



APPENDIX A

AGENDA ITEM: 12

COUNCIL: 17 July 2013

Report of: Assistant Director Community Services

Relevant Managing Director: Managing Director (People and Places)

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SUBJECT: SCRAP METAL DEALERS ACT 2013

Wards affected: Borough wide

1.0 PURPOSE OF REPORT

1.1 To advise Members of the requirements of the Scrap Metal Dealers Act 2013 (the Act) and to agree the appropriate delegations to enable its implementation.

2.0 RECOMMENDATIONS

2.1 That all functions in relation to the Scrap Metal Dealers Act 2013 be delegated to the Licensing and Appeals Committee as detailed in Table 1 at paragraph 5.5.

2.2 That the Assistant Director Community Services be given delegated authority to serve notices, enforce, issue formal cautions and lay informations and complaints to Court in respect of offences, warrants of entry or appeals, under the Scrap Metal Dealers Act 2013 and that the said Act be included in the Constitution part 4.2D (ii) (1).

2.3 That the Assistant Director Community Services be given delegated authority to issue Site Licences and Collector Licences under the Scrap Metal Dealers Act 2013 and that the delegation be included in the Constitution part 4.2D (iii) (1).

2.4 That delegated authority is granted to the Assistant Director Community Services to determine matters under the Scrap Metal Dealers Act 2013 as detailed in Table 1 at paragraph 5.5.

2.5 That the Assistant Director Community Services be given delegated authority to appoint officers in connection with the duties under the Scrap Metal Dealers Act 2013 and that the delegation be included in the Constitution part 4.2D (ii) (3) and references to the Scrap Metal Dealers Act 1964 be removed.

- 2.6 That the Assistant Director Community Services be given delegated authority to instruct the Borough Solicitor to apply for a Closure Order or Discharge Order under the Scrap Metal Dealers Act 2013.
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3.0 BACKGROUND

- 3.1 Members will be aware that the legislative regime relating to scrap metal dealers and motor salvage operators is administered by the Council and primarily enforced by the Police. Scrap metal dealers must register with the Council, whereas motor salvage operators are licensed by the Council. The broad aim of this legislative process is to ensure that the persons involved in these activities are 'fit and proper' to carry them out. However, it is the opinion of Government that this regime is ineffective as continual increases in metal theft, driven by the rise in commodity prices, have had a significant and wide ranging negative impact – varying from energy supply disruption to stolen manholes and the desecration of war memorials.
- 3.2 Accordingly, the Scrap Metal Dealers Act 2013 (the Act) repeals the existing legislation (the Scrap Metal Dealers Act 1964 and Part 1 of the Vehicles (Crime) Act 2001) and widens the definition of a scrap metal dealer to include motor salvage operators. Local authorities remain the principal regulator, but relevant businesses will need to be licensed to trade. The Council will have the power to refuse or revoke licences if a dealer is considered "unsuitable", based on a number of factors including any relevant criminal convictions.
- 3.3 The Home Office currently plan for the Act to be implemented in October 2013, but this is dependent on a national register of scrap metal dealers being established by the Environment Agency.

4.0 CURRENT POSITION

- 4.1 Two licence types have been created - a "Site Licence" and a "Collector's Licence". Collectors' Licences regulate dealers who do not have a specific site and regularly collect door-to-door, whereas a Site Licence allows a dealer to conduct business from one or more named sites. Licences are issued by the local authority in which a site is situated or the area in which a collector operates.
- 4.2 Site Licences will name the site manager at each location and the date on which the licence will expire. Collector's licences only name the dealer and the local authority area they can operate in. Both licences last for 3 years (unless revoked) and must be displayed in a prominent place where the public can see it.

Suitability

- 4.3 Local authorities will need to be satisfied that any applicant is a suitable person to operate as a dealer before issuing a licence. In deciding if someone is suitable, the Council can consider any information it considers relevant, including whether the dealer or their site manager has been convicted of a relevant offence or relevant enforcement action has been taken against them, and whether they have been refused a licence or environmental permit.

- 4.4 To determine this, the Council can consult other local authorities, the Environment Agency or Natural Resources Wales, or the Police. However, no regulations and/or formal guidance has been published to assist local authorities to determine whether an offence or enforcement action is relevant, and subsequently, if an applicant is suitable. This matter will be the subject of future reports as more information becomes available.

Determination of applications

- 4.5 Applicants are required to provide sufficient information to allow local authorities to determine their suitability. Whilst the Council can request further information, the applicant must provide their full name, date of birth, usual place of residence (for individual applicants), trading name and address(es), relevant environmental permits / scrap metal dealer licences issued and details of any relevant convictions or enforcement actions against the dealer.
- 4.6 More details on the application process will be provided in future reports as more information becomes available.

Duties of licensed operations

- 4.7 Section 11 of the Act places a duty on dealers, site managers and employees with delegated responsibility to verify the full name and address of anyone they receive scrap metal from. This has to be done by checking documents, data or other information from a reliable and independent source. Failure to verify names and addresses is an offence, as is giving a false name and address to a dealer. Dealers or site managers have a defence if they have made arrangements for names and addresses to be verified and have taken all reasonable steps to ensure those arrangements have been complied with.
- 4.8 Section 12 of the Act makes it an offence for a dealer to pay cash for scrap metal. The only authorised means of paying for scrap metal are a non-transferable cheque or an electronic transfer of funds (although the Secretary of State can allow other methods of payment). Unlike the provisions inserted into the Scrap Metal Dealers Act 1964 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, mobile collectors are not exempt from this requirement.
- 4.9 Sections 13, 14 and 15 of the Act require dealers to keep a record of any scrap metal received or disposed of in the course of their business. For metal received, the dealer has to keep the details of the date and time it is received, the registration number of any vehicle it was brought in and the name and address of anyone who brought it in. Dealers also have to keep copies of any documents they have used to verify the name and address of someone they have received metal from, and the cheque or receipt given when the metal is paid for. Where metal is disposed of, the dealer must keep a record of its description, the date and time of its disposal, and the name and address of any person it is sold to.
- 4.10 A dealer or site manager has a defence if they have made arrangements for the requirements in Sections 13 and 14 of the Act to be met and have taken all reasonable steps to ensure those arrangements have been complied with.

Variation / refusal / revocation

- 4.11 Licence holders are required to notify the Council of any change of circumstance relating to details in the licence. The Council must determine the variation and issue a revised licence as necessary. It should be noted that a licence cannot be transferred from one person to another, but one type of licence can be changed to the other - i.e. a Site Licence can be changed to a Collector's Licence.
- 4.12 If a dealer, or any of their site managers, has been convicted of a relevant offence, the Council can forcibly vary a licence to add certain conditions that limit the range of the business. These conditions are to limit the dealer to receiving any metal within the hours of 9.00am to 5.00pm, and that any scrap metal must be kept in the form in which it is received for a specific period of time not exceeding 72 hours.
- 4.13 The Council also has the discretion to refuse a licence application where it is satisfied the applicant is not a suitable person to be a scrap metal dealer. Similarly, the Council may also revoke an existing licence where it is satisfied that the dealer no longer carries on business at any of the sites listed in the licence, or where it is no longer satisfied the dealer is a suitable person to be a scrap metal dealer.
- 4.14 Where such decisions are taken, the Council must give notice to the applicant / licence holder, including the reasons for the decision. The applicant / licence holder can make representations where the local authority proposes to refuse, revoke or vary a licence. The right of appeal against the local authority's decision to refuse a licence application or to revoke a licence is to the Magistrates' Court.

Closure Notices / Orders

- 4.15 Schedule 2 of the Act provides the means by which unlicensed sites may be closed. The powers are based on the powers to close unlicensed alcohol sellers under the Criminal Justice and Police Act 2001. Only a Police Officer or local authority may issue a Closure Notice on a non-residential premises being used as an unlicensed scrap metal dealer's site.
- 4.16 Having issued a Closure Notice, the Police or local authority must apply to a Magistrate for a Closure Order. An Order cannot be applied for until a week after the Closure Notice was made or once more than six months have passed from the date when the Notice was given. An application cannot be made to a Magistrates' Court if the premises are not being used by a dealer in the course of their business and there is no reasonable likelihood that there will be in the future.
- 4.17 The Magistrates' Court may make a Closure Order where it is satisfied that a Closure Notice has been given and the premises continues to be used as a dealer's site or there is a reasonable likelihood it will in the future. The Closure Order can require the site to be immediately closed, for the dealer to immediately stop using it in the course of their business, or for a sum to be retained by the Court until requirements imposed by the Court are met.
- 4.18 A Closure Order can be terminated by the Police or the local authority if they are satisfied the need for it has ended. An application can also be made to the Court to discharge a Closure Order, but the court can only make it if it is satisfied there is no longer a need for the Order. An appeal can be made to the Crown Court against the making of a Closure Order and a Discharge Order, as well as decisions not to grant a Closure or Discharge Order.

- 4.19 Failure to comply with a Closure Order is an offence, and a Police Officer or authorised person can (using force if necessary) enter a premises and do anything reasonably necessary to ensure compliance with the Closure Order. It is also an offence to obstruct a Police Officer or authorised person exercising these powers.

Powers of entry

- 4.20 Section 16 of the Act gives Police and local authority Officers the right to enter and inspect a licensed site at any reasonable time provided they have given notice. Where giving notice would prevent the Police or local authority Officer checking the legislation has been complied with, or they have tried to give notice but have failed, then they can still enter the site. These rights do not extend to any residential premises however, and neither can force be used to gain entry.
- 4.21 Where needed, a warrant allowing the use of force to gain entry can be obtained from a Magistrate; anyone obstructing an Officer's right of entry or inspection or failing to produce a record is guilty of an offence. Police and local authority Officers can also inspect any scrap metal or records.

Fees

- 4.22 Schedule 1, Paragraph 6 of the Act allows local authorities to charge a licence fee, which is set locally. In setting the fee, the Council must have regard to any guidance issued by the Secretary of State. At present no such guidance has been published. This will be the subject of future reports as more information becomes available.

National register

- 4.23 The Act establishes a national register of scrap metal licences, which will be maintained by the Environment Agency and Natural Resources Wales. The register will record the name of the local authority issuing the licence, the name of the dealer, their trading name, the address of any sites identified on the licence, the type of licence and when it will expire. This will be the subject of future reports as more information becomes available.

5.0 ISSUES

- 5.1 The Act completely replaces the previous scrap metal dealer / motor salvage operator legislative regime operated by the Council. Therefore, the Council will be responsible for licensing all scrap metal dealers as defined under the Act and enforcement of the regime alongside the Police.
- 5.2 The provisions contained in this report are required so that the Council can fulfil these new duties. The Council's Licensing and Appeals Committee and Licensing Service are equipped to administer and enforce the regime. Therefore, it is proposed that the responsibility for this legislation be added to the functions of the Licensing and Appeals Committee given that it is responsible for similar fixed and mobile operations (i.e. taxis, street trading consents, street collections etc.).
- 5.3 Given the right of an applicant or existing licence holder to make representations where an application is going to be refused or where an existing licence is going to be revoked or varied, the delegations contained in this report propose that such decisions are made by the Licensing and Appeals Committee. This will allow the

opportunity for the matter to be determined in an open hearing, so that applicant or existing licence holder can have their representations determined in accordance with the rules of natural justice.

5.4 If full Council is mindful to add the functions of the Act to the Licensing and Appeals Committee, all further reports regarding the Act and the additional administrative requirements highlighted in this report (including the setting of licence fees) will be provided to the Licensing and Appeals Committee for determination as detailed in Table 1 below.

5.5 Details of Delegations to the Licensing and Appeals Committee:

Table 1

Matter to be dealt with	Delegated authority to:	
	Assistant Director Community Services (ADCS)	Licensing and Appeals Committee
Application for Site Licence	Power to grant only	If ADCS mindful of refusal
Application for Collector's Licence	Power to grant only	If ADCS mindful of refusal
Application to vary existing Site Licence	Power to grant only	If ADCS mindful of refusal
Application to vary existing Collector's Licence	Power to grant only	If ADCS mindful of refusal
Forcibly vary existing Site Licence	Urgent circumstances	All cases, unless urgent
Forcibly vary existing Collector's Licence	Urgent circumstances	All cases, unless urgent
Revocation of existing Site Licence	Urgent circumstances	All cases, unless urgent
Revocation of existing Collector's Licence	Urgent circumstances	All cases, unless urgent

6.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

6.1 The Act has the potential to impact upon the Community Strategy. The contents of this report have the following links with the Community Strategy: Community Safety (issues A and E); Economy and Employment (issue D).

7.0 FINANCIAL AND RESOURCE IMPLICATIONS

7.1 Based on current numbers of potential licensed operations, the implementation and administration of the Act can be met within existing resources. Further reports will be provided in relation to licence fees once more information becomes available.

8.0 RISK ASSESSMENT

8.1 The Council is under a legal obligation to implement and administer the Act. Any failure to do so would lead to legal action being taken against the Council with the potential for sanction and/or associated costs.

Background Documents

There are no background documents (as defined in Section 100D (5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is a significant direct impact on members of the public, employees, elected members and / or stakeholders. Therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report.

Appendices

1 Equality Impact Assessment.

Appendix 1

Equality Impact Assessment - process for services, policies, projects and strategies

1.	<p>Using information that you have gathered from service monitoring, surveys, consultation, and other sources such as anecdotal information fed back by members of staff, in your opinion, could your service/policy/strategy/decision (including decisions to cut or change a service or policy) disadvantage, or have a potentially disproportionately negative effect on, any of the following groups of people:</p> <p><i>People of different ages – including young and older people</i> <i>People with a disability;</i> <i>People of different races/ethnicities/ nationalities;</i> <i>Men; Women;</i> <i>People of different religions/beliefs;</i> <i>People of different sexual orientations;</i> <i>People who are or have identified as transgender;</i> <i>People who are married or in a civil partnership;</i> <i>Women who are pregnant or on maternity leave or men whose partners are pregnant or on maternity leave;</i> <i>People living in areas of deprivation or who are financially disadvantaged.</i></p>	<p><i>No. The legislation applies equally to all relevant activities and premises.</i></p>
2.	<p>What sources of information have you used to come to this decision?</p>	<p><i>The legislation requires that all relevant activities require a licence, without exception.</i></p>
3.	<p>How have you tried to involve people/groups in developing your service/policy/strategy or in making your decision (including decisions to cut or change a service or policy)?</p>	<p><i>The Council is required to implement the legislation without consultation. However, applicants / licence holders can make representations to Committee regarding refusals, revocations and/or variations – with a subsequent right of appeal to the Magistrates' Court.</i></p>
4.	<p>Could your service/policy/strategy or decision (including decisions to cut or change a service or policy) help or hamper our ability to meet our duties under the Equality Act 2010? Duties are to:-</p>	<p><i>No. The recommendations contained in this report apply equally to those activities required under relevant legislation.</i></p>

<p><i>Eliminate discrimination, harassment and victimisation;</i></p> <p><i>Advance equality of opportunity (removing or minimising disadvantage, meeting the needs of people);</i></p> <p><i>Foster good relations between people who share a protected characteristic and those who do not share it.</i></p>	
<p>5. What actions will you take to address any issues raised in your answers above?</p>	<p>N/A.</p>