



## AGENDA ITEM: 5

### SUMMARY

|                         |  |
|-------------------------|--|
| <b>Report for:</b>      | <b>Licensing Health &amp; Safety Enforcement Committee</b> |
| <b>Date of meeting:</b> | <b>27 August 2013</b>                                      |
| <b>PART:</b>            | <b>1</b>   |
| If Part II, reason:     |  |

|                         |   |
|-------------------------|---|
| <b>Title of report:</b> | <b>Implementation of Scrap Metal Dealers Act 2013</b>   |
| Contact:                | Ross Hill – Licensing Team Leader, Legal Governance   |
| Purpose of report:      | To outline new legislation for the regulation of scrap metal dealers, ahead of its implementation later this year.  |
| Recommendations         | That the Committee note the contents of the report.   |
| Corporate objectives:   | <p>Safe and Clean Environment</p> <ul style="list-style-type: none"> <li>• Maintain a clean and safe environment</li> </ul>   |
| Implications:           | <p><u>Financial / Value for Money</u><br/>           Application fees will be chargeable for the first time in this area of regulation, with fees expected to be set at a level ensuring cost recovery in respect of the administrative and compliance work undertaken by the Council, but excluding the cost of enforcement work against unlicensed businesses.</p> <p><u>Risk Implications</u><br/>           Failure to implement the new legislation correctly or in accordance with the statutory timetable could have adverse reputational implications for the Council, or lead to legal action.</p> <p><u>Health And Safety</u><br/>           A risk assessment in respect of site visits by officers was last reviewed in April 2013.</p> <p><u>Equalities Implications</u><br/>           No equalities implications are expected to arise from implementation of this new regulatory legislation.</p> |

|   |      |
|---|------|
| Consultees:   | None |
| Background papers:  |      |
| Glossary of acronyms and any other abbreviations used in this report: |      |

## 1. BACKGROUND

- 1.1. The Council has been responsible for the regulation of scrap metal dealers since the implementation of the Scrap Metal Dealers Act 1964. Any person wishing to carry on the business of a scrap metal dealer (buying or selling old, worn-out or broken metal objects, including most industrial metals but excluding precious metals (gold, silver, etc) and alloys thereof)) must be registered by the relevant local authority in whose area they operate their collection/storage facility, or, in the case of itinerant collectors of scrap metal, in the area in which they reside.
- 1.2. There is no charge for registrations, which last for 3 years at a time, and there are no provisions for councils to refuse to register a person or business, or to revoke registrations. Although offences exist for trading without a registration and for failing to keep prescribed records of transactions, there are no powers by which a registered business can be prevented from trading after misconduct, such as convictions for metal theft related offences.
- 1.3. Another piece of legislation, the Vehicles (Crime) Act 2001, introduced a second scheme of registration for businesses trading as motor salvage operators (i.e. the breaking of motor vehicles for salvage of usable or saleable parts, the repair of written-off vehicles for resale, and the trade in vehicles for the above activities). Although the powers available under this Act are slightly stronger than for scrap metal dealers, the complexity of the Act has meant that these provisions have been underused, with many salvage operators being unaware that they are required to register, or falling outside of registration requirements by virtue of the activities comprising a minor amount of their total business. There are also a number of functions which fall between the two schemes, such as the dismantling of end-of-life vehicles to retrieve the metal content.
- 1.4. Both of these registration schemes are, in common with the majority of licensing functions, designated in legislation as non-executive functions. The powers available under both Acts have historically been delegated by the Council to the Licensing Committee to exercise, with many of the more routine powers delegated again to officers to carry out on a day to day basis.

## 2. NEW LEGISLATION

- 2.1. In response to recent concerns around the operation of scrap metal dealers, particularly in light of national attention on the issue of metal theft from historic buildings, transport links and other key infrastructure, Parliament has

passed a new Act, the Scrap Metal Dealers Act 2013, which will repeal and replace the existing legislation with a more robust system of regulation.

- 2.2. The new Act introduces a combined system of licences, covering both scrap metal dealing and motor salvage activities. Any business falling within the new, wider definition of a scrap metal dealer which is trading without a licence will commit an offence, carrying a maximum penalty of a fine of up to £5,000 (level 5 on the standard scale).
- 2.3. Dealers who operate fixed premises at which scrap metal is collected or stored, or where vehicles are dismantled, repaired or traded, may apply to the relevant district council for a **site licence**. This allows for scrap activities to take place at the premises listed in the licence, for a period of up to 3 years. Holders of site licences may also collect scrap metal from any area, so long as it is returned to a licensed site. If dealers operate fixed premises in multiple council areas, they must obtain licences from each applicable council, and licences must be displayed at each site.
- 2.4. Dealers who do not operate fixed premises, instead collecting metal from door to door, may apply to the district council for the area in which they wish to collect for a **collector's licence**. If two or more individuals are working together, each must hold a collector's licence, and licences must be displayed within their vehicles. Licences must be obtained from each council in whose area it is intended to collect – a Dacorum collector's licence would not allow a collector to work in any other area, and vice versa.
- 2.5. A licensee may only hold one type of licence at a time, but may apply to vary their licence between the two types. Licences may however be obtained from multiple authorities for different areas.
- 2.6. Applicants for licences must pay a fee set by the council (following the principles set out in the EU Services Directive to ensure that such fee is commensurate with the cost to the authority of carrying out the work linked with the application only), and provide such other information and particulars as the Council may require. In particular, government guidance is likely to advocate the request of criminal records certificates from each applicant and site manager. Where the authority is satisfied that the applicant is a 'suitable person to carry on business as a scrap metal dealer', following consultation with police, the Environment Agency and other local authorities, a three-year licence will be issued.
- 2.7. Licences may be revoked if sites are not being used, if named site managers are no longer responsible for those sites, or if the authority is satisfied that the licensee can no longer be considered suitable. Conditions restricting the business activities may also be added if the licensee or site manager is convicted of a relevant offence.
- 2.8. Before applications are refused or licences revoked, applicants or licensees (as the case may be) must be given an opportunity to make written or oral representations, to be considered before a final decision is made. There is a statutory right of appeal against any decision to refuse an application to revoke a licence.

2.9. The Environment Agency have been tasked with maintaining a national register of all licensed scrap metal dealers, allowing regulatory bodies to check instantly as to the status of a licence.

2.10. Other key changes being made under the new Act include:

- New powers for police and council to close unlicensed sites
- Enhanced powers of entry and inspection for police and council officers (only police were previously able to enter)
- A complete ban on cash payments for scrap metal, and new ID requirements for sellers (currently applies to fixed sites only)
- New record-keeping requirements for sites and collectors

### **3. IMPLEMENTATION**

3.1. The Home Office have advised (although not yet confirmed) that the new provisions will be executive functions, as it is not intended to add them to the relevant Regulations. This means that in the case of authorities with executive arrangements, such as Dacorum, responsibility for the exercise and delegations of the new functions will fall to Cabinet, and it is intended to present a report in respect of the arrangements for the new Act to Cabinet's September meeting. Upon full commencement of the new Act, delegations under the previous legislation to the Licensing Committee will cease to have effect.

3.2. The Home Office are also expected to publish statutory guidance to local authorities on the exercise of the new functions, including on the setting of fees in light of recent judicial decisions. Regulations are also expected to be laid, covering some of the detail around the application process. At the time of writing, these documents are not available.

3.3. Applications for licences will be accepted from the 1<sup>st</sup> October 2013. Existing registered businesses will be deemed to have temporary licences during the transitional period, which will continue to have effect so long as valid licence applications have been submitted no later than the 15<sup>th</sup> October 2013.

3.4. Other licence applications, including from new businesses and existing businesses who failed to apply by the deadline above, may be made between the 1<sup>st</sup> October and the 30<sup>th</sup> November 2013. These applications will not attract temporary licences, and the applicants will not be able to lawfully trade until the applications have been determined and licences issued.

3.5. Enforcement powers prohibiting cash payments for any scrap metal transaction, and for inspection of sites by police and council officers, will commence as of the 1<sup>st</sup> October 2013. All other powers, including the offence of trading without a licence, will take effect from the 1<sup>st</sup> December 2013.

3.6. Officers have identified and written to around 20 businesses in Dacorum who are thought to be affected by the new provisions to advise them of the new legislation, and application forms and instructions will be sent to all of them as soon as these have been confirmed by Cabinet. It is also intended to distribute information on the new Act by way of the Council's website, and by press releases.