



Full Council
18 November 2013

**Report from the Strategic Director of
Environment and Neighbourhoods**

For Action

Wards Affected: ALL

Scrap Metal Dealers Act 2013

1.0 SUMMARY

- 1.1 The Scrap Metal Dealers Act 2013 came into force on 1st October 2013 and has repealed the Scrap Metal Dealers Act 1964 and Part 1 of the Vehicle (Crime) Act 2001 which deals with Motor Salvage Operators.
- 1.2 The Act has strengthened the regulatory regime for scrap metal dealing and vehicle dismantling. Local authorities will continue to act as the principal regulator but the new act gives more powers including the power to refuse a licence and powers to revoke licences if the dealer is considered unsuitable.
- 1.3 The Council has powers to exercise the licensing function under the relevant Act. These powers need to be delegated to committee, sub-committee and officer level and fees need to be set.

2.0 RECOMMENDATIONS

- 2.1 That Council notes the changes to the legislation and the enactment of the Scrap Metal Dealers Act 2013.
- 2.2 The Council delegates the functions of considering and approving non-contentious applications for scrap metal dealer licences, and of processing minor amendments (variations) to such applications, to the Strategic Director of Environment & Neighbourhoods.
- 2.3 Council delegates the function of considering appeals against officer decisions or contentious applications for scrap metal dealer licences to the General Purposes Licensing Sub-Committee.
- 2.4 The Council agrees the fees proposed in paragraph 3.18 and 3.20.
- 2.5 The Council delegates the function of determining fees in future for Scrap Metal dealers licence applications to the Council's Executive.

2.6 The Council approves the necessary amendments to the Council's Constitution to bring these changes into effect.

3.0 DETAILS

3.1 The rise in metal commodity prices has driven metal theft crime and has caused disruption to energy supplies, transport and telecommunications. The Home Office has estimated that there were 80,000 to 100,000 reported metal theft offences in 2010/11 alone which cost the economy an estimated £260 million per year.

3.2 In 2012 the government undertook initial steps to prohibit cash payments for scrap metal, amended Police powers of entry into unregistered scrap metal sites and increased financial penalties for offences under the Scrap Metal Dealers Act 1964. However, this has not been sufficient to stem the rise in scrap metal related crime.

3.3 Information obtained from Metropolitan Police confirms that Brent had 184 reported crimes in 2012 and 79 up to September 2013. There are currently 16 registered scrap metal dealers in Brent (under the 1964 Act). The table below summarises the level of metal theft reported crime and the estimated value of the metal stolen. The true economic cost of this crime to the communities of Brent is very much higher.

Year	Crimes reported	Value of metal
2009	95	£193,342
2010	165	£218,691
2011	187	£578,040
2012	184	£436,679
2013 (part year)	79	£168,647

The new licensing regime

3.4 The Scrap Metal Dealers Act 2013 ("the 2013 Act") received Royal Assent in February 2013. Guidance on determining the suitability of a scrap metal dealer to hold a licence and guidance on licence fee charges have been issued.

3.5 The 2013 Act repeals the Scrap Metal Dealers Act 1964 (1964 Act) (and linked legislation) and Part 1 of Vehicles (Crime) Act 2001 (2001 Act), creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries.

3.6 The new regime will provide greater powers to both the local authority and the Police to tackle the issues surrounding metal theft. It is designed to ensure that those who carry out the collection of scrap metal or operate sites that take in and sort scrap metal will be suitable people and behave in accordance with the law. The regulatory regime also gives local authorities and the Police more powers to refuse and revoke licences as well as greater rights of entry and inspection.

- 3.7 A scrap metal dealer is defined within the 2013 Act as “a person who is for the time being carrying on business as a scrap metal dealer, whether or not authorised by a licence”. There are no further details provided in the 2013 Act or the explanatory notes about who potentially might have to apply for a licence. Generally where the sale of metal is incidental to the main type of work or business undertaken then a licence will not be required.
- 3.8 In the case of most tradesmen such as plumbers and electricians and some skip hire firms the sale of scrap metal is not an integral part of their business and they will not require a licence. However, where there is a reasonable expectation that the material deposited in the skip will contain significant amounts of scrap metal such as skips used where there is demolition activity or one sited at engineering works and plumbers’ yards then the skip hire company will require a scrap metal dealers licence. Brent has contacted approximately 600 potential tradesmen seeking information in order to determine whether they would require to be licensed.
- 3.9 To enable a person or business to operate as a scrap metal dealer they will require a licence issued by the relevant local authority. These licences are:
- **Site Licence** which authorises a person or company to operate as a scrap metal dealer from identified sites. The licences will stipulate a named site manager for each of the sites.
 - **Collectors Licence** allows a person to collect scrap metal from issuing authority’s area. The collector will need to obtain a Collectors Licence from each authority where they collect scrap metal.

A person may hold more than one licence issued by different authorities but cannot hold more than one licence in the same authority area.

Licensing functions and responsibilities

- 3.10 The majority of licensing regimes that local authorities are responsible for are classified as non-executive functions. The Full Council has powers to conduct the licensing function under the relevant Act. These powers can be delegated down to committee, sub-committee or officer level.
- 3.11 The functions and responsibilities for local authorities are set out in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (2000 Regulations). These regulations specify what decisions are executive and non-executive functions of the Council. Schedule 1 of the 2000 Regulations sets out a list of all the legislation whereby the decision making process is regarded as being non-executive function. This list includes the 1964 Act which prior to 1st October 2013 was the primary legislation relating to the regulation of the scrap metal industry.
- 3.12 The Home Office in drafting the 2013 Act failed to include within section 19 (Consequential Amendments) to amend Schedule 1 of the 2000 regulations so as to replace the 1964 Act with the 2013 Act.
- 3.13 Therefore each local authority has to consider what approach it will take in relation to the licensing functions and responsibilities within the 2013 Act and clarify who is responsible for the functions and responsibilities within the 2013 Act.

3.14 The Council therefore needs to consider and delegate the following relevant functions in relating to granting of the licence:

3.14.1 The function of considering and approving non-contentious applications for scrap metal dealer licences. It is recommended that this be delegated to the Strategic Director of Environment & Neighbourhoods;

3.14.2 The function of processing minor amendments (variations) to applications. It is recommended that this be delegated to the Strategic Director of Environment & Neighbourhoods;

3.14.3 The function of considering appeals against officer decisions or contentious applications for scrap metal dealer licences. It is recommended that this be delegated to the General Purposes Licensing Sub-Committee.

Fee setting

3.15 Schedule 1, paragraph 6 of the 2013 Act enables the local authority to set a fee for applications within the Act. The local authority in setting the fees must have regard to any guidance issued by the Secretary of State. The Home Office has issued guidance to local authorities on how to set scrap metal dealer licence fees which can be found at: <https://www.gov.uk/government/publications/scrap-metal-dealer-act-2013-licence-fee-charges>

3.16 The Home Office guidance states that the costs of a licence should reflect the time spent assessing and administering applications, processing them, having experienced licensing officers review them, storing them, consulting on the suitability of an applicant, reviewing relevant offences, the decision on whether to issue a licence, as well as the cost of issuing licences in a format that can be displayed. Consulting the local authority's enforcement records in order to determine the suitability of the applicant is chargeable within the licence fee costs as are costs associated with contested licence applications.

3.17 Licences under the 2013 Act will be granted for a period of three years. Therefore the costs associated with compliance and managing that licence during the period of the licence must be considered. Fee levels must be justifiable and reasonable and meet the requirements of EU Service and the Provision of Services Regulations 2009.

3.18 Provisional fees have been set by officers on a cost recovery basis taking into account relevant costs that will be incurred over the three year life of the licence as well as taking into account the guidance provided by the Home Office in setting licensing application fees and the fees set by a number of other local authorities. It is recommended that these provisional fees be agreed by Council, which officers submit are in compliance with the guidance provided by the Home Office. The provisional and proposed fees are as follows:

	New	Renewal	Variation	Minor variation
Site Licence	£600	£450	£300	£150
Collectors' Licence	£350	£250	£175	£100

Recovering costs

- 3.19 Paragraph 6(1) of Schedule 1 states: “An application must be accompanied by a fee set by the authority”. The word “application” is not defined in the 2013 Act. The guidance provided by the Home Office states as follows: “LAs [local authorities] should specify fees for each category of application. Specifically we would expect a fee to be specified for the assessment of an application for a licence, the assessment of an application to vary a licence, and the assessment of an application for licence renewal.” The cost of dealing with an application for the production of a duplicate licence if it is lost, stolen or damaged and the establishment of a fee to recover the associated costs in producing a duplicate is not ruled out nor excluded in this guidance. The guidance from the Home Office also states as follows: “Local authorities should specify fees which are payable by licence applicants for the assessment and administration activity within the new licensing regime brought about by the 2013 Act. They should do this by identifying what they need to do to assess the type of licence in question and calculating their best estimate of the cost to be incurred by the LA. The authority will then be able to calculate a best estimate of unit cost for each case. In effect, the costs of a licence should reflect the time spent assessing and administering applications, processing them, having experienced licensing officers review them, storing them, consulting on the suitability of an applicant, reviewing relevant offences, the decision on whether to issue a licence, as well as the cost of issuing licences in a format that can be displayed.”
- 3.20 If a licensee does contact a local authority from which it holds a 2013 Act Licence informing them that they have lost, damaged or had the licence stolen then the authority will be duty bound to issue a duplicate and the Council will incur administrative costs in issuing a duplicate licence in a format that can be displayed. The 2013 Act requires the licensee to display the licence as it is a criminal offence if a scrap metal dealer fails not to display the licence. Thus, it is submitted that it is reasonable within paragraph 1(6) of Schedule 1 of the 2013 Act and the guidance provided by the Home Office to charge a fee for applications for duplicate licences to recover the administrative costs of issuing duplicate licences in a format that can be displayed. A fee of £50 is recommended for the provision of a duplicate licence.
- 3.21 The licence fee cannot be used to support enforcement activity against unlicensed scrap metal dealers. Any activity taken against unlicensed operators must be funded through existing funds. Such activity against unlicensed operators includes issuing closure notices, with applications for closure orders subsequently made to a Magistrates Court. The cost of applying to the Magistrates Court for a warrant (Section 16(5)(6) and (7) of the 2013 Act) for entry to unlicensed premises, by force if necessary, will incur legal costs to be borne by the local authority and police.
- 3.22 Council therefore is asked to note the fee setting function and delegate the function to determine fees in future for Scrap Metal dealers licence applications to the Council’s Executive. The guidance from the Home Office recommends that local authorities should review these fees regularly to check whether they remain appropriate.

Transitional Arrangements

- 3.23 From 1st October 2013 the 1964 Act and Part 1 of the 2001 Act are repealed via the commencement of section 19 of the 2013 Act. To enable those who were registered under the 1964 and 2001 Acts to continue to operate during the switch between the different licensing regimes the 2013 Order creates a deeming provision. This deeming provision was only applicable to registered operators between 1st October and 15th October 2013. Therefore a scrap metal dealer who was registered under the 1964 and 2001 Acts could submit an application before 15th October and would be deemed to have a temporary licence which is valid until a licence decision is issued. A formal licence will be issued by 1st December 2013.
- 3.24 If a registered operator failed to make an application on or before the 15th October then the deemed licence lapsed on 16th October 2013. The registered operator whose deemed licence lapses cannot be treated as a revocation by the local authority and there is no right of appeal relating to the lapse.
- 3.25 Upon lapse of a deemed licence the previous operator is not able to carry on a business as a scrap metal dealer as defined under section 21. The offences under the 2013 Act relating to operating as a scrap metal dealer without a licence commence from 1st December. If the operator wishes to continue to operate as a scrap metal dealer then they must apply for a new application to the relevant authority.
- 3.26 If the authority does determine to refuse the licence and the applicant appeals this decision the authority may attach one or both of the conditions specified in section 3(8) of the 2013 Act if it considers that the deemed licence should not continue in force without them. These conditions are: (a) that the dealer must not receive scrap metal except between 9 a.m. and 5 p.m. on any day (b) that all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time it is received.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The aim of the legislation is to reduce metal theft and the consequential financial impact upon property, equipment and infrastructure owners.
- 4.2 The fee setting power of the 2013 Act will allow recovery of the costs of administering, issuing and ensuring compliance with the requirements of the Act having regard to the guidance issued by the Secretary of State.
- 4.3 There was no fee income from the previous licensing regime. It is estimated that between 30 and 40 licenses will be issued, the majority of them collectors' licenses, suggesting total income of around £12-15,000 over a three year period.
- 4.4 The cost of applying to the Magistrate's Court for a warrant of entry to any licensed or unlicensed premises will incur legal costs which will be borne by the local authority or the police. The Authority can apply to the court for recovery of these costs in the event that a prosecution ensues and is successful. There is no guarantee that the Court will grant Court costs or if they do that the convicted individual(s) will ultimately pay Court costs.
- 4.5 Should these costs arise they will be contained within existing budgets.

5.0 LEGAL IMPLICATIONS

- 5.1 The 2013 Act repeals the 1964 and 2001 Acts and came into force on 1st October 2013.
- 5.2 The 2013 Act maintains local authorities as the principal regulator of these industries but gives powers through the licensing regime to better regulate these industries.
- 5.3 The 2013 Act creates closure powers for unscrupulous dealers who operate without a licence.
- 5.4 The Act creates a central public register, hosted by the Environment Agency of all individuals and businesses licensed as scrap metal dealers.
- 5.5 The powers which allow the Council to set fees in relation to scrap metal dealer licence applications and in relation to issuing duplicate licences are set out in paragraphs 3.15-3.22.

Summary of the provisions of the 2013 Act

- 5.6 The Act defines a “scrap metal dealer” as a person who is for the time being carrying on business as a scrap metal dealer, whether or not authorised by a licence.
- 5.7 It further states that “scrap metal” includes any old waste or discarded metal or metallic material, and 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.
- 5.8 Section 1 of the Act requires that a scrap metal dealer obtains a licence 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. This offence is punishable on summary conviction by a fine not exceeding level 5 on the standard scale.
- 5.9 Section 2 provides for two types of licence, a site licence and a collector’s licence.
- 5.10 A site licence must identify all the sites within the local authority’s area where a licensee carries on business as a scrap metal dealer, and a site manager has to be named for each site. It will empower the dealer to collect scrap within the local authority area.
- 5.11 A collector’s licence allows the licensee to operate as a collector in the area of the issuing authority. It does not allow the collector to operate in any other local authority area, so a separate licence has to be obtained from each council the collector wishes to operate in. This licence does not authorise the licensee to operate a site; to do so they will need a site licence from the relevant authority.
- 5.12 However a scrap metal dealer can only hold one type of licence in any one local authority. Under Section 2 (9) they cannot hold both a site and collectors licence from the same council.
- 5.13 A licence will be issued for a period of three years from the date of issue.
- 5.14 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 relevant enforcement action has been taken against the applicant or whether the applicant has been

convicted of a relevant offence. The Secretary of State has a power to prescribe in regulations the meaning of relevant offence and relevant enforcement action. It is intended that this will be in line with the criteria used by the Environment Agency when issuing environmental permits under the Environmental Protection Act 1990. The authority must also have regard to any 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.

- 5.15 Section 3 also allows local authorities, when issuing a licence, to include conditions on it if the licensee or site manager has been convicted of a relevant offence. Subsection (8) specifies the two conditions that can be imposed by local authorities on a licence, namely:
- (a) That the dealer must not receive scrap metal except between 9 a.m. and 5 p.m. on any day;
 - (b) That all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.
- 5.16 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 as the licensing authority. This section also allows the licensing authority to vary a licence, imposing the conditions stipulated in 3.26 above, if the licensee or a site manager is convicted of a relevant offence.
- 5.17 Section 6 places a duty on the local authority to supply any such information as requested relating to a scrap metal licence to any other local authority in England and Wales, the Environment Agency, the Natural Resources Body for Wales and to police forces.
- 5.18 Section 7 requires that a register of licences issued under the Act should be maintained by the Environment Agency in England and the Natural Resources Body for Wales in Wales. Local authorities will provide the appropriate information on all licences issued in their geographic areas in order that this 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.
- 5.19 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 level 3 on the standard scale.
- 5.20 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.
- 5.21 It will be an offence not to obtain and verify the seller's identity, punishable by a fine not exceeding level 3 on the standard scale. 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.

- 5.22 Section 13 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 level 5 on the standard scale.
- 5.23 Schedule 2 of the 2013 Act sets out the provisions for the closure of sites at which scrap metal business is being carried on without a licence. Schedule 2 does not come into force until 1 December 2013,

Changes to the Council's Constitution

- 5.24 Changes to the Council's Constitution will be necessary to bring these changes made by the 2013 Act into effect. In Part 4 of the Constitution, paragraph 25 of Part B in Table 1 needs to be amended to make reference to the 2013 Act which has amended the Scrap Metal Dealers Act 1964.
- 5.25 In Part 5 of the Council's Constitution, the terms of reference of the General Purposes Licensing Sub-Committee will need to be extended in order to consider and determine appeals against officer decisions and hear and determine contentious applications for scrap metal dealer licences under the 2013 Act.

6.0 DIVERSITY IMPLICATIONS

- 6.1 No data is available about the people undertaking scrap metal dealing operations in Brent or the prevalence of particular protected characteristics amongst them. Equalities monitoring will be undertaken to allow for an Equalities Analysis to be undertaken at a future date.

BACKGROUND PAPERS

- Scrap Metal Dealers Act 2013
- Local Authorities (Functions and Responsibilities) England Regulations 2000
- Home Office Guidance to the Scrap Metal Dealers Act 2013
- EU Service and the Provision of Services Regulations 2009
- Local Government Act 1972

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