



# LICENSING COMMITTEE

**Tuesday, 22nd October, 2013**

**At the rising of the Licensing  
Committee (Licensing Act 2003)**

**Town Hall, Watford**

Publication date: 14 October 2013

**CONTACT**

If you require further information or you would like a copy of this agenda in another format, e.g. large print, please contact Jodie Kloss in Democracy and Governance on 01923 278376 or by email to [legalanddemocratic@watford.gov.uk](mailto:legalanddemocratic@watford.gov.uk) .

Welcome to this meeting. We hope you find these notes useful.

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# COMMITTEE MEMBERSHIP

Councillor J Brown (Chair)

Councillor P Jeffree (Vice-Chair)

Councillors I Brown, J Connal, K Crout, G Derbyshire, J Dhindsa, K Hastrick, H Lynch, M Meerabux, M Mills, G Saffery, D Scudder, L Scudder and M Turmaine

## AGENDA

### PART A - OPEN TO THE PUBLIC

1. **APOLOGIES FOR ABSENCE/ COMMITTEE MEMBERSHIP**
2. **DISCLOSURE OF INTERESTS (IF ANY)**
3. **MINUTES**

To submit for signature the minutes of the meeting held on 15 July 2013.

*All minutes are available to you on the Council's website:*

<http://watford.moderngov.co.uk/mgListCommittees.aspx?bcr=1>

4. **SCRAP METAL DEALERS ACT 2013** (Pages 1 - 12)

Report of the Head of Community and Customer Services

The purpose of this report is to provide details of the new legislation, consider the proposed application fees and the proposed delegation of powers.

5. **SEX ESTABLISHMENT LICENCE FEES** (Pages 13 - 16)

Report of the Head of Community and Customer Services

This report asks the Committee to agree that the fees for the grant of a sex establishment licences be set at £615 and that for the renewal or transfer of a licence at £315.

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# Agenda Item 4

**Report to:** Licensing Committee  
**Date of meeting:** 22 October 2013  
**Report of:** Head of Community and Customer Services  
**Title:** Scrap Metal Dealers Act 2013

## 1.0 SUMMARY

- 1.1 Scrap metal theft has been a national growing concern over the last few years, leading to disruption to communications and transport infrastructure as well as having an impact on local communities. The Scrap Metal Dealers Act 2013 which received Royal Assent on 28 February 2013 and is expected to come fully into force from 1 October 2013 is an attempt to make it more difficult to dispose of illegitimately obtained metals.
- 1.2 The Act will require scrap metal dealers to be assessed for suitability before licences are granted or renewed. It replaces a free registration scheme that was introduced in 1964. It will give local authorities a limited power to impose conditions on licences, revoke licences and tighten up how trading is conducted. Local authorities and the police will also gain powers to close licensed sites.
- 1.3 The purpose of this report is to provide details of the new legislation, consider the proposed application fees and the proposed delegation of powers.

## 2.0 RECOMMENDATIONS

- 2.1 The Members are requested to:
1. adopt the proposed fee levels (Appendix A); and
  2. adopt the proposed delegations for dealing with licensing and enforcement as set out in Appendix B.

### Contact Officer:

For further information on this report please contact Jeffrey Leib (Licensing Manager) on telephone extension 8429 or email [Jeffrey.leib@watford.gov.uk](mailto:Jeffrey.leib@watford.gov.uk)

Report Approved by: Alan Gough, Head of Community and Customer Services

### 3.0 **Legislative Background**

- 3.1 Scrap metal theft costs the country between £220 and £777 million a year, according to the government. It can have an impact at a local level, such as lead taken from roofs, metal from war memorials or even stolen manhole covers. It can have widespread effects disrupting transport or communications systems. In 2011 parts of West Watford were left without power for several hours when cables were stolen from a sub-station, and in February 2012 thieves temporarily disrupted the operation of Hertfordshire Constabulary's control room.
- 3.2 In recent years several initiatives have developed to try and stop the rise of metal thefts. These have principally been led by the British Transport Police's Operation Tornado, which targets metal thefts. During the first six months of 2012, metal theft fell by 30 per cent in Hertfordshire compared to the same period of 2011 – 533 incidents compared to 773. Last year the law was amended to make it illegal for scrap metal to be paid for in cash meaning an audit trail was put in place which will hopefully deter sales of stolen metals. The Scrap Metal Dealers' Act 2013 has been passed by Parliament, unusually as a Private Members' Bill but with Government support, and it is hoped the new regulatory controls will provide a far more effective way to manage this industry.
- 3.3 The 2013 Act repeals the Scrap Metal Dealers Act 1964 (as amended) and Part 1 of the Vehicle (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. 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'. The Act gives more power for the council to work towards making safer communities and assisting in its work tackling enviro-crime.
- 3.4 The Act defines a "scrap metal dealer" as a person who:
- a carries on a business which consists wholly or partly in buying or selling scrap metal, or
  - b carries on business as a motor salvage operator.
- 3.5 The Act states that "scrap metal" includes:
- a any old, waste or discarded metal or metallic material, and
  - b 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.
- 3.6 The following is not considered to be "scrap metal":
- a gold
  - b silver, and
  - c any alloy of which 2 per cent or more by weight is attributable to gold or silver.
- 3.7 Section 1 of the Act requires that a scrap metal dealer obtains a licence from the local authority 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. The offence is punishable on summary conviction with a fine not exceeding level 5 (£5000) on the standard scale.

### 3.8 Site licences

A site licence will be issued by the local authority in whose area a scrap metal site is situated. Applicants will be required to identify all the sites within the Borough at which it is proposed to carry on business as a scrap metal dealer and a site manager will need to be named for each site. In so doing, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area. There are presently four licensed sites in the Borough; a number not expected to change as a result of the new legislation. The legislation does not allow operators to speculatively collect scrap metal door-to-door as this would constitute carrying on a business as a mobile collector.

### 3.9 Collectors' licence

A collector's licence will authorise the licensee to operate as a mobile collector in the area of the issuing local authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal. As this is a new licensing requirement and will apply to businesses from outside the Borough who wish to operate within Watford, there are no accurate estimates of numbers at this stage. The best estimate based on entries in telephone directories is there may be between twelve and twenty applications.

3.10 The licence does not permit the collector to collect from any other local authority area; a separate licence would need to be obtained from each local authority in whose area the individual wished to collect. A licence also does not authorise the licensee to carry on a business at a site within any area – should a collector wish to use a fixed site, they would need to obtain a site licence from the relevant local authority. There is no restriction as to the location where the collector can transport and sell their metals.

3.11 A person may therefore hold a site licence issued by one local authority and may also hold a number of collector licenses issued by different local authorities.

3.12 A licence will be issued for a period of three years from the date of issue. The Secretary of State will have the power under section 1(4) of the Act to alter the duration of the licence.

3.13 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 enforcement action has been taken against the applicant or whether the applicant has been convicted of a relevant offence as set out in regulations. This is broadly in line with the criteria used by the Environment Agency (EA) 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. There will therefore be costs to the authority associated with those exercises although it is envisaged it will normally only be the police and the EA who will be consulted.

3.14 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.

- 3.15 A council's ability to impose conditions on a licence is very limited. Conditions can be imposed only where the applicant or any site manager has been convicted of a relevant offence, or, where the council is revoking a licence when a condition can be imposed, until the revocation comes into effect. For the majority of applicants therefore it is unlikely that a council will be in a position of being able to consider imposing conditions. In considering whether to issue a licence where the applicant or a site manager has a relevant conviction, the local authority might decide to do so on the basis that a condition is imposed on the licence.

Councils can impose one or both of two conditions. These conditions specify that:

- the dealer can receive scrap metal only between 9.00am and 5.00pm on any day, in effect limiting the dealer's operating hours; and/or
- any scrap metal received has to be kept in the form the dealer received it for a set period of time, which cannot be more than 72 hours.

- 3.16 Section 6 places a duty on the local authority to supply any such information as requested relating to scrap metal licences to any other local authority in England and Wales, the EA and the police.

- 3.17 Section 7 requires that a register of licences issued under the Act should be maintained by the EA. Local authorities will provide the appropriate information on all licences issued in their geographic areas in order that the 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.

- 3.18 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 (£1000).

- 3.19 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. Over 80 per cent of the county's scrapyards already require such identity checks following targeted work by Hertfordshire Police and so this will not be an excessive requirement for most.

- 3.20 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.

- 3.21 Section 13 of the Act 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.
- 3.22 Both the council and police have enforcement powers under the Act. Environmental Crime Officers already liaise on a regular basis with the police, EA and other bodies. Issues and initiatives are explored and targeted through an operationally-focused county-wide forum. This forum leads joint operations – the last of which was as recent as a few weeks ago – and this new legislation will give more opportunity to tackle this area of work effectively. It is expected this forum and approach will continue and be supplemented and informed by pro-active inspections being undertaken by Council officers at fixed sites and with collectors in the borough.
- 3.23 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 made to the magistrates' court within 21 days of the decision being appealed against.
- 3.24 **Proposals for fees and scheme of delegation**
- 3.25 The fee level has been calculated at £254.48 for both site and collector licences and covers a licence period of three years. Fees to renew and to vary licences are set at £191.50 and £51.00 respectively to recognise the different complexities involved. In setting fees, the council has to have regard to the Provision of Services Regulations 2009, and a recent judgement of the Court of Appeal<sup>1</sup>. Cost recovery through fees are therefore limited to the costs of administering applications and monitoring compliance of licensed operators but cannot take into account enforcement activities against unlicensed operators. Surpluses and deficits from one year may be carried forward to the following year. The licence fee proposal is based on the assumptions set out in Appendix A and is in accordance with the Home Office statutory guidance on fee setting issued on 31 July 2013.
- 3.26 The scheme of delegations proposed at Appendix B involves most decisions being taken at officer level in the interests of efficiency. However, given the potential impact of decisions to revoke or refuse a licence this decision is proposed to be delegated to a Licensing Sub-Committee where the applicant/licensee wishes to make representations, and to the Head of Service/Section Head in other situations,.

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<sup>1</sup> [Hemming \(/a Simply Pleasure Ltd\) & Ors. R \(on the application of\) v Westminster City Council \(Rev 1\) \[2013\] EWCA Civ 591 \(24 May 2013\)](#)

## 4.0 IMPLICATIONS

### 4.1 Financial

Appendix A sets out the proposed scale of fees for licences on a cost-recovery basis.

### 4.2 Legal Issues (Monitoring Officer)

The legal issues are set out in the main body of the report.

### 4.3 Equalities

4.3.1 An assessment as to the equalities impact has been made by Government when introducing this legislation. This report does not introduce any policy decisions that are considered to require any further assessment.

### 4.4 Potential Risks

Potential Risk	Likelihood	Impact	Overall score
Not implementing the scheme	0	3	0
Not implementing scheme in time	1	3	3
Setting fees contrary to the Provision of Services Regulations	1	3	3

#### Appendices

Appendix A – proposed fees

Appendix B – proposed scheme of delegation

#### Background Papers

LGA Toolkit on Scrap Metal Dealers Act 2013

Fees Guidance

#### File Reference

Scrap Metal Dealers Act 2013

## APPENDIX A

### SCRAP METAL DEALERS ACT 2013 Scrap Metal Licence fees

Scrap Metal Licences will be issued for a maximum period of 3 years following payment of the full fee. These fees are applicable from 1 October 2013 and will be subject to review, particularly for 2014/15 when it will become more obvious how many applications are likely to be processed each year. It is not anticipated there would be a significant difference between the time entailed to process site licences compared to collectors' licences.

The fees have to be set taking into account statutory guidance issued by the Home Secretary, which reflects the Provision of Services Regulations 1990. Certain activities can not be recovered, such as enforcement in relation to unlicensed operators or the cost of appeals. They are based on the hourly office time previously approved by Cabinet.

	<b>Scrap Metal Site Licence</b>	<b>Scrap Metal Collectors Licence</b>
Grant	£254.48	£254.48
Renewal	£191.50	£191.50
Variation	£51.00	£51.00
Name Change	£51.00	£51.00
Change Of Site	£51.00	Not applicable

## APPENDIX A

Fees have been assessed as follows:

Activity	Comment	Cost of granting initial licences	Cost of renewing licences	Cost of variation/ changing name/ change of site
Preparation for and introduction of the scheme including publicity, development of processes and systems and preparation of Cabinet report	7 hours x Licensing Officer @ £28.30 per hour and 7 hours x Licensing Manager @ £40.15 2 hours x Section Head @ £50.20 per hour 1 hour Head of Service @ £50.20 Total £629.75 This total figure for this activity has then been divided between an estimated 10 applications.	62.98	n/a	n/a
Dealing with enquiries about scheme over three year period	4 hours x Assistant Licensing Officer @ £22.70 per hour 2 hours x Licensing Manager @ £40.15 per hour Total £171.10 This total figure for this activity has then been divided between an estimated 10 applications.	£17.11	£17.11	n/a
Processing application, conducting consultations, issuing licences over three years	2 hours x Assistant Licensing Officer @ £22.70  Assumed only one hour time for variations	£45.40	£45.40	£22.70
Visiting licence-holders for compliance checks over three years	3 visits for 1 hour each by Licensing Enforcement Officer/Environmental Crime Officers @ £28.30 per hour. Changes to site may require 1 x visit for 1 hour	£84.90	£84.90	£28.30
Consideration of application for possible refusal or imposition of conditions	Considered 3 applications likely over a 3 year licence period. Time totalling 3 hours x Licensing Manager @ £40.15, 6 hours x Licensing Officer @ £28.30 and 3 hours x Section Head @ £50.20. Total costs £440.85	£44.09	£44.09	n/a

## APPENDIX A

	This total figure for this activity has then been divided between an estimated 10 applications. Considered unlikely to arise when dealing with changes of name etc.			
<b>TOTAL</b>		£254.48	£191.50	£51.00

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## APPENDIX B

### SCRAP METAL DEALERS ACT 2013 DELEGATIONS

Matters to be dealt with	Licensing Committee	Licensing Sub-Committee/Head of Service or Section Head	Officers (Community & Customer Services – Environmental Health & Licensing Teams)
Fee Setting	✓		
Processing applications and supply of information to external agencies			✓
Automatic inclusion of conditions under section 3(8)			✓
Refusal of licence		Licensing sub-committee if representations made Head of Service/Section Head if no representations made	
Variation or imposition of conditions on a licence under section 4		If the applicant requests a Hearing/	If no hearing is requested
Revocation of licence		Licensing sub-committee if representations made Head of Service/Section Head if no representations made	
Entry, inspection and enforcement			✓

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# Agenda Item 5

**Report to:** Licensing Committee  
**Date of meeting:** 22 October 2013  
**Report of:** Head of Community and Customer Services  
**Title:** Sex Establishment Licence Fees

## 1.0 SUMMARY

- 1.1 The Council grants, renews and enforces licences for sex establishments within the Borough, and is entitled to charge a fee to recover its costs in doing so. Recent legislation and a court decision has now set out the extent to which those costs may be recovered.

## 2.0 RECOMMENDATIONS

- 2.1 That the fees for the grant of a sex establishment licences be set at £615 and that for the renewal or transfer of a licence at £315.

### **Contact Officer:**

For further information on this report please contact: Jeffrey Leib (Licensing Manager) on telephone extension 8429 or email [jeffrey.leib@watford.gov.uk](mailto:jeffrey.leib@watford.gov.uk).

**Report approved by:** Alan Gough, Head of Community and Customer Services

## 3.0 DETAILED PROPOSAL

- 3.1 The Council issues licences for sex establishments under schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. Paragraph 19 of the schedule states that applicants for the grant, renewal or transfer of a licence shall pay a reasonable fee determined by the authority.
- 3.2 There is currently one licensed sex establishment within the Borough, which pays an annual licence fee of £6312.
- 3.3 In setting fees councils must have regard to the Provision of Services Regulations 2009 which came into force on 28 December 2009 and which implements the EU Services Directive. A recent decision of the Court of Appeal<sup>1</sup> which particularly concerned sex establishment licence fees has now limited the extent to which a council's costs may be recovered through licence fees. In summary, the court confirmed that the regulations prohibit fees from being set as an economic deterrent;

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<sup>1</sup> [Hemming \(/a Simply Pleasure Ltd\) & Ors, R \(on the application of\) v Westminster City Council \(Rev 1\) \[2013\] EWCA Civ 591 \(24 May 2013\)](#)

that they must be properly determined by the council each year; that it is appropriate for surpluses and deficits to be taken into account each year; and – perhaps most crucially – costs of enforcement action against unlicensed operators may not be recovered through the licence fees. Enforcement activity has to be funded through general revenue costs although the costs of compliance by individual licence-holders may be incorporated within the licence fee.

- 3.4 The current licence-holder's licence expires on 15 January 2014 and upon calculating the current administration costs of this licence this year there is a need to revise the fee before an application is made for it's renewal.
- 3.5 Officers recommend that a fee for the renewal or transfer of a sex establishment licence of £315 should be set, and £615 for the grant of a new licence. These fees would accurately reflect the Council's current administrative and compliance costs.
- 3.6 Current council policy restricts the number of sex establishments in various areas of the Borough. Only one sex establishment licence is allowed, and that is the one that is currently granted.
- 3.7 The reduction in fee income is being reported to Budget Panel as unavoidable growth, and given that a favourable variance of over -£20,000 has recently been reported by the Environmental Health & Licensing section there is no overall negative impact on the council's budget. Budgets for 2014 – 2015 will be revised accordingly.

#### 4.0 **IMPLICATIONS**

##### 4.1 **Financial**

- 4.1.1 The Shared Director of Finance comments the reduced income of £6k in 2013/14 will be offset by savings in employee costs through vacancies.
- 4.1.2 For future years the reduction in the licence fee will be included in the annual report on fees and charges as part of the budget setting process.

##### 4.2 **Legal Issues** (Monitoring Officer)

- 4.2.1 The Head of Democracy and Governance comments that the legal basis for making the change is described in the main body of the report. The Committee is advised that a failure to adjust the fee to ensure it meets the requirements of the Services Regulations and the court's decision may lay it open to challenge through the Local Government Ombudsman or the courts.

##### 4.3 **Potential Risks**

Potential Risk	Likelihood	Impact	Overall score
Complaint to Local Government Ombudsman if fee not set according to Services Regulations	3	3	9
Legal challenge if fee not set according to Services Regulation	3	3	9

Appendices

None

Background Papers

Provision of Services Regulations 1990 (SI 1990/2999)

Hemming (/a Simply Pleasure Ltd) & Ors, R (on the application of) v Westminster City Council (Rev 1)  
[2013] EWCA Civ 591 (24 May 2013)

File Reference

None

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