

NEW SCRAP METAL DEALERS ACT 2013

Housing and Community Safety Advisory Committee – 15 October 2013

Report of the: Chief Officer Environmental and Operational Services

Status: For Decision

Also considered by: Cabinet – 7 November 2013

Key Decision: Yes

This report supports the Key Aim of Safe Communities to aid in the reduction of crime within the District.

Portfolio Holder Cllr. Ms Lowe (Housing and Community Safety)

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Recommendation to the Housing and Community Safety Advisory Committee: That Cabinet be recommended to approve the appropriate fee levels as set out in paragraph 25 of the report.

Recommendation to Cabinet: That, subject to any comments of the Housing and Community Safety Advisory Committee, the fees set out in paragraph 25 of the report be approved.

Reason for recommendation: to ensure that the Council complies with its Statutory duty under the Scrap Metal Dealers Act 2013.

Introduction and background

1. The Act repeals the Scrap Metal Dealers Act 1964 (and related legislation) and Part 1 of the Vehicles (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Act maintains local authorities as the principal regulator, but gives them the power to better regulate these industries by allowing them to refuse to grant a licence to 'unsuitable' applicants and a power to revoke licences if the dealer becomes 'unsuitable'.
2. The licensing regime introduced by the Act is very similar to the licensing of taxi drivers and the issuing of Personal Licences under the Licensing Act. The suitability of applicants is based on a number of factors as outlined in the Act, including any unspent relevant criminal convictions. Whilst it is expected that straightforward applications will be decided under delegation to Officers, any applications with objections where the applicant wishes to make representations

would need to be heard at a hearing, with an option to appeal their decision to the Magistrates' Court.

3. It had been expected that the Home Office would make regulations about the new Scrap Metal Dealer Act which would allow the Council to manage the licensing process in the same way it manages its other licensing functions, namely to delegate them to the Licensing Committee. Although the Act has come into force these regulations have not been made. This means that these matters are the responsibility of Cabinet rather than Council and the Licensing Committee. Delegations from the Leader to the relevant Officers will be made separately.

Licences

4. Under the Act there are two types of licence; a site licence and a collector's licence, which will both be administered by the local authority. Site managers will need to be named on site licences. Collectors will need a licence in each local authority area in which they collect. Both types of licence last for three years.
5. The local authority must be satisfied that the applicant is a suitable person to hold a licence before it can grant a licence. The scope of this requirement will include applicants, site managers, directors, secretaries and shadow directors of companies.
6. It is proposed that the Council will require a photograph to accompany the application for a Collector's Licence. It is envisaged that the photograph will form part of the licence document and will enable Officers to identify licensed collectors.

Determining Applications

7. Section 3 of the Act states that a Council must not issue a licence unless it is satisfied the applicant is a suitable person to carry on a business as a scrap metal dealer, identified via a 'suitability test'. In the case of a partnership, the suitability of each partner will be assessed. In the case of a company, it means assessing the suitability of any directors, company secretaries, or shadow directors.
8. In assessing an applicant's suitability, the Council can consider any information considered relevant. The Council will be in a stronger position to defend any challenges to a decision to refuse a licence where the decision is based on the factors specifically listed in legislation, which includes whether:
9. The applicant or site manager has been convicted of a relevant offence or subject to any relevant enforcement action (Statutory Guidance has been published and is attached as Appendix B);
10. The applicant has previously been refused a scrap metal dealers licence or an application to renew a licence has been refused.
11. The applicant will be required to complete an application and declare that the information provided is correct. The applicant will commit an offence under the Act should they make a false statement, or recklessly make a statement which is false in a material way.

12. The authority will want to satisfy itself that an applicant is suitable by checking they do not have a previous relevant conviction, have not been the subject of enforcement action, or have been refused a licence. There is no requirement under the Act for applicants to provide a Basic Disclosure Certificate (BDC). However, it is proposed that an applicant is required to submit a Basic Disclosure Certificate provided by Basic Disclosure Scotland as part of the application process. The Council will require the certificate to be within 30 days of its issue when presented with the application.
13. Should an applicant refuse to supply a BDC this would be grounds for the Council to consider what further information was needed to judge whether the applicant was suitable to hold a licence. Refusal to submit a Basic Disclosure Certificate would be grounds for the Council to decline to proceed with the application.
14. The application period includes a transitional period for those currently registered under the Scrap Metal Dealers Act 1964 and the Vehicles (Crime) Act 2001. The guidance issued by the Local Government Association (Appendix B) recommends for those registered under the former licensing regime, that their BDC is no more than 3 months old at the time of application. During the transitional period, the Council will accept relevant standard or enhanced disclosure certificates which are no more than three months old at the date of application.
15. Once the transitional period has ended, the Council will require an applicant to provide a Basic Disclosure Certificate (including standard and enhanced disclosures) that are no more than one month old at the time the application is submitted. The authority recognises that a Basic Disclosure Certificate will reveal only any unspent convictions on the Police national computer. The Certificate will not provide details of convictions for relevant offences secured by the Environment Agency or equivalent, or other local authorities. In the case of applications received during the transitional arrangements or for any new applications, the authority will consult with the Environment Agency or equivalent and the Police. The authority will reserve the right to also contact any other local authority it feels necessary to determine the suitability of an applicant(s).
16. In the case where a Basic Disclosure Certificate highlights a relevant conviction the authority will seek further information from the Police to enable the authority to better assess the applicant(s) suitability. The authority will also check public records held by the Environment Agency or equivalent to assess if any enforcement action has been taken against an individual. In certain circumstances it may be necessary to make direct contact with the above to assess if any on-going enforcement action is pending, which may not be held on a public register at the time of application.
17. If the Council should receive information that an applicant(s) has been convicted of a relevant offence, a judgement will be made whether to refuse or grant the licence. The Council will take into account any information received by an applicant or other bodies. The Council will consider the nature of the offence or enforcement action, the gravity of the offence or enforcement action, when the enforcement action was taken, or any other relevant information as defined by the Act.

Representations

18. In the case where the authority rejects an application(s), or revokes, or varies a licence, the Council will notify the applicant or licence holder by way of a written Notice. The Council will advise the applicant(s) or licence holder what the authority proposes to do and the reasons behind the action. The Notice will stipulate that the applicant/licence holder has the opportunity to make a representation, or let the authority know that they wish to. The applicant/licence holder has up to 14 days from the date of the Notice to respond.
19. If the applicant/licence holder does not make a representation, 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 authority will provide a further reasonable period in which to do so. If the applicant fails to provide a representation within the agreed period then the authority will refuse the application, or revoke, or vary the licence.

Hearings

20. Where the applicant makes representations, the authority has to consider them in accordance with the Act. If the applicant wishes to make oral representations the authority will arrange a hearing. It is anticipated that these hearings will follow the procedures for hearings under the Licensing Act 2003. The Council anticipates that further guidance on hearings will be issued.
21. Should the Council refuse an application, revoke or vary a licence the applicant/licence holder will receive a Notice of Decision, which will set out the Council's reasons for its decision. The Notice will inform the applicant, or licence holder of their right to appeal to the Magistrates' Court and, where the licence has been revoked or varied, the date under which that comes into effect.

Conditions

22. In cases where the applicant or any site manager has been convicted of a relevant offence, or where the authority is revoking a licence, the authority can impose conditions on the licence. The authority can impose one or both of two conditions, these conditions specify that:
 - the dealer can receive scrap metal only between 9.00am and 5.00pm on any day, in effect limiting the dealer's operating hours; and/or
 - any scrap metal received has to be kept in the form the dealer received it for a set period of time, which cannot be more than 72 hours.
23. There is no equivalent set of conditions for collectors.

Fees

24. The Act provides that an application for a licence must be accompanied by a fee. The fee will be set locally by each local authority on a cost recovery basis. Local authorities will have a duty to have regard to guidance issued by the Secretary of State which outlines the issues that should be considered 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 legislation and ensure compliance (Appendix A).

25. In setting a fee, the authority must have regard to any guidance issued by the Secretary of State, the proposed fees have been calculated using that Guidance (Appendix A) and are as follows;

Site Licence – Grant (3 years)	£415
Site Licence - Renewal (3 years)	£355
Collectors Licence – Grant/renewal (3 years)	£260
Minor administrative change to licence -	£30.00
Variation - change of site manager -	£160
Variation from collector to site licence -	£210
Variation from site to collector licence -	£120

Other Options Considered and/or Rejected

26. The introduction of new legislation replaces the current legislation governing Scrap Metal and as such there is no alternative action.

Key Implications

Financial

The Local Authority is required under the Scrap Metal Dealer Act 2013 to set fees to administer the regime and ensure compliance. The fees levied in each local area are set by reference to the actual costs to each authority. The EU services directive states that a licence fee can only be used to pay for the cost 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.

Legal, Human Rights etc.

The Local Authority is required under the Scrap Metal Dealer Act 2013 to set fees to administer the regime and ensure compliance.

Equality Impacts

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
a. Does the decision being made or recommended through this paper have potential to disadvantage or discriminate against different groups in the community?	No	N/A

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
b. Does the decision being made or recommended through this paper have the potential to promote equality of opportunity?	No	
c. What steps can be taken to mitigate, reduce, avoid or minimise the impacts identified above?		

Appendices

Appendix A - Home Office: Scrap Metal Dealers Act 2013: guidance on licence fee charges

Appendix B - Home Office: Scrap Metal Dealers Act 2013 Determining suitability to hold a scrap metal dealer's licence

Background Papers:

None

Mr Richard Wilson
Chief Officer Environmental and Operational Services