

NAME OF COMMITTEE	Licensing Committee
DATE	18 th September 2013
REPORT TITLE	Implementation of the Scrap Metal Dealers Act 2013
Report of	The Business Support / Licensing Manager
WARDS AFFECTED	All Wards

Summary of report:

To seek Members' endorsement of the recommendations to Council, as below:

- a) To note that Part 3 (5)(d) of the updated Constitution (Scheme of Delegation) already lists the Scrap Metal Dealers Act 2013 as a Statute with delegated powers to the Licensing Committee / Sub-committee and the Head of Environmental Health & Housing.
- b) To seek the approval of Members for the proposed fees to be charged for the process;
- c) To seek the approval of Members for the Economy and Environment Scrutiny Panel to regularly review future fees and charges under this legislation.

Financial implications:

There are no direct financial implications to the Council from this report other than the income forecasts and charging basis are set at section 4 of this report.

RECOMMENDATIONS:

That the Committee resolves to recommend to Council:

1. To authorise the amendments to Part 3 of the Constitution, Section 5(d), by deleting reference to the Scrap Metal Dealers Act 1964 and deleting reference to the Vehicle (Crime) Act 2001 and Motor Salvage Operators Regulations 2002.
2. To approve the initial fees in respect of Scrap Metal Dealers Site and Collectors Licences as set out in paragraph 4.4 in the body of this report.
3. For the Economy and Environment Scrutiny Panel to regularly review future fees under this legislation and to make recommendations to Council.

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1. INTRODUCTION / BACKGROUND

- 1.1 The Scrap Metal Dealers Act 2013 (the Act) received Royal Assent on the 28 February 2013 delivering much needed reform of the scrap metal sector. The Act will provide effective and proportionate regulation of the sector creating a more robust local authority run licensing regime that will support legitimate dealers yet provide the powers to effectively tackle unscrupulous operators. It should raise trading standards across the whole sector.
- 1.2 The Act will allow local authorities to decide who should and should not be licensed, allowing them to refuse a licence upon application or to revoke a licence at any time if they are not satisfied that the applicant is a suitable person to carry on business as a Scrap Metal Dealer. The Act also creates closure powers for unscrupulous dealers who operate without a licence. It extends the record keeping requirements placed upon Scrap Metal Dealers and requires the verification of the people Scrap Metal Dealers are transacting with. The Act will integrate the separate regulation for motor salvage operators with the scrap metal sector and bring to an end the cash exemption given to some collectors under the 1964 Act.
The Act creates a fee raising power, to allow local authorities to recover the costs stemming from administering and seeking compliance with the regime. The South Hams have four motor salvage operators and twelve scrap metal dealers presently licensed and again within the new Act, similar to the previous legislation, there is an element of shared compliance responsibility between the local authority and the police.
- 1.3 The Commencement and Transitional Provisions Order was made by Parliament on 6th August 2013 (Statutory Instrument 2013 No. 1966) bringing into force the Act in stages.
- 1.4 The new legislation repeals the Scrap Metal Dealers Act 1964 (and linked legislation) and Part 1 of Vehicles (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 and gives councils 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'.

- 1.5 The Act provides that an application for a licence must be accompanied by a fee. The fee is set locally by each council on a cost recovery basis, but local authorities have a duty to have regard to guidance issued by the Secretary of State. The guidance has outlined the issues that should be considered by councils when setting the fee and what activities the fee can cover. This fee will be an essential component of the new regime as it will provide local authorities with the funding needed to administer the regime and to ensure compliance (this part of the Act comes into force on 1st September 2013).
- 1.6 The Act incorporates the separate regulatory scheme for motor salvage operators under the Vehicles (Crime) Act 2001 into this new regime. This is to replace the current overlapping regimes for the vehicle salvage and scrap metal industries with a single regulatory scheme. The Act also revises the definition of 'scrap metal dealer' and 'scrap metal' to ensure they reflect the twenty-first century scrap metal industry.

2. Summary

2.1 What is a scrap metal dealer?

'Carrying on business as a scrap metal dealer' and 'scrap metal'

A person carries on business as a scrap metal dealer if the person—

- (a) carries on a business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
- (b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).

2.2 What is a mobile collector?

'Mobile collector' means a person who—

- (a) carries on business as a scrap metal dealer otherwise than at a site, and
- (b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.

2.3 What is a motor salvage operator?

For the purposes of paragraph 2.1(b) above, a person carries on business as a motor salvage operator if the person carries on a business which consists —

- (a) wholly or partly in recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap,
- (b) wholly or mainly in buying written-off vehicles and subsequently repairing and reselling them,
- (c) wholly or mainly in buying or selling motor vehicles which are to be the subject (whether immediately or on a subsequent re-sale) of any of the activities mentioned in paragraphs (a) and (b), or
- (d) wholly or mainly in activities falling within paragraphs (b) and (c).

- 2.4 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.
- 2.5 It further 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.
- 2.6 Attached to this report (Appendix A) is a brief summary of the various sections within the Act.

3. Implementation timetable

- 3.1 The Home Office has released the following implementation timetable:
- The Commencement Order was made on 6th August 2013 which brought the fees element into effect on 1st September.
 - The main provisions of the Act commence on 1st October including the offence of buying scrap metal for cash.
 - Dealers and motor salvage operators registered immediately before 1st October will be deemed to have a licence under the Act from 1st October.
 - Provided the dealer submits an application for a licence on or before 15th October their deemed licence will last until the council either issues them with a licence or gives them notice of the decision to refuse them a licence, although they will be able to continue trading pending an appeal against the decision not to grant a licence.
 - Where a dealer submits an application on or before 15th October but does not supply all the required information with the application form then the deemed licence remains in effect after 15th October.
 - Where a dealer with a deemed licence fails to submit an application on or before 15th October the deemed licence will lapse on 16th October.
 - Other scrap metal dealers, not previously registered, will be able to apply for a licence from 1st October but will have to wait until a licence is granted before they can legally trade.
 - Local authorities will complete suitability checks on applicants and decide whether to issue licences. It is recommended that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1st December.
 - All other enforcement provisions within the Act commence on 1st December.
- 3.2 The Council therefore needs to be in a position to take applications (and to charge a fee for applications) from 1st October 2013.

4. Proposed Licence Fees.

What costs can local authorities charge for when issuing a licence?

4.1 The power to set fees has been passed to individual local authorities, so that any fees levied in each local area is set by reference to the actual costs to each authority. The EU services directive states that a licence fee can only be used to pay for the cost associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service does not exceed the costs of providing the service.

4.2 Local authorities may charge 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. 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. 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 but not appeals to the Magistrates. 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.

4.3 The costs associated with defending a Judicial Review into whether the local authority has failed to have regard to the guidance on fees, is not chargeable under the licence regime.

4.4 Proposed Fees:

Application for the grant of a Site Licence £175.00
Application to renew a Site Licence £125.00
Application to transfer to Mobile Collector £75

Application for the grant of a Mobile Collectors Licence £125.00
Application for the renewal of a Mobile Collectors Licence £80.00
Application for the transfer to a Site Licence £75.00

5. Proposed delegations

- 5.1 The responsibilities under the Scrap Metal Dealers Act 2013 have already been delegated to the Licensing Committee, Licensing Sub-Committee and to The Head of Environmental Health in the updated Constitution and Scheme of Delegation. The matters remaining is to remove mention in the Scheme of Delegation to the Scrap Metal Dealers Act 1964, remove mention of the Vehicle (Crime) Act 2001, remove mention of the Motor Salvage Operators Regulations 2002 and to further delegate from The Head of Environmental Health and Housing to the Business Support / Licensing Manager and Licensing Officer, thus:

The hearing of representations by the Licensing Sub-Committee (three Members) and the determination of applications for a licence of a Scrap Metal Dealer, under the Scrap Metal Dealers Act 2013, where it is proposed by the Head of Environmental Health and Housing / Business Support / Licensing Manager / Officer to refuse or to cancel a licence or to vary a licence under section 4 of the Act and the applicant has given notice to the authority, within the prescribed time, that they require the opportunity to make representations about that proposal.

- 5.2 In respect of the Business Support / Licensing Manager / Officer, it is recommended that Scheme of Delegation from Head of Environmental Health and Housing be amended by the addition of the following:

To licence, renew or vary a licence, of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013.

To serve Notice of his proposal to refuse or cancel a licence of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013.

To serve Notice of his proposal to vary a licence of a Scrap Metal Dealer under section 4 of the Scrap Metal Dealers Act 2013.

The determination of applications for a licence of a Scrap Metal Dealer, under the Scrap Metal Dealers Act 2013 where it is the intention to refuse or cancel a licence or to vary a licence under section 4 of the Act, where the applicant has not served notice requiring the opportunity to make representations to the authority in respect of the proposal to refuse or cancel a licence, or to impose conditions on a licence.

6. Revocation of a licence and formulating and imposing licence conditions

- 6.1 If a licence has been granted, it may be revoked or licence conditions imposed on a scrap metal dealer if the subsections within Clause 4 of the Scrap Metal Dealers Act are triggered. A local authority may impose conditions pending an appeal against revocation (section 4 (7)) or if the applicant or site manager has been convicted of a relevant offence (section 3 (8)).

7. Variation of licence

- 7.1 Schedule 1 paragraph 3(1) indicates that a local authority may, on an application, vary a licence by changing it from one type to another so a Site Licence may be changed to a Collectors Licence and vice versa.

8. LEGAL IMPLICATIONS

- 8.1 Schedule 1(6) of the Act provides that an application must be accompanied by a fee set by the local authority. In setting a fee, the authority must have regard to any guidance issued from time to time by the Secretary of State with the approval of the Treasury. This Guidance is therefore binding on all licensing authorities to that extent.

9. FINANCIAL IMPLICATIONS

- 9.1 There are no financial implications to the Council for this Agenda Item (**also see above**).

10. RISK MANAGEMENT

- 10.1 The risk management implications are:

Corporate priorities engaged:	Improving the local economy and promoting community life.
Statutory powers:	Scrap Metal Dealers Act 2013. The Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013.
Considerations of equality and human rights:	Compliance with the Human Rights Act 1998
Biodiversity considerations:	Not applicable
Sustainability considerations:	As above under corporate priorities engaged
Crime and disorder implications:	Section 17 of Crime and Disorder Act 1998 applies.
Background papers:	SHDC Constitution and Scheme of Delegation
Appendices attached:	Appendix A – Brief summary of sections within the Act which is useful information but not necessarily required within the main body of this report.

No	Risk Title	Risk/Opportunity Description	Inherent risk status			Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel		
1	Fees	If fees are not approved then the council will be unable to collect payment. Allows the provision of this service to become cost neutral. Previous there was no fee for registering a Scrap Metal Merchant.	3	2	6 ↔	The matter is being listed before the full Licensing Committee. Fees to be reviewed regularly by the Economy and Environment Scrutiny Panel	Business Support Manager
2	Constitution and Scheme of Delegation	Allows matters to be dealt with by the Licensing Sub-committee.				Could be moved up to the full Licensing Committee if considered necessary.	

Appendix A

Brief summary of Sections within the Scrap Metal Dealers Act 2013

- a) 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 with a fine not exceeding level 5 on the standard scale (this part of the Act comes into force on 1st October 2013).
- b) Section 2 provides further detail in respect of the licence, including that there will be two types of licence, one for a site and the other for a mobile collector (for those carrying on business otherwise than at a site).
- c) A site licence will be issued by the local authority in whose area a scrap metal site is situated and will require all of the sites at which the licensee carries on the business as a scrap metal dealer within the local authority area to be identified and a site manager to be named for each site. In doing so, 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.
- d) A mobile 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. 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 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.
- e) 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 Schedule 1, paragraph 1(4) of the

- f) 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.
- g) 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.
- h) 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.
- i) Section 4 also allows the licensing authority to vary a licence, imposing the conditions stipulated above, if the licensee or a site manager is convicted of a relevant offence.
- j) If the licensing authority proposes to refuse an application for the grant or variation of a licence, or intends to revoke a licence, it must give the applicant or licensee a notice which sets out what the authority proposes to do and the reasons for it. The notice must state that the applicant may make representations against any of these decisions within 14 days.
- k) 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, the Environment Agency, the Natural Resources Body for Wales and to police forces.

- l) 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.
- m) 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.
- n) 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.
- o) 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.
- p) 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; vehicle registration mark; 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.