal against the decision not to grant a licence.
 - Where a dealer submits an application on or before 15 October but does not supply all the required information with the application form then the deemed licence remains in effect after 15 October.
 - Where a dealer with a deemed licence fails to submit an application on or before 15 October the deemed licence will lapse on 16 October.
 - Other scrap metal dealers, not previously registered, will be able to apply for a licence from 1 October but will have to wait until a licence is granted before they can legally trade.
 - Local authorities will complete suitability checks on applicants and decide whether to issue licences. We recommend that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1 December.
 - All other enforcement provisions within the Act commence on 1 December.

Main Provisions of the Act

- 3.5 In order for anyone to carry on business as a scrap metal dealer they have to have a licence. These licences will last for three years. Trading without a licence is a criminal offence and if convicted the offender can be fined.
- 3.6 There are two types of licence specified in the Act:

- **Site licence** All the sites where a licensee carries on business as a scrap metal dealer have to be identified, and a site manager has to be named for each site. This licence allows the licensee to transport scrap metal to and from those sites from any local authority area.
- **Collector's licence** This allows the licensee to operate as a collector in the area of the issuing local authority. It does not allow the collector to operate in any other local authority area, so a separate licence has to be obtained from each council the collector wishes to operate in. The licence does not authorise the licensee to operate a site; to do so they will need a site licence from the relevant local authority.

3.7 It should be noted that a dealer can only hold one type of licence in any one local authority area. They have to decide whether they are going to have a site or a mobile licence in any one area. They cannot hold both a site and mobile collector's licence from the same council.

- The Environment Agency will maintain a national register of scrap metal dealers.
- A copy of the scrap metal licence must be displayed at the site and on collector's vehicles.
- Scrap metal dealers cannot buy scrap metal for cash.
- Dealers will have to keep records of metal purchased and sold.

Fees

3.8 The Council can charge a fee for site licences and collectors licences. Fees will be submitted to the Public Protection and Community Safety Portfolio Holder for approval

Decision Making

3.9 The Council will be required to grant licences for three year periods subject to being satisfied that the applicant is a suitable person.

3.10 If there is doubt about the applicants suitability a procedure is set out in the Act which allows the applicant to make written representations, but also to request to make oral representations and appear before a person appointed by the authority.

3.11 In all other areas of licensing dealt with by this Committee, Members have retained the authority to refuse licences, whilst delegating authority to grant licences to the Executive Director of Environment and Community. Members may wish to continue with that arrangement under the Scrap Metal Dealers Act 2013. If so all applications where there was doubt about the suitability of the application would be referred to a Licensing sub Committee where the applicant can make oral representations (in keeping with provisions of Schedule 1 paragraph 8).

3.12 If the applicant chooses not to exercise that right Members can determine the application based on any written representations obtained through the procedures set out in the Act in Schedule 1 paragraph 7.

Delegation of Authority

3.13 The Council is under a duty to enforce the Act and issue licences. Day to day operation administration of the Act needs to be exercised by officers. Members are requested to approve that the Director of Environment and Community Services be authorised to undertake all necessary duties, but in particular to

- Grant licences for site and collectors licences where there is no prospect of refusal
- Impose conditions set out in section 4(9) where the applicant or site manager has relevant conditions.
- Revoke licences where the conditions set out in Section 4 apply, these are :-
 - The authority may revoke a scrap metal licence if it is satisfied that the licensee does not carry on business at any of the sites identified in the licence.
 - The authority may revoke a licence if it is satisfied that a site manager named in the licence does not act as site manager at any of the sites identified in the licence.
 - The authority may revoke a licence if it is no longer satisfied that the licensee is a suitable person to carry on business as a scrap metal dealer.
 - If the licensee or any site manager named in a licence is convicted of a relevant offence, the authority may vary the licence by adding one or both of the conditions set out in section 3(8).
 - A revocation or variation under this section comes into effect when no appeal under paragraph 9 of Schedule 1 is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn.
- Exercise the right to enter and inspect licenced sites,
- Apply to the Magistrates court for a warrant to enter.
- Close unlicensed sites (Schedule 2).

4. FINANCIAL IMPLICATIONS

- 4.1 The Council can set a fee for licence applications and renewals to recover the cost of the administration. The proposed fees will be submitted to the Public Protection and Community Safety Portfolio Holder for approval.
- 4.2 It is expected that income of up to £3k per annum could be received depending on the number of applications, to cover administration costs.

5. LEGAL IMPLICATIONS

- 5.1 The Council is under a duty to enforce the provisions of the Act

Non-Applicable Sections:	Policy and Personnel Implications
Background Documents: (Access via Contact Officer)	Scrap Metal Dealers Act 2013. Local Government Association guidance on the Scrap Metal Dealers Act 2013.

Anti-social Behaviour, Crime and Policing Act 2014

Table of delegated authority.

Anti-social Behaviour, Crime and Policing Act 2014		
Section	Power	Officer to be delegated
Part 1 Sections 1-21	Authority to make an application for an injunction.	Director of Corporate Services
Part 2 Section 22	Apply for a Criminal Behaviour Order	Director of Corporate Services
Part 2 Section 27	Apply to vary or discharge a Criminal Behaviour Order	Director of Corporate Services
Part 4 Section 43	Power to issue a community protection notice	Executive Director of Environment & Community Services
Part 4 Section 45	Power to serve a community protection notice where occupier or owner unascertainable.	Executive Director of Environment & Community Services
Part 4 Section 47	Remedial action by a local authority	Executive Director of Environment & Community Services
Part 4 Section 49	Authority to issue a notice to the defaulter (49(6))	Executive Director of Environment & Community Services
Part 4 Section 50	Receive possession of an item used in the commission of an offence and arrange for its destruction or disposal	Executive Director of Environment & Community Services
Part 4 Section 51	Act as a designated person in applying for a warrant to enter to seize an item	Executive Director of Environment & Community Services
Part 4 Section 52	Act as designated person to issue Fixed Penalty Notices.	Executive Director of Environment & Community Services
Part 4 Section 53	Power to Authorise officers as a 'Designated person ' for Part 4.	Executive Director of Environment & Community Services
Chapter 2 Section 59	Power to make a Public spaces protection order.	Full Council / Executive / Portfolio holder
Chapter 2 Section 63	Act as an authorised person in connection with the consumption of alcohol in breach of a public spaces protection order. Require a person not to consume alcohol	Executive Director of Environment & Community Services

	and surrender alcohol etc and dispose of it.	
Chapter 2 Section 68	Power to serve fixed penalty Notice in relation to public spaces protection order.	Executive Director of Environment & Community Services
Chapter 3 Section 76/77	Power to issue a closure notice up to 24 Hours	Executive Director of Environment & Community Services
Chapter 3 Section 76 /77	Power to issue a closure notice up to 48 Hours Power to extend a closure notice from 24 to 48 hrs	Chief Executive
Chapter 3 Section 78	Power to cancel or vary a 24 hr closure notice	Executive Director of Environment & Community Services
Chapter 3 Section 78	Power to cancel or vary a 48 hr closure notice or a notice extended to 48 hrs	Chief Executive
Chapter 3 Section 80	Authority to apply to the Court for a Closure Order	Executive Director of Environment & Community Services & Director of Corporate Services
Chapter 3 Section 82	Authority to apply for an extension of a closure order	Executive Director of Environment & Community Services & Director of Corporate Services
Chapter 3 Section 83	Authority to apply for the discharge of a closure order	Director of Corporate Services
Chapter 3 section 84	Power to appeal against a decision not to grant extend or continue and order	Director of Corporate Services
Chapter 3 section 85	Act as an 'Authorised Officer' under section 85 – enforcement of closure order	Executive Director of Environment & Community Services
Chapter 3 section 88	Apply to the court for an order in respect of costs incurred for clearing, securing or maintaining premises subject to a closure order	Executive Director of Environment & Community Services
Part 11 Section 154	Authorise officers to serve FPN's for littering from vehicles subject to regulations to be made by Sec of State under section 88A Environmental Protection Act 1990	Executive Director of Environment & Community Services
Schedule 4 ASB case review Part 3 para 7 (1)	Request disclosure of information from any person for the purposes of carrying out an ASB case review.	Executive Director of Environment & Community Services



London Councils' TEC Executive Sub Committee

TEC Agreement – POPLA Amendment

Item No: 04

Report by: Nick Lester **Job title:** Corporate Director, Services

Date: 11 September 2014

Contact Officer: Nick Lester

Telephone: 0207 934 9905 **Email:** nick.lester@londoncouncils.gov.uk

Summary: This report seeks the agreement of the TEC Executive to recommend to all councils that they each formally resolve to expressly delegate the exercise of section 1 of the Localism Act 2011 to the TEC joint committee for the sole purpose of providing an appeals service for parking on private land for the British Parking Association under contract, confirming for the avoidance of doubt that the existing arrangements are and have been delivered on that basis to-date, and that the TEC Governing Agreement be formally varied accordingly. The service has been provided on a cost recovery basis by London Councils since October 2012 and it is proposed that it should continue in this way until the end of the contract period in October 2015. An express delegation of the exercise of section 1 for this purpose by individual councils, and the variation of the TEC Governing Agreement to reflect this, would remove any legal doubt as to TEC's authority to deliver the service and allow London Councils' auditors, PWC, to conclude an outstanding issue in relation to an objection to the accounts.

Recommendations: Members are recommended to:

- Recommend to all 33 London local authorities that they: formally confirm that the functions delegated to TEC to enter into the arrangement with the British Parking Association were and continue to be delivered pursuant to section 1 of the Localism Act 2011; resolve to expressly delegate the exercise of section 1 of the

2011 Act to the TEC joint committee for the sole purpose of providing an appeals service for parking on private land for the British Parking Association under contract; and that the TEC Governing Agreement be varied to this end.

Background

On 15th March 2012 TEC agreed that London Councils should provide an appeals service for parking on private land for the British Parking Association under contract. This was on the basis that this would complement the service provided by PATAS which deals with appeals made against parking enforcement on the highway. It was considered at the time that providing the service on a cost-recovery basis would be in the public interest as: restrictions on parking within London on private land would have a direct impact upon London local authorities, their resources and residents; a significant proportion of the public affected and inclined to avail themselves of the POPLA service were likely to come from the Greater London area; and, having regard to those matters, as TEC was the only interested, qualified bidder. On 14th June 2012, TEC received a report to say that the basis for providing such a service had been accepted by the BPA and agreed that a contract should be entered into to provide the service.

The service, known as POPLA (Parking on Private Land Appeals) started on the 1st October 2012 and has since provided the appeals service to more than 25,000 motorists. The service operates on a full cost recovery basis and at no cost to the London Council Tax payer.

An objection was raised on the London Councils consolidated accounts by an interested person (residing within London) that TEC did not have the legal power to provide the service. London Councils' auditors, PWC, have, for some time, been investigating this and numerous other objections submitted by the same individual.

PWC has informed London Councils of legal advice it has had from the Audit Commission on the Commission's view on the power of London Councils to provide the POPLA service. In essence, the Audit Commission advice accepts that the London local authorities have the power under Section 1 of the Localism Act 2011 to provide the service and that the exercise of these functions could be delegated to TEC. London Councils agrees with this conclusion.

The Audit Commission advice, however, questions whether the exercise of those functions has been properly delegated to TEC. The issue turns on whether the Committee could be said: to have existing delegated authority under the terms of the TEC Governing Agreement; alternatively whether it made or confirmed such a delegation by virtue of the decisions it made to provide the service in 2012; or whether each individual authority should have expressly resolved to delegate the exercise of section 1 of the 2011 Act to the joint committee for the purposes of TEC's delivery of the POPLA service with the TEC Agreement being formally varied accordingly.

PWC has asked for London Councils' view on this advice in advance of making a formal determination about the objection. London Councils and its legal advisors remain of the view that the service is currently being delivered by TEC on a lawful basis on behalf of all the participating authorities with their consent and proper authority under the existing terms of the TEC Governing Agreement, and confirmed by the Committee resolving to provide the service in 2012 with these matters having been raised with local authorities prior to those decisions being taken in the normal way in respect of TEC business. However, it is accepted, that there is room for argument as to whether individual councils had to state expressly that they agreed that the arrangement with the BPA was pursuant to exercise by TEC of their powers under section 1 of the 2011.

Next Steps

Taking active and expedient steps to expressly clarify the authority of TEC to deliver the POPLA service is intended to satisfy London Councils' auditors and inform their determination in respect of the objection raised by the interested member of the public on the consolidated accounts for the 2012/13 year. Further, this would help PWC to sign off the TEC and the consolidated accounts for 2013/14 by the statutory deadline.

Accordingly, for the avoidance of doubt and to facilitate a conclusion to the issue with the Auditor PWC and the objector, it is recommended that all authorities be asked to:

- (a) formally confirm that the exercise of functions delegated to TEC to enter into the arrangement with the British Parking Association were and continue to be delivered pursuant to section 1 of the Localism Act 2011;
- (b) formally resolve to expressly delegate the exercise of section 1 of the 2011 Act to the TEC joint committee for the sole purpose of providing an appeals service for parking on private land for the British Parking Association under contract; and
- (c) take all relevant steps to give effect to the matters set out in (a) and (b) above through a formal variation to the TEC Governing Agreement

Legal Implications for London Councils

The legal implications are set out in the body of the Report.

Financial implications for London Councils

There are no financial implications for London Councils from this recommendation

Equalities Implications for London Councils

There are no equalities implications for the boroughs or London Councils arising from this report.