

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. The Act empowers Licensing Authorities to set their own fees to cover full cost recovery stemming from the administration and compliance with the new regime. In doing so the Council must have regard to any guidance and regulations issued by the Secretary of State. The current guidelines are reproduced at Appendix E.

Risk Management

Recommendation	Risk/Threat/Opportunity	Mitigation(s)
As detailed in Point 2.	By not approving the recommendations the Council will be unable to carry out its duties and functions under the Act in an effective and efficient manner	In approving the recommendations the Council will ensure that full cost recovery is in place and that all functions will be dealt with in compliance with the Act

(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 and there are no implications locally as enforcement work in respect of scrap metal dealers will be carried out consistently on the basis of risk for all premises and operators across the Borough.

5. **Supporting Information**

- 5.1 An information report on the proposed implementation of the Scrap Metal Dealers Act 2013 was put before the Licensing Committee on 18th July 2013 advising

Members of the Act and the new legislative requirements placed upon the Council and that the Act empowers Local Authorities to set their own fees.

- 5.2 There will be two types of licence, these being a Site Licence and a Collectors Licence which will be administered by the Local Authority. Collectors will need to make applications to each local authority in which they intend to collect.
- 5.3 The 2013 Act allows Local Authorities to decide in accordance with the specific criteria contained within the legislation, who should and who should not be licensed as well as powers to refuse or a revoke a licence where the Council is satisfied that the applicant or licence holder is not suitable to be licensed and in doing must serve formal notice as such on the applicant or licence holder.
- 5.4 There are enforcement requirements for Local Authorities which include powers of entry to premises, checking compliance with licence requirements including all relevant records and metal on site.
- 5.5 Scrap Metal Dealers will be required to check the identification of people selling scrap metal. They must verify the person's full name and address by reference to classes of documents and information set out in the legislation (see 'Background Papers' below).
- 5.6 Record keeping requirements are a specific requirement of the Act and dealers will be required to record details of the description and weight of the metal, details of who they bought it from and details of how the metal was paid for. There are similar record keeping requirements for the sale of metal from a site.
- 5.7 There are currently 10 operators in Slough that will need to make applications under the new legislation.

Time Scales

- 5.8 The relevant provisions of the 2013 Act come into force on 1st October 2013 with current registered operators being required to make a new application between 1st October to 15th October 2013. This then entitles the operator to continue in operation until such time as the application process is complete. Current operators will not be able to trade if applications are not received with this time period and they will be required to suspend their business until such time as a new application has been made and determined. All current dealers have been supplied with all relevant information including Basic Disclosure forms and application forms.
- 5.9 Those new operators not previously licensed will be required to make full new applications and will not be able to operate until such time as the application has been determined.
- 5.10 Local Authorities will be required to complete suitability checks on all applicants and decided whether to issue a licence, this includes consultation with any other local authority, the Environment Agency and the Police. It has been recommended that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1st December 2013.
- 5.11 All other enforcement provisions within the Act commence on 1st December 2013.

Fees

- 5.12 Any application must be accompanied by a fee set by the local authority. In setting a fee, the authority must have regard to any guidance issued from time to time by the Secretary of State. The current guidance is reproduced in **Schedule E**.
- 5.13 In setting the proposed fees we have had to have regard to the requirements of the European Union Services Directive and any case law, of which the recent case in the Court of Appeal of *Hemming v Westminster City Council* is especially relevant, as it confirms licence fee cannot be used to support enforcement activity against unlicensed activities (in this case, unlicensed scrap metal dealers).
- 5.14 The LGA have worked closely with the Home Office on all aspects of the legislation and the implementation including fee setting. The LGA Guide to the Scrap Metal Dealers Act 2013 is attached as **Appendix C** and the LGA Scrap Metal Dealers Act - Enforcement Guide as **Appendix D**.
- 5.15 In setting our fees we have taken into account the criteria as detailed in the '**Application Fees**' section of the LGA Guidance, as well as the government guidance (**Appendix E**). The fees are as follows:

Site Licence Application	£465.00p
Site Licence Renewal Application	£330.00p
Site Licence Variation Application	£202.50p
Collectors Licence Application	£465.00p
Collectors Licence Renewal Application	£330.00p
Collectors Licence Variation Application	£202.50p

- 5.16 The proposed fees are likely to differ from the initial grant of a licence through to the renewal of the licence three years later. The LGA have suggested that as this may be the case the fees will need to be re-assessed on a regular basis and adjusted accordingly to reflect actual costs.
- 5.17 The fees have also taken into consideration the point arising from *Hemming v Westminster City Council* that the fees cannot be used to pay for enforcement against unlicensed dealers, to cover the cost of issuing closure notices to unlicensed dealers or applying for closure notices from the magistrates court.
- 5.18 **Appendix A** shows the fee breakdown associated with the licensing of Scrap Metal Dealers.

Delegation of Functions

- 5.19 There are various requirements under the Act that will require timely and clear decisions. **Appendix B** is a proposed Scheme of Delegation for all functions under the Act.
- 5.20 In most cases it is anticipated that applications will be non-contentious, in which case it is proposed that Licensing Officers will grant the licence. Officers will need

delegated powers in order to administer applications and grant non-contentious applications.

- 5.21 Where the application is contentious, it is proposed that a Licensing Sub Committee will have delegated powers to determine applications or licences. Those decisions must be based specifically on the criteria detailed within the legislation and any regulations published by the Home Office.
- 5.22 The Act allows both the Police and 'an officer of the Local Authority' to enforce the provisions of the legislation. It is proposed that the following Slough Borough Council Officers are authorised under the Act:
- Licensing Officers
 - Neighbourhood Enforcement Officers (Including EHO's)
 - Trading Standards Officers
 - Health and Safety Officers (Including EHO's)

Representations

- 5.23 Where the Council proposes to reject an application (or revoke it or vary it) the applicant has to be notified what the Council proposes to do and the reasons for it. If having conducted an initial assessment of an applicant's suitability the Council is minded to refuse the application, the relevant officer has to write to the applicant to let them know.
- 5.24 The notice from the Council has to give the applicant (or licensee) the opportunity to make representations or let the Council know they wish to. The notice must also specify a period of time in which the applicant does this, which cannot be less than 14 days from the date on which the notice is given to the applicant. If the applicant does not make any representations, or does not say that they wish to in that time period, the Council can refuse the application or revoke or vary the licence. Where the applicant states that they want to make representations, the Council has to give them a further period in which to do so, and only if they fail to do so can they refuse the application or revoke or vary the licence.
- 5.25 Where the applicant makes representations the Council has to consider them (Schedule 1, paragraph 7(7)), and if the applicant states that they want to make oral representations the Council must provide them with the opportunity to appear before a Licensing Sub Committee.

Appeals

- 5.26 Appeals against any decision by the Council to refuse an application, to impose a condition on the licence or to revoke or vary the licence are to the Magistrates Court. The applicant or licence holder has 21 days from the day on which they were given notice of the decision to appeal.
- 5.27 The Magistrates Court has power to confirm, vary or reverse the Council's decision and issue any directions it considers appropriate having regard to the Act.

6. Comments of Other Committees

An information report was put before the Licensing Committee on 18th July 2013, with a resolution - That the report be noted and that an update report be submitted once the associated regulations have been published and the commencement order is known.

7. Conclusion

The Committee is request to approve the recommendations set out at Paragraph 2 of the report.

8. Appendices Attached

'A' - Breakdown of fees setting

'B' - Proposed Scheme of Delegation for functions under the Act

'C' - LGA Guidance to Scrap Metal Dealers Act 2013: Applications

'D' - LGA Scrap Metal Dealers Act - Enforcement Guide

'E' - Scrap Metal Dealers Act 2013: guidance on licence fee charges

9. Background Papers

The Scrap Metal Dealers Act 1964

Legal Aid Sentencing and Punishment of Offenders Act 2012

The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013

The Scrap Metal Dealers Act 2013 (Prescribed Documents and Information for Verification of Name and Address) Regulations 2013

New Scrap Metal Licence Application

Application Procedures	Time	Service hourly rate	Cost
Pre-application discussion	0.50	£30.00	£15.00
Check application form	0.50	£30.00	£15.00
Consultation (Police, TS, other LA's etc)	2.00	£30.00	£60.00
Pre-inspection preparation	1.00	£30.00	£30.00
Application inspection visit	4.00	£30.00	£120.00
Outstanding information chase	0.50	£30.00	£15.00
Create record on Lalpac	0.25	£30.00	£7.50
Process payment	0.25	£30.00	£7.50
Lalpac amendments	1.00	£30.00	£30.00
Applicant suitable - Grant or refer to LSC	0.50	£30.00	£15.00
Issue licence and printing	0.25	£30.00	£7.50
Postage	0.25	£30.00	£7.50
Information to Environment Agency	0.50	£30.00	£15.00
Sub total	11.5		£345.00

Compliance Officer Visit

Pre-inspection visit preparation	1.00	£30.00	£30.00
One hour annual visit per year	2.00	£30.00	£60.00
Update Lalpac	1.00	£30.00	£30.00
Sub Total	4.00		£120.00

Total Cost	£465.00
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Renewal Scrap Metal Licence Application

Application Procedures	Time	Service hourly rate	Cost
Check application form	0.50	£30.00	£15.00
Consultation (Police, TS, other LA's etc)	1.00	£30.00	£30.00
Pre-inspection preparation	1.00	£30.00	£30.00
Application inspection visit	2.00	£30.00	£60.00
Outstanding information chase	0.50	£30.00	£15.00
Create record on Lalpac	0.25	£30.00	£7.50
Process payment	0.25	£30.00	£7.50
Lalpac amendments	0.50	£30.00	£15.00
Applicant suitable - Grant or refer to LSC	0.50	£30.00	£15.00
Issue licence and printing	0.25	£30.00	£7.50
Postage	0.25	£30.00	£7.50
Information to Environment Agency	0.50	£30.00	£15.00
Sub total	7.5		£225.00

Compliance Officer Visit

Pre-inspection visit preparation	1.00	£30.00	£30.00
One hour annual visit per year	2.00	£30.00	£60.00
Update Lalpac	0.50	£30.00	£15.00
Sub Total	3.50		£105.00

Total Cost	£330.00
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Variation Scrap Metal Licence Application

Application Procedures	Time	Service hourly rate	Cost
Pre-application discussion	0.25	£30.00	£7.50
Check application form	0.50	£30.00	£15.00
Consultation (Police, TS, other LA's etc)	1.00	£30.00	£30.00
Application inspection visit	2.00	£30.00	£60.00
Outstanding information chase	0.50	£30.00	£15.00
Create record on Lalpac	0.25	£30.00	£7.50
Process payment	0.25	£30.00	£7.50
Lalpac amendments	0.50	£30.00	£15.00
Applicant suitable - Grant or refer to LSC	0.50	£30.00	£15.00
Issue licence and printing	0.25	£30.00	£7.50
Postage	0.25	£30.00	£7.50
Information to Environment Agency	0.50	£30.00	£15.00
Sub total	6.75		£202.50

Scheme of Delegation of Functions under the Scrap metal Dealers Act 2013

Matter to be dealt with	Licensing Committee	Licensing Sub Committee	Officers
Determination of fees	All fees		
Application for a Site Licence		If a relevant representation is made	If no relevant representation is made
Application for a Collectors Licence		If a relevant representation is made	If no relevant representation is made
Application to vary a Site Licence		If a relevant representation is made	If no relevant representation is made
Application to vary a Collectors licence		If a relevant representation is made	If no relevant representation is made
Revocation of a Site Licence or Collectors Licence		Where the revocation is contested	Where the revocation is not contested
Refusal to renew a licence		Where the refusal is contested	Where the refusal is not contested
Revocation of a Site Licence or Collectors Licence		Where revocation is contested	Where revocation is not contested
Refusal to vary a licence		Where the refusal is contested	Where the refusal is not contested
The inclusion of conditions on a licence			All cases
Issue of a Closure Notice			All cases
Cancellation of a Closure Notice			All cases
Application for a Magistrates Closure Order			In conjunction with Legal Services