



Walsall Council

REPORT OF THE REGULATORY SERVICES MANAGER

LICENSING AND SAFETY COMMITTEE

26 FEBRUARY 2014

SCRAP METAL DEALERS ACT 2013

IMPLEMENTATION UPDATE AND APPEALS PROCEDURE

1.0 Summary of Report

- 1.1 The Scrap Metal Dealers Act 2013 came into effect on the 1 October 2013. This report provides an update on its implementation by Walsall Council and the application of an appeals procedure against refusal of a licence together with the results to date.

2.0 Recommendations

- 2.1 That Members note the report.

3.0 Background information

- 3.1 The national growth of metal theft offences, driven by increased commodity costs highlighted the ineffectiveness of the existing registration scheme in the Scrap Metal Dealers Act 1964 which had not prevented the scrap metal industry being the central market for stolen metal.
- 3.2 Locally Walsall partners had been campaigning to raise the profile of scrap metal theft. The work has helped to increase momentum and pressure on the Government to consider changing legislation. Our initial campaign work aimed to ban cash transactions for scrap metal sales. The e-petition we launched in August 2011 received local, national and regional interest and attracted over 55,000 signatures.
- 3.3 It was widely considered that regulatory reform of the scrap metal sector was needed. Initial legislative steps to prohibit cash payments for scrap metal, amend police powers of entry into unregistered scrap metal sites and increase the existing financial penalties for offences in the Scrap Metal Dealers Act 1964 were contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which amended the Scrap Metal Dealers Act 1964. These were brought into force in December 2012.

- 3.4 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', whereas the previous regime merely provided for registration and there was no option to refuse a trader.
- 3.5 The Act regulates sites where a scrap metal dealer carries on business as well as mobile collectors of scrap. In the case of a mobile collector, it is every person who acts as a collector who must have a licence from every local authority in whose area they wish to operate as opposed to where they live.
- 3.6 The Act provides that an application for a licence must be accompanied by a fee. The fee will be set locally by each local authority on a cost recovery basis, but local authorities will have a duty to have regard to guidance issued by the Secretary of State.
- 3.7 On 27 August 2013 Community Services and Environment Scrutiny and Performance Panel received a report outlining the Implementation Plan for the Scrap Metal Dealers Act 2013. The report contained an outline as to how the authority intends to implement the provisions of the legislation including; preparation, licensing administration, enforcement including partnership arrangements, finance and member engagement. Scrutiny Committee recommended that:

"Community Services and Environment Scrutiny and Performance Panel refer the report to the Safer Walsall Policing and Crime Board Operations Group meeting on 10 September 2013 together with such representations as they deem necessary for consideration".

- 3.8 The Implementation Plan was approved at both meetings and outlined how the authority would deal with such matters as:

Delegated authorisations
Setting of Fees
Procedure and documentation for Applications
Production of Licences
Enforcement
Resources
Training
Communication Plan
Monitoring and Review Process

All aspects of the Implementation Plan have been successfully and effectively completed.

- 3.9 Following on from the successful Scrap Metal Day in December another day of activity is planned for the end of February. This will involve multi agencies targeting metal theft in the Borough. The enforcement team have identified a number of sites across the borough that would appear to be trading without a licence and work is underway to visit the premises and take enforcement action against them.

4.0 Appeals Process

- 4.1 When an application is received by the authority it must not issue or renew a scrap metal licence unless it is satisfied that the applicant is a 'suitable person'. In determining this, the authority may have regard to any information which it considers to be relevant, including in particular:
- (a) Whether the applicant or any site manager has been convicted of any relevant offence;
 - (b) Whether the applicant or any site manager has been the subject of any relevant enforcement action;
 - (c) Any previous refusal of an application for the issue or renewal of a scrap metal licence;
 - (d) Any previous refusal of an application for a relevant environmental permit or registration;
 - (e) Any previous revocation of a scrap metal licence;
 - (f) Whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with.
- 4.2 If the local authority proposes to refuse the application the applicant must be given notice of proposal setting out;
- Intention to refuse (or revoke)
 - Reasons
 - Applicant can make representation to Council within specified period (not less than 14 days beginning with the date on which the notice is given.)
- 4.3 If the Applicant has made representation within reasonable period the authority has to allow the applicant a further reasonable period to make Representations (either written or oral) and the Council must consider the representations.
- 4.4 Determination of licences and dealing with appeals against refusal are the responsibility of officers due to the way the legislation was enacted. (See legal considerations below). We have however adopted the model used by Licensing and Safety Committee when dealing with appeal hearings, the process for which is attached as Appendix 1.
- 4.5 At this time the authority has received, refused and heard appeals against the following numbers of applications:

Scrap Metal Update	Site	Collector
Applications received	36	67
Licences issued	32 (88%)	46 (69%)
Waiting further information from applicant	2	9
Applications to be determined	2	4
Applications refused	0	4
Appeals heard by Executive Director - granted	0	1
Appeals heard by Executive Director - refused	0	3
Appeals to Magistrates Court	0	0

4.6 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 to the magistrates' court. The dealer has 21 days from the day on which they were given notice of the decision in which to appeal. The magistrates' court then has the power to confirm, vary or reverse the council's decision and issue any directions it considers appropriate having regard to the Act.

5.0 Resource considerations

5.1 Financial

The Scrap Metal Dealers Act 2013 came into effect on the 1 October 2013. The Authority set appropriate fees so that we could receive applications from the appointed time taking into account the guidance that was issued by the government.

5.2 Legal

It was the intention of the government to make the licensing function under the Scrap Metal Dealers Act 2013, similar to other licensing regimes such as that with alcohol and hackney carriages, and therefore dealt with by Licensing and Safety Committee. It is however an "executive function" as the Act is not listed in the schedules to the Local Authority (Functions and Responsibilities) (England) Regulations 2000.

On the 30th September 2013 the Leader made the Executive Leader decision relating to the Scrap Metal Dealers Act 2013 thereby making an executive delegation of the functions under the Scrap Metal Dealers Act 2013 that the Leader delegate authority to Executive Director Neighbourhood Services to approve the schedule of fees under the provisions of the Scrap Metal Dealers Act 2013, to exercise on behalf of the authority the functions, powers, and responsibilities under The Scrap Metal Dealers Act 2013, and to make arrangements for the discharge of all of its functions, powers, and responsibilities.

5.3 Staffing

A temporary Licensing Officer and Enforcement Officer were appointed to assist with the smooth implementation of the administration and enforcement provisions of the Scrap Metal Dealers Act 2013.

6.0 Citizen impact

- 6.1 Although we will use the new provisions of the Scrap Metal Dealers Act 2013 to maximum effect, any problems regarding nuisance may still require other action to be taken to minimise the impact on our residents. The council will work together with its partners including Registered Social Landlords to deal with these problems in the most effective way that it can.

7.0 Community Safety

- 7.1 The 'suitability' requirement for a person to be issued with a licence under the Scrap Metal Dealers Act 2013 is new. This allows the authority to refuse to licence someone who in its opinion, may not operate in a legitimate way.

8.0 Environmental impact

- 8.1 As indicated above regarding the grounds for refusing or revoking a dealer's licence the authority may have regard to whether the person has been convicted of a relevant offence or subject to any relevant enforcement activity. Relevant offences contain many that relate to pollution, environmental or waste infringements and therefore a dealer needs to be minded that contraventions that have an environmental impact could cause any licence held to be revoked.

9.0 Performance and risk management issues

- 9.1 On 27 August 2013 members of Scrutiny Committee were asked to monitor and comment on the arrangements being made for the implementation of the provisions of the Scrap Metal Dealers act 2013 by Walsall Council. On 10 September the Safer Walsall Partnership received the same report. Regular updates are received by the Portfolio Holder for Public Health and Protection.
- 9.2 Performance risks on existing licensing functions due to the implementation of a new licensing function have been mitigated by the temporary appointment of staff to oversee the initial increase in workload.

10.0 Equality implications

- 10.1 We have consulted with our Equality and Diversity section and there is no need for an Equality Impact Assessment because it falls within one of the exceptions, i.e. implementation of government legislation. It is a new piece of national legislation which we are under a duty to implement.

11.0 Consultation

- 11.1 There has been extensive consultation with elected members, other council services, and partners during the implementation of this new legislation.

12.0 Contact Officer

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Appendix 1

EXECUTIVE DIRECTOR - NEIGHBOURHOODS

GUIDANCE FOR PROCEDURE WHEN DETERMINING SCRAP METAL

APPLICATIONS

- (1) Executive Director – Neighbourhood Services to welcome the applicant (or representative) and will be asked to confirm if he has received a copy of the report and procedure to be followed.
 - (2) All parties will be asked to introduce themselves.
 - (3) Introduction of the report by the Principal Licensing Officer.
 - (4) The applicant will be asked if he has any questions of the licensing officer regarding the contents of the report.
 - (5) The Executive Director to ask any questions of the licensing officer regarding the report.
 - (6) Applicant or representative will be invited to present his case to the Executive Director.
 - (6a) The Licensing Officer may put questions to the applicant or the representative
 - (6b) Executive Director may put questions to the applicant or representative
 - (7) Licensing Officer will be invited to make a final statement.
 - (8) Applicant or representative will be invited to make a final statement.
 - (9) Applicant or representative and Licensing Officer to withdraw from the room whilst Executive Director considers the application.
 - (10) Applicant or representative and Licensing Officer will be recalled. Parties will be advised of the decision (confirmation will be forwarded in writing).
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NOTE:

At any time during this procedure, the Head of Legal Services' representative may ask for, and respond to, points of clarification.