

## **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.

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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.