

ITEM 4 - APPENDIX B

WAVERLEY BOROUGH COUNCIL

LICENSING AND REGULATORY COMMITTEE - 26 SEPTEMBER 2013

EXECUTIVE – 1 OCTOBER

SPECIAL EXECUTIVE – 15 OCTOBER 2013

Title:

SCRAP METAL LICENSING – NEW LEGISLATION

[Wards Affected: All]

Summary and purpose:

New legislation (the Scrap Metal Dealers Act 2013) is due to come fully into force in December 2013 requires that from 1 October 2013 anyone carrying on a business as a scrap metal dealer, including previously registered premises or individuals, must be licensed. Some new Regulations and Guidance are still awaited.

The Executive considered this report at its meeting on 1st October and endorsed the proposal. However, following legal advice the Council was advised that setting the fees needs to be approved by the Executive. Consequently, the report needs to be reconsidered at this meeting. Changes proposed to the Scheme of Delegation noted in Annexe 1, will still need Council approval and this recommendation is contained within the minutes of the Executive from its last meeting.

How this report relates to the Council's Corporate Priorities:

Primarily to tackle metal theft, changes were made to earlier legislation (chiefly the Scrap Metals Dealers Act 1964) which merely required a registration of premises or collectors. Those recent changes have been consolidated under this new Act and a licensing scheme is introduced. There are no direct implications for Council Priorities but public safety should be better protected through measures designed to make the disposal of stolen metals more rigorous and accountable.

Equality and Diversity Implications:

None

Resource/Value for Money implications:

Fees must be set locally by each local authority on a cost recovery basis, so will provide the funding needed to administer the regime and ensure compliance (through inspections, spot-checks, etc.). The approach of this new legislation does not require the use of Licensing Hearings in cases of dispute – a representation will be heard by the appointed person (Head of Service) and thence by way of appeal to the Magistrates' Court if necessary. In accordance with the EU Services Directive, the Provision of Services Regulations 2009 and current case law, fees set must not exceed the costs of providing the authorisation service. This is detailed further in the body of the report.

Legal Implications:

The new regime requires changes to the Scheme of Delegation (Annexe 1) in order to determine and issue, vary, revoke or renew, or carry out enforcement regarding, scrap metal dealers' licences. Day to day regulatory functions will be carried out by Environmental Health Officers and/or Technical Officers as part of the Council's Environmental Services functions. Legal implications are detailed further in the body of the report

Background

1. There are a small number of businesses in Waverley that deal with scrap metal (Scrap Metal Dealers and Motor Salvage Operators) and they are required to register this. To reduce the potential for metal theft, fraud and money laundering, changes to the record keeping processes and payments were introduced by central government in September 2012.
2. Since then, government has looked again and decided to remove the registration requirement on such businesses and replace it with one licensing system covering both arms of scrap metal dealing, under the Scrap Metal Dealers Act 2103 (the 2013 Act). New transitional arrangements were released in August – this report is based on the information contained in these updates and a guidance document released by the Local Government Association, but a number of issues remain outstanding (see 5 below).

Introduction

3. **Transitional arrangements:** It is understood that currently registered scrap metal dealers and motor salvage operators will be able to apply for a new licence from 1st October 2013. Provided they make their applications before 16th October currently registered scrap metal dealers will automatically be deemed to hold a temporary licence pending completion of formal suitability assessments. Deemed licences will run until the application is determined but the Home Office is recommending a completion date of 1st December, by which time Licensing Authorities are expected to have concluded their licensing processes.
4. Any scrap metal dealers caught by the new legislation who are not currently registered will be able to apply from 1st October but will not receive an interim licence. The application will be processed under the 2013 Act and determined accordingly; trading without a licence will be an offence and full enforcement of the provisions of the 2013 Act will commence 1st December 2013.
5. Although the primary legislation has been passed a lot of work is still required, mainly through provision of detailed guidance for operators and Licensing Authorities, and passing of Statutory Instruments to set detailed regulations, including:
 - Issue of regulations setting out the form & content of licences.
 - Issue of formal guidance to local authorities on suitability assessment.
 - Issue of regulations setting out relevant offences to be considered in assessing suitability of applicants.

- Issue of regulations specifying requirements for verifying the identity of persons supplying scrap metal.
- Issue of guidance for applicants on applying to “Disclosure Scotland” for basic criminal record checks.

Finance/Risk Management Implications:

6. There are currently six registered scrap metal dealers (including one itinerant collector) and one motor salvage operator in Waverley. No fees are currently payable, although the Council introduced a registration fee of £109 for motor salvage in 2013-14 which would have fallen due to that one operator on renewal, in January 2014. Registration currently last 3 years and the new licensing regime mirrors this. The £109 fee will no longer be required but fees will need to be set for the two types of scrap metal dealer licences: Site licences and Collectors’ licences, as well as for variations and renewals under each category.
7. Fees must be set locally by each local authority on a cost recovery basis, so will provide the funding needed to administer the regime and ensure compliance. In accordance with the EU Services Directive, the Provision of Services Regulations 2009 and current case law, fees set must not exceed the costs of providing the authorisation service. See table of proposed fees at para.14
8. Local authorities have a duty to have regard to guidance issued by the Secretary of State which outlines issues to be considered when setting the fees and what activities the fees can cover. The guidance states the fees should reflect the time spent:
 - assessing and administering applications
 - processing applications
 - having experienced licensing officers review applications
 - storing applications
 - consulting on the suitability of an applicant
 - reviewing relevant offences
 - the decision on whether to issue a licence

Licence fees can also include:

- the cost of issuing a licence in a format which can be displayed
 - the cost of consulting the local authority’s enforcement records in order to determine the suitability of the applicant
 - costs associated with contested applications
9. The licence fee cannot be used to support enforcement action against unlicensed scrap metal dealers, and such action must be funded through existing resources.
 10. Unfortunately the fee-setting guidance has been issued very late in the day. It is understood that currently registered premises will have deemed licences (para. 3 above) even if the accompanying paperwork is incomplete. Interim fees for new applications have been agreed by CMT in order to take payment pending the setting of a fee. Applications are not valid without the payment of a fee and the

Council's timetable, due to the lateness of guidance, means this will not be formally resolved by 1st October. Any shortfalls or overpayments arising out of the interim fees will be recovered or remitted.

11. Applicants would need to be notified that the payment represents the estimated fee, and that should the fees finally set be greater or less than the estimated fee, any resultant shortfall or excess would be recovered or remitted.
12. Using the above guidance in the fee-setting process a charge of £440 for Site Licences and £400 for Collectors' Licences is recommended, with lower levels for renewals and variations. Some previously unregistered businesses may now fall under the 2013 Act and these will be identified, assessed and advised accordingly.

Legal Implications:

13. A number of powers are included in the 2013 Act, many of which reflect existing practices under other regulatory regimes. The Council's Scheme of Delegation should be amended to include the new provisions. Whilst addressing this, the Council may wish to take the opportunity to correct some errors in the current Scheme (Annexe 1). The changes to the scheme of delegation were considered at its meeting of the 1st October and endorsed by the Executive. A recommendation has been made to Council to approve these changes at its meeting on 15th October.
14. A scrap metal dealer aggrieved by a decision of the Council has a right to make representations, in writing or orally, detailed in Schedule 1 of the 2013 Act. Such representations should be heard by an appointed person (Head of Service) and their right of appeal is directly to the Magistrates' Court.

	SCRAP METAL DEALERS LICENCE by TYPE	PROPOSED FEE (£)
1	Site - new application	440
2	Collector's - new application	400
3	Site – renewal	248
4	Collector's – renewal	208
5	Site to Collector's – variation	377
6	Collector's to Site - variation	416

Conclusion

15. New fees need to be set for the elements identified in the 2013 Act and the recent Home Office Guidance of Fees. The charges suggested above have been calculated in a robust way whilst heeding the caveat of not making a profit from licence fees.

Licensing and Regulatory Committee – 26th September 2013

16. This item was considered by the Licensing and Regulatory Committee at their meeting on 26 September 2013. The Committee supported the proposal and

had no comments they wished to pass to the Executive. The Committee endorsed the recommendation to the Executive

Executive – 1st October 2013

17. At its meeting on 1st October, the Executive considered this report and endorsed the recommendation that a fee of £440 and £400 for Site and Collectors' licences respectively be set; of £248 and £208 for their respective renewals, and of £377 and £416 for variations to Site and Collector's licences. Furthermore, it recommended to Council to amend the Scheme of Delegation to reflect the new Scrap Metal licensing regime, and that the previously identified errors in the scheme of delegation be corrected as noted in Annexe 1. This will be considered at Council on 15th October 2013.

Recommendation

That the Executive approves setting a fee of £440 and £400 for Site and Collectors' licences; £248 and £208 for their respective renewals, and £377 and £416 for variations to Site and Collector's licences.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

CONTACT OFFICER:

Name: Colin Giddings

Telephone: 01483 523435

E-mail: colin.giddings@waverley.gov.uk

ANNEXE 1

Scrap Metal Dealers Act 2013 – required changes to the Environmental Health Scheme of Delegation

Changes arising out of the 2013 Act

In the introductory table of EH powers:

- Omit Scrap Metal Dealers Act 1964
- Omit Vehicles (Crime) Act 2001
- Insert Scrap Metal Dealers Act 2013

At item 153 under Licensing and Associated Powers:

- Amend existing wording to read – Environmental Health Manager to exercise powers to grant, renew, refuse, vary, impose conditions on and revoke scrap metal licences under the Scrap Metal Dealers Act 2013 (except where Schedule 1 Paragraphs 7(7) and 7(8) representations are made) and to issue notices under Section 4(7) of the Act. Environmental Health Manager to exercise powers to issue and withdraw closure notices under the Act, to certify that the need for a closure notice/closure order has ceased to exist and to authorise appropriately qualified professional and support Officers to enter and inspect sites licensed under the Scrap Metal Dealers Act 2013, and to obtain and execute warrants of entry to premises in accordance with the Act. Environmental Health Manager to exercise powers to authorise appropriately qualified professional and support Officers to assess the suitability of applicants under the Act. Authority to the Borough Solicitor, on the recommendation of the Environmental Health Manager, to institute legal proceedings for offences contrary to the Scrap Metal Dealers Act 2013 and for application for closure orders under the Act.

The Head of Environmental Services to consider written representations and be the person appointed to hear oral representations in accordance with Schedule 1 Paragraphs 7(7) and 7(8) Scrap Metal Dealers Act 2013, and to exercise powers to grant/refuse applications and revoke/vary licences following consideration of such representations.

Changes arising due to identified typographical errors

At item 87:

- Omit 'clear' and substitute 'cleanse or repair'

At items 92, 93 and 94 under Public Health Act 1961:

- Remove item 92 and re-insert between items 69 and 70 under Public Health Act 1936
- Remove item 93 and re-insert between items 76 and 77 under Public Health Act 1936
- Remove item 94 and re-insert between items 77 and 78 under Public Health Act 1936
- Re-number amended items and subsequent items accordingly