

Report of	Meeting	Date
Director of People and Places (Introduced by the Executive Member for Places)	Executive Cabinet	24 October 2013

SCRAP METAL DEALERS ACT 2013

PURPOSE OF REPORT

1. To advise Members of new legislation relating to the scrap metal industry and to consider arrangements to enable the Council to discharge its functions under the Scrap Metal Dealers Act 2013.

RECOMMENDATION(S)

2. It is recommended that:
 - (a) the Director of People and Places be authorised to:-
 - grant or renew a licence of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013.
 - serve Notice of a proposal to refuse or cancel a licence of a Scrap Metal dealer under the Scrap Metal Dealers Act 2013.
 - serve notice of a proposal to vary a licence of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013.
 - determine applications for a licence of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013 where it is the intention to refuse or cancel a licence or to vary a licence under section 4 of the Act where the applicant has not served notice requiring the opportunity to make representations to the authority in respect of the proposal to refuse or cancel a licence, or to impose conditions on a licence.
 - institute legal proceedings in respect of any breaches of the provisions of the Act.
 - (b) where the Director of People and Places proposes to refuse or to cancel a licence or to vary a licence under section 4 of the Act and the applicant has given notice to the authority within the prescribed time that they require the opportunity to make representations about that proposal, the relevant Cabinet Member be authorised to conduct the hearing and determine the application on the Cabinet's behalf.
 - (c) Executive Cabinet approve the fees set out in paragraph 53 of the report in respect of Scrap Metal Dealers Licences.
 - (d) Council constitution be amended to incorporate the approved changes in the Officer Delegation Rules contained in part 4 of the Constitution consequent to the decisions at (a) to (c) above.

EXECUTIVE SUMMARY OF REPORT

3. The Scrap Metal Dealers Act 2013 (the Act), received royal assent on 28 February 2013 and will be brought into force on 1st October 2013. This Act repeals the Scrap Metal Dealers Act 1964 and replaces part of the Vehicles (Crime) Act 2001 concerned with Motor Salvage Operators.

4. Whilst retaining a principal regulator role for Local Authorities, the Act introduces a new and arguably tougher regulatory regime for scrap metal dealing and vehicle dismantling, with new powers permitting Local Authorities to refuse, review, suspend and revoke a licence for this purpose and to enter and inspect such premises.
5. The Act also provides Local Authorities with the power to set locally (in accordance with Statutory Guidance to be issued on the matter) different charges for different type of metal dealers, on a cost recovery basis.

Confidential report Please bold as appropriate	Yes	No
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Key Decision? Please bold as appropriate	Yes	No
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Reason Please bold as appropriate	1, a change in service provision that impacts upon the service revenue budget by £100,000 or more	2, a contract worth £100,000 or more
	3, a new or unprogrammed capital scheme of £100,000 or more	4, Significant impact in environmental, social or physical terms in two or more wards

REASONS FOR RECOMMENDATION(S)

(If the recommendations are accepted)

6. In order for the Council to meet its statutory obligations under the ‘Act’

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

7. The Cabinet could choose not to delegate its powers to the Director of People and Places and/or the relevant Cabinet Member and determine all matters arising under the legislation.

CORPORATE PRIORITIES

8. This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all		A strong local economy	x
Clean, safe and healthy communities	x	An ambitious council that does more to meet the needs of residents and the local area	

BACKGROUND

9. The Scrap Metal dealers Act 2013 (“the Act”) received royal assent on 28th February 2013 and is expected to come fully into force from 1st October 2013.
10. The Act repeals the Scrap Metal Dealers Act 1964 (and linked legislation) and Part 1 of Vehicles (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Act maintains local authorities as the principal regulator 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’.
11. The Act provides that an application for a licence must be accompanied by a fee. The fee is to 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 should 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 to ensure compliance.

12. The Act aims to raise trading standards across the scrap metal industry by requiring more detailed and accurate records of transactions to be kept. Scrap metal dealers will also be required to verify the identity of those selling metal to them.
13. The Act incorporates the separate regulatory scheme for motor salvage operators under the Vehicles (Crime) Act 2001 into this new regime. This is to replace the current overlapping regimes for the vehicle salvage and scrap metal industries with a single regulatory scheme. The Act also revises the definition of 'scrap metal dealer' and 'scrap metal' to ensure they reflect the twenty-first century scrap metal industry.

SUMMARY OF THE ACT

14. The Act defines a "scrap metal dealer" as a person who is for the time being carrying on business as a scrap metal dealer, whether or not authorised by a licence.
15. It further states that "scrap metal" includes:
 - a. any old, waste or discarded metal or metallic material, and
 - b. any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.
16. The following is not considered to be "scrap metal":
 - a. gold,
 - b. silver, and
 - c. any alloy of which 2 per cent or more by weight is attributable to gold or silver.
17. Provisions allow for the Secretary of State by order to amend these definitions of "scrap metal" for the purposes of this Act.
18. Section 1 of the Act requires that a scrap metal dealer obtains a licence from the local authority in order to carry on business as a scrap metal dealer. It will be an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. This offence is punishable on summary conviction with a fine not exceeding level 5 (£5,000) on the standard scale.
19. Section 2 provides further detail in respect of the licence, including that there will be two types of licence, one for a site and the other for a mobile collector (for those carrying on business otherwise than at a site). A power is provided for the Secretary of State to prescribe the form and content of the licences in regulations.
20. A site licence will be issued by the local authority in whose area a scrap metal site is situated and will require all of the sites at which the licensee carries on the business as a scrap metal dealer within the local authority area to be identified and a site manager to be named for each site. In doing so, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area.
21. A mobile collector's licence will authorise the licensee to operate as a mobile collector in the area of the issuing local authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal. The licence does not permit the collector to collect from any other local authority area; a separate licence would need to be obtained from each local authority in whose area the individual wished to collect in. A licence also does not authorise the licensee to carry on a business at a site within any area - should a collector wish to use a fixed site, they would need to obtain a site licence from the relevant local authority. There is no restriction as to the location where the collector can transport and sell their metals.
22. A licence will be issued for a period of three years from the date of issue. The Secretary of State will have the power under paragraph 1(4) of the Act to alter the duration of the licence.

23. Section 3 requires that the licensing authority has to be satisfied that an applicant is a suitable person to carry on business as a scrap metal dealer. In considering suitability, the local authority may have regard to any relevant information, including whether any relevant enforcement action has been taken against the applicant or whether the applicant has been convicted of a relevant offence. The Secretary of State has a power to prescribe in regulations the meaning of relevant offence and relevant enforcement action. It is intended that this will be in line with the criteria used by the Environment Agency when issuing environmental permits under the Environmental Protection Act 1990. The authority must also have regard to any guidance on determining suitability which will be issued from time to time by the Secretary of State, and the authority may consult with other organisations to assist in determining suitability.
24. Section 3 also allows local authorities, when issuing a licence, to include conditions on it if the licensee or site manager has been convicted of a relevant offence. Subsection (8) specifies the two conditions that can be imposed by local authorities on a licence, namely:
 - a. that the dealer must not receive scrap metal except between 9 a.m. and 5p.m. on any day;
 - b. that all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.
25. 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.
26. Section 4 also allows the licensing authority to vary a licence, imposing the conditions above, if the licensee or a site manager is convicted of a relevant offence.
27. 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, the Natural Resources Body for Wales and to police forces.
28. Section 7 requires that a register of licences issued under the Act should be maintained by the Environment Agency in England and the Natural Resources Body for Wales in Wales. Local authorities will provide the appropriate information on all licences issued in their geographic areas in order that this register can be updated regularly. The register will be made openly accessible to the public and will include: the name of the authority which issued the licence; the name of the licensee; any trading name; the type of licence; the site(s) covered by the licence and the expiry date of the licence.
29. Section 10 requires that the licensee display a copy of their licence. For site operators this must be in a prominent place in an area accessible to the public. For mobile collectors, it must be in a manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil these requirements. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale (£1000).
30. Section 11 places a requirement on scrap metal dealers, site managers and employees who have been delegated the responsibility to do so, to verify the identity of the person they are receiving metal from and the person's address. This verification must be done by reference to data, documents or other information obtained from a reliable or independent source, such as the Identity and Passport Service, the Driver and Vehicle Licensing Agency, a bank or utility company etc. The Secretary of State will prescribe in regulations the data or documents which are sufficient or not sufficient as the case may be, for verifying identity.
31. It will be an offence not to obtain and verify the seller's identity, punishable by a fine not exceeding level 3 on the standard scale. The offence will apply to the scrap metal dealer, the site manager and any person, who under arrangements made by either the scrap metal dealer or the site manager, has responsibility for fulfilling this requirement on behalf of the business.
32. 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 attracting a penalty up to level 5 on the standard scale.

33. The legislation places a shared enforcement responsibility for this new statutory duty on both Chorley Borough Council and the Police.

IMPLEMENTATION TIMETABLE

34. The main provisions of the Act commence on 1st October including the offence of buying scrap metal for cash.
35. Dealers and motor salvage operators registered immediately before 1st October will be deemed to have a licence under the Act from 1st October.
36. Provided the dealer submits an application for a licence on or before 15th October their deemed licence will last until the Council either issues them with a licence or gives them notice of the decision to refuse them a licence, although they will be able to continue trading pending an appeal against that decision.
37. Where a dealer submits an application on or before 15th October but does not supply all the required information with the application form then the deemed licence remains in effect after 15th October.
38. Where a dealer with a deemed licence fails to submit an application on or before 15th October the deemed licence will lapse on 16th October.
39. Other Scrap Metal Dealers, not previously registered, will be able to apply for a licence from 1st October, but will have to wait until a licence is granted before they can legally trade.
40. Local authorities will complete suitability checks on applicants and decide whether to issue licences. We recommend that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1st December.
41. All other enforcement provisions within the Act commence on 1st December.

CURRENT SITUATION

42. The Home Office guidance and underpinning statutory instruments which support the Act was released very recently and some of which is still to be released at the time of writing this report. Therefore, officers were unable to prepare a report for the Cabinet to consider the new arrangements prior to the commencement of the new Act.
43. At the time of writing there are 3 registered scrap metal dealers and 4 motor salvage dealers. There are no itinerant collectors registered with the Council but no doubt there are a number operating within the district. These will have to be identified and licensed in future.
44. They have all been visited by a Public Protection Officer to advise them of their duties under the new Act and to consult on the proposed fee. All the operators were happy with the information provided and the proposed fee as quoted in paragraph 53 below.
45. It is anticipated that at the date of the meeting to receive this report that all of the above operators will have applied under the new Act and the accompanying fee as proposed below, will have been paid. Should the proposed fees be amended by Cabinet then a refund or recharge will be made to the operators as appropriate.

PROPOSED DELEGATIONS

46. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 the provisions this Act are defined as executive functions which fall within the remit of the Cabinet.
47. It is recommended that the Director of People and Places be authorised to:-
 - a. Grant or renew a licence of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013.
 - b. Serve Notice of a proposal to refuse or cancel a licence of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013.
 - c. Serve notice of a proposal to vary a licence of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013.

- d. Determine applications for a licence of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013 where it is the intention to refuse or cancel a licence or to vary a licence under section 4 of the Act, where the applicant has not served notice requiring the opportunity to make representations to the authority in respect of the proposal to refuse or cancel a licence, or to impose conditions on a licence.
48. Where the Director of People and Places proposes to refuse or to cancel a licence or to vary a licence under section 4 of the Act and the applicant has given notice to the authority, within the prescribed time that they require the opportunity to make representations about that proposal, the Act makes provision for a hearing of representations to be held. In such instances, it is recommended that the relevant Cabinet Member be authorised to conduct the hearing and determine the application on the Cabinet's behalf. This therefore means that any hearings of representations will not be conducted by the licensing committee.

PROPOSED LICENCE FEES

49. 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 having had due regard to the guidance from the Home Office. This was published on the 9th August and says :-
- “The fee raising power is an essential component of the legislation and it will provide local authorities with the funding they need to administer the regime and ensure compliance. The costs of the 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 the 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. Authorities should review fees regularly to check whether they remain appropriate.”*
50. The Home Office has decided that under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 this Act will fall as an executive function. The Council must also have regard to the European Service Directive 2006 and The Provision of Services Regulations 2009 when setting fees.
51. An important point arising out of the recent judicial review (Hemming v Westminster City Council) is that the fees cannot be used to pay for enforcement action against unlicensed dealers (particularly collectors) and these have not been included in our calculations.
52. It is clear that the Council is going into uncharted seas with the new regime and it is difficult to calculate the costs of the procedures and formalities under the scheme. It is therefore proposed that the fees are reviewed after a year of operation.
53. The proposed fees are:

Grant application (Site or Collector)	£280
Renewal (Site or Collector)	£130
Variation	£70

IMPLICATIONS OF REPORT

54. This report has implications in the following areas and the relevant Directors’ comments are included:

Finance	x	Customer Services	x
Human Resources		Equality and Diversity	
Legal	x	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE STATUTORY FINANCE OFFICER

55. The budget will be updated to reflect the fees proposed and reviewed annually as outlined in the main report.

COMMENTS OF THE MONITORING OFFICER

56. The report properly explains the operation of the new legislation and the delegations and amendments to the constitution are appropriate for the correct implementation of the act.

JAMIE CARSON
DIRECTOR OF PEOPLE & PLACES

There is one background paper to this report.

Report Author	Ext	Date	Doc ID
Mr Paul Carter	5738	17.09.13	***

Background Papers			
Document	Date	File	Place of Inspection
Scrap Metal Dealers Act 2013	Commencement date: 1 st October 2013	Web	http://www.legislation.gov.uk/ukpga/2013/10/contents/enacted