

CHESHIRE EAST COUNCIL

Licensing Committee

Date of Meeting: 30th September 2013
Report of: Public Protection and Health Manager
Subject/Title: Implementation of the Scrap Metal Dealers Act 2013

1.0 Report Summary

- 1.1 This report introduces the new provisions of the Scrap Metal Dealers Act 2013 which comes into force on 1 October 2013.

2.0 Recommendation

- 2.1 Using the principles anticipated to be recommended to Council by Constitution Committee the Licensing Committee recommends Council:

- 2.1.1 To approve the scheme of implementation and Delegations in Appendix 2
- 2.1.2 To approve policy on the Suitable Person Test to be employed by Cheshire East Council as outlined in Appendix 1.
- 2.1.3 To approve fees and charges in relation to Scrap Metal Dealers licensing activities.

3.0 Reasons for Recommendations

- 3.1 To ensure that the Council meets its obligations under the Scrap Metal Dealers Act 2013.
- 3.2 To provide a transparent and consistent approach to the Suitable Persons Test.
- 3.3 To provide a transparent basis on which fees and charges have been set.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 Contained within the report.

- 6.2 Section 13.0 of the report and Appendix 1 describe the policy to be implemented in relation to 'Suitable Person Test'.
- 6.3 Appendix 3 contains details of how the 2013 Fees for Scrap Metal Dealers have been developed and further supports information contained within Section 19.0.

7.0 Financial Implications

- 7.1 Contained within the report.
- 7.2 Fees will be set locally by Cheshire East Council on a cost recovery basis, but local authorities will have a duty to have regard to guidance issued by the Secretary of State outlining what should be considered by them when setting the fee and what activities the fee can cover.

8.0 Legal Implications

- 8.1 The current legislation, (the Scrap Metal Dealers Act 1964) requires scrap metal dealers to register. The Scrap Metal Dealers Act 2013 is designed to provide a more robust scheme of monitoring the scrap metal industry. A scheme of delegation needs to be put in place to allow for full implementation of the Scrap Metal Dealers Act 2013, by the time the first applications under it are made to the Council. All current registered scrap metal dealers will be required to make application to the council for a licence between 1st and 15th October 2013. Guidance indicates that these applications should be determined by 1st December 2013.
- 8.2 The current function, under the Scrap Metal Dealers Act 1964, is specified in Regulations as a Council ("non executive") function. The Scrap Metal Dealers Act 2013 repeals the 1964 legislation and implements the new licensing system. It was expected that Regulations would be made to specify that this function is a Council function, or a local choice function, i.e. one where the council can decide whether it wants the function to be a council (non executive) or an executive function. The implementation regulations, which were made at the beginning of September, do not make any statement to this effect. The latest information is that the Department of Communities and Local Government will make it a local choice function, but will not be consulting on regulations for this until October 2013, which is after the first tranche of licence applications are received.
- 8.3 In the absence of regulations making a function a Council (non-executive) function, the default position is that it is an Executive function. However, all other licensing functions are currently Council (non-executive) functions and whilst it is still likely that regulations will be issued to this effect in respect of the licensing of Scrap Metal Dealers, it should be noted that Section 17 of the Interpretation Act 1978 already provides that where an Act repeals and re-enacts, with or without modification, a previous enactment, then unless the contrary intention appears, in so far as any subordinate legislation made or other thing done under the enactment so repealed, or having effect as if so made or done, could have been made or done under the provision re-enacted,

it shall have effect as if made or done under that provision. The effect of this is that the new regulatory provisions should, even if no new confirmatory Regulations emerge, be capable of being done through the Council's non-Executive framework.

- 8.4 It is therefore recommended that decisions on fees and charges and policy need to be delegated to the Licensing Committee.
- 8.5 The Scrap Metal Dealers Act 2013 states that in determining licences the licensing authority has to be satisfied that the applicant is a suitable person to hold a licence. It requires the Council to give an applicant for a licence the opportunity of a hearing if the Council sends that person a notice to indicate that the Licensing Authority is minded to refuse the licence. The applicant can then make written or oral representations at a hearing.

9.0 Risk Management

- 9.1 Relying on the interpretation Act 1978 to decide this is a non-executive function does carry some small risk, but a course of action has to be determined prior to regulations making the position certain.

10.0 Background

- 10.1 Metal theft has, over the last few years had a significant impact on communities, businesses and councils themselves. This experience and the expectation that high metal prices will continue to encourage metal theft and onward sale created a drive to reform the regulation of scrap metals dealers and the development of specific legislation.
- 10.2 The Scrap Metal Dealers Act 2013 replaces the previous registration system for scrap metal dealers created by the 1964 Scrap Metal Dealers Act to create a new licensing regime. The Act maintain 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'.
- 10.3 The Act provides that an application for a licence must be accompanied by a fee. The fees will be set locally by each local authority on a cost recovery basis, but local authorities will have a duty to have regard to guidance issued by the Secretary of State which will outline the issues that can be considered by them 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 regime and ensure compliance.
- 10.4 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 to a single regulatory system that reflects the current scope of the scrap metal industry.

11.0 Definitions under the Act

11.1 *Scrap Metal Dealer*

A dealer is defined under S21(2) of the Act as someone carrying on a business which consists wholly or in part of buying or selling scrap metal, whether or not the metal is sold in the form in which it is bought. However, where a manufacturing business that sells scrap metal as a by-product of the processes it uses, or because it has a surplus of materials is not captured by this definition (S21(3)).

Within this broad definition there is also a need to have consideration to further criteria to establish the applicability of the Act. Generally where the sale of the metal is incidental to the main type of work or business undertaken then a licence will not be needed.

A dealer also includes someone carrying on a business as a motor salvage operator. This is defined as a business that;

- Wholly or in part recovers salvageable parts from motor vehicles for reuse or resale and then sells the rest of the vehicle for scrap;
- Wholly or mainly involves buying written off vehicles and then repairing and selling them off;
- Wholly or mainly buys or sells motor vehicles for the purpose of salvaging parts from them or repairing them or selling them off.

11.2 *Scrap Metal Collectors*

A collector is defined (S22(4)) as a person who carries on a business as a scrap metal dealer otherwise than at a site, and regularly engages in the course of that business in collecting waste materials and old, broken, worn out or defaced articles by means of door to door visits.

11.3 *Scrap Metal Site*

A site is defined in the Act (S22(9)) as 'any premises used in the course of carrying on a business as a scrap metal dealer (whether or not metal is kept there)'. Due to the wording of the definition this means that someone who trades in scrap metal and is thus defined as a dealer under S21(2) will need a site licence for their office even if they do not operate a scrap metal store or yard.

12.0 Applications & Licences

- 12.1 Section 1 of the Act requires that a scrap metal dealer is required to obtain a licence in order to carry on business as a scrap metal dealer; failure to do so is a criminal offence punishable on summary conviction with a fine not exceeding level 5 on the standard scale.
- 12.2 Section 2 details the two types of licence available. These are a site licence and a mobile collectors licence where the applicant does not carry on the business at a designated site.
- A site licence will be issued by the local authority in whose area a scrap metal site is situated. All sites within the local authority area where a licensee carries on a business as a scrap metal dealer have to be identified and a site manager has to be named for each site. This licence allows the licensee to transport scrap metal to and from those sites from any local authority area.
 - A collectors licence allows the licensee to operate as a collector in the area of the issuing local authority. It does not allow the collector to operate in any other local authority area, so a separate licence has to be obtained from each council the collector wishes to operate in. The licence does not authorise the licensee to operate a site; to do so, they will need a site licence from the relevant local authority. There is no restriction as to the location where the collector may transport and sell their metal.
- 12.3 It is important to note that a dealer can only hold one type of licence in any one local authority area and they will need to ensure that they apply for the correct licence to continue their operations.
- 12.4 Licences are issued for a period of three years.

13.0 Suitable Person Test

- 13.1 Section 3 of the Act 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 making this decision Cheshire East Council will 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.
- 13.2 Appendix 1 provides further detail on the information that Cheshire East Council will take into account as part of the 'Suitable Person Test'.

14.0 Attaching Conditions to Licences

- 14.1 Where a licensee of site manager has been convicted of a relevant offence the authority has the opportunity to apply conditions to any licence that is issued.

The legislation provides for two specific conditions;

- a) That a dealer must not receive scrap metal except between the hours of 09.00 and 17.00 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 that it is received.

15.0 Display of Licences

- 15.1 Section 10 requires that the licensee display a copy of their licence. It is a criminal offence punishable on summary conviction where a licensee does not meet display requirements
- 15.2 For site operators this must be in a prominent place in an area accessible to the public.
- 15.3 For mobile collectors display must be in a manner which enables the licence to be easily read by a person outside the vehicle.

16.0 Further Duties for Licensed Scrap Metal Dealers

- 16.1 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 persons 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 (DVLA), a bank or utility company etc. The Secretary of State will prescribe in regulations the data or documents which are sufficient, or otherwise as the case may be for verifying identity.
- 16.2 It will be an offence not to obtain and verify the seller's identity as part of the transaction. 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.
- 16.3 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; 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.

17.0 Revocations, Variations and Refusals

- 17.1 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.

- 17.2 Section 4 also allows the licensing authority to vary a licence; imposing those conditions stipulated in paragraph 14.1 above if a licensee is convicted of a relevant offence.
- 17.3 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.

18.0 Scheme of Delegation

- 18.1 A report to Constitution Committee on 19th September recommended that “subject to the detail being worked up and approved by Licensing Committee on 30 September, Constitution Committee recommends to Council that:

2.1.1 in so far as it is necessary as a matter of local choice, this function is specified as a non-executive function; and

2.1.2 procedures and a scheme of delegation be set up to implement the Scrap Metal Dealers Act 2013 and to determine applications for licenses under the Act consider and approve, taking account of the following principles:

- policy is delegated to the Licensing Committee
- the ability to set fees and charges is delegated to the Licensing Committee
- a member decision making body (e.g. a licensing sub-committee) shall determine any applications where the applicant has indicated he/she is taking advantage of their opportunity for a hearing (i.e. after a notice has been given under Section 7 of the Act by the licensing authority stating it proposes to refuse the application, the applicant may ask for a hearing and the opportunity to make written or oral representations)
- a member decision making body only may initiate a revocation of a licence.
- a member decision making body only may impose conditions on a licence.
- An officer should be empowered to make decisions in respect of approvals of licences and may refuse a licence in circumstances where the applicant has not expressed the wish to make representations within the specified time after a notice has been served under Section 7 stating the licensing authority proposes to refuse the application.”

- 18.2 The recommendation of Constitution Committee will be reported to the Licensing Committee at the meeting.
- 18.3 Using the above principles it is recommended that Licensing Committee make a recommendation to Council to approve the Delegations as in Appendix 2, and

to approve a policy and approve fees and charges. The recommendation for the future is to delegate all these issues to Licensing Committee, but because of the short timescale at this implementation stage it is necessary for Council to approve these matters.

19.0 Fees and Charges

- 19.1 The Act provides that an application for a licence must be accompanied by a fee. The fees will be set locally by each local authority on a cost recovery basis, but local authorities will have a duty to have regard to guidance issued by the Secretary of State which will outline the issues that can be considered by them when setting the fee and what activities the fee can cover. Appendix 3 provides relevant information.
- 19.2 When setting fees the authority cannot take into account any costs associated with enforcement activity against unlicensed scrap metal dealers including Closure Notices, applications for Closure Orders and applications for warrants or the defence of Appeals.
- 19.3 The following fees have been calculated for Scrap Metal Dealers Licences;
- Site Licence: £160.00
Collectors Licence: £160.00
- 19.4 Fees and charges will be reviewed within the initial three year licensing period to ensure that they accurately reflect the full costs associated with the provision of the service including the renewal process. At the current time it has been necessary to estimate the amount of time each element of the licensing regime will take and apportion costs accordingly. However, to support any future review of fees and charges for this area of work, more detailed time recording work will be undertaken across a sample of licence applications to ensure greater accuracy.
- 19.5 A separate income account has been created to capture the income received by the scrap metal dealers licensing regime and to support the calculation of future licensing fees.

20.0 Public Register

- 20.1 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 in England and Wales, the Environment Agency and to police forces.
- 20.2 Section 7 requires that a register of licences issued under the Act should be maintained by the Environment Agency. Local authorities will provide the appropriate information on all licences issued in their geographic areas in order that this register can be updated regularly.
- 20.3 This 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.

- 20.4 Contact with the Environment Agency in relation to protocol for the creation and maintenance of public registers indicates that currently no fee has been set for this service. This issue will need to be reviewed in line with any future review of fees and charges.

21.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Appendix 1

Policy Notes: Suitable Person Test

Section 3 of the Act states that the authority must not issue a licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer – ‘the suitability test’. This would apply to;

- Individuals;
- All partners within a partnership business;
- Directors, shadow directors or company secretaries in the case of a Company.

In considering suitability the authority will consult with;

- Any other Local Authority (if an application has been made or a licence issued to the same applicant);
- The Environment Agency;
- Cheshire Constabulary (The Police) or any other relevant Police Force.

Factors that the authority will take into account in determining suitability include;

- Whether the applicant or any site manager has been convicted of any relevant offence (to be laid out in regulations due to be laid before Parliament in September 2013);
- Whether the applicant or any site manager has been the subject of any relevant enforcement action;
- Any previous refusal for issue of or renewal of a scrap metal licence;
- Any previous refusal of an environmental permit or registration;
- Any previous revocation of a scrap metal licence;
- Whether the applicant has demonstrated that there will be adequate procedures to comply with the Act.

As part of the application process the authority will request that the applicant provide a Basic Disclosure certificate with their completed application which would offer transferable information for them to use for applications to other local authorities. This offers the possibility of providing a fair, transparent and objective means of identifying matters that might lead the authority to conclude that an applicant is not a suitable person to hold a scrap metal dealers licence.

There is no requirement under the Act for applicants to provide a Basic Disclosure certificate and the deemed licence for previously registered dealers will not lapse if it

is not supplied with the application. However refusing to supply a certificate would be grounds for the authority to consider what further information it needed to judge whether the applicant was suitable. Refusing to provide a Basic Disclosure certificate would also be grounds under paragraph 4(2) of Schedule 1 for the local authority to decline to proceed with the application.

In order to ensure that a Basic Disclosure is as current as possible the authority will only accept certificates that are up to three months old.

Appendix 2

Scheme of Implementation and Delegations

Delegations to Licensing Committee, General Licensing Sub-Committee and Officers

Function	Full Committee	Sub-Committee	Officers – Head of Public Protection and Enforcement unless otherwise stated
Power to approve policy in relation to the Scrap Metal Dealers Act 2013	Power to set policy		
Power to set fees and charges in relation to scrap metal dealers licences	Power to set fees and charges		
Power to licence (first grant, renewal and application to vary) regarding a site licence and a collectors licence under the Scrap Metal Dealers Act 2013		To determine applications where the applicant has indicated s/he is taking advantage of the opportunity for a hearing under Section 7 of the Act or where conditions are proposed by officers	To grant a licence and to refuse a licence in circumstances where the applicant has not expressed the wish to make representations within the specified time after a notice has been served under Section 7 stating the licensing authority proposes to refuse the application
Power to revoke or vary a licence under the Scrap Metal Dealers Act 2013		The power to revoke or vary a scrap metal dealers licence	
Power to issue a Closure Notice under the Scrap Metal Dealers Act 2013		Power to issue a Closure Notice	
Termination of a Closure Order		Power to terminate a Closure Order	

Application to a Justice of the Peace for a Closure Order			Power to make application for a Closure Order
Power to institute criminal proceedings under the Scrap Metal Dealers Act 2013			Power to Head of Legal Services and Monitoring Officer to institute criminal proceedings

Appendix 3

Policy Notes: Fees and Charges

Fees and charges for a licence under the Scrap Metal Dealers Act 2013 will be set locally by the Licensing Authority. In determining the fee to be applied the authority will have regard to the following processes;

- All activities required with the processing and granting a licence such as considering applications and assessing the suitability of the applicant.
- The costs of staff associated with supporting the service including senior staff with managerial responsibility for the service.
- Support provided by other parts of the council to the licensing team such as legal services and any recharges there might be for rooms, heating and lighting from the centre of the authority.
- The cost of providing advice and guidance to applicants on what will be a new process.
- Carrying out inspections and ensuring compliance with the law.
- Training for staff and councillors in the requirements of the new legislation.
- Costs associated with consulting other agencies and bodies when considering if an application is a suitable person.
- Working with any partners to ensure compliance.
- Making and reviewing any policies in relation to the operation of the new licensing regime.
- Issuing the licence.
- Any officer time spent providing information for inclusion in the register of dealers.
- Costs associated with Hearings to include communication with applicants/representatives; preparation and issue of information; report preparation; Member expenses for hearing attendance; room hire; printing and dissemination of agenda materials; legal services costs; and officer costs associated with actually running the hearing itself.