

SCRAP METAL LICENSING SUB-COMMITTEE HEARING PROCEDURE

Committee: Licensing Committee

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Services/Monitoring Officer

[N216]

1.0 ISSUE

1.1 To consider and approve the Hearings Procedure for the Scrap Metal Licensing Sub-Committee, set out in Appendix 1 to this report.

2.1 RECOMMENDATION(S)

2.1 That the Licensing Committee approve the Hearings Procedure for the Scrap Metal Licensing Sub-Committee, set out in Appendix 1 to this report.

3.0 BACKGROUND/OPTIONS

3.1 The Scrap Metal Dealers Act 2013 ('the Act') received Royal Assent on 28 February 2013 and came into force on 1 October 2013.

3.2 The Act repealed the Scrap Metal Dealers Act 1964 and Part 1 of the Vehicle (Crime) Act 2001, creating a revised regulatory regime for scrap metal recycling and dismantling, bringing together scrap metal dealers and motor salvage operators under one Act.

3.3 Under the new Act, Local Authorities remain the principal regulators. However, the new Act provides Local Authorities with the power to better regulate these businesses by allowing licences to be refused if an Applicant is deemed to be 'unsuitable' and a power to revoke or vary licences if the Dealer becomes 'unsuitable'.

3.4 When determining an application, the Act lists details that the authority could consider in determining whether a person was 'suitable', including if the person has been convicted of any relevant offences or was subject to any relevant enforcement action. If the Council proposed to refuse an application (or revoke or vary a licence) the Applicant has the opportunity to make representations. If the Applicant stated that they wished to make oral representations then they must be provided with the opportunity to a Hearing before a Licensing Sub-committee, for a decision to be made.

3.5 At its meeting on 9 October 2013, the Licensing Committee approved the level of fees for the new licensing regime under the Scrap Metal Dealers Act 2013 and also recommended to Council that the Monitoring Officer be

authorised to include any contested hearings/revocations under paragraph 3.1 of the Licensing Committee's Terms of Reference, as a Sub-Committee hearing matter in the Council's Constitution.

- 3.6 This was approved by Council at its meeting on 17 October 2013. It is therefore now necessary to formulate, and for the Licensing Committee to approve, the Hearings Procedure should a meeting of the Scrap Metal Licensing Sub-Committee be required, particularly as provisions for enforcement and offences came into force on 1 December 2013.

4.0 ARGUMENTS/CONCLUSIONS

- 4.1 Councils must establish appropriate procedures for considering applications and determining whether an Applicant/Licence Holder is 'suitable' or not to have such a licence. The Act does not set out a procedure for determining contested applications or potential revocations of a scrap metal licence. Therefore, the Licensing Committee must determine and approve the Hearings Procedure for the Scrap Metal Licensing Sub-Committee.
- 4.2 Section 3 (1) of the Scrap Metal Dealers Act 2013 states that '*a local authority must not issue or renew a scrap metal licence unless it is satisfied that the applicant is a suitable person to carry on a business as a scrap metal dealer*'.
- 4.3 Schedule 1 Paragraph 7 of the Scrap Metal Dealers Act 2013 relates to the '*Right to make representations*'. In summary, if a local authority proposes to refuse to grant a scrap metal licence, or revoke or vary it, the Applicant or Licence Holder must be given notice of that, and of the reasons, and be informed that they can make representations. Should an Applicant or Licence Holder wish to make representations the local authority must give him/her reasonable time to do so.
- 4.4 Schedule 1 Paragraph 7 (8) of the Scrap Metal Dealers Act 2013 states that '*if A¹ informs the authority that A wishes to make oral representations, the authority must give A the opportunity of appearing before, and being heard by, a person appointed by the authority*'.
- 4.5 Responsibility for conducting Hearings in relation to applications concerning Licences for Public Entertainment and licensable activities under the Licensing Act 2003; the Gambling Act 2005; Hackney Carriage and Private Hire Drivers, Private Hire Vehicles and Operators; betting, gaming and lotteries, permits for amusements with prizes, street collections and Street Trading Licences or Consents are delegated to the Council's relevant Licensing Sub-Committees. Therefore, the same principal has been applied to Hearings in relation to applications concerning Scrap Metal licences.

¹ A refers to the Applicant or Licensee

4.6 Although it is not expected that Scrap Metal Licensing Sub-Committee Hearing meetings will be frequently required, to avoid potential challenges, the Council must have in place procedures should the need arise.

5.0 FINANCIAL IMPLICATIONS/EQUALITY IMPACT ASSESSMENT

5.1 There are no additional financial implications arising from this report.

5.2 An Equality Impact Assessment (INRA) is not required.

6.0 APPENDICES

6.1 Appendix 1 Hearings Procedure for the Scrap Metal Licensing Sub-Committee.

<u>Background Documents</u>	<u>Location</u>	<u>Contact Officer</u>
Scrap Metal Dealers Act 2013 East Cambridgeshire District Council Constitution Licensing Committee 9 October 2013 - Report No.N118 and relating Minutes – Minute No.13 - Scrap Metal Dealers Act 2013 Minutes from Licensing Committee 13 November 2013 – Update given under Minute No. 22 – Chairman’s Announcements	Room 113 The Grange Ely	Jeanette Thompson Head of Legal and Democratic Services (01353) 665555 E-mail: Jeanette.thompson@eastcambs.gov.uk

Scrap Metal Licensing Sub-Committee Hearing Procedure

Pre-amble:

The hearing will normally be in public. However, where the subject matter of the hearing is likely to involve consideration of exempt matters, then the hearing will usually take place in private. A Legal Officer will assist the Committee on matters of law, evidence and procedure.

Procedure:

1. The Chairman will welcome the Applicant or Licence Holder, introduce Members and Officers present and explain the Hearing Procedure to be followed.
2. The Chairman will confirm with the Applicant or Licence Holder that they have received the report.
3. The Chairman will ask the Environmental Health Officer / Licensing Officer to present the report.
4. The Chairman will ask the Applicant/ Licence Holder whether the content of the report is accurate and follow up if he/she says that it is not.
5. The Chairman or Members may ask any questions of the Licensing Officer.
6. If 'other persons'¹ have been consulted as to the suitability of an Applicant they will be asked to present details of their concerns and/or refer to any statement appended to the report.
7. The Applicant/Licence Holder may ask the 'other persons' questions.
8. The Chairman, Members, or Legal Officer may ask the 'other persons' questions.
9. The procedure will be repeated where there is more than one 'other persons'.
10. The Applicant/Licence Holder (or his/her representative) will be invited to address the Sub-Committee in support of their case. He or she may call witnesses in support of his/her case.
11. The Chairman, Members, or Legal Officer may ask questions of the Applicant/Licence Holder or their witnesses.
12. The Chairman will ask whether any officers present have any comments to make or questions to raise. If the officers make any comments they may be asked questions.
13. The Applicant/Licence Holder will then be invited to make a closing statement.

¹ i.e. other Local Authority; Environment Agency; Police

14. The Members and Legal Officer will go into closed session (either by leaving the room or asking all other parties to do so). The Members will make a decision and record reasons for this.

15. The Members of the Sub-Committee will then return to the meeting room/ bring everyone else back into the room. The Chairman will announce the decision with reasons and advise that a letter confirming the decision and rights of appeal will be sent within the next 7 days.

16. The Applicant/Licence Holder has the right of appeal to the Magistrates' Court under the Scrap Metal Dealers Act 2013 Schedule 1 Paragraph 9, within 21 days of the Notice of decision against any decision taken by the Council's Scrap Metal Licensing Sub-Committee to refuse or revoke a licence or to vary the conditions of a licence.

17. Any person attending the hearing who, in the opinion of the Members presiding over the matter, is behaving in a disruptive manner may be required to leave the hearing and may:

- be asked to make their representations and then leave the Sub-Committee Hearing
- submit to the hearing in writing any information which they would have been entitled to give orally had they not been required to leave
- refused permission to return; or
- be permitted to return only on the conditions as may be specified by the Members