

LICENSING AND SAFETY COMMITTEE

18 SEPTEMBER 2013

SCRAP METAL DEALERS ACT 2013 - UPDATE

Report from: Perry Holmes, Assistant Director, Legal and Corporate Services

Author: Mandy Francis, Senior Licensing and Enforcement Officer

Summary

To inform Members of the new legislative requirements of the Scrap Metal Dealers Act 2013, including necessary changes to Committee Terms of Reference and Scheme of Delegations and to endorse the fee setting process to full Council

1. Budget and Policy Framework

- 1.1 In accordance with Chapter 3, Part 2, Section 7 (A) of the Council's Constitution, the Licensing Sub Committee determine licensing issues not covered by the Licensing Act 2003 or the Gambling Act 2005.

2. Background

- 2.1 The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013 and its measures are to be implemented with effect from 1 October 2013, with the commencement of enforcement of criminal offences being implemented on 1 December 2013. The new Act repeals the Scrap Metal Dealers Act 1964 and Part 1 of the Vehicles (Crime) Act 2001 creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries in England and Wales.
- 2.2 The Act was introduced in response to the growth in metal theft offences, driven by increased commodity costs, which in addition to the direct impact on the victims of theft have also had a damaging and disruptive effect on the country's infrastructure. The current regulation of the scrap metal industry consists of a simple registration scheme, which has done little to prevent this type of crime.
- 2.3 Medway Council will become the principal regulator. The new licensing regime will provide stronger regulation, including the power to refuse to grant a licence to "unsuitable" applicants and a power to revoke licences if the dealer becomes "unsuitable". The cashless trading measures brought into force via the Legal Aid, Sentencing and Punishment of Offenders Act 2012

are incorporated into the new Act, which also closes off loopholes in the earlier legislation by drawing vehicle dismantlers and former itinerant collectors into the cashless trading regime.

- 2.4 The legislation places a shared enforcement responsibility for this new statutory duty on both Medway Council and the Police.

3. Options

- 3.1 The licensing of scrap metal dealers by Medway Council is a statutory function. The scheme has to be robust so as not to attract challenges.

4. Advice and analysis

4.1 Key Features of the Act

4.1.1 These include:

- Requiring all individuals and businesses to complete an enhanced application process that includes a criminal records check to obtain a scrap metal dealer licence. Local authorities will have the power to turn down unsuitable applicants
- Giving local authorities the power to revoke a licence
- Requiring all sellers of metal to provide personal identification at the point of sale, which is then recorded by the scrap metal dealer
- Extending the offence of buying metal with cash to itinerant metal collectors
- New powers for the police and local authorities to enter and inspect sites
- Creating a central public register, hosted by the Environment Agency, of all individuals and businesses licensed as scrap metal dealers
- Widening the definition of a scrap metal dealer to include motor salvage operators

4.1.2 Full details of the provisions of the Act are attached at Appendix A.

4.1.3 At the time of writing this report the Home Office has not provided a schedule of relevant offences, however a draft of offences it is anticipated will be taken into account is attached at Appendix B.

4.1.4 The Home Office has published a councillor's handbook – 'Tackling Metal Theft', which members may find useful. This can be accessed via the link below.

http://www.local.gov.uk/c/document_library/get_file?uuid=7abe5a20-985e-4cce-8ac4-c4dcdb69d65c&groupId=10171

4.2 Timetable for transition to new regime

4.2.1 The transition timeline is:

- The Commencement Order was made on 6 August 2013
- Local authorities can set licence fees 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 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 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. It has been recommended by the Local Government Association 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 will commence on 1 December 2013.

4.3 Fee setting

4.3.1 Although not stated in the Act and with no guidance issued, the Council must assume that Regulation 2 and Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations will apply to this legislation, and therefore it would not be an Executive function but rather a function of full Council.

4.3.2 The current legislation only permits registration with basic information and there is no fee payable. The new Act will require more detailed information to be submitted on application and will attract a fee. The fee will be set locally by each local authority on a cost recovery basis, but local authorities must have

a duty with regards to guidance issued by the Home Office, which is attached at Appendix C. This outlines the issues that should be considered by them when setting a fee and what activities the fee can cover. The fee will be an essential component of the new regime, as it will provide local authorities with the funding needed to administer the regime and ensure compliance.

- 4.3.3 It is possible that there will be an initial start-up cost, which can be recovered from the licence fee, and therefore the true cost of procedures and formalities will be lower once the scheme is established. This can then be reflected in a reduction in fees following a review.
- 4.3.4 The Provision of Services Regulations 2009 states that a licence fee can only be used to pay for the costs associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service does not exceed the costs of providing the service.
- 4.3.5 The licence fee cannot be used to support enforcement activity against unlicensed scrap metal dealers. This was borne out in the recent R (Hemming and Other) v Westminster City Council judgement in the High Court.
- 4.3.6 Any activity against unlicensed operators must be funded through existing funds. Such activity against unlicensed operators will include closure notices, with applications for closure orders subsequently made to a Magistrates' Court
- 4.3.7 The general principle is that fees should reflect:
- All the activity required with processing and granting a licence such as considering applications and assessing the suitability of the applicant
 - The costs of staff associated with supporting the service, including senior staff with managerial responsibility for the service
 - Support provided by other parts of the council to the licensing team such as legal services and committee services and any recharges there might be for rooms, heating and lighting from the centre of the authority
 - The cost of providing advice and guidance to applicants on what will be a new process
 - Carrying out inspections to ensure compliance with the law
 - Training staff and councillors in the requirements of the new legislation
 - Costs associated with consulting other agencies and bodies when considering if an applicant is a suitable person
 - Working with partners in ensuring compliance
 - Issuing the licence
 - Any officer time providing information for inclusion in the register of dealers

4.3.8 A potentially significant cost not mentioned above, could be the holding of hearings to consider whether to grant a licence or whether to revoke or vary a licence. As the cost for these will be spread across licence fees as a whole, an estimate will have to be made when setting the fees of how many potential hearings there may be. Given the likely number of applicants to assess it would be sensible, once at the end of the first review of operation of the licensing system, to review how many hearings there have been and revise the fees accordingly. Council are assisted by one of the decisions from the Hemming case, which allows deficits or surpluses to be carried over into the next financial year.

5. Risk management

5.1 There are likely to be unlicensed collectors operating illegally which will impact on the work of the licensing team.

6. Financial and legal implications

6.1 Licence holders will fund part of the licensing regime via licence fees but costs in respect of unlicensed dealers will have to be met from existing resources. Under the Scrap Metal Dealers Act 2013, a person is required to obtain a licence from a local authority if he carries on a business as a dealer. It is an offence to carry on business without obtaining a licence and anyone convicted can be fined which could be unlimited in accordance with the provisions of the Legal aid, Sentencing and Punishment of Offenders Act 2012.

6.2 The licensing of scrap metal dealers by Medway Council is a statutory function. The fees and delegations must be determined by the Council. It is not a function of the Executive. The scheme has to be robust so as not to attract challenges.

7. Recommendations

7.1 Members note the contents of the report, particularly to the setting of fees for the licensing functions within the Scrap Metal Dealers Act 2013 (the Act), which falls to full Council.

7.2 That the Licensing Committee recommends to full Council that the powers and duties of the council as the licensing authority relating to the determination of applications made under the Scrap Metal Dealers Act 2013 be made to the Assistant Director, Legal and Corporate Services.

7.3 That the Licensing Committee recommends to full Council that the setting of fees under the Scrap Metal Dealers Act 2013 be delegated to the Assistant Director, Legal and Corporate Services

Lead officer contact:

Mandy Francis, Senior Licensing and Enforcement Officer
Telephone No: 01634 306000 Email: mandy.francis@medway.gov.uk

Background papers

1. Scrap Metal Dealers Act 2013 – Key Provisions (Appendix A)
2. Scrap Metal Dealers Act 2013 – Draft Relevant Convictions (Appendix B)
3. Home Office Guidance (Appendix C)