

Report to Licensing Committee

Date of meeting: 10 September 2013

Subject: SCRAP METAL DEALERS ACT 2013



**Epping Forest
District Council**

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Committee Secretary: Adrian Hendry, ext.4246

Recommendations/Decisions Required:

That the Committee:

- (1) Notes the licensing requirements of the Scrap Metal Dealers Act 2013**
- (2) Agrees that the draft guidance subject to any amendments is the subject of a consultation.**
- (3) Provides comments on the suggested licence fees prior to submission to the Council for approval.**
- (4) Recommends to the Council that Officers are granted the necessary delegations as specified in the draft guidance so that these are in place at the commencement of the Act in October.**
- (5) Recommends to the Council that the Director of Corporate Support Services and the Director of Environment and Street Scene have delegated authority to authorize officers to carry out inspections of the sites and vehicles used and conduct investigations and to issue prosecutions that may arise under the Act.**

EXECUTIVE SUMMARY:

The purpose of this report is to inform Members of impending changes to the regulatory regime for controlling scrap metal dealing to be implemented through provisions of the Scrap Metal Dealers Act 2013, and the increased duties and powers which this gives to the Council.

BACKGROUND

The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013 and is due to come into force in October this year. The new Act will replace the Scrap Metal Dealers Act 1964 and the part of the Vehicle (Crime) Act 2001 that deals with motor salvage operators. The Act revises the regulatory regime for scrap metal dealing and vehicle dismantling. Local authorities will continue to act as the main regulator but the new system gives the Council more powers, including the power to refuse an application for a licence and also to revoke licences if the dealer is considered

unsuitable. Both the local authority and the police have been given powers to enter and inspect premises.

The changes in the legislation have been prompted as a result of the impact of metal theft. This has become an increasing problem as the value of metal across the UK as a whole has risen. A wide range of bodies in both the public and private sectors are commonly affected by this criminal activity. Targets include transport, electricity and telephone links, street furniture, memorials; affecting both commercial and residential buildings, including churches and schools.

In 2012, the Government brought in some initial restrictions through the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and these were as follows:

- to prohibit cash payments for scrap metal;
- to amend police powers of entry into unregistered scrap metal sites; and
- to increase the existing financial penalties for offences under the Scrap Metal Dealers Act 1964.

There has already been an increase in the number of people applying for registration as scrap metal dealers in the district since the new legislation was announced

At present, there are 6 registered Scrap Metal Dealers and 7 Itinerant dealers within the Epping Forest District Council.

Key features of the Act

The aim of the legislation is to revise the regulatory regime for scrap metal dealing and vehicle dismantling and to give the police and local authorities more powers to refuse and revoke licences as well as greater rights of entry and inspection.

The Act brings in two types of licences: a 'site licence' and a 'collectors licence'. A person can only hold one licence in a local authority's area but can hold a licence in more than one local authority.

The Authority must not issue or renew a licence unless it is satisfied that the applicant is suitable to carry on business as a scrap metal dealer and in making this decision the local authority can have regard to:

- 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 to issue or renew a scrap metal licence;
- Any previous refusal for an environment permit or registration;
- Any previous revocation of a scrap metal licence; and
- 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, any secretary of a company or any shadow director of the company if the applicant is not an individual.

Once an application has been received, the local authority must consult with:

- Any other local authority (if an application has been made or licence issued to the same applicant);

- The Environment Agency; and
- The Police.

The Act has also introduced the requirement for the Environment Agency to keep and maintain a register of scrap metal licences issued in England, which will be open for public inspection.

The Act will introduce the requirement for scrap metal dealers to verify the identity and full name and address of the metal supplier and keep copies of proof of identification. In addition, the dealer must keep records of the type of description of the metal(s) acquired, including weight and identifying marks, the date and time of receipt, the vehicle registration of any vehicle delivering the metal and copies of cheques used to pay for metal. All records must be kept for 3 years. The Act also prohibits the payment of cash for metals.

Local authority and Police officers have been given the 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. The Act provides police and local authority powers to issue closure notices to unlicensed scrap metal dealing premises and apply to a Justice of the Peace for a closure order.

The current legislation for scrap metal dealers only requires basic information to be supplied and no fee is payable. The new Act will require more detailed information to be submitted upon application and will allow the local authority to set a fee. The fee must be fixed to allow cost recovery and local authorities will have to have regard to guidance issued by the Secretary of State.

Next Steps

In preparation for the implementation of these new powers and duties, the Council will need to make arrangements for dealing with applications; set a fee; authorise officers to exercise the new powers; and assign resources to ensure compliance.

A short consultation exercise on the proposed policy will take place with existing local scrap metal dealers and motor salvage operators; Essex Police; British Transport Police; Environment Agency and Industry Associations. This will also serve to make these parties aware of the commencement of the new system.

Dealing with Applications

Licensing Officers, have participated in a small working group of the Essex Licensing Officers Forum to draft a Statement of Licensing Policy, which can be adopted as a model of best practice across the county. A copy of the proposed policy is attached. (with some amendments) This document sets out how applications will be dealt with during the transitional period and for new applicants.

Fee Setting

Fees are to be set locally by each authority on a cost recovery basis, but local authorities will have a duty to have regard to guidance issued by Secretary of State. This will outline the issues that should be considered by them when setting the fee and what activities the fee can cover. This fee will be an essential component of the new regime as it will provide local authorities with the funding they need to administer the regime and to ensure compliance.

A copy of the guidance is attached. The routine review of the level of fee will ultimately form part of the Council's annual adoption of fees and charges. However, because the Council has to be in a position to process applications as soon as the new system comes into effect, in the interim, the Licensing Members will be asked to recommend to the Council the level of fee to be charged, as permitted under the Council's scheme of delegations.

Delegation Arrangements

A schedule of delegations on decision making is included in the draft policy.

It will be necessary for the officers from the Council to have authority to enter onto sites to carry out any necessary investigations and to institute proceedings in case of a breach of the requirements of the Act and members are requested to recommend to the Council that these are granted.

LEGISLATION/POLICY

The Scrap Metal Dealers Act 2013 will come into effect on 1 October 2013 with Transitional Arrangements taking effect from 1 September 2013.

Under Schedule 1 of the Act, an applicant may appeal to the Magistrates' Court against the refusal of an application made under paragraph 2 or 3 of Schedule 1 of the Act.

Resource Implications

Financial Implications

The issue of the licences are intended to be self financing.

Inclusion, Diversity and Community Cohesion Implications

Each application will be dealt with on its own merits, therefore there are no inclusion, diversity and community cohesion implications arising from this report. Further consideration will be given to the means of communicating the policy to target audiences and the policy will be reviewed taking account of the replies to the consultation prior to adoption by the Council.

Legal and Governance Implications:

The Scrap Metal Dealers Act 2013 and guidance issued by the Secretary of State.

Safer, Cleaner and Greener Implications:

The purpose of the Act is to introduce regulation to reduce crime.

Consultation Undertaken:

None. If it is agreed, the draft policy document will be put out to consultation.

Background Papers:

Impact Assessments:

Risk Management Implications

Relevant risks/opportunities in conjunction with this matter have been considered and are referred to in the body of the report, as appropriate.

Scrap Metal Dealer Act 2013: guidance on licence fee charges

Context

The Scrap Metal Dealers Act 2013 (referred to in this guidance as the 2013 Act) received Royal Assent on the 28 February 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. It will raise trading standards across the whole sector.

Introduction

The 2013 Act will allow local authorities to decide who should and should not be licensed, allowing them to refuse a licence upon application or to revoke a licence at any time if they 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.

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. This element of the legislation will be the focus of this guidance.

The intention is for the act to be implemented in October 2013.

Licensing requirements placed upon scrap metal dealers

Section one of the 2013 Act requires a scrap metal dealer to obtain a licence 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. In addition, Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the authority.

Aim and scope

Local authorities will be responsible for administration and compliance activity in relation to the 2013 Act. This guidance is provided to local authorities in relation to the carrying out of their fee raising function. It also provides information for the benefit of those who will be applying for a scrap metal dealer's licence and the general public. This guidance applies to local authorities in England and Wales and is produced in accordance with the 2013 Act.

Legal status

Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the local authority. In setting a fee, the authority must have regard to any guidance issued from time to time by the Secretary of State with the approval of the Treasury. This Guidance is therefore binding on all licensing authorities to that extent.