

Report of the Head of Licensing and Registration

Report to Licensing Committee

Date: 10th September 2013

Subject: Scrap Metal Dealers Act 2013

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| Are specific electoral Wards affected? If relevant, name(s) of Ward(s): All | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Are there implications for equality and diversity and cohesion and integration? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Is the decision eligible for Call-In? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Summary of main issues

1. The issue of metal theft has prompted HM Government, through the Home Office, to introduce a new licensing regime for scrap metal dealers to control the sale of metal and thereby reduce the theft of metal from railway lines, electricity substations and building sites.
2. The Scrap Metal Dealers Act 2013 was taken through Parliament by Richard Ottaway MP as a private members bill and received Royal Assent in February this year. The Home Office is now pressing to introduce the new measures as quickly as possible and have proposed a challenging implementation timetable.
3. This report details the licensing regime, proposed fee and the issue of delegation of powers to refuse licence applications made by unsuitable persons.

Recommendations

4. That Licensing Committee notes the contents of this report.

1 Purpose of this report

- 1.1 To advise Licensing Committee of the upcoming changes in the licensing of scrap metal dealers.

2 Background Information

- 2.1 Over the last few years, metal theft has had a significant impact on communities, businesses and the council. A survey, conducted by the LGA in early 2012, showed that seven out of ten councils had been the victims of metal theft and that this cost councils over £5.25M in 2010/11.
- 2.2 The high metal prices we have seen recently, driven by industrialisation in China, are likely to continue to be a feature of the world economy over the next decade and possibly longer as other countries like India and Brazil follow a similar pattern of growth.
- 2.3 For this reason the Scrap Metal Dealers Act 2013 was taken through Parliament by Richard Ottaway MP as a private members bill and received Royal Assent in February this year. The Home Office is now pressing to introduce the new measures as quickly as possible and have proposed a challenging implementation timetable.

3 Main issues

Licensing Regime

- 3.1 The Scrap Metal Dealers Act 2013 replaces the previous registration scheme created by the Scrap Metal dealers Act 1964. Every scrap metal dealer will be required to hold a licence, whether they have a scrap yard or be a mobile collector. Under the new regime the definition of scrap metal dealer has been widened to include motor salvage operators.
- 3.2 Trading without a licence will be a criminal offence which will attract, on summary conviction, a fine not exceeding scale 5 on the standard scale. Under amendments to the fine levels included in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 the fine that can be imposed will be unlimited.
- 3.3 The licensing regime is relatively straight forward. There are two types of licence specified under the act; a site licence and a collector's licence. A licence will last for three years. The applicant is required to provide a basic disclosure which will specify any criminal convictions s/he may have. The council is encouraged to consult with the local police, the Environment Agency and any other relevant local authorities to determine is the applicant is a suitable person to hold a licence.
- 3.4 The decision to grant a licence will be judged on the person's criminal record, the criminal record of any site manager he might specify in his application, and any enforcement activity the relevant agencies have had with the applicant. Example guidance on refusals is attached at appendix 1.

Fee Structure

- 3.4 The application must be accompanied by the reasonable fee set by the council. The fee can include the cost of administering the licence application process, including any compliance monitoring undertaken. The fee cannot include the cost of investigating unlicensed activity which remains at a cost to the council.
- 3.5 The proposed fee for a three year site licence is **£494**. This includes:
- Receipt, check and input of application details and banking of the fee. This also includes associated correspondence with the applicant.
 - Consultation with West Yorkshire Police, British Transport Police, Environment Agency and any other local authority who has processed an application for the same applicant or is a neighbouring authority.
 - Visits by enforcement staff to any site or vehicle to be used by the business and to check on-going compliance with the requirement of the licensing regime, with regards to cashless sales.
 - Communication with the applicant, including assistance in completing application forms. In future years the fee could include a share of the cost of translation of the form and guidance into other languages should it become apparent there is a need to do so.
 - A share of the cost of meetings to allow oral representation on request in the case of a refusal of a licence
- 3.6 The proposed fee for a three year collector's licence is **£159**. This includes the same elements as stated in 3.5 but does not include site visits.
- 3.7 The proposed fee for a variation of the licence (under Schedule 1(3) of the Act), which includes adding or changing site details or specifying a new site manager is **£327**.
- 3.8 The proposed fee to amend a site or collectors licence to change a licensee or site manager's name or address, for example due to marriage, is **£46**.
- 3.9 It is proposed that the fee is reviewed on an annual basis.

Refusal of Applications

- 3.10 If the council is minded to refuse an application, the applicant has the right to inform the authority that they wish to make oral representations. In such instances the authority must give the applicant the opportunity of appearing before, and being heard by, a person appointed by the authority.
- 3.11 It would seem natural that any hearing would be heard by the council's Licensing Committee. However the functions under this Act are executive functions, and the Licensing Committee was formed under the Licensing Act 2003 to hear council functions that relate to specific licensing functions. Therefore there is no clear delegation route of executive functions to Licensing Committee in this instance.

- 3.12 The Executive has a number of options available regarding the exercise of the functions under the Scrap Metal Dealers Act. It could:
- Hear the matters at Executive Board
 - Delegate matters to a sub-committee of Executive Board
 - Delegate matters to Assistant Chief Executive (Citizen's and Communities) for further delegation to officers under the Officer Sub-delegation scheme
- 3.13 It is difficult to predict how many hearings may arise from this process, especially in the first year when all 124 scrap metal dealers currently registered would require licensing under a much more restrictive regime.
- 3.14 It is expected that this Act will be included in a later amendment to the relevant regulations to make it a non-executive function as it was the intention of the Home Office that these matters were considered by Licensing Committee. However it is not clear when that amendment may be made.
- 3.15 At this time it is expected that the matter of refusals will be dealt with by officers under the Officer sub-delegation scheme, until the matter is made a council function when it will be delegated to Licensing Committee.

Implementation Timetable

- 3.15 The Home Office has set a challenging timetable for the implementation of the new regime:

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| 1 st September | Power to set fees commence |
| 1 st October | Scrap Metal Dealers Act commence |
| 14 th October | Transitional licences commence for existing registered operators |
| 1 st December | New Scrap Metal Licences come into effect and operating without a licence becomes an offence. |

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Due to the short timetable provided by the Home Office for implementation of this scheme it has not been possible to provide even a short consultation with the citizens of Leeds or with the 120 registered scrap metal dealers and motor salvage operators.
- 4.1.2 During August, guidance on the new legislation was sent to all local scrap metal dealers and motor salvage operators and they were encouraged to contact the council to discuss any concerns they had with the new regime, that the fee would be around £500 and the timescales. Entertainment Licensing received a number of calls, mostly from motor salvage operators, who were concerned about the increase in fee from the existing regime (which was £70) and the additional requirements.

4.1.3 In addition the Home Office has been consulting with the trade organisation such as the British Metal Recycling Association to ensure that the licensing regime is developed fit for purpose. Further communication with local dealers will be undertaken to ensure that they are provided with information and assistance to enable them to transition into the new regime.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 There are a number of mobile scrap metal collectors who do not speak English as a first language. However, due to the diversity of the languages spoken, and the cost of translation it is not possible to pre-emptively translate the guidance documents. This will be undertaken once a specific language need has been identified.

4.2.2 An Equality, Diversity, Cohesion and Integration Impact Assessment Screening has been undertaken.

4.3 Council policies and City Priorities

4.3.1 The Government, through the Home Office, has devised a licensing regime that all licensing authorities must follow when licensing scrap metal dealers.

4.3.2 The licensing regime contributes to the following Best Council Plan 2013-17 outcomes:

- Improve the quality of life for our residents, particularly for those who are vulnerable or in poverty;
- Make it easier for people to do business with us.

4.3.3 The licensing regime contributes to our best council objective:

- Ensuring high quality public services – improving quality, efficiency and involving people in shaping their city.

4.4 Resources and value for money

4.4.1 The licensing of scrap metal dealers attracts a fee which must be based on cost recovery only. It can only be used to pay for the costs associated with the licence application and cannot be used to cover the cost of enforcement or investigation of unlicensed activity. This should mean the licensing of scrap metal dealers is cost-neutral to the council; however the cost of the investigation of unlicensed scrap metal dealers remains at a cost to the council.

4.5 Legal Implications, Access to Information and Call In

4.5.1 Under the Scrap Metal Dealers Act 1964, scrap metal dealers were required to register with the council. There was no fee associated with this registration, and the council was not able to refuse such a registration. As such it is not known at this time how much of a risk of legal challenge this licensing regime represents. There are currently 124 scrap metal dealers and motor salvage operators registered with the council. Although registration has increased in recent years due to the proactive enforcement work undertaken by British Transport Police, this sector is not seen as high volume.

4.6 Risk Management

4.6.1 This report is advisory, to inform Licensing Committee of a new licensing regime.

4.6.2 The new legislation is not adoptive and will commence on the 1st October. It will become an offence for any scrap metal dealer to operate without a licence after 1st December 2013. Therefore it is important that the council has an administrative regime in place in time for scrap metal dealers to make their application and for the council to hear any matters before determining the licences before this time. Delegating the matter to officers through the sub delegation scheme should reduce any delays in implementing the new regime.

5 Conclusions

5.1 This report presents the council's new responsibilities under the Scrap Metal Dealers Act 2013 which will commence on 1st October.

6 Recommendations

6.1 That Licensing Committee notes the contents of this report.

7 Background documents¹ None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.