

AYLESBURY VALE DISTRICT COUNCIL

Democratic Services

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24 October, 2013

LICENSING COMMITTEE

A meeting of the Licensing Committee will be held at **10.00 am on Monday 4 November, 2013**, in **The Olympic Room at The Gateway, Gatehouse Road, Aylesbury**, when your attendance is requested.

Membership: Councillors Mrs Blake, Mrs Bloom, Mrs Brandis (Chairman), Cooper, Douglas-Bate (Vice Chairman), Hawkett, Huxley, Khan, Lambert, Mills, Mrs Phipps, Rand, Mrs Renshell, Mrs Roberts and Vick.

Ex-Officio: Councillor Sir Beville Stanier (Cabinet Member for Environment and Health)

Contact Officer: Alice Fisher (01296) 585041.

L White
Head of Administration

Members:

Cllr Timothy Mills, Cllr Jackie Phipps, Cllr Michael Rand, Cllr Susan Renshell, Cllr Freda Roberts, Cllr David Vick, Cllr Janet Blake, Cllr Jenny Bloom, Cllr Judy Brandis, Cllr Peter Cooper, Cllr Andrew Douglas-Bate, Cllr Mike Hawkett, Cllr Andy Huxley, Cllr Steven Lambert, Cllr Raj Khan,

AGENDA

1 **APOLOGIES**

2 **TEMPORARY CHANGES TO MEMBERSHIP**


Any changes to be reported to the meeting.

3

MINUTES

To approve as a correct record the Minutes of the meeting held on 2 Septmeber 2013, attached as Appendix A.

Documents Attached:

 licensing minutes 02.09.13.pdf

4

DECLARATIONS OF INTEREST

Members to declare any interests.


5

SCRAP METAL DEALERS ACT, 2013

To consider the report attached as Appendix B coloured blue.

Contact Officer: Peter Seal (01296) 585083

Documents Attached:

 appendix B scrap metal dealers.pdf

LICENSING COMMITTEE

2 September 2013

PRESENT: Councillor Mrs Brandis (Chairman); Councillors Mrs Bloom, Cooper, Douglas-Bate, Hawkett, Huxley, Lambert, Mrs Phipps, Mrs Renshell, Mrs Roberts, and Vick.

APOLOGIES: Councillors Sir Beville Stanier, Mrs Blake, Rand and Mills

1. MINUTES

RESOLVED –

That the Minutes of 8 July 2013 be approved as a correct record.

2. DECLARATIONS OF INTEREST

Councillors Huxley and Lambert declared personal interests in item 4; Changing from National Driving Standards Agency driving test to Local Transport for Bucks tailored scheme, as they were both elected Members of Bucks County Council.

3. SCRAP METAL DEALERS ACT, 2013

It was reported that metal theft had increased dramatically over the last couple of years and has had a significant impact on communities. The Association of Chief Police Officers (ACPO) estimated that metal theft costs the UK economy £770 million every year. Up until recently local authorities have had limited powers in dealing with scrap metal dealers and motor salvage operators, who could play a significant role as part of the supply chain in stolen metals.

The Scrap Metal Dealers Act 2013 (the Act) would replace the previous registration system for scrap metal dealers created by the Scrap Metal Dealers Act 1964 and in its place established a new licensing regime. Every scrap metal dealer would now be required to have a licence and operating without one would be a criminal offence. Also, the definition of scrap metal had been extended to include motor salvage operators.

Under the new regime there would be two types of licences. A site licence would be required in relation to any site where a licensee carried on a business as a scrap metal dealer. A site manager had to be named for each site and the licence allowed the licensee to transport scrap metal to and from those sites from any local authority area. A collector's licence allowed the licensee to operate as a collector in the area of the issuing local authority. Therefore a separate licence had to be obtained from each Council the collector wished to operate in. A dealer could only hold one type of licence in any one local authority area.

The new licensing regime commenced on 1 October 2013 and in order to provide time for councils to process applications, the Home Office would be implementing a transition process. The timeline for the transitional period was shown in detail in the report to Members.

Members commented and asked questions on a number of issues including timescales for the transition period, the number of registered dealers in the Vale, fees to be charged and how the charges would be arrived at, the different kinds of dealers/collectors and who required a permit under the new legislation, Bucks County Council and Environment Agency permits, fines for criminal offences and local authority waste collections.

It was confirmed that Local Authority waste collections were not covered by the Act. At the moment criminal offences could incur a maximum fine of £5000 (level 5), but this could be unlimited when other legislation is brought into force.

The fees that AVDC would be charging had yet to be set, but could only be based on officer costs. No income/profit could be made.

The officers' first priority would be to get existing dealers licensed. No other work, such as prosecutions, could be undertaken until December 2013.

Council would be asked at its meeting on 11 September to delegate functions under the Act to the Licensing Committee and the Licensing Services Manager.

RESOLVED

- (1) That the Committee noted the report and asked that a report on the review of the interim arrangements be brought back to the Committee at its meeting on 4 November 2013.

4. CHANGING FROM NATIONAL DRIVING STANDARDS AGENCY DRIVING TEST TO LOCAL TRANSPORT FOR BUCKS TAILORED SCHEME

Hackney carriage and private hire operators, drivers and vehicles were principally governed by the Local Government (Miscellaneous Provisions) Act 1976, Town Police Clauses Act 1847, Council byelaws and the conditions implemented by the licensing authority

The council currently licenced approximately 1000 drivers, being fairly split between private hire and hackney carriage licensees. Each year there were approximately 100 new applicants to be licensed while a similar number ceased working. Approximately 350 renewal licences were determined each year, giving a total of approximately 450 driver applications to be administered by this authority each year.

The council had a duty to ensure that applicants for a private hire or hackney carriage drivers licence were "fit and proper" for the purpose of obtaining the licence. This was currently done by ascertaining medical fitness through a Group 2 medical check, a

Criminal Record Check to check relevant criminal conduct and, for new drivers, a Driving Standards Agency (DSA) taxi test as recommended by the Department for Transport.

However, there was a long waiting list for the DSA test. Furthermore this test did not approach local issues. Because of these issues, the council had approached Bucks County Council Transport for Bucks (TfB) to design a driving course suitable for both new and existing private hire and hackney carriage drivers. A scoping document for the provision of this procedure had been attached as an appendix to the report.

The cost of the training package would be comparable to the DSA test, however the course would be tailored to offer both a 2 hour driving test as well as a 2 hour classroom based theory element that would address issues most relevant to this authority.

It was intended to use this course for all new drivers and also for it to be completed by all existing drivers on their subsequent renewal for one time only. It was envisaged that within 3 years all existing licensed drivers would have undergone this assessment.

The course could also be used in conjunction with the current policy on enforcement and it was envisaged that this would be employed by the council to deal with drivers who had received repeat complaints of bad driving standards.

Interest in the new test had been expressed by local disability organisations and Thames Valley Police who were keen to provide input into this test.

RESOLVED

- (1) That the Committee noted the report and authorised the Licensing services Manager to consult with the trade and other local, relevant organisations on the details of a tailor made driving course in respect to taxi and private hire driver applicants, and a report on the outcomes to be brought back to the committee in due course.

(Councillors Huxley and Lambert declared personal interests in the above item, as they were both elected Members of Bucks County Council.)

SCRAP METAL DEALERS ACT 2013

1 Purpose

- 1.1 To inform Members of the arrangements made to implement the new licensing regime under the Scrap Metal Dealers Act 2013.

2 Recommendations/for decision

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| 2.1 | That the arrangements made to implement the new licensing regime under the Scrap Metal Dealers Act 2013 be approved. |
| 2.2 | That Members decide whether decisions to refuse applications and revoke or vary licences should be referred to a licensing sub-committee. |
| 2.3 | That Members note that a further opportunity to review the procedures is scheduled for March 2014. |

3 Supporting information

- 3.1 Members will recall that a report was brought before Licensing Committee in September 2013 in relation to the new licensing regime in relation to scrap metal dealers – the Scrap Metal Dealers Act 2013 ('the Act'). In particular Members attention was drawn to the commencement date for the new regime of the 1 October 2013 and the tight transitional arrangements. That is to ensure all existing registered businesses apply by the 15 October 2013. At the time of the last Licensing Committee it was imperative that the Council was in a position to accept applications which included setting fees.
- 3.2 On the 11 September 2013 Full Council delegated to Licensing Committee and, to the extent that the Act permits, the Licensing Services Manager, all the Council's licensing functions pursuant to and in connection with the Act. This allowed the Licensing Services Manager to ensure that all the necessary action could be taken before the due date.
- 3.3 As a reminder the Act replaces the previous registration system for scrap metal dealers created by the Scrap Metal Dealers Act 1964 and in its place it establishes a new licensing regime. Every scrap metal dealer will now be required to have a licence and operating without one will be a criminal offence. Also the definition of scrap metal has been extended to include motor salvage operators.
- 3.4 Under the new regime there are two types of licences. A site licence is required in relation to any site where a licensee carries on a business as a scrap metal dealer. A site manager has to be named for each site and the licence allows the licensee to transport scrap metal to and from those sites from any local authority area. A collector's licence allows the licensee to operate as a collector in the area of the issuing local authority. Therefore a separate licence has to be obtained from each Council the collector wishes to operate in. A dealer can only hold one type of licence in any one local authority area.

- 3.5 The new licensing regime commenced on 1 October 2013 and in order to provide time for councils to process applications the Home Office implemented a transition process. The transition timeline is as follows and is tight:
- The commencement order to enable implementation of the transition arrangements was made in August 2013.
 - This allows local authorities to set licence fees 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 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 the 15 October 2013 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.
 - 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 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 trade.
 - Local authorities will complete suitability checks on applicants and decide whether to issue licences. The 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.
- 3.6 Fees have been calculated in accordance with the Secretary of State's statutory guidance on fees and are attached to this report as Appendix 1. The licence fee can only be used to pay for the cost of administering the regime and ensuring compliance. The guidance is very explicit about what can be charged for and what cannot. The calculated fees include setting up the regime for the Council, the application administration and compliance checks for each type of application. They also include the costs of hearings should the service be minded to refuse and the applicant wish to make an oral representation.
- 3.7 The Local Government Association (LGA) helpfully produced a generic application form as an appendix to their own guidance to the Act. Letters were sent to all registered dealers in the Vale during mid-September informing them of the new licensing regime and urging them to make arrangements for criminal disclosures. Finally the forms and fee list were sent out prior to the 1 October 2013. Reminder letters were sent out on the 8 October 2013 urging existing businesses to make an application before the 15 October. The Licensing Services Manager will update the Committee at the 4 November meeting as to the position current at the time in respect to numbers of applications and subsequent actions.

- 3.8 The Home Office have issued guidance on 'Determining suitability to hold a scrap metal dealer's licence' and advise that when assessing an application for a scrap metal dealer's licence, you should consider the suitability of the individual applicant, each partner within a partnership and any director, secretary or shadow director of a company. Suitability primarily relates to previous convictions of relevant offences or relevant enforcement action taken against them. In addition other factors may be taken into consideration.
- 3.9 The local authority have discretion whether to issue or refuse (or in some cases vary) a licence. If minded to refuse an application or revoke or vary a licence, the local authority must warn the applicant/licensee what the authority is proposing to do and the reasons for it. The applicant/licensee has at least 14 days to make representations or inform the authority that that he wishes to do so. If the applicant/licensee wishes to make representations, the authority must allow the applicant/licensee a 'further reasonable period'.
- 3.10 If the applicant/licensee wishes to make *oral* representations the authority must provide 'the opportunity of appearing before and being heard by a person appointed by the authority'.
- 3.11 There is no requirement therefore for contested cases to be referred to Members by way of hearing. Both written and oral representations can be considered by officers. According to the LGA Guide to the Act the most appropriate way of interpreting the requirement for a person appointed by the council to hear representations would be a licensing committee.
- 3.12 It is proposed, however, that the person appointed to hear representations be the Licensing Services Manager. This would mean that contested cases, whether dealt with by way of written or oral representations, are dealt with consistently. Alternatively, where the applicant/licensee wishes to make oral representations, Members could decide to refer such decisions to a three Member sub-committee following procedures similar to hearings regulated by the Licensing Act 2003. Members could even decide that all contested refusal, revocation and variation decisions should be referred to the three Member sub-committee.
- 3.13 Members' attention is also drawn to the so called 'tacit authorisation' effect of the Provision of Services Regulations 2009 i.e. if applications are not decided within fixed and published time limits, applications are deemed to be granted. But different arrangements can be justified by overriding reasons in the public interest.
- 3.14 According to Supplementary guidance issued by the Home Office in October 2013, "Tacit consent should not apply in relation to scrap metal dealer licence applications as there is an overriding public interest in ensuring that the suitability of applicants is assessed before the licence is issued."
- 3.15 Members may recall that the Council most recently agreed to override these provisions in respect of sexual entertainment venue applications and it is proposed that the same approach should be taken in respect of applications under the Act.
- 3.16 The public interests reasons are that it is imperative that the suitability of applicants is assessed before licences are issued and for reasons beyond the control of the Council, and/or others affected by the outcome of an application, it may not always be reasonable or even practical to rigidly apply a standard timescale fixed in advance. In the interests of fairness and justice, it is essential that all applications are carefully considered and all the relevant issues are properly weighed in the balance before the outcome is determined.

3.17 As the full provisions of the Act do not come into force until the 1 December 2013, a further report reviewing the Council's procedures under the Act will be presented to the Committee in March 2014.

4 Options considered

4.1 None

5 Reasons for Recommendation

5.1 To ensure implementation of the new licensing regime in respect to scrap metal dealers.

6 Resource implications

6.1 Fees have been calculated to recover the full costs of running the service.

7 Response to Key Aims and Objectives

7.1 None specific.

Contact Officer	Peter Seal x 5083
Background Documents	None

Scrap Metal Act 2013

Fees for the Provision of Licences under the Scrap Metal Dealers Act 2013

Site Licence – New (3 Years)	£600.00
Site Licence - Renewal (3 years)	£350.00
Collectors Licence – New (3 Years)	£310.00
Collectors Licence – Renewal (3 Years)	£115.00
Variation of Licence type Collector to Site or vice versa	£145.00
Variation of any Licence as listed above To Include: - The Name of Licensee (name changed, not new licensee) - Change/addition/subtraction of site address' (site licence only) - Named Site Managers (site licence only)	£63.00
Reprint of License	£35.00
Vehicle Window cards	£60.00
Application Assistance (1 hour face to face discussion and assistance with AVDC officer)	£75.00

The fees for the Scrap Metal Act 2013 for Aylesbury Vale District Council were set at September 2013. The fees will be reviewed regularly by the Licensing Services Manager to ensure that they are reasonable and proportionate to the continued provision of service.