

READING BOROUGH COUNCIL

REPORT BY HEAD OF ENVIRONMENT AND CONSUMER SERVICES

TO:	LICENSING APPLICATIONS COMMITTEE		
DATE:	2 OCTOBER 2013	AGENDA ITEM:	5
TITLE:	SCRAP METAL DEALERS ACT 2013		
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1. PURPOSE AND SUMMARY OF REPORT

- 1.1 To outline the provisions of the Scrap Metal Dealers Act 2013, seek any additional delegations necessary, and propose application fees for licences.

2. RECOMMENDED ACTION

- 2.1 That the Committee note the provisions of the Scrap Metal Dealers Act 2013.
- 2.2 That Council be recommended to delegate to the Head of Environment and Consumer Services the powers and duties in the Scrap Metal Dealers Act 2013, as set out in Appendix 1 to the report.
- 2.3 That Council be recommended to delegate to the Head of Legal and Democratic Services authority to institute legal proceedings for the offences under the Scrap Metal Dealers Act 2013, as set out in Appendix 1.
- 2.4 That Council be recommended to delegate to the Licensing Applications Committee authority to approve and ratify proposed fees set out at paragraph 4.6 of this report.

3. BACKGROUND

- 3.1 The legislation covering scrap metal dealers was contained in the Scrap Metal Dealers Act 1964, which is repealed with effect from 1st October 2013. This required Local Authorities to maintain a simple register of persons trading in their area as scrap metal dealers. The offence of carrying on a business as a scrap metal dealer without being registered attracts a fine of up to £5000 for the operator. Registration lasted for three years. The Act was amended in December 2012 to create an offence of paying cash for scrap metal and to require additional records to be kept of transactions.
- 3.2 The Scrap Metal Dealers Act 2013 received Royal Assent on 28th February 2013 with its provision to be implemented with effect from 1st October 2013. The new Act repeals the Scrap Metal Dealers Act 1964 in total and Part 1 of the Vehicles (Crime) Act 2001,

thus creating a revised single point regulatory regime for the scrap metal recycling and vehicle dismantling operations in England and Wales. Motor salvage operators are now included in the scrap metal dealers regime.

- 3.3 The new Act is in response to the growth in metal theft offences resulting from a booming metal recycling industry worth £5 Billion in 2011. In addition to the direct impact of theft there are significant impacts on national infrastructure. Nine of every ten councils have been affected by the theft of metal e.g. drain covers, cables, street furniture etc. there has been disruption to rail services, loss of power to homes, interruptions to telecommunications, theft of bus shelters and even grave memorials.
- 3.4 Local Authorities remain the principal regulators of the 2013 Act with powers to issue or refuse to grant a licence to “unsuitable” applicants and to revoke licences if the dealer becomes “unsuitable”. It retains a cashless trading system first brought into force through the Legal Aid, Sentencing and Punishment of Offenders Act 2012. It closes off loopholes relating to vehicle dismantlers and itinerant collectors by bringing them into the cashless trading scheme. All applications are subject to a fee which must be set on a cost recovery basis, having regard to guidance issued by the Secretary of State.
- 3.5 Officers have already received calls from one existing dealer and a mobile collector for clarification and applications are expected to be received from September 2013. The proposed regime is wholly different to the current registration scheme but is similar to the current Vehicle and Premises Licensing regimes; assessing the suitability of applicants including any unspent relevant criminal convictions.

4. PROPOSAL

4.1 The Act creates two different types of scrap metal licences:

- Site Licence: which allows a scrap metal dealer or a motor salvage operator to carry on business at any sites in the Council’s area listed on the Licence and to transport scrap metal to and from those sites from any local authority area.
- Collectors’ Licence: covers dealers who do not have a site and regularly collect through “door-to-door” collections. The holder of a Collectors’ Licence issued by Reading Borough Council can only operate within this authority’s boundary and would need a licence from a neighbouring local authority if they wish to trade in that authority’s area.
- No individual may hold more than one licence issued by one authority, but may also hold a licence issued by another authority.

4.2 The Act introduces additional powers and requirements:

- Requirement for all individuals and businesses to complete an enhanced application process to obtain a scrap metal dealer’s licence.
- Issued Licences to be displayed
- Dealers to carry out stricter identity checks on anyone from whom they receive scrap metal
- Dealers to keep records of any scrap metal received or disposed of and all sellers of metal to provide personal identification at the point of sale
- Prohibits the payment of cash for metal. Payment can only be made by non-transferable cheque or an electronic transfer of funds

- New powers of Local Authorities and Police to enter and inspect licensed premises, demand and take copies of records and require inspection of any scrap metal
- The closure of unlicensed sites through the Police or Local Authority seeking a closure order from the Magistrates' Court
- Widening the definition of a scrap metal dealer to include motor salvage operators; and
- Creating a National Public Register, hosted by the Environment Agency, of all individuals and businesses licensed as scrap metal dealers

4.3 Suitability of an Applicant: Prior to issuing a licence the local authority needs to be satisfied that an applicant is a "suitable person" to operate as a scrap metal dealer. Authorities may consult with the Police, other relevant local authorities' and the Environment Agency and can consider any information deemed as relevant, including whether the dealer or their site manager has been convicted of a relevant offence.

4.4 Period of Licence: Licences will last for three years unless revoked, but the Act also gives licensing authorities the power to refuse a licence, add two specific conditions to a licence under certain circumstances or to revoke a licence. Applicants will have the right to appeal to a Magistrates' Court against refusal of an application, revocation or variation of a licence and against the inclusion of a condition in a licence. Where the Council proposes to refuse an application, or to revoke or vary a licence, it must give a notice to the applicant/licensee and give them the right to make oral representations. It is proposed that any applicant wishing to make representations should have the opportunity to appear before the Licensing Applications Committee.

4.5 Currently, there are two Scrap Metal Dealers and one Motor Salvage Operator, registered within Reading Borough Council. The new scheme will broaden the definition and allow us to consider any unidentified collectors or premises.

4.6 Fees are set on a cost recovery basis following the guidance issued by the Secretary of State. The guidance indicates that the fees must reflect the cost of processing licence applications, including costs of assessing suitability of applicants and of monitoring compliance (on renewal), and can include the costs of hearings of oral representations by Committee.

Fees

Grant Application for Site Licence	£ 736
Grant Application for Collector Licence	£ 427
Renewal for Site Licence	£ 736
Renewal for Mobile collector	£ 427
Variation	£ 50

4.7 The implementation date is 1st October 2013, therefore we need arrangements in place as soon as possible.

4.8 The Commencement and Transitional Provisions Order was made on 6 August 2013 and sets out:

- Fee-setting in force from 1st September,
- The main provisions of the Act to come into force on 1st October and
- The criminal offences on 1st December

- The transitional provisions to enable dealers and operators previously registered under the 1964 & 2001 Acts (immediately before 1st October 2013) to benefit from a deemed licence.

Provided the existing registered scrap metal dealer or registered motor salvage operator applies for a licence on or before 15th October 2013 they shall be deemed to be licensed, which will continue until the Council grants a licence under the new Act or an appeal against a refusal of a licence is determined by the Magistrates Court.

Should an existing registered dealer or operator fail to apply before the end of 15th October their licence would be deemed as lapsed on 16 October 2013.

4.9 Further Regulations have been made under the Act; these are:

The Scrap Metal Dealers Act 2013 (Prescribed Documents and Information for Verification of Name and Address) Regulations 2013. These set out the types of documents which must be produced to allow a scrap metal dealer to verify the name and address of a person supplying scrap metal. An offence is committed where the dealer fails to fulfil this obligation to verify such details. The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 set out the relevant offences to which the Council may have regard in assessing whether the applicant for a licence is a suitable person.

5. CONTRIBUTION TO STRATEGIC AIMS

- 5.1 The Licensing Service contributes to the Council's Strategic Aim of Developing Reading as a Green City with sustainable environment and economy at the heart of the Thames Valley.

6. COMMUNITY ENGAGEMENT AND INFORMATION

- 6.1 The new Act is expected to reduce incidents of the anti-social and disruptive crime of metal theft and will benefit local residents and businesses. The new fee based licences will increase the costs of dealing in scrap metal which may impact on the viability of some small local businesses, although this is expected to be offset by the creation of a fairer and more equal marketplace.

7. EQUALITIES IMPACT ASSESSMENT

- 7.1 This change does not impact on equalities.

8. LEGAL IMPLICATIONS

- 8.1 The new Act imposes new legal duties on the Council. Failure to discharge these duties adequately may result in legal challenges from scrap metal dealers, members of the public and aggrieved parties.
- 8.2 Schedule 1(6) to the 2013 Act requires the Council to have regard to the guidance issued by the Secretary of State in setting application fees. The guidance issued by the Home Office in August 2013 reminds Councils that, in order to be compliant with the EU Services Directive, they must ensure that the income from fees charged for a service does not exceed the costs of providing the service. The guidance gives further details on the type of activities associated with the application process which may be included

in setting the fee. Failure to have regard to the statutory guidance in setting the fee would render the Council liable to challenge by way of judicial review.

- 8.3 Functions relating to the issue of certain licences are listed in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as functions which cannot be exercised by an authority's executive. This means that they have to be exercised by a Committee set up under Section 101 of the Local Government Act 1972, with cross-party Councillor membership proportionate to the political composition of the authority. Following the decision of the authority to adopt a committee system of governance from May 2013, this distinction between executive and non-executive functions is no longer applicable to Reading. However, for the record, the functions set out in Schedule 1 continue to be shown in Part 3 of the Council's constitution. The functions of registering motor salvage operators and licensing scrap yards under the legislation which has now been repealed are listed as Schedule 1 functions which have been delegated by Council to the Licensing Applications Committee and onward to the Head of Environment and Consumer Services, hence the replacement functions are therefore also within the remit of the Committee and may appropriately be exercised by the Head of Environment and Consumer Services.

9. FINANCIAL IMPLICATIONS

- 9.1 The Government's intention is that the cost of administering the licensing regime will be met from fee income. Such costs include the costs of assessing suitability of applicants and monitoring licence compliance. The costs of investigation and enforcement against unlicensed operators will not form part of the cost recovery but must be met by the Council. The number of existing operators is low and it is considered that the additional workload imposed will be absorbed within existing resources, however, there is a risk that should the investigation and enforcement elements be more than expected a shortfall could occur.

10. APPENDICES

APPENDIX 1

Scrap Metal Dealers Act 2013

New Delegations to be added to Register:

Delegations to Head of Environment and Consumer Services

Section 2 power to issue scrap metal licence (site licence or collector's licence)

Section 3 powers and duties relating to issue of scrap metal licence

Section 4 power to revoke scrap metal licence, to vary licence and to impose conditions pending the coming into effect of a revocation

Section 6 duty to supply information to specified bodies on request, and power to supply information in other cases

Section 8 duty to notify Environment Agency of notifications, variations and revocations

Section 16(1) right to enter and inspect licensed site on notice to site manager

Section 16(2) right to enter and inspect licensed site otherwise than on notice in specified circumstances

Section 16(5) and (8) power to apply for warrant to enter licensed premises or unlicensed premises where there are reasonable grounds for believing they are being used by a scrap metal dealer in the course of business, and power to use reasonable force in the exercise of the powers under a warrant

Section 16(9) power to require production of, and inspect, any scrap metal kept at any licensed premises or any premises mentioned in a warrant under section 16(5); power to require production of, and inspect, any records kept in accordance with sections 13 or 14 and any other records relating to payment for scrap metal; power to take copies of or extracts from any such records.

Schedule 1 paragraph (3) power to vary licence from one type to another

Schedule 1 paragraph 4(1) power to request further information

Schedule 1 paragraph 4(2) power to decline to proceed with application where applicant fails to comply with paragraph 4(1) request

Schedule 1 paragraph 6(2) power to set fee for application

Schedule 1 paragraph 7 duty to give applicant or licensee notice of proposed refusal, revocation or variation; power to refuse, revoke or vary where no representations made; duty to consider representations; duties with regard to oral representations

Schedule 1 paragraph 8 duty to give decision notice with reasons on refusal, revocation or variation under section 4

Schedule 1 paragraph 9(7) duty to comply with directions given by magistrates' court on appeal

Delegations to Head of Environment and Consumer Services in consultation with Head of Legal Services

Schedule 2 paragraph 2 powers and duties with regard to closure notice

Schedule 2 paragraph 3 power to cancel closure notice

Schedule 2 paragraph 4 power to apply to magistrates court for closure order

Schedule 2 paragraph 6 power to make a certificate ending closure order, and related duties

Schedule 2 paragraph 8 power to appeal to Crown Court against magistrates court decision not to make closure order or against discharge order

Schedule 2 paragraph 9 power to enter premises to secure compliance with closure order

Delegations to Head of Legal Services

Power to institute proceedings for the following offences under the Scrap Metal Dealers Act 2013

Section 1(3) carrying on business as a scrap metal dealer without a licence

Section 8 (9) failure to comply with section 8 (notification requirements)

Section 10(5) failure to comply with section 10 (display of licences)

Section 11(4) receiving scrap metal without verifying person's name and address

Section 11(7) giving false name or address to scrap metal dealer on delivering scrap metal

Schedule 2 paragraph 9 offences relating to closure orders

Section 12(4) paying for scrap metal otherwise than by cheque or electronic transfer (i.e. paying by cash)

Section 15 (4) failing to fulfil requirement of sections 13 or 14 (records of receipt or disposal)

Section 16(13) obstructing the exercise of a right of entry or inspection under section 16, or failing to produce a record required to be produced under section 16.

Schedule 1, paragraph 3(5) failing to make application to vary licence in circumstances in paragraph 3(2)

Schedule 1 paragraph 5 knowingly or recklessly making false statement in application or in response to request under paragraph 4(1)

Schedule 2 paragraph 9 offences in relation to closure orders

Schedule 2 paragraph 9 offence of obstructing exercise of powers under paragraph 9

Delegations to be removed from Register:

HECS

No.39 reference to 1964 Act to be updated to 2013, and refer to licensing rather than registration

No. 41 amend scrap metal dealer registration to licensing

No. 225 - delete

11. BACKGROUND PAPERS

Home Office "Scrap Metal Dealer Act 2013: Guidance on Licence fee charges"

Local Government Association: "Get in on the Act: Scrap Metal Dealers Act 2013"

Local Government Association: LGA Guide to the Scrap Metal Dealers Act: Applications

Local Government Association: Tackling Metal Theft - A Councillors' Handbook.