

16 July 2013		ITEM: 5
Licensing Committee		
Scrap Metal Dealers Act 2013		
Report of: Paul Adams, Principal Licensing Officer		
Wards and communities affected: All	Key Decision: Non key	
Accountable Head of Service: Gavin Dennett, Head of Public Protection		
Accountable Director: Lucy Magill – Director of Environment and Public Protection		
This report is Public		
Purpose of Report: To advise the Licensing Committee of the provisions contained within the Scrap Metal Dealers Act 2013.		

EXECUTIVE SUMMARY

The Scrap Metal Dealers Act 2013 (“the Act”) received Royal Assent on 28th February 2013 and is expected to come into force from 1st October 2013. Once further Regulations and guidance have been issued by the Secretary of State and the Home Office a further report will be presented to the Licensing Committee to set fees, policy and delegated authority.

1. RECOMMENDATIONS:

1.1 That the Committee -

- a) Members note this report and its contents.**
- b) Note that further reports will be brought forward to set fees, agree policy and delegated authority once further Regulations and guidance have been issued by the Secretary of State and the Home Office.**

2. INTRODUCTION AND BACKGROUND:

- 2.1 The increased value of metal has caused a growing problem of metal thefts throughout the U.K. The Home Office has provided an estimate that there were between 80,000 – 100,000 reported metal theft offences in 2010/11 alone and is costing the economy up to an estimated £260 million per year. A wide range of sectors have been targeted, which includes transport infrastructure, electricity and telephone links, street furniture, memorials, commercial and residential building including churches and schools.

- 2.2 In late 2012 the Government introduced initial measures to prohibit cash payments for scrap metal, amend Police powers of entry into unregistered scrap metal sites; and increase the existing financial penalties for offences under the scrap metal Dealers Act 1964. These changes were contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- 2.3 The Scrap Metal Dealers Act 2013 (“the Act”) received Royal Assent on 28th February 2013 and is expected to come into force from 1st October 2013.
- 2.4 The Act repeals the Scrap Metal Dealers Act 1964 (and linked legislation) and Part 1 of 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’.

3. ISSUES, OPTIONS AND ANALYSIS OF OPTIONS:

- 3.1 The Act defines a “scrap metal dealer” as a person who is for the time being carrying on a business as a scrap metal dealer, whether or not authorised by a licence.
- 3.2 The Act states that “scrap metal” includes:
- Any old, waste or discarded metal or metallic material, and
 - Any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life
- 3.3 The act exempts as “scrap metal” gold, silver and any alloy of which 2 per cent or more by weight is attributable to gold or silver.
- 3.4 Section 1 of the Act requires that a scrap metal dealer obtains a licence from the local authority in order to carry on business as a scrap metal dealer. It will be an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. The offence is punishable on summary conviction with a fine not exceeding level 5 (£5,000) on the standard scale.
- 3.5 Section 2 of the Act provides further detail in respect of the licence. There will be two types of licence, either a site licence or a collector’s licence. A site licence will be issued by the local authority in whose area a scrap metal site is situated and will require all of the sites at which the licensee carries on the business as a scrap metal dealer within the local authority area to be identified and a site manager to be named for each site. In doing so, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area.

- 3.6 A mobile collector's licence will authorise the licensee to operate as a mobile collector in the area of the issuing local authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal. The licence does not permit the collector to collect from any other local authority area; a separate licence would need to be obtained from each local authority in whose area the individual wished to collect in. A licence also does not authorise the licensee to carry on a business at a site within any area – should a collector wish to use a fixed site, they would need to obtain a site licence from the relevant local authority. There is no restriction as to the location where the collector can transport and sell their metals.
- 3.7 A licence will be issued for a period of three years from the date of issue. The Secretary of State will have the power under 1(4) of the Act to alter the duration of the licence.
- 3.8 Section 3 requires that the licensing authority has to be satisfied that an applicant must be a suitable person to carry on business as a scrap metal dealer. In considering suitability, the local authority may have regard to any relevant information, including whether any enforcement action has been taken against the applicant or whether the applicant has been convicted of a relevant offence. The Secretary of State has a power to prescribe in regulations the meaning of relevant offence and relevant enforcement action. It is intended that this will be in line with the criteria used by the Environment Agency when issuing environmental permits under the Environmental Protection Act 1990. The authority must also have regard to any guidance on determining suitability which will be issued from time to time by the Secretary of State, and the authority may consult with other organisations to assist in determining suitability.
- 3.9 This section also allows local authorities, when issuing a licence, to include conditions on it if the licensee or site manager has been convicted of a relevant offence. Subsection (8) specifies the two conditions that can be imposed by local authorities on a licence, namely
- that the dealer must not receive scrap metal except between 9am and 5pm 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.
- 3.10 Section 4 provides the licensing authority with the discretion to revoke a licence on particular grounds, including where the local authority is no longer satisfied that the licensee is a suitable person to carry on the business as a scrap metal dealer. The revocation of a licence can only be carried out by a local authority.
- 3.11 This section also allows the local authority to vary a licence, imposing the conditions stipulated in 3.9 above, if the licensee or a site manager is convicted of a relevant offence.

- 3.12 Section 6 places a duty on the local authority to supply any such information as requested relating to scrap metal licence to any other local authority in England and Wales, the Environmental Agency and to Police forces.
- 3.13 Section 7 requires that a register of licenses issued under the Act should be maintained by the Environment Agency. Local authorities will provide the appropriate information on all licences issued in their geographic areas in order that the register can be updated regularly. The register will be made openly accessible to the public and will include: the name of the authority which issued the licence; the name of the licensee; any trading name; the type of licence; the site(s) covered by the licence and the expiry date of the licence. There will be a charge applied to each local authority for this, charged has yet to be determined.
- 3.14 Section 10 requires that the licensee display a copy of their licence. For site operators this must be in a prominent place in an area accessible to the public. For mobile collectors, it must be in a manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil these requirements. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale.
- 3.15 Section 11 places a requirement on scrap metal dealers, site managers and employees who have been delegated the responsibility to do so, to verify the identity of the person they are receiving metal from and the person's address. This verification must be done by reference to data, documents or other information obtained from a reliable or independent source, such as the identity and Passport Service, the Driver and Vehicle Licensing Agency, a bank or utility company etc. The Secretary of State will prescribe in regulations the data or documents which are sufficient or not sufficient as the case may be, for verifying identity.
- 3.16 It will be an offence not to obtain and verify the seller's identity, punishable by a fine not exceeding level 3 on the standard scale. The offence will apply to the scrap metal dealer, the site manager and any person, who under arrangements made by either the scrap metal dealer or the site manager, has responsibility for fulfilling this requirement on behalf of the business.
- 3.17 Section 13 sets out the record-keeping requirements in respect of any scrap metal received by a scrap metal dealer in the course of their business. Information that is required to be recorded includes the type of metal being purchased; the time/date of the transaction; personal information on the seller; who is acting on behalf of the dealer and proof of the non-cash transaction. Failure to comply with the requirements of this section is an offence attracting a penalty up to level 5 on the standard scale.
- 3.18 The legislation places a shared enforcement responsibility for this new statutory duty on both Thurrock Council and the Police.

- 3.19 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, but local authorities will have a duty to have regard to guidance issued by the Secretary State which will outline the issues that should be considered by them when setting the fee and what activities the fee can cover. The fee will be an essential component of the new regime as it will provide local authorities with the funding needed to administer the regime and ensure compliance.
- 3.20 The power to set fees has been passed to each local authority, so that any fees levied in each local area is set by reference to the actual costs to each authority.
- 3.21 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.
- 3.22 The Home Office are due to publish guidance that will assist local authorities in setting relevant fees, however the general principle is that fees should reflect:
- The cost of administering and processing applications.
 - Having experienced licensing officers review
 - Storage
 - Consulting on the suitability of applicants
 - Decision making process
 - The cost of issuing licences in a suitable format
 - Criminal records checks
 - Contested applications
 - Compliance- Entry, inspection
 - Charge payable for national register
- 3.23 The licence fee cannot be used to support enforcement activity against unlicensed scrap metal dealers.
- 3.24 Any activity taken against unlicensed operators must be funded through existing funds. Such activity against unlicensed operators will include closure notices; with applications for closure orders subsequently made to a magistrates court.
- 3.25 The costs of applying to the magistrates court for a warrant for entry to any licensed or unlicensed premises by force if necessary will incur legal costs which will be borne by the local authority and Police.
- 3.26 The Secretary of State is to issue Regulations and guidance which is expected in July 2013 and at this stage it is believed that the Act will commence on 1st October 2013, however there is a transitional period which is likely to begin on the 1st September 2013, and that local authorities will be expected to receive and process application from this date.

- 3.27 It is anticipated that to enable a clear and transparent application process including the licensing authorities consideration of applicant's suitability, a Thurrock Scrap Metal Dealers Act Policy will be developed and adopted once relevant regulations and guidance have been received.
- 3.28 Delegated authority will also need to be determined. Subject to the awaited guidance it is likely to mirror other licensing legislation where grant is at officer level unless there is a question relating to the applicants suitability, where the application will be referred to a Licensing Sub-Committee for determination.
- 3.29 Once the Regulations and guidance have been published, it is the intention to submit a further report to the Licensing Committee for approval to be referred to Full Council to approve a fee structure, policy and delegated authority all before the commencement date and transitional period.

4. REASONS FOR RECOMMENDATION:

- 4.1 This report is for information only. At the time this report was produced the Regulations and Statutory Guidance has not been published so no further action can be taken at this stage, a further report will be brought to the Licensing Committee once the Regulations and Guidance are issued for the policy, delegated authority and fees to be agreed.

5. CONSULTATION (including Overview and Scrutiny, if applicable)

- 5.1 At this stage no consultation has been undertaken or is required.

6. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

- 6.1 None.

7. IMPLICATIONS

7.1 Financial

Implications verified by: **Michael Jones**
Telephone and email: **01375 652277**
mxjones@thurrock.gov.uk

There are no financial implications for Thurrock Council.

7.2 Legal

Implications verified by: **David Lawson**
Telephone and email: **01375 652087**

david.lawson@bdtlegal.org.uk

Following the publication of Regulations and guidance the proposed policy, fees and delegated authority will have to be brought back to this committee for approval before being referred to Full Council for adoption.

7.3 Diversity and Equality

Implications verified by: **Samson DeAlyn**
Telephone and email: **01375652472**
sdealyn@thurrock.gov.uk

There are no diversity Implications contained in this report.

7.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

None

BACKGROUND PAPERS USED IN PREPARING THIS REPORT (include their location and identify whether any are exempt or protected by copyright):

- Scrap metal Dealers Act 2013.

APPENDICES TO THIS REPORT:

None

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