

1. **Scrap Metal Dealer Act 2013 and The Council Scheme of Delegation**

**Submitted by:** Julia Cleary – Democratic Services Manager

**Portfolio:** Safer Communities

**Ward(s) affected:** All Wards

**Purpose of the Report**

The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013 and is due to take effect from October this year.

The Act provides that an application for a licence must be accompanied by a fee set by the Local Authority and this report requests that the Council's Scheme of Delegation be amended to delegate this fee setting power to the Licensing Committee.

**Recommendations**

- a. That the power to set fees under the Scrap Metal Dealers Act 2013 be delegated to the Licensing Committee.
- b. That authority to grant applications received under the Act where there are no questions relating to the suitability of the applicant be delegated to Licensing Officers.
- c. That where questions do arise regarding the suitability of the applicant, the application be referred to the Licensing Committee or Licensing Sub Committee.

**Reasons**

The introduction of the Scrap Metal Dealers Act from October 2013 will replace all previous legislation relating to Scrap Metal Dealers and Motor Salvage Operators.

The Council will be required to set appropriate fees for the licences in the Act.

The requirements on Councils to allow an applicant to make oral representations means that it will be appropriate to refer any contested applications to the Licensing Committee or Licensing Sub-Committee.

Those applications which are uncontested or where there are no questions about the suitability of the applicant can be delegated to licensing officers to make the decision on whether or not to grant the application. Before this can occur the Council will need to consider its scheme of delegation.

1. **Background**

The Scrap Metal Dealers Act replaces the previous registration system for scrap metal dealers created by the 1964 Scrap metal Dealers Act. Every scrap metal dealer will be required to have a licence and operating without one will be a criminal offence. Under the new legislation the definition of a scrap Metal dealer is extended so it now includes motor salvage operators, and the provisions in the Vehicles (crime) Act 2001 under which they operate will end once the new Act comes into effect

Under the previous Act the Council had to register anyone who notified it that they were operating as a scrap metal dealer; under the new regime the Council will be able to refuse to grant a licence where the applicant is judged not to be a suitable person to operate as a scrap metal dealer.

The new regime will be in force from 1<sup>st</sup> October 2013, but with a transitional period to ensure a smooth hand over from the old system to the new.

In order for anyone to carry on a business as a scrap metal dealer they will have to have a licence. The licence will last for three years and trading without the 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.

### **Collectors 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, so a separate licence has to be obtained from each council the collector wish 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.

It should be noted that a dealer cannot hold more than 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.

## **2. Issues**

### **Application Fees**

Any application must be accompanied by a fee; the fee must be set by the Local Authority. The fee must be set having regard to the Home Office Guidance which has now been issued. The local Authority must also have 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. It is proposed that the Licensing Committee be given delegated authority to set the application fees.

### **The application process and assessing the suitability of the applicant**

Section 3 of the Act states that the Council must not issue a licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer. In assessing an applicant's suitability the Council can consider any information it considers relevant but the list specified in the legislation includes the following and a decision based on these factors will put the Council in a stronger position should it be asked to defend its decision:

- The applicant or site manager have been convicted of a relevant offence or subject to any relevant enforcement action
- The applicant has previously been refused a scrap metal dealers licence
- The applicant has previously been refused a relevant environmental permit or registration
- They had previously held a scrap metal dealers licence that has been revoked

Much of this information will be set out in the application form and it is an offence for the applicant to make a false statement.

As part of the application process the applicant will also be required to provide a basic disclosure certificate with the application form. Refusal by an applicant to supply a certificate would be grounds for the council to consider what further information it needed to judge whether the applicant was suitable.

In any case the Democratic Services Manager or relevant licensing officer will liaise with the Head of Environmental Health, the Head of Planning (to ensure that the relevant planning permissions are in place) and the police prior to granting any scrap metal dealer licence.

### **Rejection of an Application and the role of the Licensing Sub Committee**

Where the Council proposes to reject an application (or revoke it or vary it) the applicant has to be notified with what the Council proposes to do and the reasons for it. If having conducted an initial assessment of an applicant's suitability the Council is minded to refuse the application, the relevant officer must write to the applicant to let them know.

The notice from the Council must give the applicant the opportunity to make representations or let the council know that they wish to. The notice must also specify a period of time in which the applicant does this, which cannot be less than 14 days from the date on which the notice is given to the applicant. If the applicant does not make any representations, or does not say that they wish to in that time period then the Council can refuse the application or revoke or vary the licence. Where the applicant states they want to make representations the Council has to give them a further period in which to do so, and only if they fail to do so can the Council refuse the application or revoke it or vary the licence.

Where the applicant makes representations the council has to consider them and if the applicant states they want to make oral representation the council must provide them with the opportunity to appear before a licensing committee.

### **3. Options Considered**

As set out in the recommendations.

### **4. Proposal**

- a. That the power to set fees under the Scrap Metal Dealers Act 2013 be delegated to the Licensing Committee.
- b. That authority to grant applications received under the Act where there are no questions relating to the suitability of the applicant be delegated to Licensing Officers.
- c. That where questions do arise regarding the suitability of the applicant, the application be referred to the Licensing Committee or Licensing Sub Committee.

### **5. Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

- creating a cleaner, safer and sustainable Borough
- creating a Borough of opportunity
- creating a healthy and active community
- transforming our Council to achieve excellence

7. **Legal and Statutory Implications**

The Council has a duty to act under the Scrap Metal Dealers Act 2013 which is due to come into force on 1<sup>st</sup> October 2013.

8. **Financial and Resource Implications**

A fee will now be set for all scrap metal dealer licences.

Depending on the number of applications received this could place an additional burden on licensing staff but it is not expected that there will be many applications and as each licence lasts for three years there should be not an excessive amount of additional work associated with the new legislation.

10. **Major Risks**

None identified.

15. **Background Papers**

Scrap Metal dealers Act 1964

LGA guide to the Scrap Metal dealers Act 2013: Applications

Scrap metal Dealer Act 2013: Guidance of licence fee charges