

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

8 October 2013

Report of the Director of Central Services and Monitoring Officer

Part 1- Public

Matters for Recommendation to Council

1 SCRAP METAL DEALERS ACT 2013

1.1 Background

1.1.1 The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013 and its measures were implemented with effect from 1 October 2013. The new Act repeals the Scrap Metal Dealers Act 1964 (currently administered by Tonbridge and Malling Borough Council) and Part 1 of the Vehicles (Crime) Act 2001 (currently administered by Kent County Council) creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries in England and Wales.

1.1.2 The Act was introduced in response to the growth in metal theft offences, driven by increased commodity costs, which in addition to the direct impact on the victims of theft have also had a damaging and disruptive effect on the country's infrastructure. The current regulation of the scrap metal industry consists of a simple registration scheme which has done little to prevent this type of crime.

1.1.3 Tonbridge and Malling Borough Council is now the principal regulator. The new licensing regime will provide stronger regulation, including the power to refuse to grant a licence to "unsuitable" applicants and a power to revoke licences if the dealer becomes "unsuitable". The cashless trading measures brought into force via the Legal Aid, Sentencing and Punishment of Offenders Act 2012 are incorporated into the new Act, which also closes off loopholes in the earlier legislation by drawing vehicle dismantlers and former itinerant collectors into the cashless trading regime.

1.1.4 There are two types of licence specified in the Act, both of which last for a 3 year period:

- Site licence – all the sites where a licensee carries on business as a scrap metal dealer have to be identified and a site manager named for each site. This licence allows the licensee to transport scrap metal to and from those sites from any local authority area.
- Collector's licence –this allows the licensee to operate as a collector in the area of the issuing licensing authority. It does not allow the collector

to operate in any other local authority area, so a separate licence has to be obtained for each council area within which the collector wishes to operate. The licence does not authorise the licensee to operate a site; to do so they will need a site licence from the relevant local authority.

1.1.5 The legislation places a shared enforcement responsibility for this new statutory duty on both Tonbridge and Malling Borough Council and the Police.

1.2 Key Features of the Act

1.2.1 These include:

- Requiring all individual and businesses to complete an enhanced application process that includes a criminal records check to obtain a scrap metal dealer licence. Local authorities will have the power to turn down unsuitable applicants.
- Giving local authorities the power to revoke a licence.
- Requiring all sellers of metal to provide personal identification at the point of sale, this is then recorded by the scrap metal dealer.
- Extending the offence of buying metal with cash to itinerant metal collectors.
- New powers for the police and local authorities to enter and inspect sites.
- Activity against unlicensed operators will include closure notices, with applications for closure orders subsequently made to a Magistrates' Court.
- Creating a central public register, hosted by the Environment Agency, of all individuals and businesses licensed as scrap metal dealers.
- Widening the definition of a scrap metal dealer to include motor salvage operators

1.2.2 Briefing notes on the Scrap Metal Dealers Act 2013 are attached as **Annex 1** to this report.

1.3 Timetable for transition to new regime

1.3.1 The new regime under the Scrap Metal Dealers Act 2013 commenced on 1 October 2013. In order to provide time for councils to process applications without existing businesses being in a position where they cannot operate, the Home Office is implementing a transition process.

1.3.2 The transition timeline is:

- The Commencement Order was made on 6 August 2013.

- Local authorities were able to set licence fees from 1 September 2013.
- The main provisions of the Act commenced on 1 October 2013 including the offence of buying scrap metal for cash.
- Dealers and motor salvage operators registered immediately before 1 October 2013 will be deemed to have a licence under the Act from 1 October 2013.
- Provided the dealer submits an application for a licence on or before 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, although they will be able to continue trading pending an appeal against the decision not to grant a licence.
- Where a dealer with a deemed licence fails to submit an application on or before 15 October 2013 the deemed licence will lapse on 16 October 2013.
- Other scrap metal dealers, not previously registered, were able to apply for a licence from 1 October 2013 but will have to wait until a licence is granted before they can legally trade.
- Local authorities will complete suitability checks on applicants and decide whether to issue licences. It has been recommended by the Local Government Association 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 will commence on 1 December 2013.

1.4 Fee setting

- 1.4.1 Licence fees will be set locally by each local authority on a cost recovery basis, with local authorities having due regard to guidance recently issued by the Home Office. (This guidance is attached as **Annex 2** to this report). The guidance outlines the issues that should be considered when setting a 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.
- 1.4.2 It is recognised that there will be an initial start-up cost which can be recovered from the licence fee and therefore the true cost of procedures and formalities may well be lower once the scheme is established. This can then be reflected in a reduction in fees following a review.
- 1.4.3 The Provision of Services Regulations 2009 states that a licence fee can only be used to pay for the costs 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.

- 1.4.4 The licence fee cannot be used to support enforcement activity against unlicensed scrap metal dealers. Also fees cannot be used as an economic deterrent or to raise funds. This was borne out in the recent R (Hemming and Other) v Westminster City Council judgment in the High Court.
- 1.4.5 The Cabinet Office guidance makes clear that in calculating licence fees we may not take into account the costs of any appeals to Magistrates Court against decisions to condition, refuse, revoke or vary a licence.
- 1.4.6 The general principle is that fees should reflect:
- All the activity required with processing and granting a licence such as considering applications and assessing the suitability of the applicant, and considering representations.
 - The costs of staff associated with supporting the service, including senior staff with managerial responsibility for the service.
 - Support provided by other parts of the council to the licensing team such as legal services and committee services and any recharges there might be for rooms, heating and lighting from the centre of the authority
 - The cost of providing advice and guidance to applicants on what will be a new process
 - Carrying out inspections to ensure compliance with the law
 - Training staff and councillors in the requirements of the new legislation
 - Costs associated with consulting other agencies and bodies when considering if an applicant is a suitable persons
 - Working with partners in ensuring compliance
 - Issuing the licence
 - Any officer time providing information for inclusion in the central register of dealers
- 1.4.7 A potentially significant cost not explicitly mentioned above, could be the holding of hearings to consider whether to grant a licence or whether to revoke or vary a licence. As the cost for these will be spread across licence fees as a whole, an estimate will have to be made when setting the fees of how many potential hearings there may be. Given the likely number of applicants to assess it would be sensible once at the end of the first review of operation of the licensing system to review how many hearings there have been and revise the fees accordingly.

Council are assisted by one of the implications of the Hemming case which allows deficits or surpluses to be carried over into the next financial year.

1.5 The Way Forward

- 1.5.1 In view of the short time frames involved it is necessary to take prompt action to delegate the Council's powers and functions in respect of scrap metal dealers to an appropriate Committee, to confirm which department will undertake the new responsibilities, and to set fees.
- 1.5.2 LGA guidance suggests that the easiest way forward would be for existing licensing departments to add the responsibility for scrap metal licensing to their responsibilities for alcohol, taxi and gambling licensing. Presently, all delegations in respect of these other licensing functions sit with the Director of Central Services & Monitoring Officer, so it is therefore proposed that the responsibility for exercising the Council's functions in respect of scrap metal licences is included within these delegations.
- 1.5.3 A Licensing Panel, drawn from the Licensing Committee, would then be used to hear representations, contested applications and any cases where officers are recommending refusal or revocation of a licence.
- 1.5.4 This draft scale of fees and the working behind it is attached as **Annex 3**; **Annex 4** and **Annex 5** to this report, in order that members of Cabinet may examine it and comment before it is brought before Council on 5 November for approval.
- 1.5.5 In summary the proposed fees are as follows;
- Site licence grant - £340
 - Site licence renewal - £320
 - Collectors licence, grant or renewal - £265
 - Variation (such as change of address) £30
- Each licence covers a 3 year period.

1.6 Legal Implications

- 1.6.1 The licensing of scrap metal dealers by Tonbridge and Malling Borough Council, under the new regime, is a statutory function of the Council. It is not function of the Executive.

1.7 Financial and Value for Money Considerations

- 1.7.1 Part of the licensing regime will be funded by licence holders but the cost of unlicensed dealers will have to be met from central funds.

1.7.2 Fee setting must be in accordance with The Provision of Services Regulations 2009 together with the relevant Secretary of State and LGA guidance.

1.7.3 As of 2 October 2013 three potential site licences and nine mobile collectors licences have been identified which would result in £4,200 in fee revenue (3 * £340 = £1,020 and 12 * £265 = £3,180).

1.8 Risk Assessment

1.8.1 We have already contacted existing dealers operating within Tonbridge and Malling that we are aware of so as to apprise them of the new legislation and the transitional arrangements.

1.8.2 There are likely to be unlicensed collectors operating illegally which will impact on the work of the licensing team.

1.9 Equality Impact Assessment

1.9.1 See 'Screening for equality impacts' table at end of report

1.10 Recommendations

1.10.1 Cabinet is asked to **RECOMMEND** to Council that

- (1) The scale of fees set out at paragraph 1.5.5 and detailed in **Annex 3 - Annex 5**, to this report are approved;
- (2) Authority is delegated to the Director of Central Services and Monitoring Officer to exercise all functions of the Borough Council in relation to scrap metal licensing;
- (3) The terms of reference in respect of the Licensing and Appeals Committee are amended so as to include scrap metal licensing.

Background papers:

contact: Anthony Garnett

Nil

Adrian Stanfield
Director of Central Services and Monitoring Officer

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	All applications made are decided on their own merits and on a case by case basis. Application are open to all groups in the community to apply
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	N/A
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.