

CABINET
07 November 2013 at 7.00 pm

Further to the recent despatch of agenda and papers for the above meeting, please find the following item(s) which were marked as 'to follow' and an additional report that should have been included within the main agenda:

3. a) Ruling By The Chairman Regarding Urgent Matters

The Chairman has been asked to agree to take the following report as an urgent item:

9. New Scrap Metal Dealers Act 2013

Reason for urgency:

Due to an administrative error the report was missed from publication with the agenda. A decision needs to be taken by Cabinet before 1 December 2013, the Chairman has therefore been asked to agree that it be taken as an urgent matter.

6. Recommendations from the Cabinet Advisory Committees (Pages 1 - 4)

b) New Scrap Metal Dealers Act 2013 (*Minute 15, Housing & Community Safety Advisory Committee – 15 October 2013*)

c) Annual Review of Parking Charges for 2014/15 and Christmas Parking 2013 (*Minute 13, Economic and Community Development Advisory Committee – 24 October 2013*)

9. Scrap Metal Dealers Act 2013 (Pages 5 - 22)

To assist in the speedy and efficient despatch of business, Members wishing to obtain factual information on items included on the Agenda are asked to enquire of the appropriate Director or Contact Officer named on a report prior to the day of the meeting.

Should you require a copy of this agenda or any of the reports listed on it in another format please do not hesitate to contact the Democratic Services Team as set out below.

For any other queries concerning this agenda or the meeting please contact:

The Democratic Services Team (01732 227241)

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RECOMMENDATIONS FROM CABINET ADVISORY COMMITTEES

- b) New Scrap Metal Dealers Act 2013 (*Minute 15, Housing & Community Safety Advisory Committee – 15 October 2013*)

Members considered a report which advised that the new Scrap Metal Dealers Act 2013 repealed the 1964 Act (and related legislation) and Part 1 of the Vehicles (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Act maintained local authorities as the principal regulator, but gave the power to better regulate these industries by allowing the ability to refuse to grant a licence to ‘unsuitable’ applicants and a power to revoke licences if the dealer became ‘unsuitable’.

It had been expected that the Home Office would make regulations about the new Scrap Metal Dealer Act which would allow the Council to manage the licensing process in the same way it managed its other licensing functions, namely to delegate them to the Licensing Committee, however these regulations had not been made. This was therefore an executive function and the responsibility of Cabinet rather than Council and the Licensing Committee. Delegations from the Leader to the relevant Officers would be made separately.

The Act provided that an application for a licence must be accompanied by a fee set locally on a cost recovery basis. The fee would provide the funding needed to administer the legislation and ensure compliance. The proposed fees had been calculated using the Scrap Metal Dealer Act 2013: Guidance on Licence Fee Charges.

Resolved: That it be recommended to Cabinet to approve the appropriate fee levels as set out below:

Site Licence – Grant (3 years)	£415.00
Site Licence - Renewal (3 years)	£355.00
Collectors Licence – Grant/renewal (3 years)	£260.00
Minor administrative change to licence -	£30.00
Variation - change of site manager -	£160.00
Variation from collector to site licence -	£210.00
Variation from site to collector licence -	£120.00

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- c) The Annual Review of Parking Charges for 2014/15 and Christmas Parking 2013
(*Economic and Community Development Advisory Committee – Minute 13, 24 October 2013*)

The Chief Officer, Environmental & Operational Services presented the annual review of parking charges which proposed options for increases in respect to car park and on-street parking charges to meet the income budget targets for 2014/15 and included consideration of free Christmas parking.

The Chairman invited Cllr. Maskell to address the Committee on behalf of Westerham Town Partnership (WTP). He reported that the WTP had identified parking charges were not taking into account the development of the town, so they were proposing charges to support the development of town and business. They had identified that charges could be used to draw people to certain areas for long term and that parking charges should not be looked at from a purely revenue point of view but as a support tool for the development of the town.

The Chief Officer, Environmental & Operational Services advised that the report and recommendations of the Advisory Committee would be considered by Cabinet on 7 November 2013 and the Cabinet agreed proposals would go out to a three week consultation period which was when the public could submit comments which would then be reported back to Cabinet on 6 February 2013. He would ensure that Westerham Town Partnership were consulted and welcomed their input. However their information had still yet to be shared with Officers .

In response Cllr Maskell commented that in relation to the process where officers had used data and information from the last three years this was a traditional approach, but things had moved on and the focus of the Council had changed and therefore there needed to be new processes for pre-empting and looking at opportunities.

Members generally felt that the information presented by Cllr Maskell had been received too late and at this point would be more suitably considered as part of the consultation process. In response to questions, Cllr. Maskell advised that he had only been given sight of part of the WTP proposals within the last day. He had been told that known parking patterns had been taken into account and that they disputed the Council's figures and that there were fundamental issues that needed to be taken into account. It was suggested that out of town parking fees be reduced to encourage movement from the town centre but that it agreed with rises in central parts. The consultation procedure and system needed to be looked at, and the proposal put forward from WTP needed to be looked at seriously.

A Member suggested that the situation may have highlighted a need to look into procedures and consultations prior to the report stage. The Vice Chairman sympathised with the situation, he had seen the WTP proposals and whilst there were some slight differences there was nothing immediately controversial, this Committee was not making the final decision, Cabinet had yet to consider the report and then there would be the consultation process.

The Chairman stated that input was welcomed from all informed sources and lessons had been learned. With regards to the schedule of charges laid out by the WTP there was a proposal for a free period of time, was there any barrier to this proposal. The Parking

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Manager responded that there was no barrier to free charging periods, but ultimately it was a case of achieving income targets. The Chief Officer, Environmental & Operational Services added that once the WTP had shared their findings with Officers they could look at the implications of their proposals and these could be considered by Cabinet on 7 November 2013.

Members agreed that it was not possible to make a decision on information only circulated to Members, and that any information received should be put to Cabinet to consider.

With regards to the recommendations before the Committee, Members were generally against Sunday parking charges, and in favour of continuing free Saturday parking at the Council Offices. It was felt that evening charge should possibly be reviewed to benefit restaurant goers.

A Member commented that car parking charges had been a recent news item and that government was not liking the way some Councils were charging for inappropriate purposes to balance the books. He stated that the Committee needed to be sure the fees set were not in confrontation with central government over this issue, and that the law of diminishing returns needed to be looked at. With regards to the evening charge it would be interesting to correlate it to the social cost of night time entertainment. He suggested that local comparators needed to be looked at such as Dartford Town Centre. Another Member also raised the issue of diminishing returns.

The Chief Officer, Environmental & Operational Services confirmed that the central government issue was in relation to on-street parking. He added that the income needed to be found to meet the 3.5% assumption, costs were going up as was inflation which was running at 3.2%. In response to the issue of potential diminishing returns he added that it was a valid point but that ticket sales were up 5% on last year and that there could be other factors to consider such as not enough car parking spaces and inability to meet demand.

The Chairman of the Scrutiny Committee Members In Depth Working Group on Car Parking addressed the Committee, and stated that with regards to the procedures and the issue around information being fed into the process he was happy to take this away and look at it as part of the current review.

The Portfolio Holder for Finance and Resources addressed the Committee and pointed out the Marks and Spencers would not be significantly investing in Sevenoaks if it were not viable and would be providing interactive signage. Studies were being engaged to look into extending long stay car parks. The shortfall that needed to be made up in business rates did not help the situation. Once the interactive data was compiled and a cost effective analysis carried out it may be that a pay on exit system could be a solution. But it all needed to be carefully looked at. Hopefully a report would be put to this Committee next financial year.

A preference for Option 2 was expressed.

In respect to the free Christmas parking, the Parking Manager advised that the Westerham Town Council preferred dates were 7 and 14 December 2013 and that the

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Sevenoaks Town Council preferred the 14 and 21 December 2013. Different dates for each area could be accommodated.

Resolved: That the following proposals be submitted to Cabinet for consideration along with this Committee's views in relation to:

- (a) the proposed increases to car park charges for 2014/15, as long as within the 3.5% 10 year budget strategy assumption;
- (b) the proposed increases to on-street parking charges for 2014/15, as long as within the 3.5% 10 year budget strategy assumption;
- (c) the preferences for Westerham (7 and 14 December 2013) and Sevenoaks (14 and 21 December 2013) were agreed for free Christmas parking to be provided in all car parks and on-street parking areas for two Saturdays before Christmas 2013; and that the cost in terms of lost income be funded from Supplementary Estimates;
- (d) that there should be no amendment to the car park evening charge in Sevenoaks town centre, but options for next year be investigated;
- (e) that no parking charges be introduced into the Council office car park on Saturdays;
- (f) that Sunday charges should not be considered;
- (g) that the on-street tariffs at Knockholt Station be aligned with the tariff structure for Swanley; and
- (h) that a decision on the standardisation of the on-street tariffs for Westerham town with others in the district be deferred pending consideration of information to be submitted by Westerham Town Partnership.

NEW SCRAP METAL DEALERS ACT 2013

Cabinet – 7 November 2013

Report of the:	Chief Officer Environmental and Operational Services
Status:	For Decision
Also considered by:	Housing and Community Safety Advisory Committee – 15 October 2013
Key Decision:	Yes

This report supports the Key Aim of Safe Communities to aid in the reduction of crime within the District.

Portfolio Holder Cllr. Ms Lowe (Housing and Community Safety)

Contact Officer(s) Claire Perry Ext: 7325 / 07970 731616

Recommendation to the Housing and Community Safety Advisory Committee: That Cabinet be recommended to approve the appropriate fee levels as set out in paragraph 25 of the report.

Recommendation to Cabinet: That, subject to any comments of the Housing and Community Safety Advisory Committee, the fees set out in paragraph 25 of the report be approved.

Reason for recommendation: to ensure that the Council complies with its Statutory duty under the Scrap Metal Dealers Act 2013.

Introduction and background

1. The Act repeals the Scrap Metal Dealers Act 1964 (and related legislation) and Part 1 of the 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, 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'.
2. The licensing regime introduced by the Act is very similar to the licensing of taxi drivers and the issuing of Personal Licences under the Licensing Act. The suitability of applicants is based on a number of factors as outlined in the Act, including any unspent relevant criminal convictions. Whilst it is expected that straightforward applications will be decided under delegation to Officers, any applications with objections where the applicant wishes to make representations

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would need to be heard at a hearing, with an option to appeal their decision to the Magistrates' Court.

3. It had been expected that the Home Office would make regulations about the new Scrap Metal Dealer Act which would allow the Council to manage the licensing process in the same way it manages its other licensing functions, namely to delegate them to the Licensing Committee. Although the Act has come into force these regulations have not been made. This means that these matters are the responsibility of Cabinet rather than Council and the Licensing Committee. Delegations from the Leader to the relevant Officers will be made separately.

Licences

4. Under the Act there are two types of licence; a site licence and a collector's licence, which will both be administered by the local authority. Site managers will need to be named on site licences. Collectors will need a licence in each local authority area in which they collect. Both types of licence last for three years.
5. The local authority must be satisfied that the applicant is a suitable person to hold a licence before it can grant a licence. The scope of this requirement will include applicants, site managers, directors, secretaries and shadow directors of companies.
6. It is proposed that the Council will require a photograph to accompany the application for a Collector's Licence. It is envisaged that the photograph will form part of the licence document and will enable Officers to identify licensed collectors.

Determining Applications

7. Section 3 of the Act states that a Council must not issue a licence unless it is satisfied the applicant is a suitable person to carry on a business as a scrap metal dealer, identified via a 'suitability test'. In the case of a partnership, the suitability of each partner will be assessed. In the case of a company, it means assessing the suitability of any directors, company secretaries, or shadow directors.
8. In assessing an applicant's suitability, the Council can consider any information considered relevant. The Council will be in a stronger position to defend any challenges to a decision to refuse a licence where the decision is based on the factors specifically listed in legislation, which includes whether:
9. The applicant or site manager has been convicted of a relevant offence or subject to any relevant enforcement action (Statutory Guidance has been published and is attached as Appendix B);
10. The applicant has previously been refused a scrap metal dealers licence or an application to renew a licence has been refused.
11. The applicant will be required to complete an application and declare that the information provided is correct. The applicant will commit an offence under the Act should they make a false statement, or recklessly make a statement which is false in a material way.

12. The authority will want to satisfy itself that an applicant is suitable by checking they do not have a previous relevant conviction, have not been the subject of enforcement action, or have been refused a licence. There is no requirement under the Act for applicants to provide a Basic Disclosure Certificate (BDC). However, it is proposed that an applicant is required to submit a Basic Disclosure Certificate provided by Basic Disclosure Scotland as part of the application process. The Council will require the certificate to be within 30 days of its issue when presented with the application.
13. Should an applicant refuse to supply a BDC this would be grounds for the Council to consider what further information was needed to judge whether the applicant was suitable to hold a licence. Refusal to submit a Basic Disclosure Certificate would be grounds for the Council to decline to proceed with the application.
14. The application period includes a transitional period for those currently registered under the Scrap Metal Dealers Act 1964 and the Vehicles (Crime) Act 2001. The guidance issued by the Local Government Association (Appendix B) recommends for those registered under the former licensing regime, that their BDC is no more than 3 months old at the time of application. During the transitional period, the Council will accept relevant standard or enhanced disclosure certificates which are no more than three months old at the date of application.
15. Once the transitional period has ended, the Council will require an applicant to provide a Basic Disclosure Certificate (including standard and enhanced disclosures) that are no more than one month old at the time the application is submitted. The authority recognises that a Basic Disclosure Certificate will reveal only any unspent convictions on the Police national computer. The Certificate will not provide details of convictions for relevant offences secured by the Environment Agency or equivalent, or other local authorities. In the case of applications received during the transitional arrangements or for any new applications, the authority will consult with the Environment Agency or equivalent and the Police. The authority will reserve the right to also contact any other local authority it feels necessary to determine the suitability of an applicant(s).
16. In the case where a Basic Disclosure Certificate highlights a relevant conviction the authority will seek further information from the Police to enable the authority to better assess the applicant(s) suitability. The authority will also check public records held by the Environment Agency or equivalent to assess if any enforcement action has been taken against an individual. In certain circumstances it may be necessary to make direct contact with the above to assess if any on-going enforcement action is pending, which may not be held on a public register at the time of application.
17. If the Council should receive information that an applicant(s) has been convicted of a relevant offence, a judgement will be made whether to refuse or grant the licence. The Council will take into account any information received by an applicant or other bodies. The Council will consider the nature of the offence or enforcement action, the gravity of the offence or enforcement action, when the enforcement action was taken, or any other relevant information as defined by the Act.

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Representations

18. In the case where the authority rejects an application(s), or revokes, or varies a licence, the Council will notify the applicant or licence holder by way of a written Notice. The Council will advise the applicant(s) or licence holder what the authority proposes to do and the reasons behind the action. The Notice will stipulate that the applicant/licence holder has the opportunity to make a representation, or let the authority know that they wish to. The applicant/licence holder has up to 14 days from the date of the Notice to respond.
19. If the applicant/licence holder does not make a representation, or does not say that they wish to in that time period, then the Council can refuse the application, or revoke, or vary the licence. Where the applicant states they want to make representations, the authority will provide a further reasonable period in which to do so. If the applicant fails to provide a representation within the agreed period then the authority will refuse the application, or revoke, or vary the licence.

Hearings

20. Where the applicant makes representations, the authority has to consider them in accordance with the Act. If the applicant wishes to make oral representations the authority will arrange a hearing. It is anticipated that these hearings will follow the procedures for hearings under the Licensing Act 2003. The Council anticipates that further guidance on hearings will be issued.
21. Should the Council refuse an application, revoke or vary a licence the applicant/licence holder will receive a Notice of Decision, which will set out the Council's reasons for its decision. The Notice will inform the applicant, or licence holder of their right to appeal to the Magistrates' Court and, where the licence has been revoked or varied, the date under which that comes into effect.

Conditions

22. In cases where the applicant or any site manager has been convicted of a relevant offence, or where the authority is revoking a licence, the authority can impose conditions on the licence. The authority 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.
23. There is no equivalent set of conditions for collectors.

Fees

24. The Act provides that an application for a licence must be accompanied by a fee. The fee will be set locally by each local authority on a cost recovery basis. Local authorities will have a duty to have regard to guidance issued by the Secretary of State which outlines the issues that should be considered 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 they need to administer the legislation and ensure compliance (Appendix A).

25. In setting a fee, the authority must have regard to any guidance issued by the Secretary of State, the proposed fees have been calculated using that Guidance (Appendix A) and are as follows;

Site Licence – Grant (3 years)	£415
Site Licence - Renewal (3 years)	£355
Collectors Licence – Grant/renewal (3 years)	£260
Minor administrative change to licence -	£30.00
Variation - change of site manager -	£160
Variation from collector to site licence -	£210
Variation from site to collector licence -	£120

Other Options Considered and/or Rejected

26. The introduction of new legislation replaces the current legislation governing Scrap Metal and as such there is no alternative action.

Key Implications

Financial

The Local Authority is required under the Scrap Metal Dealer Act 2013 to set fees to administer the regime and ensure compliance. The fees levied in each local area are 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.

Legal, Human Rights etc.

The Local Authority is required under the Scrap Metal Dealer Act 2013 to set fees to administer the regime and ensure compliance.

Equality Impacts

Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
a. Does the decision being made or recommended through this paper have potential to disadvantage or discriminate against different groups in the community?	No	N/A

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Consideration of impacts under the Public Sector Equality Duty:		
Question	Answer	Explanation / Evidence
b. Does the decision being made or recommended through this paper have the potential to promote equality of opportunity?	No	
c. What steps can be taken to mitigate, reduce, avoid or minimise the impacts identified above?		

Appendices

Appendix A - Home Office: Scrap Metal Dealers Act 2013: guidance on licence fee charges

Appendix B - Home Office: Scrap Metal Dealers Act 2013 Determining suitability to hold a scrap metal dealer's licence

Background Papers:

None

Mr Richard Wilson

Chief Officer Environmental and Operational Services

Scrap Metal Dealer Act 2013: guidance on licence fee charges

Context

The Scrap Metal Dealers Act 2013 (referred to in this guidance as the 2013 Act) received Royal Assent on the 28 February 2013, delivering much needed reform of the scrap metal sector. The 2013 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 will raise trading standards across the whole sector.

Introduction

The 2013 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.

Finally, the 2013 Act creates a fee raising power, to allow local authorities to recover the costs stemming from administering and seeking compliance with the regime. This element of the legislation will be the focus of this guidance.

The intention is for the act to be implemented in October 2013.

Licensing requirements placed upon scrap metal dealers

Section one of the 2013 Act requires a scrap metal dealer to obtain a licence in order to carry on business as a scrap metal dealer¹. 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. In addition, Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the authority.

Aim and scope

Local authorities will be responsible for administration and compliance activity in relation to the 2013 Act. This guidance is provided to local authorities in relation to the carrying out of their fee raising function. It also provides information for the benefit of those who will be applying for a scrap metal dealer's licence and the general public. This guidance applies to local authorities in England and Wales and is produced in accordance with the 2013 Act.

Legal status

Schedule 1(6) of the 2013 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.

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

The 2013 Act provides that an application for a licence must be accompanied by a fee set by the local authority. This fee raising power is an essential component of the legislation as it will provide local authorities with the funding they need to administer the regime and ensure compliance.

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.

LAs 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.

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. 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.

Registering authorities should review fees regularly to check whether they remain appropriate.

Can a local authority charge for enforcement activity?

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.

What are the different types of licences?

There are two types of licence specified within the act, one is for a site licence and the other is for a mobile collector licence (carrying on business otherwise than at a site). The licence authorises the licensee to carry on business as a scrap metal dealer at the sites listed in it (in the case of a site licence) or within the local authority area (in the case of a mobile collector's licence).

Site licences

A site licence requires 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.

Collectors licences

A collector's licence authorises 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 should be obtained from each local authority from which the individual wishes to collect in. A collector's 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 will need to obtain a site licence from the relevant local authority.

The Act 2013 also specifies that a licence will be issued by the local authority in whose area a scrap metal site is situated, or (in respect of a mobile collector) in the area that the collector operates.

Do different fees apply?

Yes. Fees charged for a site licence would reflect the extra work involved in processing these licences and will vary from a collector's licence.

Display of licences

The form in which a licence is issued must enable it to be displayed in accordance with section ten of the 2013 Act. All licensees are therefore required to display a copy of their licence. For site operators the licence must be displayed 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 this requirement. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

The cost of providing a licence in a form which can be displayed should be included in the local authority licence fee charges.

Police objections to licence applications

The police may object to a licence application where they believe that the applicant is not a suitable person as defined within the act. The police can object where, for example, the applicant has been convicted of a relevant offence. LAs should also consider representations from other organisations or individuals in considering the applicant's suitability

Where the police do object, the local authority should take this into consideration but must use their own judgement and discretion when taking a licence decision. The local authority must allow for the person whose licence is about to be refused or revoked to be afforded the right to make representations. The local authority considering the matter must restrict its consideration to the issue of suitability of applicant and provide comprehensive reasons for

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its decision.

Costs associated with considering oral and written representations should be included in licence fee charges.

Appeals

There is a right of appeal to the Magistrates' Court against a decision to refuse a licence application, to include a condition within the licence, to revoke the licence or to vary the licence. The costs associated with appeals and the costs of defending an appeal in the Magistrate Court should not be included in licence fee charges.

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.

Revocation of a licence and formulating and imposing licence conditions

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)).

Variation of licence

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 and (2) if there is a change in any of the matters mentioned in section 2(4)(a), (c) or (d) or (6)(a).

These changes should be recorded by the local authority. The applicant is also under a duty to notify any convictions for relevant offences to the local authority. These measures ensure that a single record will be held of the licence holder's history in terms of licensing matters.

National Register of Scrap Metal Dealers

Whilst a local authority can recover any costs incurred in transmitting information about a licence, the costs which the Environment Agency incurs are not chargeable under the licence regime.

How long will a licence be valid for?

Schedule 1 paragraph 1 of the 2013 Act specifies the terms of a licence. It indicates that a licence expires at the end of the period of 3 years beginning with the day on which it is issued.

Additional regulations and guidance

The Home Office will be publishing regulations in relation to relevant offences and the identification required to sell scrap metal over the summer of 2013. These regulations will be published on www.gov.uk. We will also be working with the Local Government Association, the British Metal Recycling Association and British Transport Police to produce additional guidance on the requirements of the new act.

The Local Government Association guidance will include a breakdown of reasonable timescales for each of the activities associated with setting a fee.

Annex A - Definitions

What is a local authority?

'Local authority' means —

- (a) in relation to England, the council of a district, the Common Council of the City of London or the council of a London borough;
- (b) in relation to Wales, the council of a county or a county borough.

What is a scrap metal dealer?

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

(2) 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)).

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.

What is a motor salvage operator?

(4) For the purposes of subsection (2)(b), 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).
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Home Office

Scrap Metal Dealers Act 2013

Determining suitability to hold a scrap metal dealer's licence

Statutory guidance for local authorities in England and Wales
First publication: issued 1 October 2013

Introduction

The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013. The majority of the provisions within the Act commence on 1 October 2013 including the requirement in section 1(1) to be authorised by a licence in order to carry on business as a scrap metal dealer. Section 3(1) of the Act states that a local authority must not issue or renew a scrap metal dealer's licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer. Section 3(6) states that a local authority must have regard to any guidance on determining suitability issued by the Secretary of State.

Status of the guidance

This is statutory guidance and local authorities are under a duty to have regard to it.

Whose suitability should be assessed?

When assessing an application for a scrap metal dealer's licence, you should consider the suitability of:

- the individual applicant;
- each partner within a partnership;
- any director(s), secretary(s) or shadow director(s) of a company.

You should consider whether a site manager (if an application for a site licence is submitted) has been convicted of a relevant offence or relevant enforcement action and whether this impacts on the applicant's suitability to hold a scrap metal dealer's licence.

What information may you have regard to?

Under section 3(2) of the Scrap Metal Dealers Act 2013, you may have regard to any information which you consider to be relevant when determining the suitability of a person to hold a scrap metal dealer's licence, including:

1. whether the applicant or any site manager has been convicted of any relevant offence

Under Schedule 1, Para 2 (1) (j), of the Act, a person applying for a scrap metal dealer's licence must provide details of any conviction for a relevant offence. The relevant offences, prescribed by the Secretary of State, can be found in Part 1 and 2 of the Schedule of The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 using the following link:

<http://www.legislation.gov.uk/id/ukxi/2013/2258>. Under Regulation 2, a relevant offence is also "attempting or conspiring to commit any offence falling within the Schedule; inciting or aiding, abetting, counselling or procuring the commission of any offence falling within the Schedule, and an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) committed in relation to any offence falling within the Schedule". These offences should also be considered when determining suitability.

- A conviction for a relevant offence should not automatically lead to the refusal of a scrap metal dealer's licence. You may consult your local police force (section 3 (7)) for further details about the offence including both the seriousness of the offence and the date of when it was committed. Once you have this, you should consider it alongside any other information you may have regard to when determining suitability. If a site manager has been convicted of a relevant offence, the same process applies.

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- Under section 4 (5) of the Act, if a person has been convicted of a relevant offence or is convicted of a relevant offence once a licence has been issued, you may wish to consider, imposing one or both of the following conditions on the licence if you think this is necessary:
 - that the dealer must not receive scrap metal except between 9am and 5pm on any day;
 - 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.
 - These conditions are set out at section 3 (8) of the Act and could be applied until you are satisfied that the inclusion of such a condition in the licence is no longer necessary under all the circumstances.
 - If, during your checks, you discover that the applicant has a relevant conviction which was not detailed in a person's application you should request further information from the applicant (Schedule 1, Para 4). You should also consider whether this is a deliberate omission and therefore impacts on suitability. Making a false statement in an application is a criminal offence (Schedule 1, Para 5) and, where this has happened, it will be at your discretion as to whether you refer this to the police.
 - Only unspent convictions should be considered for individual applicants, site managers, partnerships and companies.
2. whether the applicant or any site manager has been the subject of any relevant enforcement action
- The relevant enforcement action you may have regard to when considering suitability to hold a scrap metal licence has been prescribed in Regulation 3 of The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 by the Secretary of State which can be found at: <http://www.legislation.gov.uk/id/uksi/2013/2258>.
 - Under Regulation 3(a), a person is the subject of relevant enforcement if *'the person has been charged with an offence specified in the Schedule to these Regulations, and criminal proceedings in respect of that offence have not yet concluded'*. However, you should **not** refuse a licence on this point alone as the action (pending prosecution) is ongoing. If an applicant details a pending prosecution in their application form, you should note this and monitor the outcome. Only once the action is completed should you consider whether the outcome, if a conviction, impacts on a person's suitability to hold a scrap metal dealer's licence and take any necessary action for instance to impose conditions or, ultimately, to revoke.
 - Under Regulation 3 (b), a person is the subject of relevant enforcement action if *"If an environmental permit granted in respect of the person under the Environmental Permitting (England and Wales) Regulations 2010 has been revoked in whole, or partially revoked, to the extent that the permit no longer authorises the recovery of metal"*. You should consult the Environment Agency (in England) or Natural Resources Wales (section 3 (7)) to find out the reasons for the whole or partial revocation and consider if the reasons impact on their suitability.
3. any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal)
- You should check your local authority area's records to find out whether a scrap metal dealer has previously been refused a scrap metal dealer's licence, taking into consideration

the reasons for the refusal. Section 3 (7) of the Act states that you may consult other persons regarding the suitability of an applicant, including in particular, any other local authority or officer of a police force. It will be undesirable for a person who has been refused a licence by one local authority area to be issued a licence by another, therefore if a person has been refused a licence in a different local authority area it will be important to scrutinise the reasons for the refusal. For example, the refusal may have been given because the applicant has not demonstrated that there will be adequate procedures in place to comply with the Act (section 3 (2) (f)) but the applicant has now implemented sufficient changes and the reason no longer applies.

4. any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal)

- You should routinely check whether an applicant is on the Environment Agency's/Natural Resources Wales' register of permits and registrations. If you have any concerns or would like to find out further information you should contact the Environment Agency (in England) or Natural Resources Wales. Additionally, if the applicant does not appear on the register and, therefore, does not hold a relevant environmental permit, exemption, or registration, then you may also wish to consult the Environment Agency or Natural Resources Wales as the applicant should not be operating as a scrap metal dealer without one or other of these.

5. any previous revocation of a scrap metal licence (and the reasons for the revocation)

- You should routinely check the register of scrap metal licences, hosted by the Environment Agency/Natural Resources Wales, to find out if a scrap metal dealer has had a licence revoked in another local authority area. If a person has had a licence revoked, you should contact that local authority to understand the reasons why the licence was revoked (section 3 (7)). It will be important for you to scrutinise the reasons for refusal and consider whether these still apply. The reasons for revoking a licence may not always impact on suitability (section 4 (1) (2)).

6. whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with

- Where you have information that raises concerns about the adequacy of procedures that the applicant or site manager has in place to comply with section 11 (verifying the supplier's identity), section 12 (offence of buying scrap metal for cash) or section 15 (records: supplementary), you may wish to obtain further information about how the applicant will ensure compliance with the requirements of the Act. For example, where you have concerns about the procedures around the offence of buying scrap metal for cash, you may wish to check the details of the back account which the applicant proposes to use. This information should be included in the application form (Schedule 1, Para 2 (1) (i)).

Further information

Although section 3 (2) sets out some information you may have regard to, you may request any relevant information from the applicant (either when the application is made or later) to help you consider the application (Schedule 1, Para 4 (1)), this will include determining suitability.

Reasons for refusal

If a licence application is refused, you should provide full reasons for your decision. This will not only help the applicant to understand the refusal but will allow a Magistrates' Court to clearly understand the reasons should the applicant appeal the decision.

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