

BODY: Full Council

DATE: 18th September 2013

SUBJECT: Introduction of the Scrap Metal Dealers Act 2013

REPORT OF: Henry Branson, Senior Head of Infrastructure.

Ward(s): All

Purpose: To inform members of the changes to national legislation concerning the introduction of the Scrap Metal Dealers Act 2013 and to seek delegated powers to determine the fee structure and implementation of the legislation.

Contact: Jay Virgo, Senior Specialist Advisor, Telephone 01323 415933 or internally on extension 5933
E-mail address jay.virgo@eastbourne.gov.uk

Recommendations: Council is recommended to;

- 1) delegate to the Senior Head of Infrastructure the power to set the level of licence fees relating to the Act in accordance with the available national guidance, to grant appropriate licences where there are no contra indications as to the suitability of the applicant, and to undertake all other administrative, regulatory and enforcement functions under the Act;
- 2) delegate to the General Licensing Committee the power to determine applications for licences where the Senior Head of Infrastructure is minded to reject an application, and to determine cases where it may be appropriate that an existing licence should be revoked or varied.

1.0 Background

- 1.1 Central government has for some time been reviewing various options to deal with the rapid rise in metal theft over the last few years. It has become obvious that the existing legislation was outdated and was not an effective tool to deal with this modern problem.
- 1.2 The existing legislation, the Scrap Metal Dealers Act 1964, only required Local Authorities to issue a registration to scrap dealers in their area. The registration lasts for 3 years and did not attract a fee, and it had limited powers. Separate legislation exists to deal with car breakers and the vehicle dismantling industry.
- 1.3 The Scrap Metal Dealers Act 2013 has been devised to close the loop holes in the old legislation and address the issues of metal theft. It introduces a licence regime with fees, and a proposed implementation of 1st October 2013.
- 1.4 The new Act repeals the old legislation and brings forward a revised combined regulatory regime for the scrap metal dealing and vehicle dismantling industries. The Act maintains local authorities as the principal regulator and enables them to grant, refuse and revoke licences.

1.5 In addition, it requires a national register of dealers to be set up and maintained by the Environment Agency, with all local authorities supplying updated information for the register.

2.0 Implementation

2.1 Although the Act will take effect from the 1st October 2013, applications for licences from the industry are expected to arrive from late August onwards in preparation for implementation.

2.2 The Local Government Association (LGA) has provided guidance and associated information in relation to the implementation of the Act, the LGA Guide to the Scrap Metal Dealers Act 2103, attached at Appendix 1. It was issued at the end of August 2013 and imposes very tight time scales on local authorities to prepare for implementation, hence the need to bring this report to full Council without going through the usual processes of consideration at General Licensing Committee and Cabinet as the first stages.

2.3 The implementation date for the legislation is 1st December 2013. However the transitional arrangements for existing registered dealers commence on the 1st October 2013. A requirement of the transitional provisions is that local authorities need to have agreed the fees they will charge applicants no later than the end of September 2013.

2.4 The Act creates two different types of licence;

- Site Licence - allows a dealer to carry on a business at any sites in the Local Authority area as stipulated on the licence;
- Collector's Licence - allows dealers who do not have a site to collect and transport scrap metal within the local authority.

2.5 The collector's licence will only allow collection in a particular local authority area, therefore collectors covering several Council areas will require more than one licence.

2.6 Both licences will be issued for a three year period and must be displayed on the site premises in an area open to the public, and also be clearly displayed on any vehicle used by a collector.

2.7 The Act introduces a "suitable person" test, similar to the existing "fit and proper" test used for taxi drivers, requiring local authorities to be satisfied that any applicant is a suitable person to operate as a dealer.

2.8 In reaching a decision over suitability, local authorities will be able to consider any relevant information, and this includes a basic DBS (Disclosure and Barring Service) check and other enforcement information from the Police, and the Environment Agency, as deemed appropriate by the authority in individual cases.

2.9 Local authorities will be able to add limited conditions to a licence as deemed appropriate in individual circumstances. The power to vary, refuse or revoke an existing licence is also contained in the Act. The Act also contains extensive powers of entry by Police and authorised officers from the local authority and requires that an effective record keeping system be implemented for the dealers.

- 2.10 The Home Office is releasing statutory guidance which all authorities must consider when making decisions under the Act. The application process, style of forms and methods of information storage are all contained in the Act or its associated regulations.
- 2.11 For the first time the process allows local authorities to set locally agreed fees for the licences. Government has decided not to impose either a set fee or a cap but has stated that it expects authorities to be broadly similar in their fee setting regime. It also expects different levels of fee for the two types of licence, the site licence attracting the higher fee due to the inspection process. The Local Government Association has issued guidance on setting fees and officers are consulting their counterparts in other Sussex local authorities to ensure fairness and consistency.
- 2.12 The fee setting process further states that authorities must have regard to the guidance on such matters as issued by the Secretary of State. As with all licence fees the law is clear that they must be based on cost recovery for the administration and carrying out of the processes undertaken, and cannot be set so as to make a surplus for local authorities. Guidance in relation to the setting of the fee is contained in Appendix 2.

3.0 Legal Considerations

- 3.1 The Council's Legal Officer has been fully consulted on this report.
- 3.2 All decisions made by the Authority under the Act have a built in appeal process that allows applicants to challenge decisions in the Magistrates Court within 21 days.

4.0 Work Processes

- 4.1 Under the previous legislation scrap metal dealers were asked to register the business with the Council. No specific inspection powers existed and no fee was collected. This culminated in the Council just holding a registration form on file which was renewed every 3 years. It was a relatively minor administrative and enforcement function, given that there were only 3 scrap metal dealers registered with the Council.
- 4.2 The new system requires the Council to issue licences for all sites and collectors in their area. It is possible that there are more than 3 dealers in the town, and work will be undertaken to ascertain the location of any others. In addition, collectors who may be based in another local authority area but who transport scrap metal within the borough, will need to be licenced.
- 4.3 There will be a significant administrative process to ensure that this function is carried out properly, and the following processes will need to be followed;
- Mail out of application forms to existing operators
 - Checking of applications received and data input
 - Checking of DBS records
 - Checking with partner agencies for "Suitability of Applicant"
 - Checking of business partners, directors as above
 - Issue of site licences
 - Issue of collector's licence

- Issue of vehicle identity discs
- Maintenance of data base
- Exchange of information with Environment Agency.
- Follow the above procedure for the variation or transfer of licences

4.4 In addition, the new Act gives inspection powers to the local authorities and the Police, and compliance checks will need to be carried out.

5.0 Financial & Resource Implications

5.1 The cost of administering the service will be met through the licence fee income.

6.0 Human Rights

6.1 The provisions of the Human Rights Act, 1998, must be borne in mind by the Committee when taking licensing decisions under the Licensing Act, 2003. Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property.

6.2 Article 8 relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right, Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is done:

Has a basis in law;

Is intended to pursue a legitimate purpose

Is necessary and proportionate; and

Is not discriminatory;

7.0 Other Implications - Environmental, Equalities, Community Safety, Youth, Anti-poverty.

7.1 The new Act will enable the Council to work with the Police and other agencies to tackle metal theft with the aim of reducing metal theft rates.

7.2 An Equality and Fairness analysis and scoping report will be carried out.

8.0 Summary

8.1 The report explains the key elements of the Scrap Metal Dealers Act 2013, and sets out the steps that the Council must take to ensure it can implement the legislation.

Jay Virgo

Senior Specialist Advisor

Background papers

The Background Papers used in compiling this report are as follows:

Scrap Dealers Act 1964

Scrap Dealers Act 2013

LGA Guide to the Scrap Metal Dealers Act 2013