

# General Licensing and Registration Committee

17<sup>th</sup> October 2013



## Scrap Metal Dealers Act 2013

### Guidance

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## Report of Joanne Waller, head of Environment, Health and Consumer Protection

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### Purpose of the Report

- 1 The purpose of this report is to provide members with information and guidance on the Scrap Metal Dealers Act 2013 (the Act)

### Background

- 2 The Act came into force on the 1 October. It harmonised the previous scrap metal registration scheme and the motor vehicle salvage operators regimes into one Act. The term "scrap metal dealers" includes scrap metal dealer sites and mobile collectors
- 3 The Act introduced a new licensing system requiring anyone operating as a scrap metal dealer to apply for a licence. Previously, the only requirement was to register with their local authority. Councils are able to refuse to grant a licence where the applicant is judged not to be a suitable person to operate as a scrap metal dealer. This ability to regulate who is and who is not a scrap metal dealer is designed to improve the operating standards of those dealers who do not operate in the same way as the majority of reputable dealers.
- 4 In order for anyone to carry on business as a scrap metal dealer, a licence will be necessary. These licences will last for three years and trading without a licence will be a criminal offence. If convicted of trading without a licence the offender could be fined up to Level 5 on the standard scale. Amendments to the size of the fines that courts can impose in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 mean that when the provisions come into force, a fine at that level will be unlimited.
- 5 There are two types of licence specified in the Act:

#### Site licence

All the sites where a licensee carries on business as a scrap metal dealer have to be identified and a site manager has to be 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 local authority. It does not allow the collector to operate in any other local authority area, so a separate licence has to be obtained from each council the collector wishes to operate in. The licence does not authorise the licensee to operate a site. It should be noted that a dealer could only hold one type of licence in any one local authority area so they will have to decide whether they are going to have a site or a mobile licence in any one area. They cannot hold both a site and mobile collector's licence from the same council.

## **Timetable for Transition to the New Regime**

6 In order to provide time for councils to process applications without existing businesses being in a position where they cannot operate, the Home Office has implemented a transition process. The transition timeline is:

- The Commencement Order was made in August, which allowed local authorities to set a licence fee from 1 September.
- The main provisions of the Act commenced on 1 October.
- Dealers and motor salvage operators registered immediately before 1 October are deemed to have a licence under the Act from that date.
- Provided the dealer submitted an application for a licence on or before 15 October 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 submitted an application on or before 15 October but does not supply all the required information with the application form then the deemed licence remains in effect after 15 October.

## **Application Fees**

7 Any application under the Scrap Metal Dealers Act 2013 must be accompanied by a fee. Local Authorities were able to set fees under this Act from 1 September 2013. The fee is set by the local authority having had regard to guidance issued by the Home Office with the approval of the Treasury and the Local Government Association. These figures have been used by many local authorities when setting their fees. In setting their fees, local authorities must have regard to the requirements of the European Union Services Directive and any licensing case law, of which the recent case in the Court of Appeal of *Hemming v Westminster City Council* is especially relevant.

The following aspects have been considered in calculating the DCC fees:

- Consultation with the trade and other relevant parties
- Advice and guidance to prospective applicants
- Fee processing
- Application processing
- Consideration of application
- Formal committee hearings where required
- Production of licence, including licences that can displayed in vehicles
- Production and maintenance of a register
- Post licence inspection(s)
- Staff and Member training
- Policy preparation
- Application forms, licence and guidance preparation
- Printing costs
- Pre-enactment reports and fee setting

- 8 It is expected that these costs are likely to differ over the period from the initial grant of a licence through to the renewal of the licence three years later and therefore be considered as a matter of course with the annual review of all fees and charges.
- 9 The fees in relation to the costs of hearing is a best estimate as Democratic services are unable to provide a figure which shows the overall costs as they consider that there are too many variable factors.
- 10 It is expected that the Council will receive at least one hundred and seventy applications during the first two weeks of the act coming into force. This figure has been used when calculating the fee. It is anticipated that 20% of the applications will be contested and determined by General Licensing Committee. This percentage figure is consistent with other local authorities across the region when setting their fees.
- 11 The estimated cost of holding the committees, the general costs and materials such as window stickers have been added together and divided between the estimated figure of 170 applications being received.

## **Fees**

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<b>Type of Licence</b>	<b>Proposed Fee</b>
Site Licence - New	£354
Site Licence Variation	£162
Site Licence Renewal	£338
Collectors Licence - New	£219
Collectors Licence Variation	£155
Collectors Licence Renewal	£219

## **Guidance**

In the absence of a policy, to assist Members and officers in dealing with applications under the Act, DCC guidance has been produced and is attached as appendix 2. A policy on the subject will be produced in 2014.

## **Background papers**

The Scrap Metal Dealers Act 1964

The Scrap Metal Dealers Act 2013

The Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order

2013

Vehicles (Crime) Act 2001

Scrap Metal Dealers Act 2013 Supplementary Guidance

Scrap Metal Dealers Act 2013 Determining Suitability to hold a Scrap Metal Dealers licence

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## Appendix 1: Implications

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**Finance** - Licensing under the Scrap Metal Dealers Act 2013 will be funded through a schedule of fees which will recover all costs associated with the service except any enforcement against unlicensed traders. The fees will be reviewed annually. As the licence lasts for three years, any income received will not be annual and should not be considered as part of an annual income target. Once the existing licence holders receive their new licence it is not anticipated that there will be many other applications for the site licences and it is unknown how many mobile collectors will be operating in County Durham.

**Staffing** – Licensing staff will process applications and consult with other agencies when applications are received. Should an application be contested licensing staff will process this to committee stage with colleagues in Democratic Services.

**Risk** - Risks associated with the regime are managed by the Service.

**Equality and Diversity / Public Sector Equality Duty** - All applicants and other parties under the Scrap Metal Dealers Act 2013, will be treated equally by the Local Authority. No decision taken under the Act should in any way discriminate against any person or group in society.

**Accommodation** - None

**Crime and Disorder** - Every application will be accompanied by a basic disclosure certificate notifying of any unspent convictions. Further consultation will then take place with the police is deemed appropriate so that they have an opportunity of visiting premises and making a comment on the application.

**Human Rights** - None

**Consultation** - None

**Procurement** - None

**Disability Issues** - None

**Legal Implications** - The Scrap Metal Dealers Act 2013 commences on the 1 October 2013 and repeals the Scrap Metal Dealers Act 1964 and the Motor Vehicles Crime Act 2001. The new Act which received Royal Assent on 28 February 2013 consolidates scrap metal dealers and motor salvage operators under one licensing regime. The timeframe for processing the each application from 1 October are outlined in the Act. Based on recent case law the fees are set to include all costs associated with operating the licensing regime and do not cover the costs of enforcing the non-licensed traders.

Clare Greenlay in Legal and Democratic services has seen this report and method of calculation.