

EAST HERTS COUNCIL

EXECUTIVE – 5 NOVEMBER 2013

REPORT BY EXECUTIVE MEMBER FOR COMMUNITY SAFETY AND ENVIRONMENT

SCRAP METAL DEALERS ACT 2013

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- The purpose of this report is to provide details of the new legislation, consider the proposed application fees and the proposed delegation of powers.

<u>RECOMMENDATIONS FOR EXECUTIVE: That:</u>	
(A)	the proposed fee levels as set out in Essential Reference Paper B, be adopted; and
(B)	the proposed delegations for dealing with licensing and enforcement as set out in Essential Reference Paper C, be approved.

1.0 Background

1.1 Scrap metal theft costs the country between £220 and £777 million a year, according to the government. It can have an impact at a local level, such as lead taken from roofs, metal from war memorials or even stolen manhole covers. It can have widespread effects disrupting transport or communications systems.

1.2 In recent years several initiatives have developed to try and stop the rise of metal thefts. These have principally been led by the British Transport Police's Operation Tornado, which targets metal thefts. During the first six months of 2012, metal theft fell by 30 per cent in Hertfordshire compared to the same period of 2011 –

533 incidents compared to 773. Last year the law was amended to make it illegal for scrap metal to be paid for in cash meaning an audit trail was put in place which will hopefully deter sales of stolen metals. The Scrap Metal Dealers' Act 2013 has been passed by Parliament, unusually as a Private Members' Bill but with Government support, and it is hoped the new regulatory controls will provide a far more effective way to manage this industry.

2.0 Report

2.1 The 2013 Act repeals the Scrap Metal Dealers Act 1964 (as amended) and Part 1 of the Vehicle (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Act maintains local authorities as the principal regulator, but gives them the power to better regulate these industries by allowing them to refuse to grant a licence to 'unsuitable' applicants and a power to revoke licences if the dealer becomes 'unsuitable'. The Act gives more power for the council to work towards making safer communities and assisting in its work tackling enviro-crime.

2.2 The Act defines a "scrap metal dealer" as a person who:

- a) carries on a business which consists wholly or partly in buying or selling scrap metal, or
- b) carries on business as a motor salvage operator.

2.3 The Act states that "scrap metal" includes:

- a) any old, waste or discarded metal or metallic material, and
- b) any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.

2.4 The following is not considered to be "scrap metal":

- a) gold
- b) silver, and
- c) any alloy of which 2 per cent or more by weight is attributable to gold or silver.

2.5 Section 1 of the Act requires that a scrap metal dealer obtains a licence from the local authority in order to carry on business as a scrap metal dealer. It will be an offence to carry on a business as

a scrap metal dealer in breach of the requirement to hold a licence. The offence is punishable on summary conviction with a fine not exceeding £5000 (level 5 on the standard scale for summary offences set in the Criminal Justice Act 1982).

2.6 Site licences

A site licence will be issued by the local authority in whose area a scrap metal site is situated. Applicants will be required to identify all the sites within the District at which it is proposed to carry on business as a scrap metal dealer and a site manager will need to be named for each site. In so doing, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area. There are presently five licensed sites in the District and this number is expected to change as a result of the new legislation.

2.7 Collectors' licence

A collector's licence will authorise the licensee to operate as a mobile collector in the area of the issuing local authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal. As this is a new licensing requirement and will apply to businesses from outside the District who wish to operate within East Herts, there are no accurate estimates of numbers at this stage. The best estimate based on entries in telephone directories is there may be between twelve and twenty applications.

2.8 The licence does not permit the collector to collect from any other local authority area; a separate licence would need to be obtained from each local authority in whose area the individual wished to collect. A licence also does not authorise the licensee to carry on a business at a site within any area – should a collector wish to use a fixed site, they would need to obtain a site licence from the relevant local authority. There is no restriction as to the location where the collector can transport and sell their metals.

2.9 A person may therefore hold a site licence issued by one local authority and may also hold a number of collector licenses issued by different local authorities.

2.10 A licence will be issued for a period of three years from the date of issue. The Secretary of State will have the power under section 1(4) of the Act to alter the duration of the licence. The costs for the licences – which may not take account of any enforcement

action against unlicensed operators – can be spread across the three year period.

- 2.11 Section 3 requires that the licensing authority has to be satisfied that an applicant is a suitable person to carry on business as a scrap metal dealer. In considering suitability, the local authority may have regard to any relevant information, including whether any enforcement action has been taken against the applicant or whether the applicant has been convicted of a relevant offence. The Secretary of State has prescribed in regulations the meaning of relevant offence and relevant enforcement action. The authority must also have regard to the guidance on determining suitability which will be issued from time to time by the Secretary of State, and the authority may consult with other organisations to assist in determining suitability. There will therefore be costs to the authority associated with those exercises.
- 2.12 Section 4 provides the licensing authority with the discretion to revoke a licence on particular grounds, including where the local authority is no longer satisfied that the licensee is a suitable person to carry on the business as a scrap metal dealer. The revocation of a licence can only be carried out by a local authority.
- 2.13 A council's ability to impose conditions on a licence is very limited. Conditions can be imposed only where the applicant or any site manager has been convicted of a relevant offence, or, where the council is revoking a licence when a condition can be imposed, until the revocation comes into effect. For the majority of applicants therefore it is unlikely that a council will be in a position of being able to consider imposing conditions. In considering whether to issue a licence where the applicant or a site manager has a relevant conviction, the local authority might decide to do this on the basis that a condition is imposed on the licence.

Councils can impose one or both of two conditions. These conditions specify that:

- the dealer can receive scrap metal only between 9.00am and 5.00pm on any day, in effect limiting the dealer's operating hours; and/or

- any scrap metal received has to be kept in the form the dealer received it for a set period of time, which cannot be more than 72 hours.
- 2.14 Section 6 places a duty on the local authority to supply any such information as requested relating to scrap metal licences to any other local authority in England and Wales, the Environment Agency and to Police forces.
- 2.15 Section 7 requires that a register of licences issued under the Act should be maintained by the Environment Agency. Local authorities will provide the appropriate information on all licences issued in their geographic areas in order that the register can be updated regularly. The register will be made openly accessible to the public and will include: the name of the authority which issued the licence; the name of the licensee; any trading name; the type of licence; the site(s) covered by the licence and the expiry date of the licence.
- 2.16 Section 10 requires that the licensee display a copy of their licence. For site operators this must be in a prominent place in an area accessible to the public. For mobile collectors, it must be in a manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil these requirements. This offence is punishable on summary conviction with a fine not exceeding £1000 (level 3 on the standard scale for summary offences set in the Criminal Justice Act 1982).
- 2.17 Section 11 places a requirement on scrap metal dealers, site managers and employees who have been delegated the responsibility to do so, to verify the identity of the person they are receiving metal from and the person's address. This verification must be done by reference to data, documents or other information obtained from a reliable or independent source, such as the Identity and Passport Service, the Driver and Vehicle Licensing Agency, a bank or utility company etc. The Secretary of State will prescribe in regulations the data or documents which are sufficient or not sufficient, as the case may be, for verifying identity. Over 80 per cent of the county's scrap yards already require such identity checks following targeted work by Hertfordshire Police and so this will not be an excessive requirement for most.
- 2.18 It will be an offence not to obtain and verify the seller's identity,

punishable by a fine not exceeding £1000 (level 3 on the standard scale for summary offences set in the Criminal Justice Act 1982). The offence will apply to the scrap metal dealer, the site manager and any person, who under arrangements made by either the scrap metal dealer or the site manager, has responsibility for fulfilling this requirement on behalf of the business.

- 2.19 Section 13 of the Act sets out the record-keeping requirements in respect of any scrap metal received by a scrap metal dealer in the course of their business. Information that is required to be recorded includes the type of metal being purchased; the time/date of the transaction; personal information on the seller; who is acting on behalf of the dealer and proof of the non-cash transaction. Failure to comply with the requirements of this section is an offence attracting a penalty up to £5000 (level 5 on the standard scale for summary offences set in the Criminal Justice Act 1982).
- 2.20 Both the council and police have enforcement powers under the Act. Officers of East Herts Council already liaise on a regular basis with the police, Environment Agency and other bodies. It is expected joint operations with other agencies will be supplemented and informed by pro-active inspections being undertaken by Council officers at fixed sites and with collectors in the District.
- 2.21 Appeals against a decision by the council to refuse an application, to impose a condition on the licence or to revoke or vary the licence are made to the magistrates' court within 21 days of the decision being appealed against.
- 2.22 **Proposals for fees**
The fee level has been calculated at £246.00 for a site and £222.50 for a collector licences and covers a licence period of three years. Fees to renew a site licence are calculated to be £182.70 for a site licence and £159.20 for a collectors licence. The fee for variation or change of name on either a site or collectors licence and change of site has been calculated at £43.50 taking into account the complexity of the applications. In setting fees, the council has to have regard to the Provision of Services Regulations 2009, and a recent judgement of the Court of Appeal. Cost recovery through fees are therefore limited to the costs of administering applications and monitoring compliance of licensed operators but cannot take into account enforcement activities

against unlicensed operators. Surpluses and deficits from one year may be carried forward to the following year. The licence fee proposal is based on the assumptions set out in **Essential Reference Paper B** and is in accordance with the Home Office statutory guidance on fee setting issued on 12 August 2013.

2.23 **Proposals for scheme of delegation**

The scheme of delegations proposed at **Essential Reference Paper C** involves most decisions being taken at officer level in the interests of efficiency. However, given the potential impact of decisions to revoke or refuse a licence this decision is proposed to be delegated to the Director of Neighbourhood Services. This function cannot be delegated to the Licensing Committee (or a sub-committee of the Licensing Committee) as it is currently a function of the Executive. It is understood the Government will amend the relevant regulations next year to bring this within the jurisdiction of the Licensing Committee and at that stage the Constitution will be amended.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Scrap Metal Dealers Act 2013: guidance on fees and charges

(Issued by the Home Office 12 August 2013)

<http://online.eastherts.gov.uk/moderngov/mglIssueHistoryHome.aspx?IId=12612&PlanId=188>

Contact Member: Malcolm Alexander – Deputy Leader and Executive Member for Community Safety and Environment
malcolm.alexander@eastherts.gov.uk

Contact Officer: Simon Drinkwater - Director of Neighbourhood Services
simon.drinkwater@eastherts.gov.uk

Report Author: Oliver Rawlings – Senior Specialist Licensing Officer
oliver.rawlings@eastherts.gov.uk