

Item No. 8.	Classification: Open	Date: 4 September 2013	Meeting Name: Licensing Committee
Report title:		Scrap Metal Dealers Act 2013	
Ward(s) or groups affected:		All	
From:		Strategic Director of Environment & Leisure	

RECOMMENDATIONS

1. That the licensing committee notes the content of this report, including the timetable for implementation of the new licensing regime under the Scrap Metal Dealers Act 2013.
2. That the licensing committee notes that a proposed fees schedule for licences under the Act will be considered by the leader of the council under the IDM process, following a variation of delegation.
3. That the licensing committee notes the intention that, in advance of formal amendment to the council constitution, all cases where it is proposed to either reject, revoke or vary an application for a licence under the Act will be put to the licensing sub-committee for consideration.

BACKGROUND INFORMATION

4. Metal theft has, in recent years, had a wide ranging impact on communities, businesses and local authorities. We have seen disruption to public transport services, energy supplies and telecommunications; lead stolen from church roofs; manhole covers and street signs stolen and war memorials desecrated. A survey conducted by the Local Government Association (LGA) in early 2012 showed that seven out of ten councils had been the victims of metal theft. The Home Office has estimated that there were 80,000 – 100,000 reported metal theft offences in 2010/11 alone, with estimated costs to the UK economy of up to £260 million per year. These thefts have also had the effect of highlighting how ineffective the regulation of scrap metal dealers under current legislation, dating from the 1960s, had become.
5. In 2012, the government took some initial steps toward addressing the issue. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 saw police powers of entry into scrap metal sites amended; financial penalties for offences under the existing law increased; and cash payments for scrap metal made illegal.
6. More recently, on 28 February 2013, The Scrap Metal Dealers Act 2013 received Royal Assent. The Act repealed the current Scrap Metal Dealers Act 1964 and Part 1 of the Vehicles (Crime) Act 2001 and brought forward a revised regulatory regime for the scrap metal dealing and vehicle dismantling industry.
7. The Scrap Metal Dealers Act 2013 (Commencement and Transitional provisions) Order 2013 (made on 6 August 2013) confirmed that the main provisions of the Act come into effect as of 1 October 2013. Relevant provisions enabling local

licensing authorities to set fees and charges become effective as of 1 September 2013. Provisions relating to enforcement and offences under the Act come into effect as of 1 December 2013.

8. Overall responsibility falls under the Home Office. However, the Act maintains local authorities as the principal regulator of these industries and provides a basis for better regulation, through increased regulatory powers for both the local authority and police.
9. This report explains the new licensing regime and the proposed transitional arrangements. As these have been confirmed at short notice the report also asks the committee to note arrangements for establishing a fees schedule and interim arrangements for determining applications where it is likely that representations must be heard.

KEY ISSUES FOR CONSIDERATION

Key provisions of the new licensing regime

Licences

10. The Act makes it a requirement for a scrap metal dealer to hold a licence in order to carry on in business as a dealer. It is an offence to carry on a business without firstly obtaining a licence. Any person convicted can be fined at level 5 on the standard scale. Appendix A to this report provides further information on relevant definitions.
11. The Act creates two separate categories of scrap metal licences – a site licence and a collector’s licence.
 - A site licence allows the dealer to carry on business at any authorised site
 - The collector’s licence covers dealers who do not have a site but regularly collect through door to door collections.
12. Licences will be issued by the local authority in which the site is located or in which the collector operates. If a dealer intends to work from more than one local authority area, relevant licences will have to be obtained from each authority. A dealer may only hold either a site or collector’s licence in any individual authority’s area. Applications for a licence must be accompanied by full personal and business details (see Appendix A) and the relevant fee.

Suitability of the applicant

13. Local authorities must be satisfied that an applicant is a suitable person to operate as a scrap metal dealer before they may issue any licence.
14. When determining whether an applicant is suitable, a local authority may have regard to any information that it considers relevant. Full detail is provided within Appendix A to this report. However, relevant matters will include applicant’s behaviour in the operation of their business, alongside matters such as whether the dealer (or proposed site manager under a site licence) has been convicted of relevant offences or subject of relevant enforcement action. Prior refusals or revocations of scrap metal licences or environmental permits may also be taken into account.

15. To assist in determining this 'suitability test', a local authority can consult with other local authorities; the Environment Agency or Natural Resources Wales; and with the police. Agreement has also been reached between the Home Office and Disclosure Scotland allowing applicants for a scrap metal dealer's licence to apply for a Basic Disclosure as part of the application process.

Licence determinations

16. Licences granted will be valid for three years and may be renewed or varied or revoked. If an applicant or named site manager has been or is convicted of a relevant offence the local authority may add conditions requiring that:
 - The dealer must not receive scrap except between 0900 and 1700 on any day
 - That all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.
17. Where a council proposes to reject an application for a licence or revoke it or vary it, the applicant has to be notified and offered the opportunity to make representations and given at least 14 days to indicate that they wish to do so. If the applicant indicates that they wish to make representations, a further period of time must be given for these to be provided. If the applicant wishes to make oral representations then an opportunity to appear before the licensing committee must be afforded to them.
18. Any decision to refuse, revoke or vary any application must be accompanied by detailed reasons. In such cases, the applicant has right of appeal within 21 days from the date on which they were notified of the decision. Appeals against a decision are made to the local magistrates' court.
19. Record of all individuals and businesses licensed as scrap metal dealers is required to be maintained upon a central register, to be hosted by the Environment Agency. Dealers are obliged to inform the local licensing authority of any material change of information supplied in connection with an application and local authorities are obliged, in turn, to notify the Environment Agency.

Licence compliance

20. In order to comply with their licence, any licensed dealer must:
 - Display a copy of the relevant licence, in a prominent position, at each site or in any vehicle they use in the course of their business
 - Verify the full name and address of anyone they receive scrap metal from by checking documents, data or other information from a reliable and independent source
 - Pay for scrap metal by means of non-transferable cheque or electronic transfer of funds only
 - Maintain full records of any scrap metal received or disposed of in the course of their business (see Appendix A).
21. Failure to comply with any of the above requirements constitutes an offence under the Act.

Enforcement

22. Police officers and authorised local authority officers have the right to enter and inspect a licensed site at any reasonable time provided they have given notice. Where giving notice would prevent the officers concerned checking that the legislation has been complied with, or they have tried to give notice but have failed, then they can still enter the site. These rights do not extend to any residential premises, however, and neither can force be used to gain entry.
23. Where needed, a warrant allowing the use of force to gain entry can be obtained from a magistrate. Anyone obstructing an officer's right of entry or failing to produce a record is guilty of an offence.
24. Police officers or authorised local authority officers also have power to issue a closure notice on a non-residential premises being used as an unlicensed scrap metal dealer's site. The closure notice has to be given to the site manager and any other person who appears to be a director or manager of the business or anyone who occupies another part of any building or structure. A police officer or the council can cancel a closure notice through a cancellation notice.
25. Having issued a closure notice, an officer may apply to a magistrate for a closure order. An order cannot be applied for until a week after the closure notice was made or once more than six months have passed from the date when the notice was given. A magistrates' court may make an order where it is satisfied that a closure notice has been given and the premises continues to be used as a dealer's site or there is a reasonable likelihood it will in the future. The closure order can require the site to be immediately closed, for the dealer to stop using it in the course of their business, or for a sum to be retained by the court until requirements of the court have been met. The making of a closure order may be appealed to the Crown Court.
26. Failure to comply with a closure order is an offence and an authorised officer may enter a premises and do anything necessary to ensure compliance with a closure order.

Transitional arrangements

27. In order to allow local authorities to process applications for scrap metal dealers licences without existing business being in a position where they cannot operate, the Home Office is implementing a transitional process.
28. The following timetable for transition is confirmed:
 - Local authorities may set a licence fee from 1 September 2013.
 - The main provisions of the Act commence on 1 October 2013, including the offence of buying scrap metal for cash.
 - Dealers and motor salvage operators registered immediately before 1 October 2013 will be deemed to have a licence under the Act from 1 October 2013, provided the dealer submits an application for a licence on or before 15 October 2013. In such case their deemed licence will last until the council either issues them with a licence or gives notice of the decision to refuse a licence. However, 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 2013 but does not supply all the required information with the application form then the deemed licence remains in effect after 15 October 2013.
- Where a dealer with a deemed licence fails to submit an application on or before 15 October 2013 the deemed licence will lapse on 16 October 2013.
- Other scrap metal dealers, not previously registered, will be able to apply for a licence from 1 October 2013, 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. The Local Government Association (LGA) recommends that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1 December 2013.
- All other enforcement provisions within the Act commence on 1 December 2013.

Meeting the timetable

29. In lieu of guidance from the Home Office, the LGA has taken on a co-ordination role to help achieve consistency in application of the new licensing regime. This authority is having regard to guidance received from the LGA. This is to include guidance on setting fees for licences under the Act.
30. Final preparations to ensure that all involved parties understand their responsibilities and roles under the Act are in hand. These include:
 - Local operators will be informed of the transitional arrangements; the steps they must take to ensure continuity of business; and the steps this council will take to determine their applications.
 - Application forms, process and procedure, together with guidance notes will be confirmed and issued.
 - Staff will receive full training on the Act.
 - Partner services will be contacted and communication channels confirmed.
 - Officers will be formally authorised.
31. A schedule of fees will also be confirmed to come into effect as of 1 October 2013. Fees will be calculated in accordance with Home Office and LGA guidance, when received, and will be considered by the Leader of the Council under the IDM process through a 'variation to delegation'.
32. Currently there are nine scrap metal dealers registered under the current regime. It is expected that each of these will wish to continue their business into the new regime and that a few new operators may apply.
33. As has been noted, the Act requires representations against an intention to refuse an application or revoke or vary a licence to be heard by a licensing committee. It is our intention (consistent with other licensing regimes) that any intention to refuse, revoke or vary will be put to a licensing sub-committee. It is not anticipated that this legislation will generate significant amounts of business for the committee. However, the procedure to be followed at any such hearing will be discussed in full with the committee before the first case arises.

Policy implications

34. It is anticipated that the introduction of this new licensing regime has the potential

to make a significant contribution in dealing with metal theft and the impacts of metal theft in the borough.

35. The action taken also supports this council's fairer future principles:
- Making Southwark a place to be proud of – By establishing a lawful framework enabling rigorous enforcement against illegal operators in support of legitimate operators and the local community.
 - Spending money as if it were from our own pocket – By ensuring that the community impacts and costs of metal theft are minimised.

Community impact statement

36. The council, as local licensing authority, has a duty under the Act to implement, administer and enforce the new scrap metal dealers licensing regime.
37. This includes a duty to consider each application for a licence put to it. In doing so, the council must comply with the provisions of the Act and operate within the parameters of the Act.
38. In accordance with the rules of natural justice each application put to the council will be considered upon its own merits with all relevant matters taken into account.
39. As such, the licensing regime, as set down, provides for a fair and consistent basis for consideration of applications. The provisions of the law are intended to provide both protections for lawful business operators and for the local community.
40. Where the council is minded to refuse an application for a licence or vary or revoke any existing licence, the operator will be given the opportunity to make representations and be heard by the council's licensing sub-committee. In the event that the council confirms any decision to refuse, vary or revoke a licence there is a right of appeal.
41. All enforcement activities under the Act will be considered in accordance with the council's enforcement policy. Enforcement activities will be directed to where they are necessary and carried out on a fair and consistent basis.
42. The implementation of this legislation is seen as a necessary step in order to combat the impacts of metal theft on the community. Consideration has been had as to the potential for discrimination, inequality of opportunity or preventing good relations between different people and all appropriate opportunities to prevent this have been taken.

Financial implications

43. The work involved in establishing process, procedure and practice for consideration of scrap metal dealers licences and associated enforcement will be absorbed within the council's environmental health and trading standards business unit's licensing team.
44. There is potential for additional income to be generated through scrap metal dealers' licence fees. The amount cannot be estimated until government guidance on fee setting has been issued and considered. The income generated

will be used to recover any additional costs incurred for administering and enforcing the licensing scheme.

Consultation

45. No consultation has been undertaken in preparation of this report. The new licensing regime is being established at short notice in accordance with issued guidance.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

46. The Scrap Metal Dealers Act 2013 repeals the Scrap Metal Dealers Act 1964 and Part 1 of Vehicles (Crime) Act 2001 and provides a revised regulatory regime for the scrap metal dealing and vehicle dismantling industries.
47. The Act completely replaces the previous registration process local authorities operated for scrap metal dealers. Local authorities will now be the principal regulator responsible for the licensing of scrap metal dealers and the enforcement of the licensing regime, alongside the police.
48. The Act provides that an application for a licence must be accompanied by a fee that will be set locally by the local authority, on a cost recovery basis. The local authority will have a duty to have regard to the guidance issued by the Secretary of State which outlines the issues that should be considered by local authorities when setting the fee and what activities the fee can cover. The guidance is being issued in two stages. At the time of writing only the first stage has been published. Regard will be had to the guidance when this is fully available.
49. Other key features of the Act include:
- Creating a central public register of all individuals and businesses licensed as scrap metal dealers;
 - Widening the definition of scrap metal to include motor salvage operators;
 - All individuals and businesses to complete an enhanced application process to obtain a scrap metal dealer licence, which gives a local authority power to refuse unsuitable applicants;
 - Giving local authorities the power to revoke scrap metal dealer licenses;
 - Requiring sellers of metal to provide personal identification at the point of sale, which is recorded by the scrap metal dealer;
 - Providing new powers for the police and local authorities to enter and inspect scrap metal sites; and
 - Extending the offence of buying metal with cash to itinerant metal collectors.

Strategic Director of Finance and Corporate Services (E&L/13/023)

50. The strategic director of finance and corporate services notes this report on the new licensing regime under the Scrap Metal Dealers Act 2013 and the financial implications in paragraphs 43-44.
51. This update report does not, in itself, incur any additional revenue or capital costs as preliminary work will be contained within existing resources. Further analysis

will be done to determine potential fee income to offset associated costs, which will be incorporated in any IDM reports to the leader of the council.

Background Papers	Held At	Contact
Scrap Metal Dealers Act 2013	Health Safety Licensing & Environmental Protection Unit, 160 Tooley Street, London, SE1 2QH	Name: Mrs Kirty Read Phone number: 020 7525 5748
LGA Guidance	As above	As above

APPENDICES

No.	Title
Appendix A	Scrap Metal Dealers Act 2013 – relevant extracts

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Environment & Leisure	
Report Author	Richard Parkins, Health Safety Licensing & Environmental Protection Unit Manager	
Version	Final	
Dated	22 August 2013	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments Included
Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
Cabinet Member	No	No
Date final report sent to Constitutional Team	22 August 2013	