

COUNCIL

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SCRAP METAL DEALERS ACT 2013 - UPDATE

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Summary

To inform Members of the new legislative requirements of the Scrap Metal Dealers Act 2013, including necessary changes to the Licensing and Safety Committee's Terms of Reference, Scheme of Delegations and the fee setting process.

1. Budget and Policy Framework

1.1 The proposals to comply with the new legislative changes require a number of changes to the Constitution, therefore, this is a matter for Council.

2. Background

2.1 The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013 and its measures are to be implemented with effect from 1 October 2013, with the commencement of enforcement of criminal offences being implemented on 1 December 2013. The new Act repeals the Scrap Metal Dealers Act 1964 and Part 1 of the Vehicles (Crime) Act 2001 creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries in England and Wales.

2.2 The Act was introduced in response to the growth in metal theft offences, driven by increased commodity costs, which in addition to the direct impact on the victims of theft have also had a damaging and disruptive effect on the country's infrastructure. The current regulation of the scrap metal industry consists of a simple registration scheme, which has done little to prevent this type of crime.

2.3 Medway Council will become the principal regulator. The new licensing regime will provide stronger regulation, including the power to refuse to grant a licence to "unsuitable" applicants and a power to revoke licences if the dealer becomes "unsuitable". The cashless trading measures brought into force via the Legal Aid, Sentencing and Punishment of Offenders Act 2012

are incorporated into the new Act, which also closes off loopholes in the earlier legislation by drawing vehicle dismantlers and former itinerant collectors into the cashless trading regime.

- 2.4 The legislation places a shared enforcement responsibility for this new statutory duty on both Medway Council and the Police.

3. Options

- 3.1 The licensing of scrap metal dealers by Medway Council is a statutory function. The scheme has to be robust so as not to attract challenges.

4. Advice and analysis

4.1 Key Features of the Act

- 4.1.1 These include:

- Requiring all individuals and businesses to complete an enhanced application process that includes a criminal records check to obtain a scrap metal dealer licence. Local authorities will have the power to turn down unsuitable applicants
- Giving local authorities the power to revoke a licence
- Requiring all sellers of metal to provide personal identification at the point of sale, which is then recorded by the scrap metal dealer
- Extending the offence of buying metal with cash to itinerant metal collectors
- New powers for the police and local authorities to enter and inspect sites
- Creating a central public register, hosted by the Environment Agency, of all individuals and businesses licensed as scrap metal dealers
- Widening the definition of a scrap metal dealer to include motor salvage operators.

- 4.1.2 Full details of the provisions of the Act are attached at Appendix A.

- 4.1.3 At the time of writing this report the Home Office has not provided a schedule of relevant offences, however a draft of offences it is anticipated will be taken into account is attached at Appendix B.

- 4.1.4 The Home Office has published a Councillor's handbook – 'Tackling Metal Theft', which Members may find useful. This can be accessed via the link below.

http://www.local.gov.uk/c/document_library/get_file?uuid=a69ddb0a-7dd6-4de2-a2f6-e41086da5548&groupId=10180

4.2 Timetable for transition to new regime

4.2.1 The transition timeline is:

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

4.3 Fee setting

4.3.1 Although not stated in the Act and with no guidance issued, the Council must assume that Regulation 2 and Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations will apply to this legislation, and therefore it would not be an Executive function but rather a function of full Council.

4.3.2 The current legislation only permits registration with basic information and there is no fee payable. The new Act will require more detailed information to be submitted on application and will attract a fee. The fee will be set locally by each local authority on a cost recovery basis, but local authorities must have

a duty with regards to guidance issued by the Home Office, which is attached at Appendix C. This outlines the issues that should be considered by them when setting a fee and what activities the fee can cover. The fee will be an essential component of the new regime, as it will provide local authorities with the funding needed to administer the regime and ensure compliance.

- 4.3.3 It is possible that there will be an initial start-up cost, which can be recovered from the licence fee, and therefore the true cost of procedures and formalities will be lower once the scheme is established. This can then be reflected in a reduction in fees following a review.
- 4.3.4 The Provision of Services Regulations 2009 states that a licence fee can only be used to pay for the costs associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service does not exceed the costs of providing the service.
- 4.3.5 The licence fee cannot be used to support enforcement activity against unlicensed scrap metal dealers. This was borne out in the recent R (Hemming and Other) v Westminster City Council judgement in the High Court.
- 4.3.6 Any activity against unlicensed operators must be funded through existing funds. Such activity against unlicensed operators will include closure notices, with applications for closure orders subsequently made to a Magistrates' Court
- 4.3.7 The general principle is that fees should reflect:
- All the activity required with 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 committee 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 to ensure compliance with the law
 - Training staff and Councillors in the requirements of the new legislation
 - Costs associated with consulting other agencies and bodies when considering if an applicant is a suitable person
 - Working with partners in ensuring compliance
 - Issuing the licence
 - Any officer time providing information for inclusion in the register of dealers.

4.3.8 A potentially significant cost not mentioned above, could be the holding of hearings to consider whether to grant a licence or whether to revoke or vary a licence. As the cost for these will be spread across licence fees as a whole, an estimate will have to be made when setting the fees of how many potential hearings there may be. Given the likely number of applicants to assess it would be sensible, once at the end of the first review of operation of the licensing system, to review how many hearings there have been and revise the fees accordingly. Council are assisted by one of the decisions from the Hemming case, which allows deficits or surpluses to be carried over into the next financial year.

5. Risk management

5.1 There are likely to be unlicensed collectors operating illegally which will impact on the work of the licensing team.

6. Licensing and Safety Committee – 18 September 2013

6.1 The Licensing and Safety Committee considered this report on 18 September 2013.

6.2 The Committee agreed the following:

6.2.1 To note the contents of the report, particularly the requirement to set fees for the licensing functions within the Scrap Metal Dealers Act 2013 (the Act), which falls to Full Council.

6.2.2 To recommend the Council at its meeting on 17 October 2013 add responsibility for dealing with all matters relating to the functions of the Council under the Scrap Metal Dealers Act 2013 to the terms of reference of the Licensing and Safety Committee, and, subject to this being agreed by the Council, to agree that the Licensing Sub Committee should consider and determine the action to be taken when representations are received from an applicant where it is proposed to refuse, vary or revoke a scrap metal licence.

6.2.3 That subject to paragraph 6.2.2 above the powers and duties of the council as the licensing authority relating to the determination of applications made under the Scrap Metal Dealers Act 2013 be delegated to the Assistant Director, Legal and Corporate Services.

6.2.4 That subject to paragraph 6.2.2 above, the setting of fees under the Scrap Metal Dealers Act 2013 be delegated to the Assistant Director, Legal and Corporate Services.

6.2.5 That the Council be recommended to agree the consequential changes to the Council's Constitution as set out in Appendix D to the updated addendum report circulated at the meeting.

6.2.6 That the licence be clearly displayed so it can be easily visible to the public.

6.2.7 That provision of the new legislation be publicised in the local press and in Medway Matters.

6.3 The Committee's consideration of this issue is set out in Appendix E.

7. Financial and legal implications

- 7.1 Licence holders will fund part of the licensing regime via licence fees but costs in respect of unlicensed dealers will have to be met from existing resources. Under the Scrap Metal Dealers Act 2013, a person is required to obtain a licence from a local authority if he carries on a business as a dealer. It is an offence to carry on business without obtaining a licence and anyone convicted can be fined which could be unlimited in accordance with the provisions of the Legal aid, Sentencing and Punishment of Offenders Act 2012.
- 7.2 The licensing of scrap metal dealers by Medway Council is a statutory function. The fees and delegations must be determined by the Council. It is not a function of the Executive. The scheme has to be robust so as not to attract challenges.

8. Recommendations

- 8.1 Council is asked to add responsibility for dealing with all matters relating to the functions of the Council under the Scrap Metal Dealers Act 2013 to the terms of reference of the Licensing and Safety Committee.
- 8.2 Council is asked to note that subject to approval of recommendation 8.1 above, the Licensing and Safety Committee has agreed:
- the powers and duties of the council as the licensing authority relating to the determination of applications made under the Scrap Metal Dealers Act 2013 be delegated to the Assistant Director, Legal and Corporate Services.
 - the setting of fees under the Scrap Metal Dealers Act 2013 be delegated to the Assistant Director, Legal and Corporate Services.
 - that the Licensing Sub Committee should consider and determine the action to be taken when representations are received from an applicant where it is proposed to refuse, vary or revoke a scrap metal licence.
- 8.3 Council is asked to agree the consequential changes to the Council's Constitution as set out in Appendix D to the report.

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Appendices

- 1 Scrap Metal Dealers Act **2013**- Key Provisions (Appendix A)
2. Scrap Metal Dealers Act **2013**- Draft Relevant Convictions (Appendix B)
3. Home Office Guidance (Appendix C)
4. Proposed changes to the Constitution (Appendix D)
5. Licensing and Safety Committee Minutes – 18 September 2013 (Appendix E)

Background papers

None

Scrap Metal Dealers Act 2013 – key provisions

Section 1

Makes it a requirement for a scrap metal dealer to have a licence in order to carry on in business as a dealer. It is an offence to carry on business without obtaining a licence, and anyone convicted can be fined at level 5 on the standard scale, which will mean the fine could be unlimited as contained in the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Section 2

Creates two different types of scrap metal licence. One is a site licence, the other a collector's licence.

Collectors' licences cover dealers who do not have a site and regularly collect through door-to-door collections.

A site licence allows the dealer to carry on business at any sites in the councils' area listed on the licence, while the collector's licence allows a dealer to carry on business in a councils' area.

Licences will be issued by the local authority in which a site is situated or the area a collector operates. Local authority is defined in Section 22 as a district council, the City of London or a London borough in England and county council or county borough council in Wales.

Site licences allow the dealer to operate from the sites named in the licence. The licence will also have to name the site manager at each of the sites and the date on which the licence will expire.

Collector's licences only have to name the dealer and the local authority area they can operate in. A collector's licence will not allow a dealer to operate in any other local authority area, so a separate licence will have to be obtained from each council in which the dealer wants to operate. Both licences will have to be in a form which allows the dealer to display it, in line with the requirements in Section 10.

Section 3

Requires councils to be satisfied an applicant is a suitable person to operate as a dealer before they issue a licence. In deciding if someone is suitable the local authority 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.

To determine this, a council can consult other local authorities, the Environment Agency or Natural Resources Wales, or the police. Whether an offence or enforcement action is relevant will be decided by the Secretary of State, who can make regulations, and can also issue guidance on determining if an applicant is suitable.

This section also allows councils to add conditions to the licence where the dealer or any of their site managers has been convicted of a relevant offence. 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.

Section 4

Allows for licences to be revoked. Councils have discretion to revoke licences where it is satisfied 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. This section also allows the local authority to vary a licence to impose the conditions set out in Section 3 following the conviction of the dealer or a site manager for a relevant offence, or pending a hearing to appeal a decision to revoke the licence.

Section 5

Gives effect to Schedule 1, which sets out the procedure for issuing licences. Licences will last for three years unless revoked, although the Secretary of State has the power to vary the length of the licence period.

Paragraph 2 sets out what information must accompany an application. This includes the full name, date of birth and usual place of residence for an individual applicant, the trading name, the addresses of sites in other local authority areas they run, details of any relevant environmental permits they hold, the details of any other scrap metal dealer licences issued to them in the previous three years, and the details of any relevant convictions or enforcement actions against the dealer.

Schedule 1 also allows councils to vary licences where there is a change of circumstance relating to details in the licence, although the licence cannot be transferred from one person to another. One type of licence can also be changed to the other, so a site licence can be changed to a collector's licence. Failure to apply for a variation in the licence when the details in it change is an offence punishable by a fine not exceeding level 3.

Paragraph 4 allows councils to request further information from the applicant when considering an application, while paragraph 5 makes it an offence to make a false statement when applying for a licence or providing additional material. Again the offence is punishable by a fine not exceeding level 3.

Paragraph 6 allows local authorities to charge a licence fee, which is set locally. In setting the fee, local authorities have to have regard to any guidance issued by the Secretary of State.

Paragraphs 7, 8 and 9 set out how an applicant can make representations where the local authority proposes to refuse, revoke or vary a licence. They also specify what notice a local authority has to give when it refuses an application, or revokes or varies it. This includes having to set out reasons for the decision. 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.

Section 6

Requires local authorities to supply any information related to a scrap metal licence to any other local authority in England and Wales, the Environment Agency, Natural Resources Wales, and the police.

Section 7

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.

Section 8

Imposes an obligation on the dealer to notify the local authority of any material changes in the information they have supplied in support of an application, if they have changed their trading name, and if they have ceased to trade in that authority's area. The local authority is then required to notify the Environment Agency or Natural Resources Wales of any changes that need to be made to the register, and of any changes that materially affect the accuracy of any information provided in connection with the application. Failure to notify the local authority is an offence punishable by a fine not exceeding level 3.

Section 9

Gives effect to Schedule 2, which deals with the closure of unlicensed sites. The powers are based on the powers to close unlicensed alcohol sellers under the Criminal Justice and Police Act 2001. The powers in Schedule 2 can only be exercised by a local authority over premises in its area.

Paragraph 2 allows a police officer or local authority to issue a closure notice on a non-residential premises being used as an unlicensed scrap metal dealer's site. The closure notice has to be given to the site manager and any other person who appears to be a director or manager of the business or anyone who occupies another part of any building or structure, and can also give it to anyone with an interest in the premises. A police officer or the council can cancel a closure notice through a cancellation notice.

Having issued a closure notice, paragraph 4 allows the police or the council to 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.

Paragraph 5 allows a magistrates' court to 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.

Paragraph 6 allows the police or the local authority to terminate the closure order 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 closure 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.

Paragraph 9 deals with enforcement of closure orders. Failing 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 in exercising their powers under this paragraph. Both this offence and failing to comply with a closure order are punishable by a fine not exceeding level 5.

Section 10

Requires dealers to display copies of their licence at each site in a prominent place where the public can see it, while a mobile collector has to display a copy of their licence in any vehicle they use in the course of their business so that it can be easily read by a person outside the vehicle. A dealer commits an offence if they fail to comply with this requirement, the punishment being a fine not exceeding level 5.

Section 11

Places a duty on a dealer, 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. Both offences are punishable by a fine not exceeding level 3. 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.

Section 12

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. Paying for scrap metal in breach of these requirements is punishable by a fine not exceeding level 5. 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.

Sections 13 and 14

Mean that dealers have 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.

Section 15

Provides further details on the record keeping requirements and makes failure to comply with the provisions under sections 13 and 14 an offence punishable by a fine not exceeding level 5. A dealer or site manager has a defence if they have made arrangements for the requirements in sections 13 and 14 to be met and have taken all reasonable steps to ensure those arrangements have been complied with.

Section 16

Gives police officers 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.

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, which can be punished by a fine not exceeding level 3. Police and local authority officers can also inspect any scrap metal or records.

Section 17

Means that as well as any 'body corporate' being liable under any offences in the Act, a director or manager is also guilty of an offence if it is proved the offence has been committed with their consent or connivance.

Section 18

Places a duty on the Secretary of State to review the Act within 5 years of section 1 coming into force. A report has to be published as part of this review, setting out whether the objectives of the Act have been achieved and whether it is appropriate to retain the Act.

Sections 19 and 20

Make the necessary amendments to other legislation and set out how orders and regulations under the Act should be made.

Sections 21 and 22

Sets out some key definitions such as what carrying on business as a scrap metal dealer is, what carrying on business as a motor salvage operator is, what scrap metal is defined as, what a mobile collector is and what a trading name is.

Section 23 sets out the commencement provisions.

SCRAP METAL DEALERS ACT 2013 - DRAFT RELEVANT OFFENCES

1. The list of relevant offences for a scrap metal dealer's licence will mirror the list that the EA consider when granting an environmental permit [as far as possible] – the environmental related offences are listed below. It is proposed not to reduce the list of offences as this goes against the original intention and it could lead to a situation whereby a scrap metal dealer may be considered suitable for an environmental permit but not a scrap metal dealer licence or vice versa.

- Control of Major Accident and Hazards Regulations 1999 (1999 No 743)
- Control of Pollution (Amendment) Act 1989: Section 1, 5 or 7(3) (1989 C14)
- Environment Act 1995: Sections 110(1), (2) and (3)
- Environmental Permitting Regulations 2007: Regulation 38
- Environmental Permitting Regulations 2010: Regulation 38
- Environmental Protection Act 1990: Section 33 and 34 and 34B
- Food and Environment Protection Act 1985: Section 9(1) and (2)
- Hazardous Waste (England and Wales) Regulations 2005
- Landfill (England and Wales) Regulations 2002: Regulation 17(1)
- Pollution Prevention and Control (England and Wales) Regulations 2000
- Producer Responsibility Obligations (Packaging Waste) Regulations 2007
- Transfrontier Shipment of Waste Regulations 1994
- Transfrontier Shipment of Waste Regulations 2007
- Waste Electrical and Electronic Equipment Regulations 2006
- Waste (England and Wales) Regulations 2011: Regulation 42
- Water Resources Act 1991: Section 85, 202 or 206

The following will also be included as a relevant offence:

- Attempting or conspiring to commit any of the offences listed above or below
- Inciting or aiding, abetting, counselling or procuring the commission of any offence listed above or below
- An offence under Part 2 of the Serious Crime Act 2007(a) (encouraging or assisting crime) committed in relation to any of the offences listed above or below

2. Also to be included are the following list of non-environmental offences which also mirrors [as far as possible] the environmental permitting regime. The permitting regime only considers convictions after 2 July 2012 for these offences as relevant as that is the date they were added to the operational instruction, however we are not going to have this time restriction. Offences under these Acts are limited to environmental and metal theft related offences only which is the same as the environmental permitting regime.

- Customs and Excise Management Act 1979: Section 170 and section 170B (to include metal related offences only)
- Fraud Act 2006: Section 1
- Proceeds of Crime Act 2002: Sections 329, 330, 331 & 332 [we are also now including sections 327 and 328 but are not including section 329. We are not limiting the offence to metal/environment related only for offences under this Act].
- Theft Act 1968: Sections 1, 8, 9, 10, 11, 17, 18, 22 & 25

2a. Environment related offences are defined as the following which is based on the definition of environmental pollution in section 1 of the Pollution Prevention and Control Act 1999 to cover carriers, duty of care, TFS and hazardous waste movements which states that:

An offence is environment related -

"if it relates to:

- (1) the transportation, shipment or transfer of waste; or
- (2) the prevention, minimisation or control of pollution of the air, water or land which may give rise to any harm; and for the purposes of this definition (but without prejudice to its generality)—

(a)“pollution” includes pollution caused by noise, heat or vibrations or any other kind of release of energy;

(b)“air” includes air within buildings and air within other natural or man-made structures above or below ground.

For the purpose of the definition of “environment related offence” “harm” means— (a)harm to the health of human beings or other living organisms; (b)harm to the quality of the environment, including— (i)harm to the quality of the environment taken as a whole, (ii)harm to the quality of the air, water or land, and (iii)other impairment of, or interference with, the ecological systems of which any living organisms form part; (c)offence to the senses of human beings; (d)damage to property; or (e)impairment of, or interference with, amenities or other legitimate uses of the environment.”]

3. • Scrap Metal Dealers Act 1964 (the permitting regime currently only consider environment and metal theft related offences)
 - Scrap Metal Dealers Act 2013
 - Section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012
 - Vehicles (Crime) Act 2001: Sections 1, 10, 12, 35 and 39

5. Although local authorities may have regard to a relevant offence (or relevant enforcement action) this does not determine the outcome of whether a scrap metal dealer licence is granted, continued or renewed. If a person has been convicted of a relevant offence or had enforcement action taken against them,

the local authority, if it thinks it right to do so, may decide to grant a licence or grant a licence with conditions. The local authority may consider the relevant offences and enforcement action; the seriousness of the offence or enforcement action; when the offence was committed or the enforcement action was taken, along with any other relevant information as set out in Section 3 (2) of the Scrap Metal Dealers Act 2013.

Relevant enforcement action information

6. The police have advised that they wish local authorities to have regard to only very high level relevant enforcement action when considering an application for a scrap metal dealer's licence. This is intended to be where a person has a pending prosecution for any relevant offence under the Scrap Metal Dealers Act 2013 as listed above. The police definition of a pending prosecution is where a person has been charged with a relevant offence but not convicted.
7. The police intend to suggest in guidance for their officers and Environment Agency that they advise local authorities when they are prosecuting a scrap metal dealer for a relevant offence so a local authority may have regard to this information when considering applications for a scrap metal dealers licence.
8. They also intend that relevant enforcement action means where the Environment Agency has suspended an environmental permit. This is important as they believe that if persons are not suitable for an environmental permit then they should not be suitable for a scrap metal dealer's licence. Local authorities should routinely check the EA register to find out this

HOME OFFICE GUIDANCE ON THE OFFENCE OF BUYING SCRAP METAL FOR CASH

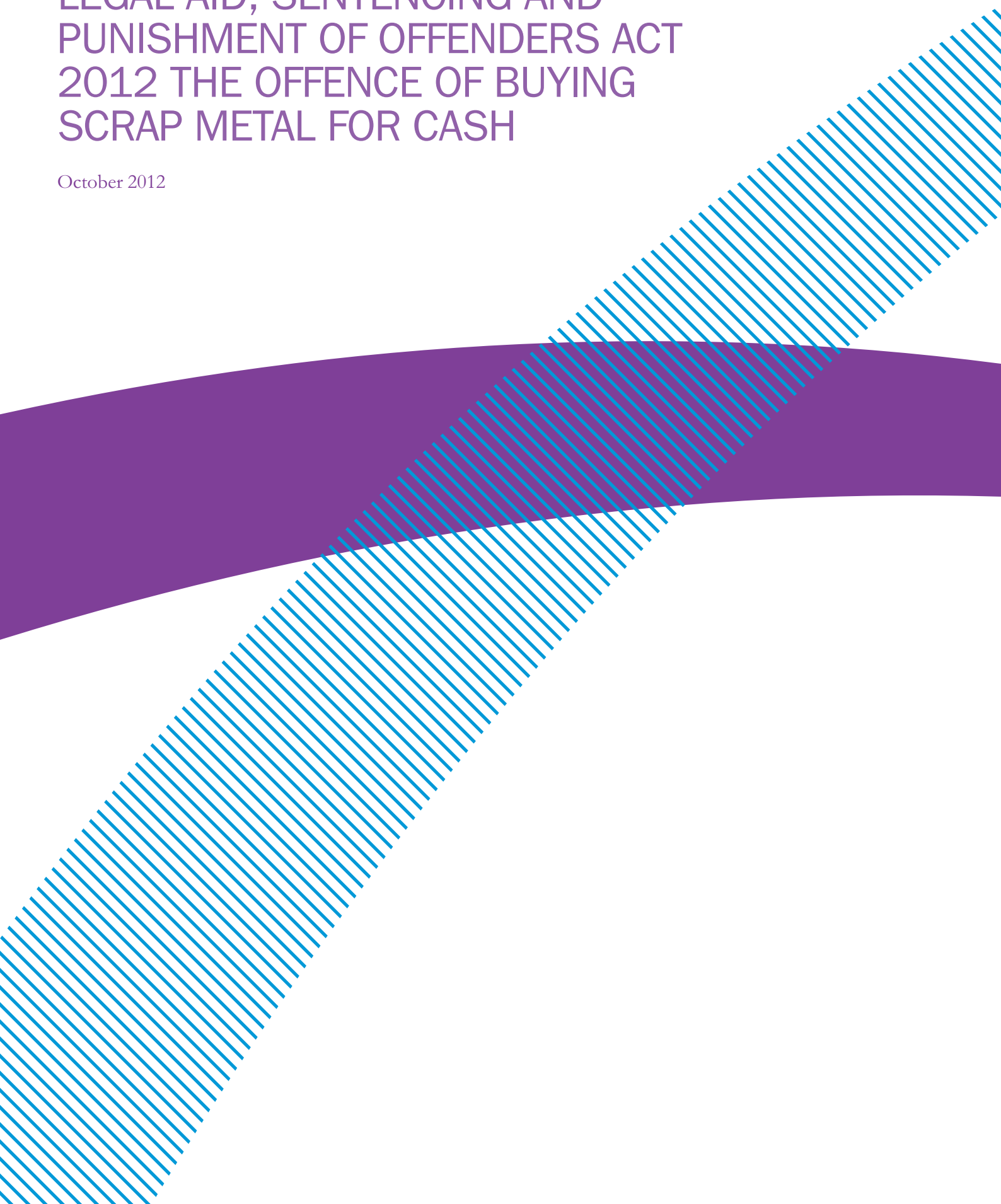
LEGAL AID, SENTENCING AND
PUNISHMENT OF OFFENDERS ACT
2012 THE OFFENCE OF BUYING
SCRAP METAL FOR CASH

October 2012

Appendix C



Home Office



INTRODUCTION

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 received Royal Assent on 1 May 2012. The legislation sets out changes to the Scrap Metal Dealers Act 1964 that currently regulates the scrap metal industry. The changes aim to remove the rewards that make metal theft such a low risk criminal enterprise for metal thieves and unscrupulous dealers.

The revised legislation creates a new criminal offence which prohibits scrap metal dealers from paying for scrap metal in cash, only permitting electronic payment or payment by cheque. The Act will also increase significantly the fines available for key offences under the existing Scrap Metal Dealers Act 1964 so that the most serious breaches can result in a level 5 fine and revise the police powers of entry into scrap metal yards, allowing the police to enter, by warrant, any place to which admission is reasonably required to ascertain whether the prohibition on cash payments is being complied with.

This document provides details of the new offence of purchasing scrap metal for cash and sets out how the new offence will be implemented from 3 December 2012.

THE OFFENCE OF BUYING SCRAP METAL FOR CASH

Section 146 of the LASPO Act 2012 provides that:

- (1) A scrap metal dealer must not pay for scrap metal except—
 - (a) by a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or
 - (b) by an electronic transfer of funds (authorised by credit or debit card or otherwise).
- (2) The Secretary of State may by order amend subsection (1) to permit other methods of payment.
- (3) In this section paying includes paying in kind (with goods or services).
- (4) If a scrap metal dealer pays for scrap metal in breach of subsection (1), each of the following is guilty of an offence—
 - (a) the scrap metal dealer;
 - (b) a person who makes the payment acting for the dealer;
 - (c) a manager who fails to take reasonable steps to prevent the payment being made in breach of subsection (1).

Therefore from the commencement of this provision cash cannot be used to purchase scrap metal, only payment by cheque or an electronic transfer of funds will be acceptable.

WHO WILL THIS MEASURE APPLY TO?

The requirement to purchase scrap metal without cash will apply to all scrap metal dealers as defined by the Scrap Metal Dealers Act 1964, regardless of whether they are registered with their local authority. Any business that buys or sells scrap metal must be registered with their local authority as a scrap metal dealer under the Scrap Metal Dealers Act 1964 - trading without a registration is a criminal offence.

The only exemption from this measure is for some itinerant collectors; itinerant collectors are defined in section 9 of the Scrap Metal Dealers Act 1964. For an exemption, collectors must both:

- be registered with their local authority under section 1 of the Scrap Metal Dealers Act 1964; and
- have obtained a separate order under section 3(1) of the Scrap Metal Dealers Act 1964 which exempts them from certain record keeping requirements. Local authorities must consult with the Chief Officer of the local police force prior to issuing every order.

Should an itinerant collector not fulfil either of these requirements they will not be exempted and cannot purchase scrap metal for cash.

METHODS OF PAYMENT

The over-riding requirement is for transactions to have traceability and to provide an effective audit trail. All transactions therefore must be either by cheque or an electronic transfer of funds, both of which mean that the payment will be linked to a readily identifiable account, for both the payee and the payer.

ELECTRONIC TRANSFERS

The legislation provides a clear focus on electronic transfers of money. This means that non-paper forms of payment such as direct debit, direct credits, BACS payments, faster payments, standing orders, credit transfers, on-line, phone and mobile banking are all acceptable forms of payment within the legislation. These methods of payment all provide the required traceability with a record of the transaction from the payer's account to the payee's account.

Re-loadable Electronic-Money products which are issued to a named account (which verifies the customers identification) and undertakes full customer due diligence and "Know Your Customer" checks under the Money Laundering Regulations are permitted. If Scrap Metal Dealers are unclear whether an E-Money product undertakes full customer due diligence and "know your customer" checks they are strongly advised to make payment by other means.

The payment methods listed above ensure compliance with the Law. The list is not however exhaustive. The electronic payments market is rapidly evolving with new products regularly entering the market.

CHEQUE PAYMENTS

Cheque payments are acceptable within the cashless operating model but this is limited to "Crossed Cheques", which are payable to a named individual(s) or firm and not made out to cash. Crossed cheques are non-transferable and the money will be paid to the intended beneficiary of the cheque.

UNACCEPTABLE METHODS OF PAYMENT

Payment instruments which do not come within the methods above (crossed cheque or electronic transfer) and which provide anonymous or near cash alternatives are not acceptable within the legislation. This includes the use of postal orders, foreign currency, electronic vouchers, virtual currencies, mobile phone airtime credits, retailer / supermarket gift cards and vouchers.

Single, non-reloadable pre-paid debit cards and re-loadable debit cards which are anonymous in nature and require only simplified due diligence under the Money Laundering Regulations are unacceptable.

RECORD KEEPING

Scrap metal dealers are required to record each transaction under the existing Scrap Metal Dealer Act (1964) and this requirement has been extended as part of the LASPO Act, section 146(6). It now also includes a requirement for scrap metal dealers to provide details of the transaction as part of each record. This record must either be a copy of a named cheque or a print out receipt of the electronic payment made. A record must also be made giving the details of the person who made the payment and the person who took receipt.

Records which fail to show the transaction and how the payment was made will be considered incomplete and deemed an offence under s2 of the Scrap Metal Dealers Act.

Local authorities and police forces are responsible for checking the records of scrap metal dealers under the existing Scrap Metal Dealers Act 1964 and they will remain responsible for ensuring compliance with the new cashless trading provisions. The police and local authorities will expect to see the records required under the Act for instance a copy of the cheque or any receipt identifying the payment along with Scrap Metal Dealers' record of each transaction. The receipts kept must be marked so as to identify the scrap metal by reference to the entry in the records relating to the receipt of the metal.

FURTHER LEGISLATION - SCRAP METAL DEALERS BILL

Initial legislative action to tackle metal theft has been taken through the LASPO Act however these amendments have always been considered a first step in reforming the regulation of the scrap metal industry. There remains an urgent need for wider reform and modernisation of the Scrap Metal Dealers Act through a more robust regime to regulate the scrap metal industry.

That is why Government fully supports Richard Ottaway's (MP for Croydon South) Scrap Metal Dealers Bill which received first reading in the House of Commons on 20 June. The Bill would introduce a rigorous new, local authority administered licensing regime with the local authority able to refuse and revoke trading licences; to require those selling metal to provide proof of identity; to include the LASPO cash prohibition and to widen the definition of a scrap metal dealer to include motor salvage operators. It will also create a central public register, hosted by the Environment Agency, of all individuals and businesses licensed as scrap metal dealers.

Significantly, the new legislation would also remove the existing record-keeping exemption which relates to some itinerant collectors who, until this legislation comes into force, will be excluded from the cashless provision.



Home Office

Appendix D

Recommended changes to the Constitution

Note – all amendments are underlined

Page 3.7 Part 2 – Responsibility for Council Functions

Licensing and Safety	Between 10 – 15 members of the authority	<p>Taxi, gaming, alcohol, entertainment, food, <i>scrap metal</i>, and miscellaneous licensing</p> <p>Functions relating to licensing and registration as set out in Schedule 1 to the Functions Regulations, the Licensing Act 2003. Gambling Act 2005, <i>Scrap Metal Dealers Act 2013</i> and other licensing functions reserved by law to the Council's Licensing and Safety Committee and its Sub-Committees.</p>	Chief Executive
		<p>Health and safety</p> <p>Functions relating to health and safety under any “relevant statutory provision” within the meaning of Part 1 of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the Council’s capacity as employer.</p>	Chief Executive

Page 3.15 and 3.16 Terms of Reference for Committees

Licensing and Safety Committee

- Functions relating to licensing and registration as set out in schedule 1 to the Functions Regulations, the Licensing Act 2003, Gambling Act 2005, Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009, *the Scrap Metal Dealers Act 2013* and other licensing functions reserved by law to the Council's Licensing and Safety Committee and its Sub-Committees;
- To act in a quasi-judicial capacity to consider appeals that may require determination upon receipt of representation from an aggrieved party where a licence has either been refused, amended or revoked by officers and make decisions related thereto;
- To act in a quasi-judicial capacity to determine application of licences where there is substantial objection by other parties to the grant of a licence or where in the officer's opinion the issue is of a sensitive nature and make decisions related thereto;
- *To act in a quasi-judicial capacity to consider representations from applicants for licences under the Scrap Metal Dealers Act 2013 where the authority is minded to refuse, vary or revoke a licence.*
- To consider objectively other ad hoc matters relating to the licensing process which officers or the Council deems appropriate;
- To recommend to Council to determine a policy not to permit casinos, in accordance with section 166 of the Gambling Act 2005;
- To recommend to Council final approval of the Statement of Gambling Act Policy;
- To recommend to Council approval of the Statement of Licensing Policy;
- To recommend to Council approval of the Statement of Policy in respect of Sex Establishments and Sexual Entertainment Venues;
- To determine matters relating to health and safety under any 'relevant statutory provision' within the meaning of Part 1 of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the Council's capacity as employer.

Note: For the purpose of these terms of reference the term "licence" or "licensing" includes any such controlling measure such as permit, certificate or registration.

(A) Licensing Sub-Committee

- To determine hackney carriage private hire, [scrap metal dealers](#) and other licensing issues not covered by the Licensing Act 2003 nor the Gambling Act 2005.

Page 3.34 and 3.35 Part 4 Employee Delegation Scheme – Assistant Director, Legal and Corporate Services

6.14 Licensing:

- Except where a specific Council side responsibility, to manage all licensing and registration functions of the Council including the licensing and registration of pleasure boats, hackney carriage and private hire, sex establishments, street and house to house collections, motor [salvage](#), scrap metal dealers, street trading consents and such other services as may be authorised.

Description of delegation

- With regard to Licensing Act 2003 matters, to determine:
 - (i) An application for a personal licence, if no objection made;
 - (ii) An application for a premises licence/club premises certificate, if no relevant representation made;
 - (iii) An application for a provisional statement, if no relevant representation made;
 - (iv) An application to vary a premises licence/club premises certificate, if no relevant representation made;
 - (v) An application to vary a designated premises supervisor in all cases other than where there is a police objection;
 - (vi) A request to be removed as a designated premises supervisor;
 - (vii) An application for transfer of premises licence in all cases other than where there is a police objection;
 - (viii) Applications for interim authorities in all cases other than where there is a police objection;
 - (ix) A decision on whether a complaint is irrelevant, frivolous, vexatious, etc.

Note: A relevant representation is one which relates to the likely effect of the grant of the licence on the promotion of at least one of the four licensing objectives specified in the Licensing Act 2003 (Council 9 December 2004 & 22 November 2007).

- With regard to the Gambling Act 2005, to determine:
 - (i) Fee setting (when appropriate);
 - (ii) An application for a premises licence, where no representations received/representations have been withdrawn;
 - (iii) An application for a variation to a licence, where no representations received/representations have been withdrawn;
 - (iv) An application for a transfer of a licence, where no representations received from the Commission;
 - (v) An application for a provisional statement, where no representations received/representations have been withdrawn;

Description of delegation

- (vi) An application for club gaming/club machine permits, where no objections made/objections have been withdrawn;
- (vii) Applications for other permits;
- (viii) A cancellation of licensed premises gaming machine permits;
- (ix) The consideration of a temporary use notice (Council 7 December 2006).
- With regard to the Local Government (Miscellaneous Provisions) Act 1982, as amended by the Policing and Crime Act 2009;
 - (i) To grant any applications for sex establishments and sexual entertainment venues whereby no representations have been received and the Assistant Director is able to agree suitable conditions with the applicant.
- **With regard to the Scrap Metal Dealers Act 2013, to determine:**
 - (i) **Fee setting (when appropriate);**
 - (ii) **Application for or renewal of a Site or Collector's licences, where no representations have been received from the applicant or where their representations have been withdrawn;**
 - (iii) **Application for a variation to a licence, where no representations have been received from the applicant or where their representations have been withdrawn;**
 - (iv) **To issue a closure notice on non-residential premises being used as a scrap metal dealer's site**
 - (v) **Application to the Magistrates Court for a closure order**
 - (vi) **Termination of a closure order**
 - (vii) **Application to the Magistrate's Court to discharge a closure order**
 - (viii) **Revocation of a licence, where no representations have been received from the applicant or where their representations have been withdrawn;**
 - (ix) **Consideration of and imposition of conditions**

Licensing and Safety Committee – 18 September 2013

Discussion:

The Licensing and Local Land Charges Manager informed the committee that a supplementary agenda had been circulated with revised recommendations, along with an additional appendix highlighting the changes to the council's constitution in line with the powers of the Scrap Metal Dealers Act 2013.

The Senior Licensing and Enforcement Officer introduced the report on the Scrap Metal Dealers Act 2013, which was due to come into force on 1 October 2013. The new Act would give local authorities increased powers, including the power to refuse to grant a licence and powers to revoke licences if the dealer was considered unsuitable.

The Act introduced two types of licence either a site licence or a collector's licence. A person could only hold one licence in a local authority's area but could hold a licence in more than one local authority.

Any dealers that had been registered before 1 October 2013 would be deemed to have a licence under the Act from 1 October 2013 and provided that the dealer submitted an application on or before 15 October their deemed licence would last until the council either issued a licence or gave notice of the decision to refuse the licence. Any dealer who failed to submit an application on or before 15 October 2013 would see their deemed licence lapse on 16 October 2013. Any new scrap metal dealer would be able to apply for a licence but would have to wait until a licence was granted before being able to trade.

Members were advised that local authorities would complete suitability checks before granting a licence. The Local Government Association had recommended that decisions on whether to grant or refuse a licence to those previously registered was to be made by 1 December 2013.

The Senior Licensing and Enforcement Officer explained that fees would be set locally by each local authority, but that this should be on a cost recovery basis and not a profit making exercise.

The committee welcomed the report and the Senior Licensing and Enforcement responded to a number of questions. The committee were informed that no licences had yet been granted, as currently all scrap metal dealers only had to register themselves with the local authority. In total there were approximately 45 scrap metal dealers who were registered.

The Senior Licensing and Enforcement Officer confirmed that the only agency who could object to the granting of a licence was the Police and it was being proposed that the dealer could appeal the decision via the Licensing Sub-Committee.

Members asked if it was possible for the new licence to identify the vehicle that itinerant dealers used but the committee was informed that it would be the dealers themselves who would be granted a licence and not the vehicle. However, all dealers were to be given an ID card and the Police had the power to stop and ask to see their ID.

Members were advised that there was currently no resource within the licensing team to visit all dealers. The Licensing and Local Land Charges Manager advised the committee that one of the reasons behind delegating authority to the Assistant Director, Legal and Corporate Services was to allow time to see how many applications the local authority received and how this cost could be absorbed within current resources. The Licensing and Local Land Charges Manager also explained to the committee that although full council determined the setting of charges and fees, by granting the Assistant Director, Legal and Corporate Services delegated authority to determine these particular fees it would enable any restructuring of fees to be dealt with quickly, rather than having to wait until the new financial year. By the 1 December 2013 the licensing team would have a better idea of how many applications had been received and would review resources at that point.

It was noted that the effect of the new legislation would be communicated to all scrap metal dealers, primarily by the British Metals Recycling Association. The Police had also visited a number of sites and advised dealers of the changes in legislation and asked that this be disseminated to itinerant dealers. In addition, the local authority was creating a webpage explaining the changes and updates to the legislation.

In response to a Member's question, the Senior Licensing and Enforcement Officer confirmed that there was no power to prevent dealers parking their vans on the street provided the vehicles were taxed and insured. However, any dealer who owned a site would need to have the site licensed in order to keep scrap metal on the land.

The Senior Licensing and Enforcement Officer noted the concern of members that some dealers might not take all reasonable steps to verify the names and addresses of anyone they received scrap metal from. However, any dealers who proved that they had taken all reasonable steps to ensure validity would not be prosecuted.

It was also stressed that information as to local authority boundaries would be included on the guidance issued with the Licence and on the Council's website to assist dealers and collectors in knowing the boundary within which they were licensed.

Members asked if it was possible to issue a sticker, which could be placed on the vehicle windscreen when granting a licence, similar to a sticker when a restaurant passes its health and safety check. The Licensing and Local Land Charges Manager confirmed that she would review the legislation to assess whether such sticker would be permissible but stressed that this could be an

additional cost to the service to create stickers or another form of identification for the vehicle. The Senior Licensing and Enforcement Officer also informed members that the personal licence would be small and could fit on the vehicles windscreen.

A member asked whether it was possible to attach conditions to the licence. The Licensing manager confirmed that the LA had no power to do this except in certain specified conditions.

A member also suggested that an article be included in a future edition of Medway Matters drawing attention to the need for the public to be aware that they could ask scrap metal collectors for their identity and licence. It was also noted that all licences that were granted would be available to view online, and dealers were aware that anyone could ask to see their licence on request.

Decision:

The committee agreed:

- (i) To note the contents of the report, particularly the requirement to set fees for the licensing functions within the Scrap Metal Dealers Act 2013 (the Act), which falls to full Council.
- (ii) To recommend the Council at its meeting on 17 October 2013 add responsibility for dealing with all matters relating to the functions of the Council under the Scrap Metal Dealers Act 2013 to the terms of reference of the Licensing and Safety Committee, and, subject to this being agreed by the Council, to agree that the Licensing Sub Committee should consider and determine the action to be taken when representations are received from an applicant where it is proposed to refuse, vary or revoke a scrap metal licence.
- (iii) That subject to (ii) above the powers and duties of the council as the licensing authority relating to the determination of applications made under the Scrap Metal Dealers Act 2013 be delegated to the Assistant Director, Legal and Corporate Services.
- (iv) That subject to (ii) above, the setting of fees under the Scrap Metal Dealers Act 2013 be delegated to the Assistant Director, Legal and Corporate Services.
- (v) That the Council be recommended to agree the consequential changes to the Council's Constitution as set out in Appendix D to the updated addendum report circulated at the meeting.
- (vi) That the licence be clearly displayed so it can be easily visible to the public.
- (vii) That provision of the new legislation be publicised in the local press and in Medway Matters.