



Council
11 November 2013

Subject: Scrap Metal Dealers Act 2013

Report by:

Director of Regeneration and Planning

Contact Officer:

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Purpose / Summary:

To inform Members with regard to the effects of the Scrap Metal Dealers Act 2013 that will come fully into force in December 2013 and request Members to set fees relating to applications and put in place the appropriate governance arrangements.

RECOMMENDATION(S):

- 1) Council are requested to agree on the fees to be charged for each type of application, all fees to be charged will take immediate effect. Please see section 8 for further information.
- 2) Council are requested to authorise delegated authority to be given to Head of Public Protection for the determination of all applications where the applicant meets the defined criteria, no objections are received and where there are no grounds for refusal.
- 3) Council are requested to delegate authority to the Taxi & General Licensing Sub-Committee for the determination of any application on which there would be grounds to consider refusal either due to the applicant not meeting the criteria or where objections are received, or where any revocation is to be considered.

IMPLICATIONS

Legal:

Please see section 7 below.

Financial: FIN/35/14

Fees must accompany all types of applications and these will be set on a cost recovery basis, please see section 5 and 6 below.

Staffing:

It is anticipated that the administration, enforcement and compliance in relation to this area of work will be carried out by existing staff from both licensing and environmental protection sections, from within existing budgets.

Equality and Diversity including Human Rights :

N/A as a result of this report

Risks:

Failure to ensure that the fees to be charged by the Authority are appropriately set and authorised could result in a challenge to the Authority.

Failure to ensure any changes to the Constitution are properly authorised, could result in a challenge to the Authority.

Climate Related Risks and Opportunities :

N/A as a result of this report

Title and Location of any Background Papers used in the preparation of this report:

SMDA 2013 - With licensing officer

SMDA 2013 - Environmental Agency Guidance – With licensing officer

SMDA 2013 - Enforcement Guide – With licensing officer

SMDA 2013 - Supplementary Guidance October 2013 – With licensing officer

SMDA 2013 - Guidance on Licence Fee Charges - With licensing officer

Call in and Urgency:

Is the decision one which Rule 14 of the Scrutiny Procedure Rules apply?

Yes

No

Key Decision:

Yes

No

Background

1.

1.1 The Scrap Metal Dealers Act 2013 (The Act) was passed on 28 February 2013 and is due to come into force in December this year. Transitional arrangements take effect from 1st October 2013. The new Act replaces the Scrap Metal Dealers Act 1964 and parts of the Vehicles (Crime) Act 2001 that deal with motor salvage operators.

1.2 The Act has revised the regulatory regimes for scrap metal dealing and vehicle dismantling. Local Authorities will continue to act as the principal regulator but the new Act will give authorities more powers to revoke licences if the dealer is considered unsuitable. In addition Local Authorities and Police have been given powers to enter and inspect premises.

1.3 The cost of issuing and enforcing licences, but not taking action against unlicensed operators, will be met by the fee charged to applicants for licences. The cost of taking action against unlicensed operators cannot be met from the licence fee therefore this cost will be met by the tax payer. Administering and enforcing the regime will be undertaken by Licensing and Environmental Protection officers jointly, using existing staff resources.

2. Introduction

2.1 Scrap metal has increased in cost world-wide and as a result of this an increase in metal theft across the UK has been noticed. This has affected national transport, electricity and telephone lines, street furniture, memorials and commercial and residential buildings including churches and schools.

2.2 The Government introduced initial changes in 2012 that took steps to prohibit cash payments for scrap metal, amend the powers of entry into unregistered scrap metal sites and increase the financial penalties for offences under the Scrap Metal Dealers Act 1964. These changes were brought in under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

2.3 The aim of the legislation is to revise the regulatory regime for scrap metal dealing and vehicle dismantling and to give the police and local

authorities more powers to refuse and revoke licences as well as greater rights of entry and inspection. Additionally, the purpose of the legislation will assist in the prevention of the sale of stolen metal. The licensing of dealers will allow those who operate within the law to do so under a legitimate licensing regime whilst empowering agencies to deal with the minority who operate outside of the law.

3. Revised application process

- 3.1 The legislation creates two categories of licenses that operators will need to obtain, depending on what type of business they are proposing to carry on. The two licenses are:
- a) Site Licence – which authorises the applicant to carry on a business as a scrap metal dealer from a site or sites listed in the application
 - b) Collectors Licence – which authorises the applicant to carry on a business as a scrap metal collector, who would then weigh in their scrap at a site. Both of the above of applications must be accompanied by a fee, suggestions of which are listed below.

4. Current registrations

- 4.1 The Council currently has no motor salvage operators or scrap metal registrations as any previously registered with the authority have now lapsed. Therefore any person wishing to carry on a business as a scrap metal dealer will have to apply to the authority and have their application determined before they can start trading. The Scrap Metal Dealers Act 1964 will be subsequently repealed.
- 4.2 The licensing section has received a small number of enquiries from potential applicants who would like to be licensed under the new regime.

5. Financial implications

- 5.1 The cost of administering and enforcing licences will be funded by licence holders and a fee for this will be set on a cost recovery basis.
- 5.2 A large part of the fee options suggested is made up of the officer time taken who will have to visit the sites in order to ensure compliance with the legislation is adhered to. There are clear responsibilities placed upon the dealers and collectors regarding displaying licenses and the traceability of the metal weighed in and any transactions paid out. There are no circumstances where cash may be paid for metal following the commencement of this legislation. Payment must be either by Cheque or Electronic Transfer.
- 5.3 The Council must have regard to European Service Directive 2006/123/EC (Services in the Internal Market) and The Provision of Services Regulations 2009 when setting fees.

- 5.4 Article 13 of the Directive states, "Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures."
- 5.5 Regulation 18(4) of the 2009 Services Regulations states, "Any charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities."
- 5.6 The recent judicial review (Hemming and others v Westminster City Council) considered that there were three elements in the licensing process:
- i) The vetting of the applicant and application and the grant of the licence;
 - ii) The supervision and enforcement of the licence and any conditions in order to confirm compliance at renewal;
 - iii) Enforcement of the legislation on unlicensed operators etc.

It concluded that i) and ii) could be included in the fee calculation but was definite that iii) could not.

- 5.7 It is therefore clear that the cost of enforcing unlicensed operators will not be recoverable in fees and must be borne by the tax-payer.

6. Fee options

- 6.1 As noted above the application(s) must be accompanied by a fee. Three options are suggested below on the fees to be charged for applications. The main difference in the costs of the application is around how many visits the site requires during the tenure of the licence which will be granted on a 3 year duration.
- 6.2 As with all compliance and enforcement this has to be carried out on a risk based, proportionate approach.
- 6.3 Option 1 is based on 2 officers visiting the site, twice per year throughout the duration of the licence (6 visits in total). This is to ensure that licence holders and collectors have a clear understanding from the outset what obligations have to be met and so that officers can be reassured and satisfied that the site is being operated appropriately and in accordance with what the legislation and any guidelines require.
- 6.4 Option 2 is based on 2 officers visiting the site, twice during the first year of operation and once only during year 2 and 3 (4 visits in total).

- 6.5 Option 3 is based on 2 officers visiting the site, once per year throughout the duration of the licence (3 visits in total).
- 6.6 Option 1 costs Site Licence = £1180.09 Collector = £165.70
- 6.7 Option 2 costs Site Licence = £807.04 Collector = £130.78
- 6.8 Option 3 costs Site Licence = £620.51 Collector = £113.32
- 6.9 Other charges:
- i Application to renew scrap metal site licence TBC
 - ii Application to renew scrap metal collectors licence TBC
 - iii Application to vary scrap metal licence change of licensee details
£23.00
 - iv Application to vary scrap metal licence change of licensed site
£43.53
 - v Application to vary scrap metal licence change of site manager
£43.53
 - vi Application to vary scrap metal licence site to collectors licence
TBC (this will be proportionate and dependant on which option above is
chosen)
 - vii Application to vary scrap metal licence collectors to site licence
TBC (this will be proportionate and dependant on which option above is
chosen)
 - viii Application for copy of licence £10.50

7. Risks and legal implications

- 7.1 Fees – by not setting the fees in line with Home Office guidance or disregarding the recent Court ruling of Westminster City Council V Hemming and Others would leave the authority open to challenge.
- 7.2 Governance / Delegations – failure to put in place the proper governance arrangements to enable the authority to determine applications accordingly would leave the authority open to challenge.
- 7.3 As the SMDA 2013 is a statutory function the authority has no choice but to implement the effects of this act. Failure to do so would lead to challenge.
- 7.4 Section 17 – All Local Authorities must fulfil their obligations under Section 17 of the Crime and Disorder Act 1998 when carrying out their

functions as licensing authorities. Section 17 places a duty on Local Authorities to do all they reasonably can to prevent crime and disorder in their area. This Act will also give Local Authorities stronger powers and aims to reduce scrap metal theft and other associated crimes.

- 7.5 The licensing and compliance role of the Council is important in improving the health, safety, security and welfare of the District's residents, visitors and business community.

8. Recommendations

- 8.1 That Members consider the options suggested in section 6 and agree the fees to be charged for all applications.
- 8.2 Your officer recommendation is that the fees described at paragraph 6.6 above, should be approved in relation to Site and Collector Licenses accordingly. Any fees approved will have immediate effect. Justification - The very theme of the SMDA 2013 Act is to ensure that only properly vetted persons are permitted to lawfully collect, buy and sell scrap metal backed up by a vigorous inspection scheme of supervision. Therefore it is envisaged this will place demands on the service to carry out this role effectively and accordingly the fees must reflect this.
- 8.3 That Members authorise delegated authority to be given to Head of Public Protection for the determination of all applications where the applicant meets the defined criteria, no objections are received and where there are no grounds for refusal.
- 8.4 Any application on which there would be grounds to consider refusal either due to the applicant not meeting the criteria or where objections are received, or any revocation, would be referred to Taxi and General Licensing Sub-Committee for determination under the Council's Natural Justice Procedure.
- 8.5 The overriding position being that officers are able to refer any application to the committee for consideration when appropriate to do so.