

EXECUTIVE 11 SEPTEMBER 2013

SCRAP METAL DEALERS ACT 2013

REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)



Hinckley & Bosworth
Borough Council

A Borough to be proud of

WARDS AFFECTED: ALL WARDS

1. **PURPOSE OF REPORT**

- 1.1 To inform members of the licensing requirements of the Scrap Metal Dealers Act 2013 and to seek approval for the scheme of delegation and licensing fees.

2. **RECOMMENDATION**

- 2.1 The Executive are asked to consider the report on the implementation of the Scrap Metal Dealers Act 2013 and to approve the following recommendations:

- (a) the charges of £ 280 for a new licence and £ 180 for a variation of licence are introduced as shown at Appendix 2.
- (b) that all contested applications are considered by a Licensing Panel made up of three members of the Licensing Regulatory Committee;
- (c) that both the designations of Authorised Officers under the Act, as set out in paragraph 3.25, and the Scheme of Delegation as set out at Appendix 1 be recommended for approval by the Council.

3. **BACKGROUND TO THE REPORT**

- 3.1 The increased value of metal has caused a growing problem of metal thefts in the whole of the U.K. The Home Office has estimated that there were 80,000-100,000 reported metal theft offences in 2010/11 alone and is costing the economy up to an estimated £260 million per year. A wide range of sectors have been hit including national transport, electricity and telephone links, street furniture, memorials, commercial and residential building including churches and schools.
- 3.2 In 2012 the government brought in some initial steps to prohibit cash payments for scrap metal, amend Police 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 contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- 3.3 The Local Government Association, along with a range of other bodies – pressed the government further to reform the regulation of scrap metal dealers. The result was the Scrap Metal Dealers Act 2013, delivering much needed reform of the scrap metal sector. The 2013 Act will provide effective and proportionate regulation of the sector, creating a more robust, local

authority run, licensing regime that will support legitimate dealers yet provide the powers to effectively tackle unscrupulous operators.

- 3.4 The 2013 Act will allow the Council to decide who should and should not be licensed, allowing us to refuse a licence upon application or to revoke a licence at any time if we are not satisfied that the applicant is a suitable person to carry on business as a Scrap Metal Dealer. The act also creates closure powers for unscrupulous dealers who operate without a licence. It extends the record keeping requirements placed upon scrap metal dealers and requires the verification of the people Scrap Metal Dealers are transacting with. The act will integrate the separate regulation for motor salvage operators with the scrap metal sector and bring to an end the cash exemption given to some collectors under the 1964 Act.
- 3.5 Finally, the 2013 Act creates a fee raising power, to allow local authorities to recover the costs stemming from administering and seeking compliance with the regime.
- 3.6 In order for anyone to carry on business as a scrap metal dealer they must obtain a licence. The licence will be valid for three years and trading without a licence is a criminal offence.

There are two types of licence specified in the Act:

- Site licence
All the sites where a licensee carries on business as a scrap metal dealer have to be identified, and a site manager has to be named for each site. This licence allows the licensee to transport scrap metal to and from those sites from any local authority area.
 - Collector's licence
This allows the licensee to operate as a collector in the area of the issuing local authority. It does not allow the collector to operate in any other local authority area, so a separate licence has to be obtained from each council the collector wishes to operate in. The licence does not authorise the licensee to operate a site; to do so they will need a site licence from the relevant local authority.
- 3.7 It should be noted that a dealer can only hold one type of licence in any one local authority area. They have to decide whether they are going to have a site or a mobile licence in any one area. They cannot hold both a site and mobile collector's licence from the same council.

Timetable for transition to new regime

- 3.8 The licensing regime created by the Scrap Metal Dealers Act 2013 will commence on 1 October 2013. In order to provide time for councils to process applications without existing businesses being in a position where they cannot operate, the Home Office is implementing a transition process.
- 3.9 The transition arrangements will be implemented by a commencement order which will be made in August 2013. This order will allow councils to set a licence fee for applications from 1 September. It will also specify that the

remaining sections in the Act commence on 1 October, apart from the majority of criminal offences and enforcement-related provisions, which will come into force on 1 December. The exception to this will be the ban on using cash to pay for scrap metal which will also come into force on 1 October. Any dealer currently registered under the 1964 Scrap Metal Dealers Act, or a motor salvage operator already registered under the 2001 Vehicles (Crime) Act, will be deemed to have a licence under the 2013 Act until the council grants a licence or sends the dealer notice of its decision to refuse the licence, provided they submit an application on or before the 15 October. If they do not submit an application their deemed licence will lapse on 16 October. If they wish to trade in the future they would then need to submit an application, but would not be able to legally trade until a licence had been granted.

- 3.10 While their application is being considered by the council, these dealers will be able to operate as if they have a licence. No date will be specified in the regulations setting out when councils will have to have made a decision on applications made between 1 and 15 October. It is recommended that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1 December 2013. Dealers will therefore be able to continue to trade without disruption during the transition period without fear of being prosecuted for operating illegally. While an actual transitional licence need not be issued, sending the dealer an acknowledgement that the application has been received on or before 15 October 2013 will enable a dealer to satisfy the police that during this period they were legally able to operate.
- 3.11 Where an applicant is not registered under the Scrap Metal Dealers Act 1964 or the Vehicles (Crime) Act 2001 before 1 October then they will not be able to trade legally after 1 October until a licence has been issued. Full enforcement of the provisions in the 2013 Act will commence from 1 December 2013.

The transition timeline is:

- The Commencement Order will be made in August.
- This will allow local authorities to set a licence fee from 1 September.
- The main provisions of the Act commence on 1 October including the offence of buying scrap metal for cash.
- Dealers and motor salvage operators registered immediately before 1 October will be deemed to have a licence under the Act from 1 October.
- Provided the dealer submits an application for a licence on or before 15 October 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 but does not supply all the required information with the application form then the deemed licence remains in effect after 15 October.
- Where a dealer with a deemed licence fails to submit an application on or before 15 October the deemed licence will lapse on 16 October.

- Other scrap metal dealers, not previously registered, will be able to apply for a licence from 1 October 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 is recommended that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1 December.
- All other enforcement provisions within the Act commence on 1 December.

3.12 There are two implications for councils arising from this transitional timetable. We need to be in a position to accept applications for licences from 1 October. To do that we will have had to have agreed the fees to charge applicants no later than the end of September.

Application fees

- 3.13 Any application must be accompanied by a fee. The fee is set by the local authority having had regard to guidance issued by the Home Office.
- 3.14 In setting our fees we have had regard to the requirements of the European Union Services Directive and any licensing case law, of which the recent case in the Court of Appeal of *Hemming v Westminster City Council* is especially relevant.

In calculating our fees we have taken into account:

- all the activity required with processing and granting a licence such as considering applications and assessing the suitability of the applicant
 - staff costs associated with supporting the service,
 - support provided by other parts of the council to the licensing team such as legal services and any other associated recharges,
 - the cost of providing advice and guidance to applicants on what will be a new process
 - carrying out inspections and ensuring compliance with the law
 - training for 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
 - making and reviewing any policies in relation to the operation of the new licensing regime
 - issuing the licence
 - Invoicing costs
 - any officer time spent providing information for inclusion in the register of dealers.
- 3.15 These costs are likely to differ over the period from the initial grant of a licence through to the renewal of the licence three years later, which suggests that we will need to reassess the fees on a regular basis.
- 3.16 Not mentioned in the list immediately above, but a potentially significant cost, will be holding 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 might be. Given the likely number of applicants is very difficult to assess it would be sensible to increase the number of hearings in any estimate rather than decreasing them. However once at the end of the first year of operation of the licensing system it would be sensible to review how many hearings there had actually been and revise the fees accordingly.

- 3.17 In assessing the costs of any hearings where the applicant makes oral representations to the local authority, councils will have to have regard to:
- the cost of communicating with the applicant and any representatives they have
 - how much it costs to prepare and issue the notice setting out what the council proposes to do as required by paragraph 7(1) in Schedule 1
 - what costs are incurred in preparing the report to the Committee
 - the cost of printing and sending out the agendas, legal services costs and any legal advice the committee needs
 - officer costs associated with actually running the hearing.
- 3.18 When looking at enforcement costs we have to bear in mind that they must be based on the principles of good regulation, and they have to be set in an open and transparent way. An important point arising out of the *Hemming v Westminster* case is that the fees cannot be used to pay for enforcement action against unlicensed dealers (particularly collectors) or as an economic deterrent or to raise funds. The limitation placed by the EU Services Directive around enforcement means that councils cannot recover the cost of issuing closure notices to unlicensed dealers and applying for closure orders from the magistrates' court.
- 3.19 A further consideration is that councils cannot demand a fee where that has not been determined. In the case of *Hemming* there were a number of years where in effect the fee was carried over from the previous year without being considered in detail by a committee or the council. This point highlights the importance of regularly reviewing the fees and also making sure that when committees come to determine fees they have all the relevant information before them, otherwise they could be subject to legal challenge.
- 3.20 Appendix 2 shows the fee breakdown associated with the licensing of scrap metal dealers.

Objections to Licence Applications

- 3.21 The Police may object to a licence application where they believe that the applicant is not a suitable person. The local authority, having considered the Police objections and having considered all other information must decide whether they will issue a licence. If the local authority is minded not to issue a licence they must allow the applicant the right to make either oral or written representations.
- 3.22 In order to ensure that the application process is open and transparent it is proposed that all representations are heard by a 'Licensing Panel' which would be made up of three members from Licensing Regulatory Committee. It is anticipated that the hearings would be managed in a similar way to

Licensing Act hearings, where Members hear representations from all parties involved before making a decision.

- 3.23 There is a right of appeal to the Magistrate's Court against the decision to refuse a licence application, to include a condition within the licence, to revoke the licence or to vary the licence

Delegation of Functions

- 3.24 There are various requirements under the Act that will require timely and clear decisions.
- 3.25 Set out at Appendix 1 is a proposed scheme of delegation for functions under the Act.

The Act allows both the police and local authority officers to enforce the provisions of the legislation. It is proposed that the following designation of officers is authorised under the Act:

Principal Licensing Officer
Licensing & Compliance Officer
Environmental Health Officers
Environmental Health Technical Officers
Chief Officer (Environmental Health)
Environmental Health Manager (Commercial)

4. FINANCIAL IMPLICATIONS [IB]

- 4.1 The proposed charge for a new licence is £280. The proposed charge for a variation to the licence is £180. The charges are based on latest budget in the current financial year and allow for recovering direct and indirect costs associated with the service. A cost breakdown is attached in Appendix 2.

There are at least fourteen existing business that will need to apply for the licence. The estimated income from these businesses is £3,920.

The charge will be included within the Council's Scale Fees and Charges.

- 4.2 Costs for running the service will be met from existing budgets.

5. LEGAL IMPLICATIONS [MR]

- 5.1 The legal implications of the Act for the Council are set out comprehensively in the report.

6. CORPORATE PLAN IMPLICATIONS [RP]

- 6.1 Will help improve control of the scrap metal industry within the Borough and thereby contribute towards the Council aims of creating a vibrant place to work and live.

7. **CONSULTATION [MB]**

7.1 All Licensed Scrap Metal Dealers and Motor Salvage Operators within the borough have been written to and informed of the changes to the legislation and have also been visited by the Licensing Officer and the Police.

8. **RISK IMPLICATIONS**

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Reputation, Legal, Regulatory	The Council follows the Home Office guidance in implementing the Act and fee setting.	Mark Brymer
Knowledge and skills of staff	Ensure adequate training given to enforcement staff	Mark Brymer

9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

An equality impact assessment has not been conducted as this is primary legislation and applies nationally and there are no implications locally as enforcement work in respect of scrap metal will be carried out consistently on the basis of risk for all premises across the whole Borough.

10. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- Community Safety implications - Environmental implications
- ICT implications - Asset Management implications
- Human Resources implications - Planning Implications - Voluntary Sector

Background papers: Scrap Metal Dealers Act 2013,
Get in on the Act – LGA Briefing
Home Office Guidance

Contact Officer: Mark Brymer ext 5645
Executive Member: Councillor David Gould