

To: General Purposes Licensing Committee

Date: 5 September 2013

Report of: Head of Environmental Development

Title of Report: Scrap Metal Dealers Act 2013

Summary and Recommendations

To inform Committee of new legislation, approve any necessary changes to the Constitution and the setting of a licence fee for the administration and enforcement of the Scrap Metal Dealers Act 2013.

Report Approved by:

Finance: Paul Swaffield

Legal: Daniel Smith

Policy Framework: A Vibrant and Sustainable Economy

The Committee is recommended to:

- i) Note the content of this report;
- ii) Authorise Head of Environmental Development and Head of Law and Governance to make any necessary changes to the Constitution consequent to the implementation of Scrap Metal Dealers Act 2013.
- iii) Approve the licence fees applicable for the two types of Scrap Metal Dealers as detailed at Paragraph 34 of this report.

Introduction

1. The Scrap Metal Dealers Act 2013 (the Act) was passed on 28th February 2013 and is due to come into force later this year on 1st October 2013. A copy of the Act is attached at **Appendix One**.
2. The Act repealed the Scrap Metal Dealers Act 1964 and consolidates scrap metal dealers & motor salvage operators under one licensing regime. Local Authorities will continue to act as the main regulator but the new Act gives Licensing Authorities more powers, including the power to refuse a license and powers to revoke licenses if the dealer is considered unsuitable. Both the Local Authority and the Police have been given powers to enter and inspect premises.

Background

3. There has been an increase in metal theft with the increased value of metal across the UK as a whole. A wide range of sectors have been hit including

national transport, electricity and telephone links, street furniture, memorials, commercial and residential buildings including churches and schools.

4. The Government introduced initial changes in 2012 that took steps to prohibit cash payments for scrap metal and amend the powers of entry into unregistered scrap metal sites and increase the existing financial penalties for offences under the Scrap Metal Dealers Act 1964. These changes were brought in under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Secretary of State Guidance

5. The Home Office is expected to issue guidance to Local Authorities (not yet published at the time of this report being presented to the Committee). Ahead of this guidance being issued, the Local Government Association has provided an explanation of the new Act, and this is attached at **Appendix Two**.

Summary of the Act

Definitions

6. The Act defines a “scrap metal dealer” as a person who is for the time being carrying on a business as a scrap metal dealer, whether or not authorised by a licence.
7. It further states that “scrap metal” includes:
 - (a) any old, waste or discarded metal or metallic material, and
 - (b) 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.
8. The following is not considered to be “scrap metal”:
 - (a) gold,
 - (b) silver, and
 - (c) any alloy of which 2 per cent or more by weight is attributable to gold or silver.

Requirement to obtain a Licence

9. Section 1 of the Act requires that a scrap metal dealer obtains a licence from the Local Authority in order to carry on business as a scrap metal dealer. It will be an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. This offence is punishable on summary conviction with a fine not exceeding level 5 on the standard scale.
10. Section 2 provides further detail in respect of the licence, including that there will be two types of licence, one for a site and the other for a mobile collector (for those carrying on business otherwise than at a site). A power is provided for the Secretary of State to prescribe the form and content of the licences in Regulations.

Site Licence

11. A site licence will be issued by the Local Authority in whose area a scrap metal site is situated and will require all of the sites at which the licensee carries on the business as a scrap metal dealer within the Local Authority area to be identified and a site manager to be named for each site. In doing so, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any Local Authority area.

Mobile Collector's Licence

12. A mobile collector's licence will authorise the licensee to operate as a mobile collector in the area of the issuing Local Authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal.
13. The licence does not permit the collector to collect from any other Local Authority area; a separate licence would need to be obtained from each Local Authority in whose area the individual wished to collect in. A licence also does not authorise the licensee to carry on a business at a site within any area - should a collector wish to use a fixed site, they would need to obtain a site licence from the relevant Local Authority.
14. There is no restriction as to the location where the collector may transport and sell their metals.

Duration of Licence

15. A licence will be issued for a period of three years from the date of issue.

Fit and Proper Test

16. Section 3 requires that the Licensing Authority has to be satisfied that an applicant is a suitable person to carry on business as a scrap metal dealer. In considering suitability, the Local Authority must consult with:

- Any other Local Authority (if an application has been made or license issued to the same applicant),
- The Environment Agency, and
- The Police

In order to assess the following criteria:

- Whether the applicant or any site manager has been convicted of any relevant offence.
- Whether the applicant or any site manager has been the subject of any relevant enforcement action
- Any previous refusal for issue of or renewal of a scrap metal license.
- Any previous refusal for an environment permit or registration
- Any previous revocation of a scrap metal license.

- Whether the applicant has demonstrated that there will be adequate procedures to comply with the Act

All of the above will apply to any director or any secretary of a company if the applicant is not an individual.

Conditions attached to a Licence

17. Section 3 also allows Local Authorities, when issuing a licence, to impose prescribed conditions if the licensee or site manager has been convicted of a relevant offence. Subsection (8) specifies the two conditions that can be imposed by Local Authorities on a licence, namely:
 - (a) that the dealer must not receive scrap metal except between 9 a.m. and 5 p.m. on any day; and
 - (b) 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.

Revocation of a Licence

18. Section 4 provides the Licensing Authority with the discretion to revoke a licence on particular grounds, including where the Local Authority is no longer satisfied that the licensee is a suitable person to carry on the business as a scrap metal dealer. The revocation of a licence can only be carried out by a Local Authority as the Licensing Authority.

Variation of a Licence

19. Section 4 also allows the Licensing Authority to vary a licence, imposing the conditions stipulated in Paragraph 17 above, if the licensee or a site manager is convicted of a relevant offence.

Duty to provide Relevant Information

20. Section 6 places a duty on the Local Authority to supply any such information as requested relating to a scrap metal licence to any other Local Authority in England and Wales, the Environment Agency, the Natural Resources Body for Wales and to police forces.

National Register of Scrap Metal Dealers

21. Section 7 requires that a register of licences issued under the Act should be maintained by the Environment Agency in England and the Natural Resources Body for Wales in Wales. Local Authorities will provide the appropriate information on all licences issued in their geographic areas in order that this register can be updated regularly. The register will be made openly accessible to the public and will include: the name of the Authority which issued the licence; the name of the licensee; any trading name; the type of licence; the site(s) covered by the licence and the expiry date of the licence.

Duties of Licence Holder

22. Section 10 requires that the licensee display a copy of their licence. For site operators this must be in a prominent place in an area accessible to the public. For mobile collectors, it must be in a manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil these requirements. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale.
23. Section 11 places a requirement on scrap metal dealers, site managers and employees who have been delegated the responsibility to do so, to verify the identity of the person they are receiving metal from and the person's address. This verification must be done by reference to data, documents or other information obtained from a reliable or independent source, such as the Identity and Passport Service, the Driver and Vehicle Licensing Agency, a bank or utility company etc. The Secretary of State will prescribe in regulations the data or documents which are sufficient, or not sufficient as the case may be, for verifying identity.
24. It will be an offence not to obtain and verify the seller's identity, punishable by a fine not exceeding level 3 on the standard scale. The offence will apply to the scrap metal dealer, the site manager and any person, who under arrangements made by either the scrap metal dealer or the site manager, has responsibility for fulfilling this requirement on behalf of the business.
25. Section 13 sets out the record-keeping requirements in respect of any scrap metal received by a scrap metal dealer in the course of their business. Information that is required to be recorded includes the type of metal being purchased; the time/date of the transaction; personal information on the seller; who is acting on behalf of the dealer and proof of the non-cash transaction. Failure to comply with the requirements of this section is an offence attracting a penalty up to level 5 on the standard scale.
26. The Act also prohibits the payment of cash for metals

Administrative Function of the Licensing Authority

27. A flowchart to assist Officers in determining whether a person requires a licence is attached at **Appendix Three**, and a draft application form for such persons to complete is attached at **Appendix Four**.

Enforcement Powers

28. Local Authority and Police Officers have been given powers to inspect licensed premises and can require production of any scrap metal at the premises, inspect records kept and take copies of those records.
29. The Act provides both the Police and the Local Authority with powers to issue closure notices to unlicensed scrap metal dealing premises and apply to a justice of the peace for a closure order.

Licence Fees

30. The current legislation only permits registration with basic information and no fee payable. The new Act requires more detailed information to be submitted on application and will allow the Local Authority to set a fee. The fee may be set locally and must be set at cost recovery of considering and determining the application; and when setting a fee Local Authorities must have regard to the guidance that will be issued by the Secretary of State.
31. In assessing the costs incurred in administering this regime Officers have taken advice from the Guidance issued by the Secretary of State, a copy of which is attached at **Appendix Five**.
32. To summarise the Guidance issued by the Secretary of State, income from licence fees can only be used to pay for the costs of carrying out the licensing process and must not exceed these costs. Local Authorities should specify different fees for each type of application including the assessment of an application for a licence, an application to vary a licence*, and an application for licence renewal.

*the 2013 Act allows a variation from a Site Licence to a Mobile Collectors Licence and vice versa. However, Officers believe that such a variation should be considered as a New Application for the respective licence being sought.

33. Fees should reflect the following costs:
- time spent on assessment and administration
 - experience of licensing officers
 - storage (paper and electronic)
 - consultation on suitability of an applicant (including liaising with other Licensing Authorities)
 - reviewing relevant offences
 - format of licences
 - hearings
 - legal and other Council services associated with the function
34. The table below provides details of the proposed licence fees* that have been calculated to cover the administrative time and materials involved in considering applications (including any consultation period) and to cover the costs of Officers carrying out compliance and enforcement checks of Scrap Metal Dealers within the city over the 3 year period of a licence. A breakdown of the costs associated with administering and enforcing this licensing function are attached at **Appendix Six**.

APPLICATION	Site Licence	Mobile Collectors Licence
New / Renewal	£1200.00	£900.00
Variation (Admin Changes)	£100.00	£100.00

*the licence fee does not include any charges required for a Basic Disclosure which the applicant would obtain as part of the application process at his or her own cost. 104

35. Members are asked to approve the implementation of these fees. A spreadsheet detailing the full costs associated with each licence fee is attached at **Appendix Six**.

Transitional Arrangements

36. Listed below is the timeframe and guidance for the ending of the Scrap Metal Dealer Act 1964, and the commencement of the Scrap Metal Dealer Act 2013.
- All scrap metal dealers can apply for a scrap metal dealer's licence from 1st October 2013.
 - A scrap metal dealer who is currently registered under the Scrap Metal Dealers Act 1964 or Vehicles (Crime) Act 2001 needs to submit an application on or by 15th October and will be deemed to have a temporary licence which is valid until a licence decision is issued. We recommend that a formal licence decision is issued by local authorities by 1st December 2013.
 - Local Authorities will complete checks to assess applicants' suitability to hold a licence between 15th October 2013 and 1st December 2013.
 - If a registered scrap metal dealer does not submit an application on or by 15th October 2013 their deemed licence will lapse on 16th October 2013. A deemed temporary licence which has lapsed does not give rise to a right to appeal. The dealer must submit an application and wait for a licence to be issued before they can trade legally.
 - A Local Authority can impose conditions on a deemed temporary licence pending an appeal for the refusal of a licence.
 - Scrap metal dealers who are not registered under the Scrap Metal Dealers Act 1964 or the Vehicles (Crime) Act 2001 can apply for a scrap metal dealer's licence from 1st October 2013 but must wait for a licence to be issued before they can trade legally.
 - The offence of buying scrap metal for cash will come into force on 1st October 2013.
 - Local Authority officers and police officers will have the right to enter and inspect sites from 1st October 2013.
 - The majority of the other enforcement provisions within the Act will come into force on 1st December 2013.
37. This information has been made available on the Council website, and all currently registered relevant persons have been sent a letter informing them of the new provisions and the need to ensure that they make any relevant application to the Licensing Authority within the timeframe listed at Paragraph 36.

Financial Implications

38. The setting of the licence fees and the associated costs of maintaining the Scrap Metal Dealer Licensing function will impact on the Licensing Authority, and the costs incurred by the Authority are sought to be recovered through the licence fees detailed at Paragraph 34 of this report.

Legal Implications

39. Any legal implications regarding this matter are covered within the 2013 Act.

Recommendations

40. The Committee is recommended to:
- i) Note the content of this report;
 - ii) Authorise Head of Environmental Development and Head of Law and Governance to make any necessary changes to the Constitution consequent to the implementation of Scrap Metal Dealers Act 2013.
 - iii) Approve the licence fee applicable for a Scrap Metal Dealer as detailed at Paragraph 34 of this report (subject to any guidance to be issued by the Secretary of State).

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Background Papers:

- Appendix One:** Scrap Metal Dealers Act 2013
- Appendix Two:** LGA Guidance
- Appendix Three:** Application Flowchart
- Appendix Four:** Draft Application Form
- Appendix Five:** Secretary of State: Fees Guidance
- Appendix Six:** Costs to administer the Scrap Metal Dealer licensing function

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