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19 September 2013

Dear Councillor

I am now able to enclose, for consideration at the meeting of the **REGULATORY COMMITTEE** on Thursday 26 September 2013 at 10.00 am, the following reports that were unavailable when the agenda was printed.

6 **SCRAP METAL DEALERS ACT 2013** (Pages 2 - 4)

To consider the attached report of the Licensing Team Leader.

Yours sincerely

A handwritten signature in black ink, appearing to be "Nicky", written over a white background. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Chief Executive

Subject:	SCRAP METAL DEALERS ACT 2013
Meeting and Date:	Regulatory Committee – 26th September 2013
Report of:	Susan Herivel, Licensing Team Leader
Classification:	Unrestricted

Purpose of the report: To advise Members of the Scrap Metal Dealers Act 2013

Recommendation: For committee to delegate to the Licensing Team Leader for decision non contentious Licence applications in accordance with the Scrap Metal Dealers Act 2013 and to delegate responsibility for setting all relevant fees to the Head of Regulatory Services and the Director of Governance concurrently, in conjunction with the Chairman and vice-chair of the Regulatory Committee.

1. Summary

The Scrap Metal Dealers Act 2013 requires all scrap metal dealers to obtain an appropriate licence for which a fee is payable and gives greater power to Local Authorities to licence, regulate and take enforcement action, where necessary.

2. Introduction and Background

- 2.1 A Scrap Metal Dealer is defined as someone carrying on a business which consists wholly or in part of buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought.
- 2.2 Increases in metal theft driven by the rise in commodity prices cost the economy between £220 million and £777 million a year according to two recent estimates. It has seen disruption to energy supplies, transport and telecommunications, as well as manhole covers stolen and war memorials desecrated. Thus, in 2012 the Government produced a Bill setting out proposals for a new licensing regime for scrap metal dealers. Initial changes were introduced to prohibit cash payments for scrap metal, to amend powers of entry into unregistered scrap metal sites and to increase the existing financial penalties for offences under the Scrap Metal Dealers Act 1964.
- 2.3 The current system of registration of scrap metal dealers with local authorities has operated since 1964. The 2013 Scrap Metal Dealers Act will replace the Scrap Metal Dealers Act 1964 and part of the Vehicle Crime Act 2001 that deals with motor salvage operators, widening the definition of a scrap metal dealer to include motor salvage operators.
- 2.4 The Scrap Metal Dealers Act 2013 received Royal Assent on 28th February 2013, the majority of which comes into force on 1st October 2013.
- 2.5 The Act revises the regulatory regime for scrap metal dealing and vehicle dismantling industries. The Act maintains local authorities as the principal regulator of these industries. It gives local authorities the power to better regulate these industries by provided a power to refuse to grant a licence and to revoke licences if the dealer

is considered 'unsuitable'. Unsuitability will be based on a number of factors including any relevant criminal convictions. The Act will also provide local authorities and police officers with suitable powers of entry and inspection.

- 2.6 There will be two types of licence, both valid for three years: a Site licence or a Collector's licence. A person can only hold one type of licence in a Local Authority's area but can hold a licence in more than one local authority area. A rigorous application process has been introduced to ensure that all applicants are suitable to hold a licence. A licence can be refused if the Local Authority is not satisfied of the suitability of the applicant after consultation with the Police, the Environmental Agency/Natural Resources Wales.
- 2.7 If refused, the applicant may make representations to the council and if the applicant states they want to make oral representations the council must provide them with the opportunity to appear before a licensing committee.
- 2.8 In the event the committee is minded to refuse the application then it will need to carefully consider the grounds on which it has decided to do so. The applicant has to be given the reasons an application has been refused and if there is an appeal, the council will want to have robust grounds on which to defend its decision not to grant a licence.
- 2.9 Where a council has refused an application, revoked a licence or varied a licence it must give the applicant or licensee notice of the decision, which also sets out the reasons for the decision. The notice also has to inform the applicant or licensee of their right to appeal.
- 2.10 The main provisions of the new Act come into force on 1st October 2013 and allow those with current registrations under the 1964 Act to continue to operate providing an application has been submitted to the Council between the 1st October 2013 and 15th October 2013. Those without prior registrations cannot legally operate until a licence is issued in accordance with the new Act's provisions.
- 2.11 The Act allows the fees for both Site Licences and Collectors' Licences to be set by the Local Authority on a cost recovery basis and subject to having regard to the European Union Services Directive and any licensing case law (Court of Appeal case of Hemming v Westminster City Council being of particular relevance).
- 2.12 The cost of enforcement action against unlicensed operators cannot be included in the fee charged to the licence holders and would have to be borne from central funds.
- 2.13 In the first year, the fee will be a best estimate as licences have not been issued before, but the fee will be reviewed annually to ensure that they are an accurate reflection of the costs involved.
- 2.14 Although it is not stated in the Act and no guidance has been issued, the Council must assume that Regulation 2 and Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 will apply to this legislation and the function of fee setting would not be a function of the Executive.

3. Identification of Options

- 3.1 The licensing and regulation of Scrap Metal Dealers will become a statutory function of the Council when the Scrap Dealers Act 2013 becomes law on 1st October 2013 and a fee must be charged which reflects the costs involved in dealing with these licences.
- 3.2 Option 1: For Committee to grant, refuse, revoke or vary applications under the 2013 Scrap Metal Dealers Act where representations are made. Non-contentious applications without representations to be granted by the Licensing Team Leader under delegated powers. To delegate responsibility for setting relevant fees to the Head of Regulatory Services and the Director of Governance concurrently, in conjunction with the Chairman and vice-chair of the Regulatory Committee.
- 3.3 Option 2: For Committee to retain responsibility for setting fees and determining all applications.

4. Evaluation of Options

- 4.1 Option 1 (point 3.2 above): If Committee is minded to choose this option it will allow the Local Authority to fulfil its statutory duty to licence and regulate Scrap Metal Dealers in accordance with the Scrap Metal Dealers Act 2013. This option will allow officers to deal with non contentious applications and to set fees on a cost recovery basis. It will be a quick and efficient means of dealing with applications and deciding on fees. The licensing fees and charges will be considered annually by the members of the Licensing and Regulatory Committees. This option is consistent with current procedures operating in relation to other Licensing matters.
- 4.2 Option 2 (point 3.3 above): If Committee is minded to choose this option all applications will need to be seen and approved by Committee. Members may wish to consider if the timescales and expense of holding meetings would make this a less economical or efficient method of dealing with these issues.

5 Background Papers

“Get in on the Act” Local Government Association Guidance on Scrap Metal Dealers Act 2013

Contact Officer: Susan Herivel, Licensing Team Leader