

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2013 - 2014

LICENSING COMMITTEE
22nd October 2013

REPORT OF:
Service Director
Public Health & Protection

<u>Part I</u>	<u>Item No. 4</u>
Changes to Licensing Committee Terms of Reference	

1. PURPOSE OF THE REPORT

The purpose of the report is to apprise Members of recent constitutional changes and the remit of the Licensing Committee, with specific regard to

- **The Scrap Metal Dealers Act 2013**
- **Provisions for hearing appeals regarding 'Home to School Transport' and suitability of Drivers/Passenger Assistants (escorts).**

2. RECOMMENDATION

- (i) **To note the content of the report in respect of the constitutional changes introduced and the process of implementation which is provided for information;**
- (ii) **To note the proposals for a briefing session for Members to be held prior to the next scheduled Licensing Committee meeting, 2nd December 2013, commencing at 4pm.**

3. BACKGROUND

(i) Pressure for Change – Scrap Metal Dealers

The Scrap Metal Dealers Act 2013 has been introduced with a very short implementation period, in recognition of the serious escalation of crime associated with metal theft and the consequent adverse impact to communities and economic well being.

As a result, local Authorities in England & Wales are charged with the responsibility of implementation from 1/10/13. This date recognises the need for a transition period where existing registered traders are allowed to continue to trade, provided application is made under the new regime by 15/10/13.

Guidance has been issued by the Home Office, with an expectation that applications for licence under the new regime will be issued by 30/11/13. There is a proposal that enforcement of the new regime will commence 1/12/13.

However, in order to meet these very tight timescales, all Local Authorities in England & Wales must make arrangements for constitutional change to accommodate the new legislation, as well as organising a process for consultation and determination of applications to satisfy the robust revised system.

The required constitutional change has been implemented in order that the process can be initiated and a copy of the report submitted to Full Council 25/9/13 is reproduced for information as **Appendix 1A**.

The report reproduced at Appendix 1A details the reasons for such changes and it is not proposed to make further comment in respect of the background information at this time.

However, given the very tight implementation dates imposed by Government in respect of Scrap Metal Dealers, it will be necessary to be able to be in a position to determine contested applications as soon as possible, potentially by the next scheduled meeting of this Committee on 3/12/13.

The constitutional changes introduced have included the delegation of authority for the implementation of the Scrap Metal Dealers Act 2013 to the Group Director Environmental Services. The application process will be managed by the Licensing Team under the remit of the Service Director of Public Health & Protection, who will be responsible for the presentation of contested applications to this Committee for determination.

(ii) Home to School Transport Appeals

Members will note that in addition to provisions for Scrap Metal Dealers, there is also a change to the remit of the Licensing Committee in respect of determining appeals regarding 'Home to School Transport' matters that will primarily affect Drivers & Passenger Escorts.

The 'Home to School' Transport appeals will be managed by the Integrated Transport Unit (ITU), under the remit of the Head of Service, Highways, Transportation & Strategic Projects, who will be responsible for the presentation of reports to this Committee for relevant appeals.

(iii) Implementation Process – Scrap Metal Dealers

At the time of preparing this report, there are several matters outstanding to be resolved, prior to full implementation.

Application Fees have been determined in accordance with statutory guidance, which makes provision for full recovery of costs with the exception of appeal to Magistrate's Court and enforcement activity of unlicensed traders.

Fees are reproduced for information below:-

Site Operator – £315
Renewal - £315
Variation - £55

Mobile Collector - £210
Renewal - £210
Variation - £35

The introduction of the Scrap Metal Dealers Act 2013 requires the Licensing Authority **not to issue a licence** unless it is satisfied that the applicant is 'a suitable person' to hold such licence. Legislation also requires that applicants be afforded 'an oral hearing' where the matter of suitability is brought into question.

Although there is recognised good practice with the Licensing Committee in determining suitability for Hackney Carriage/Private Hire Vehicle (Taxi) licences, it is recognised that this is a new regime where there is currently no specific experience. The legislation specifies 'relevant offences' and 'other information' to which the Licensing Authority may have regard when determining suitability and both the scheme of delegation and policy on relevance of convictions are yet to be finalised. Whilst there is a broad legal framework, it will be for each individual Licensing Authority to determine the detail. There will however be an advantage to have consistency between neighbouring Authorities and certainly within each respective Police Force Area.

Officers are currently liaising with partner agencies, such as South Wales Police and Natural Resources Wales, who will have a considerable role in determining suitable person criteria. However, each case will be determined on merit and the final decision rests with the Licensing Authority.

(iv) Potential Application Profile

Records indicate that there are currently 28 registered dealers in Rhondda Cynon Taf, with approximately 39 enquires from **unlicensed dealers** who wish to trade in this area. At the time of preparing this report, it is not possible to assess the number of applications likely to require determination by Licensing Committee, but this information should be available by the next scheduled meeting 3/12/13.

The short implementation date is a pressure on existing resource. Officers will seek to meet targets set where possible, mindful of the potential detriment to applicants and resources allocated to existing work commitments.

A programme will then be devised to hear the applications in a measured manner and it may be necessary to call a special meeting, should a large number require consideration.

(v) Training

(a) Scrap metal Dealers

It is proposed that a briefing session on the new provisions will be provided to Members, prior to the commencement of the next scheduled meeting of this Committee on 3/12/13, commencing at 4pm.

The briefing will be provided by Officers from the Licensing & Legal Services Teams and will take the format of an informal presentation/discussion on the key elements of the 'suitable person' test, relevant to the legislation.

(b) Home to School Transport Appeals

In addition, it is proposed to utilise this opportunity to provide information for Members in respect of the salient issues for Home to School Transport appeals.

There are currently no outstanding matters which require determination.

It is considered that such a briefing will be sufficient to prepare Members for the role of determining applications and hearing appeals, bearing in mind the good practice/ existing robust processes that exist for determination of other licence types with similar considerations.

Further comment will be made at the meeting in this respect.

4. CONCLUSION

It is recognised that the new legislation in respect of Scrap Metal Dealers will provide robust control of an essentially unregulated activity which has the potential to adversely affect our community. Consequently there is commitment, in conjunction with partner agencies, to facilitate the implementation as quickly and effectively as possible, within existing resources.

The revised provisions for determination of appeals for Home to School Transport disputes will further improve the process, to ensure that decisions made are sustainable, should there be legal challenge.

Paul J Mee
Service Director Public Health & Protection

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RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**MUNICIPAL YEAR 2013 - 2014****COUNCIL
25 SEPTEMBER 2013****Agenda Item No. 11****REPORT OF THE DIRECTOR OF
LEGAL AND DEMOCRATIC SERVICES****CHANGES TO LICENSING
COMMITTEE TERMS OF REFERENCE****Authors: Andy Wilkins, Corporate and Democratic Services Solicitor
Paul Nicholls, Principal Solicitor - Litigation****1. PURPOSE OF REPORT**

To seek Members approval to amend the terms of reference of the Licensing Committee as a result of (i) changes made to the regulation of scrap metal dealers and (ii) creating an appeals procedure for dealing with the approval of Home to School Transport drivers and passenger assistants.

2. RECOMMENDATIONS

- 2.1 To note the coming into force of the Scrap Metal Dealers Act 2013.
- 2.2 To delegate the function of conducting and determining application hearings for licences under the Scrap Metal Dealers Act 2013 to the Licensing Committee and amend the terms of reference of the Licensing Committee to allow it to conduct and determine such application hearings as set out at paragraph 4.4 of the report.
- 2.3 To note that that all other functions to be exercised under the Scrap Metal Dealers Act 2013 are Executive functions.
- 2.4 To note the Council's obligations in relation to Home to School Transport as outlined in the report.
- 2.5 To delegate the function of conducting and determining Home to School Transport appeals in relation to the approval of drivers and passenger assistants to the Licensing Committee and amend the terms of reference of the Licensing Committee to allow it to conduct and determine such appeals as set out at paragraphs 5.4 and 5.5 of the report.
- 2.6 That the Director of Legal and Democratic Services amend the Constitution to reflect the required amendments.

3. SCRAP METAL DEALERS ACT 2013 (the 'Act') - BACKGROUND

- 3.1 The growth of metal theft offences has highlighted the ineffectiveness of the existing registration scheme in preventing the sale of stolen metal.
- 3.2 The Act received Royal Assent on 28 February 2013 and was passed with the intention of regulating scrap metal dealers, collectors and motor salvage operators. Every scrap metal dealer will be required to have a licence, and operating without one will be a criminal offence.
- 3.3 The Council will continue to act as the principal regulator but the Act will give the Council more powers including the power to refuse a licence and to revoke licences if the dealer is considered unsuitable. In addition local authorities and Police have been given powers to enter and inspect premises.
- 3.4 An applicant for a licence must be suitable and the local authority, when determining suitability, can have regard to:
- whether the applicant or any site manager has been convicted of any relevant offence;
 - whether the applicant or any site manager has been the subject of any relevant enforcement action;
 - any previous refusal for issue or renewal of a scrap metal licence;
 - any previous refusal for an environmental permit or registration;
 - any previous revocation of a scrap metal licence; and
 - whether the applicant has demonstrated that there will be adequate procedures in place to comply with the Act.
- 3.5 Once an application has been received the Local Authority may consult with:
- any other local authority (if an application has been made or licence issued to the same applicant);
 - Natural Resources Body for Wales;
 - Environment Agency; or
 - the Police
- regarding the suitability of any applicant.
- 3.6 The current legislation permits registration with minimal information and no fee payable. The Act will require more detailed information to be submitted on application and will allow the Council to set a fee.
- 3.7 The Act has also introduced the requirement for the Natural Resources Body for Wales to keep and maintain a register of all scrap metal licences issued in Wales and that register will be open for public inspection.

- 3.8 The Act will also introduce the requirement for scrap metal dealers to verify the identity and full name and address of the metal supplier and keep copies of proof of identification. In addition the dealer must keep records of the type and description of the metal, including weight and identifying marks, the date and time of receipt, the vehicle registration of any vehicle delivering the metal, how the metal was disposed of and copies of any cheques used to pay for metal. All records must be kept for 3 years. The Act also prohibits the payment of cash for metals.
- 3.9 The Council and Police Officers have been given powers to inspect licensed premises and can require production of any scrap metal at the premises, inspect records kept and take copies of those records. The Act provides the Police and the Council with powers to issue closure notices to unlicensed scrap metal dealing premises and apply to a Justice of the Peace for a closure order.
- 3.10 The new regime will commence from 1 October 2013, but with a transitional period to ensure a smooth hand over from the old regime to the new with minimal disruption to scrap metal dealers. Enforcement of the new regime will commence from 1 December 2013.

4. LICENCE APPLICATION HEARINGS UNDER THE ACT

- 4.1 The requirement on the Council to allow an applicant to make oral representations in relation to an application for a licence means that it would be appropriate to refer any contested applications to the Licensing Committee. Those applications which are uncontested or where there are no questions about the suitability of the applicant can be delegated to the Group Director, Environmental Services to make the decision on whether or not to grant the application and a report was presented to the Cabinet meeting on 23 September recommending this course of action.
- 4.2 The most obvious instance where an application should be referred to a Licensing Committee is where there is information available to the Council that suggests the applicant may not be suitable to hold a scrap metal dealers licence. Existing good practice around the consideration of applications by the Licensing Committee would be applied to the consideration of applications for scrap metal dealers licences.
- 4.3 In the event the Licensing Committee is minded to refuse the application then it will need to carefully consider the grounds on which it has decided to do so. The applicant has to be given the reasons an application has been rejected and if there is an appeal, the Council will want to have robust grounds on which to defend its decision not to grant a licence.
- 4.4 Delegating the function of dealing with contested applications under the Act to the Licensing Committee will require an amendment to the terms

of reference of the Licensing Committee. It is therefore recommended Council delegate powers to exercise this function (under Section 5 and paragraph 7 and 8 of Schedule 1 of the Scrap Metal Dealers Act 2013) to the Licensing Committee.

5. HOME TO SCHOOL TRANSPORT - BACKGROUND

- 5.1 The Learner Travel (Wales) Measure 2008 places a duty on local authorities to make suitable transport arrangements to facilitate the attendance of children each day at the relevant place where the child receives education or training. To this effect the local authority provides a 'Home to School' transport service.
- 5.2 Under the Safeguarding Vulnerable Groups Act 2006 the local authority has a duty to have in place a system of checks to ensure only those individuals eligible to participate in the authorities Home to School service do so.
- 5.3 To ensure this duty is carried out all staff acting as drivers or passenger assistants for contractors operating transport for the Home to School service are required to apply for and obtain ID Badges prior to being employed on such contracts. As part of this application process, appropriate CRB checks are made on all applicants and only upon the receipt of a 'clear' check will the authority issue to the driver/passenger assistant an ID badge. If however, the check is returned indicating convictions or other 'issues' of concern, the matter is placed before the Head of Service for consideration and determination.
- 5.4 Should the Head of Service refuse to issue the ID badge, the individual is entitled to 'appeal' that decision to a person or panel independent of the original decision taker. To date that person has been the Director of Environmental Services. However to bring the process in line with other similar processes it is felt that the appeal may more appropriately be dealt with by the Licensing Committee due to its expertise in dealing with similar issues under 'taxi' legislation.
- 5.5 Delegating the function of dealing with such 'appeals' will require an amendment to the terms of reference of the Licensing Committee. It is therefore recommended that Council delegate powers to exercise this function to the Licensing Committee.

LOCAL GOVERNMENT ACT 1972
as amended by
LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL
LIST OF BACKGROUND PAPERS
COUNCIL
25 SEPTEMBER 2013

REPORT OF DIRECTOR, LEGAL & DEMOCRATIC SERVICES

REPORT

**OFFICERS TO
CONTACT**

**CHANGES TO LICENSING COMMITTEE TERMS OF
REFERENCE**

Mr.A.S.Wilkins
Tel: 01443 424189

Mr P Nicholls
Tel: 01443 424162

Scrap Metal Dealers Act 2013
Learner Traveler (Wales) Measure 2008
Safeguarding Vulnerable Groups Act 2006

