

SLOUGH BOROUGH COUNCIL

REPORT TO: Licensing Committee **DATE:** 18th July 2013

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PART I

FOR INFORMATION

IMPLEMENTATION OF THE SCRAP METAL DEALERS ACT 2013

1. **Purpose of Report**

To inform the Committee of impending changes to the regulatory regime for Scrap Metal to be implemented through the provisions of the Scarp Metal Dealers Act 2013 and the increased duties and powers which this gives the Council.

2. **Recommendation(s)**

That the Committee are asked to note the contents of the report and to receive a further update once the associated regulations have been published and the commencement order is known.

3. **Community Strategy Priorities –**

- **Being Safe, Feeling Safe**
- **A Cleaner, Greener place to Live, Work and Play**
- **Prosperity for All**

4. **Other Implications**

(a) **Financial**

There will be financial implications as there will be additional resources required to implement and run the licensing regime.

There will be provision for the Council to set and charge a fee and in doing so the Council must have regard to any guidance and regulations issued by the Secretary of State.

Risk Management

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
As detailed in Point 2.		

(b) Human Rights Act and Other Legal Implications

Section 1 and Schedule 1 Parts I & II of The Human Rights Act 1998 apply:

Article 1 – Every person is entitled to the peaceful enjoyment of his or her possessions including the possession of licence and shall not be deprived of the possession except in the public interest

Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

(c) Equalities Impact Assessment

An Equalities Impact Assessment has not be conducted as this is primary legislation and applies nationally.

5. Supporting Information

- 5.1 The Council currently regulates Scrap Metal Dealers within its area under the provisions of the Scrap Metal Dealers Act 1964, the Vehicle (Crime) Act 2001 and the Motor Salvage Operators Regulations 2002. Under this regime Scrap Metal Dealers must register with the Council.
- 5.2 The increase in metal theft offences in recent years has highlighted the ineffectiveness of the currently regulatory regime, and the Government felt that reform was necessary.
- 5.3 From 3 December 2012 the Government introduced some changes to this regime through sections 145-147 of the Legal Aid Sentencing and Punishment of Offenders Act 2012. In particular, it increased the penalties for the existing offences contained in the 1964 Act and introduced a new offence of buying scrap metal for cash.
- 5.4 In addition during the course 2012 the Scrap Metal Dealers Act 2013 was introduced as a private members bill. It received Royal Assent on 28 February 2013 and will come into force by means of a commencement order, which is anticipated to be on 1st October 2013.
- 5.5 A detailed explanation of the provisions of the '2013 Act' is contained in the note at **Appendix 1** and also in the document entitled "*The Legislative Response to Metal Theft*" issued by the Home Office March 2013 enclosed as **Appendix 2**.
- 5.6 The main aim of the 2013 Act is to raise standards within the Scrap Metal industry, by replacing the overlapping regimes for vehicle salvage and scrap metal with one regulatory regime, and by giving Councils the responsibility for the licensing and enforcement of the Act in conjunction with the police. The 2013 Act will repeal the 1964 Act, Sections 145-147 of Legal Aid Sentencing and

Punishment of Offenders Act 2012 and Part 1, section 35 and paragraphs 1 & 2 of the Schedule of the Vehicles (crime) Act 2001.

6. The main provisions of the 2013 Act.

- 6.1 An extended regime to include a wide range of businesses (*see paragraphs 1 & 2 of Appendix 1*).
- 6.2 Amended definition of scrap metal (*see paragraph 3 of Appendix 1*).
- 6.3 The introduction of a national register of licenses to be held by the Environment Agency. Each Council previously held a register individually.
- 6.4 The introduction of two different types of licences, Site and Collector (*see paragraphs 4-9 of Appendix 1*).
- 6.5 The introduction of a suitability test for applications and licensees (*see paragraphs 17-19 of Appendix 1*).
- 6.6 The introduction of a licence fee to be determined by the Council (*see paragraph 15 of Appendix 1*).
- 6.7 The introduction of the power to revoke a licence (*see paragraphs 23 to 31 of Appendix*).
- 6.8 The introduction of entry and inspection powers (*see paragraphs 59 to 61 of Appendix 1*).
- 6.9 The power to obtain closure notices for unlicensed sites (*see paragraphs 62 to 67 of Appendix 1*).
- 6.10 The introduction of increased record keeping requirements (*see paragraphs 50 to 58 of Appendix 1*).
- 6.11 The introduction of a requirement to display licenses (*see paragraphs 38 to 40 of Appendix 1*).
- 6.12 The continuation of the offence of buying scrap metal for cash and additional offences relating each of the powers and duties contained in the 2013 Act.
- 6.13 Page 40 of Appendix 2 contains a useful diagram of how the licensing model is intended to work.

7. Issues

- 7.1 In preparation for the implementation of these new powers and duties the Council will need to make arrangements for dealing with applications, setting a fee (with regard to any statutory guidance issued by the Secretary of State) and providing the resources to deal with enforcement.
- 7.2 It is proposed therefore that a further report will be submitted to Committee once the commencement date has been confirmed and the Secretary of State has issued and Guidance and Regulations.

6. Comments of Other Committees

None.

7. Conclusion

The Committee are requested to note the contents of the report and that a further update will be provided once the associated regulations have been published and the commencement order is known.

8. Appendices Attached

'1' - Main provisions - Scrap metal Dealers Act 2013

'2' - Home Office - The Legislative Response to metal Theft

9. Background Papers

The Scrap Metal Dealers Act 1964

Legal Aid Sentencing and Punishment of Offenders Act 2012

THE SCRAP METAL DEALERS ACT 2013 (“Act”)

Definition of Scrap Metal Dealer

1. A person carries on business as a scrap metal dealer (“**SMD**”) for the purposes of this Act if the person:
 - a. Carries on business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
 - b. Carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).

This will not include persons who manufacture articles if the selling of scrap metal is only a by-product of that or are surplus materials not needed in the manufacturing.

2. A person carries on business as a motor salvage operator if the person carries on business which consists:
 - a. Wholly or partly in recovering salvageable parts from motor vehicles for reuse or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap,
 - b. Wholly or mainly in buying written off vehicles and subsequently repairing and reselling them,
 - c. Wholly or mainly in buying or selling motor vehicles which are to be the subject (whether immediately or on a subsequent re-sale) of any of the activities mentioned in paragraphs (a) and (b), nor
 - d. Wholly or mainly in activities falling within paragraph (b) and (c).
3. 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.

This does not however include gold, silver or any alloy, which contains 2% or more (by weight) of gold or silver. There is also provision for the Secretary of State to amend the definition of scrap metal.

Requirement for Licence

4. The Act repeals the previous regulatory regime contained in the Scrap Metal Dealers Act 1964, and introduces a licensing regime under which:
 - a. No person may carry on business as a scrap metal dealer unless authorised by a licence under the Act (“**Scrap Metal Licence**”).
 - b. Introduces an offence for failure to comply with 1(a) above, which is punishable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).
5. The Licence will be issued by the Local Authority and must be one of the following types:
 - a. A site licence; or

- b. A collector's licence.

Site Licence

6. This will authorise the licensee to carry on business at any site in the authority's area, which is identified in the licence.
7. It must include:
 - a. Name of licensee;
 - b. Name of authority;
 - c. Identify all sites in the authority's area at which the licensee is authorised to carry on business;
 - d. Name the site manager of each site, and
 - e. State the date on which the licence is due to expire.

Collector's licence

8. This authorises the licensee to carry on business as a mobile collector in the authority's area.
9. It must:
 - a. Name the licensee;
 - b. Name the authority; and
 - c. State the date on which the licence is due to expire.

Term of the Licence

10. A licence expires at the end of the period of **3 years** beginning with the day on which it is issued.
11. But if an application to renew a licence is received before the licence expires, the licence continues in effect and –
 - a. If the application is withdrawn, the licence expires at the end of the day on which the application is withdrawn;
 - b. If the application is refused, the licence expires when no appeal is either possible or is finally determined or withdrawn;
 - c. If the licence is renewed, it expires at the end of the period of 3 years beginning with the day on which it is renewed or (if renewed more than once) the day on which it is last renewed.

Applications

12. A licence is to be issued or renewed on an application, which must be accompanied by-
 - a. If the applicant is an individual, the full name, date of birth and usual place of residence of the applicant,
 - b. If the applicant is a company, the name and registered number of the applicant and the address of the applicant's registered office,
 - c. If the applicant is a partnership the full name, date of birth, and usual place of residence of each partner,
 - d. Any proposed trading name,
 - e. The telephone number and email address (if any) of the applicant,
 - f. The address of any site in the area of any other local authority at which the applicant carries on business as a scrap metal dealer or proposes to

- do so,
- g. Details of any relevant environmental permit or registration in relation to the applicant,
 - h. Details of any other scrap metal licence issued (whether or not by the local authority) to the applicant within the period of 3 years ending with the date of the application,
 - i. Details of the bank account, which is proposed to be used in order to comply with section 12 (scrap metal not be bought for cash etc).

If the application relates to a site licence, it must also be accompanied by

- j. The address of each site proposed to be identified in the licence (or, in the case of an application to renew, of each site identified in the licence whose renewal is sought), and
 - k. The full name, date of birth and usual place of residence of each individual proposed to be named in the licence as a site manager (other than the applicant).
13. The Local authority may request (either when the application is made or later) that the applicant provide such further information as the authority considers relevant for the purpose of considering the application.
14. An applicant who in response made to a request under 10 above:
- a. Makes a statement knowing it to be false in a material particular, or
 - b. Recklessly makes a statement which is false in a material particular,

Is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

Fee

15. The Local Authority must set the fee to accompany the application and in doing so must have regard to the guidance issued from time to time by the Secretary of State.

Issue of Licence

16. The Council must not issue or renew a Scrap Metal Licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer.

Suitable person

17. In determining whether an applicant is a suitable person the Council may have regard to any information which it considers relevant including:
- a. Whether the applicant or site manager has been convicted of any relevant offence (as defined by regulations to follow);
 - b. Whether the applicant or site manager has been the subject of any relevant enforcement action (as defined by regulations to follow);
 - c. Any previous refusal of any application for the issue or renewal of a Scrap Metal Licence (and the reasons for refusal);
 - d. Any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal);
 - e. Any previous revocation of a Scrap Metal Licence (and the reasons for the

- revocation;
 - f. Whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with.
 - g. Any guidance issued by the Secretary of State on determining suitability.
18. When considering applications from companies or partnerships the Council shall apply the criteria set out in 8 to any director, secretary, shadow director (i.e. any person in accordance with whose directions or instructions the directors of the company are accustomed to act) of the company and each partner within a partnership.
19. The Council may also consult the following on the suitability of an applicant:
- a. Any other local authority;
 - b. The environment agency;
 - c. The Natural Resources Body for Wales;
 - d. An officer of a police force.

Conditions on Licence

20. If the applicant or any site manager has been convicted of a relevant offence, the authority may include in the licence one or both of the following conditions:
- a. That the dealer must not receive scrap metal except during the hours 9am to 5pm;
 - b. 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.

Variation of licence

21. A local authority may, on application vary a licence by changing it from one type of licence to the other, but the licence cannot be transferred from one person to another.
22. If any of the details of the licence or its sites changes the Licensee must apply for a variation. A Licensee who fails to do so is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000). It is a defence to this offence that the person took all reasonable steps to avoid committing the offence.

Revocation of Licence

23. The Council may revoke a Scrap Metal Licence if it is:
- a. satisfied that the Licensee does not carry on business at any of the sites identified in the licence;
 - b. satisfied that a site manager named in the licence does not act as site manager at any of the sites identified in the licence;
 - c. no longer satisfied that the licensee is a suitable person to carry on business as a scrap metal dealer.
24. If the licensee or any site manager is convicted of a relevant offence the Council can vary the licence to add the conditions at 11(a-b) above.
25. The revocation comes into effect when either an appeal is not made within the allotted time or when the appeal is finally determined or withdrawn.

26. If during the appeal period the Council considers that the licence should not continue in force without conditions it may by notice provide:
 - a. That until revocation comes into effect the Scrap Metal Licence is subject to the conditions set out at 11(a-b) above.
 - b. That a variation as in 13 above comes into effect immediately.

Right to make representations

27. If a Local Authority proposes to:
 - a. Refuse an application;
 - b. Revoke a licence;

It must give the applicant or licensee a notice that sets out what the authority proposes to do and the reasons for it.

28. The applicant or Licensee will have not less than 14 days to either make a representation or inform the Council that it wishes to do so. If the applicant or licensee informs the Council that it wishes to make representation then it must be allowed a further reasonable period in which to do so.
29. The Council must consider the representations made and if the applicant or licensee wishes to make oral representations the Council must allow them to do so by giving them the opportunity of appearing before and being heard by a person appointed by the Council.

Notice of Decision

30. If the Authority refuses an application or revokes or varies the licence it must give a notice setting out the decision and the reasons for it.
31. The notice must state:
 - a. That they may appeal against the decision;
 - b. The time within which they may appeal;
 - c. In the case of a revocation or variation when that will take effect.

Appeals

32. An applicant/licensee may appeal to the Magistrates court against:
 - a. The refusal of an application;
 - b. The inclusion of a condition on a licensee;
 - c. The revocation/variation of a licensee.
33. The appeal must be made within 21 days beginning with the day on which the notice referred to above was given.
34. On appeal the Magistrates Court may:
 - a. Confirm, vary or reverse the authority's decision, and
 - b. Give such directions as it considers appropriate having regard to the provisions of this Act.

Supply of information by authority

35. The Council must supply any information (which has been supplied to it under this

Act and which relates to a Scrap Metal Licence or to an application for or relating to a licence) to:

- a. Any other local authority;
- b. The Environment Agency;
- c. The Natural Resources Body for Wales; or
- d. An officer of a police

Who requests it for purposes relating to the Act.

36. This does not limit any other power the Council has to supply such information.

Register of Licences

37. The **Environment Agency** must maintain a register of Scrap Metal Licences issued by authorities in England. This was previously the responsibility of the Council.

Display of Licence

Site Licence

38. The licence holder must display a copy of the licence (in a prominent place in an area accessible to the public) at each site identified in the licence.

Collector's Licence

39. The licence holder must display a copy of the licence (in a manner which enables it easily to be read by a person outside the vehicle) on any vehicle that is being used in the course of the dealer's business.

Penalty

40. A licence holder who fails to comply with the above is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

Verification of supplier's identity

41. A SMD must not receive scrap metal from a person without verifying the person's full name and address.

42. Verification must be made by reference to documents, data or other information obtained from a reliable and independent source. Regulations may be made to specify what these will be.

43. Breach of the above is an offence for which the following are liable:

- a. The SMD;
- b. If the metal is received at site the site manager;
- c. Any person who, under arrangements made by a person within (a –b) above who has responsibility for verifying the name and address.

44. It is a defence to this offence to show that the person made arrangements to ensure that the metal was not received in breach of the Act and took all reasonable steps to ensure that those arrangements were complied with.

45. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

Offence of buying scrap metal for cash

46. A SMD must not pay (including paying in kind for goods or services) for scrap metal except by cheque or by electronic transfer. This may be amended by the Secretary of State to include other methods of payment.

47. If a SMD breaches this section the following persons are guilty of an offence:

- a. The SMD;
- b. If payment is made at a site, the site manager;
- c. Any person who makes the payment acting for the dealer.

48. It is a defence if the person made arrangements to ensure that the payment was not made in breach and took all reasonable steps to ensure that the payment was not made in breach.

49. A person guilty of an offence under this section is liable to a fine not exceeding level 5 on the standard scale (currently £5,000).

Records: receipt of metal (Section 13)

50. If the SMD receives any scrap metal in the course of their business they must record the following information:

- a. The description of the metal, including the type, form, condition, weight and any marks identifying previous owners or other distinguishing features;
- b. The date and time of its receipt;
- c. If the metal is delivered in or on a vehicle, the registration mark of the vehicle;
- d. If the metal is delivered from a person, the full name and address of that person;
- e. If the SMD pays for the metal the name of the person who makes the payment acting for the dealer.

51. The SMD must keep copies of any documents it uses to verify the name and address of that person.

52. If the SMD pays for the metal by cheque they must keep a copy of the cheque, or if they pay by electronic transfer a copy of the receipt identifying the transfer or the particulars identifying the transfer.

Records: disposal of metal

53. If a SMD disposes of any scrap metal in the course of business (which applies whether or not it is in the same form in which it was received, it is disposed of to another person or it is despatched from site) it must record the information set out below:

Site licence

- a. The description of the metal, including its type (or types if mixed), form and weight;
- b. The date and time of its disposal;
- c. If the disposal is to another person, the full name and address of that person;

- d. If the dealer receives payment for the metal (whether by way of sale or exchange), the price or other consideration received.

Collector's Licence

- a. The date and time of disposal;
- b. If the disposal is to another person, the full name and address of that person.

Supplementary

54. The information must be recorded in a manner, which allows the information and the scrap metal to be readily identified by reference to each other.
55. The information must be kept for 3 years from when the metal was either received or disposed of.
56. If there is a breach of any of the requirements relating to record keeping the following persons will be guilty of an offence:
 - a. The SMD;
 - b. If metal is received at or (as the case may be) despatched from a site, the site manager;
 - c. Any person who, under arrangements made by a person within (a) or (b) has responsibility for fulfilling the requirement.
57. It is a defence to prove that the person:
 - a. Made arrangements to ensure that the requirement was fulfilled, and
 - b. Took all reasonable steps to ensure that those arrangements were complied with.
58. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

Right to enter and inspect

59. A constable or an officer of the local authority may enter and inspect a licensed site at any reasonable time on notice to the site manager, or without notice to the site manager if:
 - a. Reasonable attempts to give such notice have been made and have failed, or
 - b. Entry to the site is reasonably required for the purpose of ascertaining whether the provisions of this Act are being complied with or investigating offences under it and (in either case) the giving of notice would defeat the purpose.

This does not however apply to residential premises, nor is the constable or officer allowed to use force to enter the premises this can only be done in exercise of a warrant (which can be obtained under the act).

60. A constable or officer may require production of and inspect any scrap metal kept at any premises or mentioned in any warrant obtained under the Act.
61. A person who:
 - a. Obstructs the exercise of a right of entry or inspection under this section,or

- b. Fails to produce a record required to be produced under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000).

Closure of Unlicensed Sites

- 62. Where a constable or the local authority is satisfied that premises are being used by a SMD in the course of business and that it is not a licensed site they may issue a closure notice.
- 63. When the notice has been given the constable or LA may make a complaint to a justice of the peace for a closure order. This must be made not less than 7 days after or more than 6 months after the date on which the closure notice was given.
- 64. The justice may then issue a summons to answer the complaint.
- 65. A closure order may require:
 - a. That the premises be closed immediately to the public and remain closed until a constable or LA make a certificate to terminate the order;
 - b. That the use of the premises by a SMD in the course of business be terminated immediately;
 - c. That any defendant pays into court such sum as the court determines and that the sum will not be released by the court to that person until the other requirements of the order are met.
- 66. It may also make such conditions as the court considers appropriate to the admission of persons to the premises and the access by persons to another part of any building or other structure of which the premises form part.
- 67. The police and LA also have powers to enforce a closure order and any person who intentionally obstructs them in exercising those powers is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000).

Review of the Act

- 68. Before the end of 5 years beginning with the day on which section 1 of the act comes into force the Secretary of State must carry out and publish the conclusion of its review of the Act.
- 69. The report must in particular:
 - a. Set out the objectives intended to be achieved by this Act,
 - b. Assess the extent to which those objectives have been achieved, and
 - c. Assess whether it is appropriate to retain or repeal the Act or any of its provisions in order to achieve those objectives