

SCRAP METAL DEALERS ACT 2013

Committee	Licensing Committee
Officer Contact	Beejal Soni
Papers with report	None
Ward(s) affected	All

SUMMARY

The Scrap Metal Dealers Act 2013 (“the Act”) received Royal Assent on 28th February 2013 and is due to come into force from 1st October 2013.

The Act repeals the Scrap Metal Dealers Act 1964 (and related legislation) and Part 1 of the Vehicles (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Act maintains local authorities as the principal regulator but gives them the power to better regulate these industries by allowing them to refuse to grant a licence to ‘unsuitable’ applicants and a power to revoke licences if the dealer becomes ‘unsuitable’.

In order to discharge the Council’s duties and obligations under the Act, it is possible that the Council’s Scheme of Delegation may be amended later this year in order to enable the Licensing Committee to determine applications where it is proposed to refuse an application for a scrap metal dealer licence.

RECOMMENDATION

That the Licensing Committee notes the content of this report

INFORMATION

Key provisions of the new licensing regime

Licences

The Act makes it a requirement for a scrap metal dealer to hold a licence in order to carry on in business as a dealer. It is an offence to carry on a business without firstly obtaining a licence. Any person convicted can be fined at level 5 on the standard scale.

The Act creates two separate categories of scrap metal licences – a site licence and a collector’s licence.

- A site licence allows the dealer to carry on business at any authorised site
- The collector’s licence covers dealers who do not have a site but regularly collect through door to door collections.

Licences will be issued by the local authority in which the site is located or in which the collector operates. If a dealer intends to work from more than one local authority area, relevant licences will have to be obtained from each authority. A dealer may only hold either a site or collector's licence in any individual authority's area. Applications for a licence must be accompanied by full personal and business details and the relevant fee.

Suitability of the applicant

Local authorities must be satisfied that an applicant is a suitable person to operate as a scrap metal dealer before they may issue any licence. When determining whether an applicant is suitable, a local authority may have regard to any information that it considers relevant. Relevant matters will include applicant's behaviour in the operation of their business, alongside matters such as whether the dealer (or proposed site manager under a site licence) has been convicted of relevant offences or subject of relevant enforcement action. Prior refusals or revocations of scrap metal licences or environmental permits may also be taken into account.

To assist in determining this 'suitability test', a local authority can consult with other local authorities; the Environment Agency or Natural Resources Wales; and with the police.

Licence determinations

Licences granted will be valid for three years and may be renewed or varied or revoked. If an applicant or named site manager has been or is convicted of a relevant offence the local authority may add conditions requiring that:

- The dealer must not receive scrap except between 0900 and 1700 on any day
- That all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.

Where a council proposes to reject an application for a licence or revoke it or vary it, the applicant has to be notified and offered the opportunity to make representations and given at least 14 days to indicate that they wish to do so. If the applicant indicates that they wish to make representations, a further period of time must be given for these to be provided. If the applicant wishes to make oral representations then an opportunity to appear before the committee must be afforded to them. Because the legislation mostly mirrors the requirements of the Licensing Act 2003, the LGA has suggested that hearings be delegated to Licensing Committees/ Sub-Committees.

Any decision to refuse, revoke or vary any application must be accompanied by detailed reasons. In such cases, the applicant has right of appeal within 21 days from the date on which they were notified of the decision. Appeals against a decision are made to the local magistrates' court.

A record of all individuals and businesses licensed as scrap metal dealers is required to be maintained upon a central register, to be hosted by the Environment Agency. Dealers are obliged to inform the local licensing authority of any material change of information supplied in connection with an application and local authorities are obliged, in turn, to notify the Environment Agency.

Licence compliance

In order to comply with their licence, any licensed dealer must:

- Display a copy of the relevant licence, in a prominent position, at each site or in any vehicle they use in the course of their business
- Verify the full name and address of anyone they receive scrap metal from by checking documents, data or other information from a reliable and independent source
- Pay for scrap metal by means of non-transferable cheque or electronic transfer of funds only
- Maintain full records of any scrap metal received or disposed of in the course of their business

Failure to comply with any of the above requirements constitutes an offence under the Act.

Enforcement

Police officers and authorised local authority officers have the right to enter and inspect a licensed site at any reasonable time provided they have given notice. Where giving notice would prevent the officers concerned checking that the legislation has been complied with, or they have tried to give notice but have failed, then they can still enter the site. These rights do not extend to any residential premises, however, and neither can force be used to gain entry. Where needed, a warrant allowing the use of force to gain entry can be obtained from a magistrate. Anyone obstructing an officer's right of entry or failing to produce a record is guilty of an offence.

Police officers or authorised local authority officers also have power to issue a closure notice on a non-residential premises being used as an unlicensed scrap metal dealer's site. The closure notice has to be given to the site manager and any other person who appears to be a director or manager of the business or anyone who occupies another part of any building or structure. A police officer or the council can cancel a closure notice through a cancellation notice.

Having issued a closure notice, an officer may apply to a magistrate for a closure order. An order cannot be applied for until a week after the closure notice was made or once more than six months have passed from the date when the notice was given. A magistrates' court may make an order where it is satisfied that a closure notice has been given and the premises continues to be used as a dealer's site or there is a reasonable likelihood it will in the future. The closure order can require the site to be immediately closed, for the dealer to stop using it in the course of their business, or for a sum to be retained by the court until requirements of the court have been met. The making of a closure order may be appealed to the Crown Court. Failure to comply with a closure order is an offence and an authorised officer may enter a premise and do anything necessary to ensure compliance with a closure order.

Transitional arrangements

In order to allow local authorities to process applications for scrap metal dealers licences without existing business being in a position where they cannot operate, the Home Office is implementing a transitional process. The release of key regulations including hearing procedures, fee setting licensing considerations has been delayed, leading to officers having to prepare for the transition when and as information becomes available.

The following timetable for transition is confirmed:

- Local authorities may set a licence fee from 1 September 2013.
- The main provisions of the Act commence on 1 October 2013, including the offence of buying scrap metal for cash.
- Dealers and motor salvage operators registered immediately before 1 October 2013 will be deemed to have a licence under the Act from 1 October 2013, provided the dealer submits an application for a licence on or before 15 October 2013. In such case their deemed licence will last until the council either issues them with a licence or gives notice of the decision to refuse a licence. However, 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 2013 but does not supply all the required information with the application form then the deemed licence remains in effect after 15 October 2013.
- Where a dealer with a deemed licence fails to submit an application on or before 15 October 2013 the deemed licence will lapse on 16 October 2013.
- Other scrap metal dealers, not previously registered, will be able to apply for a licence from 1 October 2013, 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. The Local Government Association (LGA) recommends that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1 December 2013.
- All other enforcement provisions within the Act commence on 1 December 2013.

Meeting the timetable

In lieu of guidance from the Home Office, the LGA has taken on a co-ordination role to help achieve consistency in application of the new licensing regime. This authority is having regard to guidance received from the LGA including guidance on setting fees for licences under the Act.

Bearing in mind the short time frame prior to the Act commencing, Cabinet Member briefings have been issued. It is anticipated that a policy and fee for this new licensing regime will be presented to Cabinet in November 2013. Simultaneously, it is anticipated that Council will consider whether to extend the remit of the Licensing Committee to include the Act.

Final preparations to ensure that all involved parties understand their responsibilities and roles under the Act are due to begin shortly. These include:

- Local operators will be informed of the transitional arrangements; the steps they must take to ensure continuity of business; and the steps this council will take to determine their applications.
- Application forms, process and procedure, together with guidance notes will be confirmed and issued.
- Staff will receive full training on the Act.
- Partner services will be contacted and communication channels confirmed.
- Officers will be formally authorised.

A schedule of fees will also be calculated and come into effect retrospectively as at 1 October 2013. Fees will be calculated in accordance with Home Office and LGA guidance, when received, and will be considered at Cabinet level.

PART 1 – MEMBERS, PUBLIC AND PRESS

The Licensing Service is currently collating information from the Food, Health and Safety team (who currently hold responsibility for Scrap Metal Dealer registration) relating to scrap metal dealers registered under the current regime. It is expected that all existing operators will wish to continue their business into the new regime and that a few new operators may apply.

Policy implications

It is anticipated that the introduction of this new licensing regime has the potential to make a significant contribution in dealing with metal theft and the impacts of metal theft in the borough.

FINANCIAL IMPLICATIONS

None at this stage. The introduction of the new licensing regime is likely to introduce a new fees and charges scheme at a later date.

LEGAL IMPLICATIONS

Legal considerations have been amalgamated into this document. Further work will require detailed and focused legal involvement.