

Committee: CABINET

Agenda Item

Date: 12 SEPTEMBER 2013

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Title: SCRAP METAL DEALERS

Author: MICHAEL PERRY

Key decision: No

Summary

1. This report is to inform members of the provisions of the Scrap Metal Dealers Act 2013 and to seek members' views regarding the implementation thereof

Recommendations

2. The Leader designate a portfolio holder to have overall responsibility for the Council's functions under the Act
3. The Cabinet determine the mechanism for dealing with applications under the Act and grant any necessary delegations
4. The Cabinet determine the level of fees for licences granted under the Act

Financial Implications

5. The Act permits local authorities to set their own fees for the issue of licences. In so doing the Council must have regard to guidance issued by the Secretary of State which is attached as Appendix A. Fees may include the costs of considering applications, holding hearings where need be and issuing licences. In addition the fees may include an element to cover monitoring the activities of licence holders. Any costs incurred in enforcing breaches of the legislation by unlicensed dealers however may not be included in the licence fees and would need to be met by the general fund.

Background Papers

6. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

None

Impact

- 7.

Communication/Consultation	None
Community Safety	None
Equalities	None

Health and Safety	None
Human Rights/Legal Implications	As set out in the body of this report
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	There will be additional workloads for the enforcement and licensing teams

Situation

8. The Scrap Metal Dealers Act 1964 contains provisions for registration of scrap metal dealers and the regulation thereof. The Act did not extend to motor salvage operators who are subject to registration under the Vehicles (Crime) Act 2001. The regulatory regimes were different for both types of business. Registration in each case is with the district council within the area of which the business is carried out.
9. With effect from 1 October 2013 both of the aforementioned Acts are repealed so far as they relate to scrap metal dealers and motor salvage operators. They are replaced by the Scrap Metal Dealers Act 2013 ("the Act") which applies to both types of business.
10. The Act is clearly regulatory in nature and as such the functions under the Act would normally be performed by the Licensing and Environmental Health Committee. However unusually (possibly uniquely) for legislation of this type the functions have not been excluded from being executive functions. I am aware of this being queried with the government by the LGA and the reported response indicates that this may well have been an oversight by the parliamentary draftsman. However the situation is that unless and until there is an amendment to the legislation functions under the Act fall to be performed by the executive.
11. The Act requires scrap metal dealers to be licensed by local authorities instead of merely registered by them. This is a significant difference as a local authority may not refuse to register a business but may in certain circumstances refuse to grant a licence.
12. Licences are divided into 2 categories, site licences and collectors' licences. The former authorises the licensee to carry on business in an authority's area. The latter authorises a licensee to act as a mobile collector in a local authority's area. A site licence may cover more than 1 site in the district. A collector's licence is required from the council for each district within which the licensee collects scrap metal. Only one licence of each description may be held by an individual from a local authority (which means that where a licensee has more than one site within a district all must be covered by the same

licence). However licensees may hold licences issued by more than one council.

13. Local authorities must not grant or renew licences unless they are satisfied that the applicant is a fit and proper person to carry on business as a scrap metal dealer. In determining whether the applicant is fit and proper regard may be had to any information the Council considers relevant including in particular:
 - a. whether the applicant or site manager has been convicted of a relevant offence. (A "relevant offence" is one prescribed by the Secretary of State by statutory instrument. At the time of preparation of this report no such S.I. had been issued).
 - b. whether the applicant or site manager had been the subject of any relevant enforcement action (again, to be prescribed)
 - c. any previous refusal to grant or renew a licence
 - d. any previous refusal of an application for a relevant environmental permit
 - e. any previous revocation of a scrap metal dealers licence
14. Where the applicant is a limited company the council may also have regard to the suitability of directors of the company, the company secretary and any shadow directors. If the applicant is a partnership all of the partners should be "fit and proper" persons.
15. In determining whether applicants are fit and proper persons local authorities must also have regard to any guidance issued by the Secretary of State. At the time of preparation of this report no such guidance has been issued. Local authorities may (but are not obliged to) consult with others on the issue of suitability of applicants including other local authorities, the Environment Agency and the police. I suggest that as a matter of good practice the Environment Agency and police should always be consulted and that where it is known that the applicant holds or has within the 5 years preceding application held scrap metal dealers licences of any description from other local authorities those authorities should be consulted also.
16. The Act presupposes that relevant convictions would not necessarily be a bar to holding a licence as it provides that in such cases if a licence is granted it may be subject to conditions on hours of operation and requiring scrap metal not to be altered from the condition in which it was received for up to 72 hours.
17. The Act also gives local authorities power to revoke licences in circumstances where:-
 - a. the licensee does not carry on business from any of the sites identified in the licence

- b. the person named as site manager no longer acts as site manager at the sites identified in the licence
 - c. the authority is no longer satisfied that the licensee is a fit and proper person
18. Licences last for a period of 3 years. Once granted they may be varied in certain circumstances but may not be transferred. Thus if a licensee were to dispose of his business a new application for a licence would normally be required.
19. Decisions to refuse to grant, renew or vary a licence or to impose conditions as permitted by the Act or to revoke a licence are subject to a right of appeal to the magistrates' court.
20. There are no "grandfather rights" accruing to those with existing registrations. The only concession they have is that they have a deemed licence which lasts from 1 October 2013 until 15 October 2013. Providing an application is made for a licence by 15 October the deemed licence will continue until such time as the application has been determined and (if the application is refused) until the time for appealing against refusal has lapsed or any appeal has been disposed of. Each applicant would therefore need to satisfy the Council that they are a fit and proper person.
21. As the functions under the Act are executive functions they may be performed by the Leader, the Cabinet, a committee of the Cabinet or an individual Cabinet member or officer under delegated powers.
22. Under other regulatory regimes uncontroversial applications are dealt with by officers. Members may therefore consider it appropriate to delegate the decision to officers to grant licences where no adverse representations are received from consultees and there is no evidence that the applicant or site manager have been convicted of a relevant offence or been the subject of relevant enforcement action (once these matters have been prescribed). Where the officer is not minded to grant the licence for those reasons or for on any other grounds or where grounds exist whereby officers consider that an existing licence should be revoked the applicant/licensee must be given the opportunity to make representations and may request a hearing. Members need to take a view as to who should deal with such matters when representations are received and/or a hearing is requested.
23. The Act contains provisions for the conduct of scrap metal dealerships monitoring of which will be the responsibility of the enforcement team.
24. As referred to in the preface the Act permits the Council to set its own level of fees. These should be set on a costs recovery basis only and different fees may be appropriate on initial grant and on renewal.
25. Officers have identified 6 businesses in the district which will require licences. There appears to be a trend with other authorities to charge less for collector's licences than for site licences and indeed the government guidance

anticipates that collectors' licences would require less work. However the council's licensing officers are unable to identify any difference in the work involved which would justify any differential. It is therefore suggested that when setting fees the charge for collectors' licences and site licences should be the same.

26. In round figures officers calculate the costs of officer time in processing applications and issuing licences (including initial and set up costs) as being a total of £935. Divided between the 6 businesses identified this amounts to £156 per licence rounded to the nearest pound. Deducting costs which would not be required on renewal the fees would be £107 per licence.
27. In addition to the costs of processing and issue however other costs can be recovered consistent with the legislation and government guidance. These costs would include the costs associated with any hearings etc (but not appeal costs to the magistrates' court), training and some enforcement activity.
28. Hearings are only required where the Council proposes to refuse to grant, renew or vary a licence or to revoke a licence. As such they will be the exception rather than the norm. The estimate costs in terms of officer time for a hearing would be approximately £300. It is unlikely that there would be more than 1 hearing in the 3 year period covered by licences in respect of all premises. Members may therefore consider it appropriate to add £50 to each licence fee as a contingency for the costs of any hearings.
29. Government guidance permits recovering the costs of having experienced officers to deal with applications. By necessary extension this would also apply to members dealing with applications at hearings. Initial training for officers and members can be provided at a cost to the Council of £480 equivalent to £80 per licence. Thereafter ongoing training (the costs of which may be included in the renewal fee) would cost £240 or £40 per licence.
30. The ability of local authorities to recover enforcement costs in respect of regulatory activities has recently been the subject of scrutiny by the courts, in particular in the case of *Hemming -v- Westminster* (concerning sex shop licensing). It is clear from that case that the costs of enforcing against unlicensed operators may not be included in licence fees. It seems that the costs of monitoring compliance with legislation and conditions may legitimately be included and this is reflected in the government guidance. What is not clear however is whether the costs of enforcement against licence holders may be taken into account in setting licence fees. In the absence of such clarity I would recommend not seeking to recover such costs through the licence fees.
31. I would suggest that in terms of monitoring compliance having regard to government guidance on regulatory activities it would be reasonable for each licensee to receive one compliance visit during each 3 year period of a licence. The average cost of such visits is £79 rounded to the nearest pound.
32. The table below sets out the various permutations of fee structures based upon the above. The Council's Pricing and Concessions Policy provides that where the Council has a discretion to set fees then it should do so to ensure

full costs recovery unless there is a policy or business reason to subsidise the fees. No such reasons would appear to apply here and Option H would therefore appear to be the appropriate fee level.

Fee to cover	Initial Grant	Renewal
Option A - issue of licence only	£156	£107
Option B - issue and hearings	£206	£157
Option C - issue and training	£236	£147
Option D - issue and monitoring	£235	£186
Option E - issue, hearing and training	£286	£197
Option F - issue, hearing and monitoring	£285	£196
Option G - issue, training and monitoring	£315	£226
Option H - issue, hearings, training and monitoring	£365	£276

33. It is estimated that variations of licences would require the same amount of work as a renewal and would carry the same potential for hearings as applications for new licences but that it would not be justifiable to add to the fee for variations costs involved in training and monitoring as these would be included in the basic licence fee. It is therefore suggested that members fix the fee for variations at either £107 or £157 to include a contingency for costs of hearings. In the light of the Council's Pricing and Concessions Policy £157 would appear to be the appropriate fee.
34. It is not legitimate to set fees by reference to those set by other authorities as costs will differ and the fees set by this council must reflect its own costs rather than those of others. However members will clearly be interested to know what other authorities are charging and Appendix B gives details of the fees set by authorities in Essex as at the time of preparation of this report for members' information.

Risk Analysis

- 35.

Risk	Likelihood	Impact	Mitigating actions
The Council does not have procedures in place to enable licences to be granted	1 - the Cabinet will be likely to adopt such procedures	4 - significant reputational damage if existing businesses are unable to trade because of a failure in the part of the Council and possible civil claims for loss of profits	The Cabinet puts appropriate procedures into place
Fees are set too low to cover costs	2- officers' estimates are based upon experience of setting fees in other regulatory regimes	1 - whilst any loss would be met from the general fund the total costs involved are such that the effect would be minimal	Monitor income against costs and review before licences are due to be renewed in 2016
Fees are set too high giving rise to a profit	2 – officers' estimates are based upon experience of setting fees in other regulatory regimes	3 - if fees are considered too high by the trade there is a slight risk of a challenge by way of judicial review. If it transpires that the fees were too high in retrospect then this can be taken into account when reviewing fees in future to ensure break even over a period of time	Respond positively to any prospective claim for judicial review. Monitor income against costs and review before licences are due to be renewed in 2016

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

APPENDIX B

Authority	Site			Collector		
	New	Renewal	Variation	New	Renewal	Variation
A	£345	£200		£220	£175	
B	£496	£272		£164	£123	
C	£270	£180		£200	£170	
D	£375	£283	£283	£273	£180	£180
E	£345	£230		£230	£200	
F	£320	£189	£31	£198	£128	£31