

PLYMOUTH CITY COUNCIL

Subject: Scrap Metal Dealers Act 2013 – Determining Suitability
Committee: Licensing Committee
Date: 10 December 2013
Cabinet Member: Cllr Vincent
CMT Member: Anthony Payne, Director for Place
Author: Andy Netherton
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Ref:
Key Decision: No
Part: I

Purpose of the report:

This report provides an update of the key provisions of the Scrap Metal Dealers Act 2013 (the Act) following on from the initial report that was presented to Members on the 17 September 2013. This report also sets out the implementation arrangements and the role that Members will play in its decision-making.

The Brilliant Co-operative Council Corporate Plan 2013/14 -2016/17:

Growing –

The regulation of illegal operators will ensure that correctly operated businesses are not unfairly disadvantaged.

The administration of the licensing regime for scrap metal dealers will be undertaken in a way that minimises burdens on business but will ensure the reduction of metal theft within the City. The reduction of metal theft will reduce the financial costs borne by those businesses that are affected.

Implications for Medium Term Financial Plan and Resource Implications:

Including finance, human, IT and land:

The Act allows for the introduction of locally set fees to cover the costs of administering and ensuring business compliance.

Fees have been determined by Executive Decision by the Cabinet Member for the Environment.

It is anticipated that this new licensing regime will attract an indicative income of £8K for the first 3 year licensing period.

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:

The increase in metal theft has particularly affected the railways and other transport infrastructure. Local communities have suffered through the theft of roof materials from places of worship, schools and other buildings. The reduction of metal theft will benefit businesses, local communities and public authorities.

Equality and Diversity:

Has an Equality Impact Assessment been undertaken? No

Recommendations and Reasons for recommended action:

- I. Members note the contents of the report
-

Alternative options considered and rejected:

None

Published work / information:

[Scrap Metal Dealers Act 2013](#)

[Home Office Guidance – Determining suitability to hold a scrap metal dealers licence](#)

[Scrap Metal Dealers Fees](#)

[Scrap Metal Dealers Committee Report – 17 September 2013](#)

Background papers:

Title	Part I	Part II	Exemption Paragraph Number						
			1	2	3	4	5	6	7

Sign off:

Fin	CF/PlaceFES D1314.28.11 .13	Leg	18998/ag/28. 11.13	Mon Off		HR		Assets		IT		Strat Proc	
Originating SMT Member													
Has the Cabinet Member(s) agreed the content of the report? Yes													

Scrap Metal Dealers Act 2013

1.0 Background

- 1.1 The international price of ferrous scrap metal increased dramatically over recent years, which has seen a significant increase in the theft and illegal trade of stolen metal, at national level which is estimated to cost the economy £220m per year. Metal theft across the country has regularly targeted infrastructure such as power lines, railway signals and manhole covers. Metal theft has also included parts of local war memorials.
- 1.2 This report will provide an update to Licensing Committee of the key provisions of the Scrap Metal Dealers Act 2013 (the Act) following on from the previous report presented on the 17 September 2013. This report sets out the implementation arrangements and the role that Committee members will play in its decision-making, see **Appendix I**.
- 1.3 This Act brings together the current registration schemes for Scrap Metal Dealers and Motor Salvage Operators and replaces them with a single licensing regime. No person may carry on a business as a Scrap Metal Dealer unless licensed under the Act.
- 1.4 The Act has introduced the principle of cashless transactions to enable transparency and traceability within the scrap metal trade.

2.0 Fees

- 2.1 Since the initial report scrap metal fees have been set by Executive Decision and are as follows;

Scrap Metal Dealers Fees 2013/2014

New Applications

Site Licence	£305
Collectors	£228

Renewals

Site Licence	£251
Collectors	£182

Variation

Site to Collector	£48
Collector to Site	£110
Change of Site Manager	£48
Change of Details	£35
Duplicate/Replacement of licence	£10.50

A licence will last for three years from the date of issue.

- 2.2 The Act allows every local authority to set its own fees for the administration of the licensing regime based on full cost recovery and having regard to the guidance issued by the Home Office and Local Government Association.

The following are examples of activities which have been included in the calculation;

- Setting up the new licensing regime.

- Providing advice and guidance to applicants on what will be a new process.
- Processing and granting a licence such as considering applications and assessing the suitability of the applicant.
- Consulting other agencies and bodies when considering if an applicant is a suitable person.
- Costs of issuing the licence.
- Providing information for inclusion in the national register of dealers.
- Site inspections and ensuring compliance with the law.
- Working with partners to ensure compliance.
- Staff and resources associated with supporting the service.
- Support provided by legal services and democratic services
- On-costs associated with building costs, heating and lighting.

Fees cannot be used to cover the following activities;

- Enforcement action against unlicensed dealers.
- Costs associated with appeals and the costs of defending an appeal.
- Costs associated with defending a Judicial Review regarding a failure to have regard to Home Office fee guidance.

Refunds for unsuccessful applications will be issued. The proportion of the fee retained will reflect the costs associated with the application.

2.3 As this is a new system the fees have been based on best estimates of the work and time required, including set up costs. In accordance with best practice the fees will be reviewed to ensure that income balances costs over a 3 year period.

3.0 Types of Licence

3.1 There are two types of licence

- (i) A Site Licence with authorises an operator to carry on a business as a scrap metal dealer
- (ii) A Collector's Licence allows the collector to carry on a business as a mobile collector throughout Plymouth.

3.2 A dealer can only hold one type of licence in any one local authority area.

3.3 It should be noted the wording of the Act and subsequent statutory guidance is ambiguous as to whether the holder of a site licence in Plymouth can 'collect' scrap metal within this administrative district. It appears that the general intention of the Act was to enable a site licence holder to collect by arrangement or appointment, but not collect door-to-door as an itinerant collector.

4.0 Suitability Test

4.1 The Act states that the Council must not issue a licence unless it is satisfied the applicant is a suitable person to carry on a business as a scrap metal dealer, this is known as the 'suitability test'. The Council can have regard to any information it considers relevant that may call into question the applicant's suitability to hold a licence.

For a company or partnership, any person whether a partner, company secretary, any director or site manager may be considered under this test.

4.2 Officers and Members should consider the following information as part of this suitability test;

Whether the applicant or any site manager has been convicted of any relevant offence

The applicant or any relevant persons as described above are required to submit a Basic Disclosure Certificate that declares any unspent convictions and cautions, as part of their application. The Act prescribes that only relevant offences may be considered when determining an application. For the purposes of the Act a relevant offence includes convictions connected to the collection or disposal of waste materials, including 'attempting or conspiring.....inciting or aiding, abetting, counselling or procuring the commission' of any offence falling within the schedule or 'encouraging or assisting crime' in connection with the proceeds of crime. The full list of relevant convictions is attached marked **Appendix 2**.

A conviction for a relevant offence will not automatically lead to refusal however as part of the investigation officers would consult with the police on factors such as the severity of fine, pattern of offending, frequency and time gap since the last offence would be considered.

Officers have agreed a protocol to consult the local police on all applications.

If a person has been convicted of a relevant offence or is convicted of a relevant offence once a licence has been issued, the Council may wish to consider imposing one or both of the following conditions. This would be a matter for Licensing Sub-Committee to consider.

- (i) That the dealer must not receive scrap metal except between 9am and 5pm on any day;
- (ii) That all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.

Whether the applicant or any site manager has been the subject of any relevant enforcement action

Relevant enforcement action would include ongoing investigations where the applicant or relevant person has been charged and proceedings in respect to that offence have not been concluded. Only once the action is completed can it be considered as to whether it impacts on that person's suitability to hold a licence.

The Environment Agency (EA) has prescribed a national consultation protocol to establish whether any relevant enforcement action is being undertaken. This involves checking the EA public register in the first instance in order to establish whether the applicant has the appropriate waste carriers permit in place. Where no permit is in place or where the Council has additional concerns, enquiries can be made using the established email contact point.

Any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal)

To our knowledge no applicant has previously been refused the issue of a licence made under the Scrap Metal Dealers Act 1964 in Plymouth. Appropriate routine checks will be made with neighbouring Council's or the home authority in which the applicant lives and any information submitted will be considered as part of the suitability test.

Any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal)

Licensed operators will be subject of routine inspection or complaint investigation. As part of these checks or where officers have concerns officers will contact the Police and Environment Agency as part of the investigation.

Any previous revocation of a scrap metal licence (and the reasons for the revocation)

The Council would investigate any information received during the application process and take the appropriate action.

Whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with

During routine inspections or complaint investigations officers will assess the adequacy of procedures that ensures traceability of scrap metal transactions. The licensee has to be able to verify the identity of the supplier, be able to demonstrate cashless transactions and record the type and quantity of the materials bought.

The Act states that a council can consider any information it considers relevant in determining the suitability of an applicants. The applicant's behaviour in the operation of their business may be relevant such as they have been operating without planning permission or that they are not registered the Information Commissioners Office under the Data Protection Act. The lack of planning permission in itself may not be sufficient to not grant a licence but it may be considered together with a range of other behaviours that suggest that the applicant is not suitable to hold a licence.

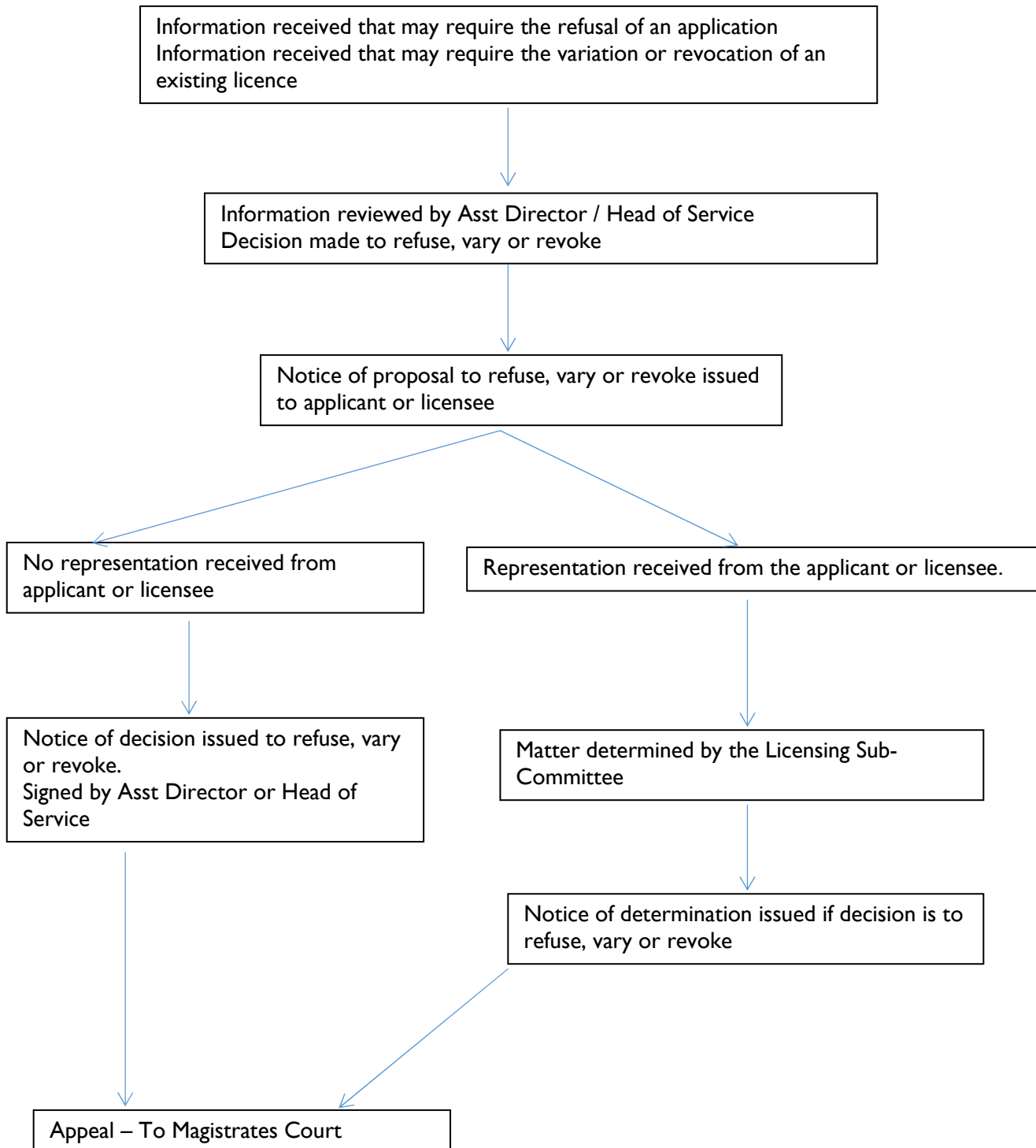
- 4.3 Having considered all the relevant information the Assistant Director and Head of Service responsible for the licensing function will grant, vary or refuse an application. In cases where the Council are not satisfied that the person is a suitable person, the applicant will receive a 'notice of proposal' setting out reasons of its intention to refuse the issue of a licence. The applicant will be given a period of not less than 14 days to make a representation, which can be in writing or notice that they wish to do so in person. If no formal representation is received the application will be refused
- 4.4 Members resolved on the 17 September 2013 that where representations are submitted (whether in writing or the applicant wishes to make them orally), these would be considered by Licensing Sub-Committee. Where Members resolve to uphold the officer's decision to refuse to grant then the applicant has a right of appeal in the Magistrates Court.
- 4.5 The suitability test requirements also apply to existing licence holders, so where information is received that calls into question that person's right to remain a licence holder or whether the licence should be revoked this will be considered in the same way as for a new applicant.

5.0 Conclusion

- 5.1 The Council is expected to be in the position to issue licences by the 1 December 2013 however delays with the issue of disclosures certificates by the Disclosure Scotland mean that this target date may not be achieved. We are currently putting in place measures that will allow us to issues licences as soon as we are in possession of all the relevant information.

- 5.2 Following the completion of the initial application process, officers intend to follow up premises or collectors who made initial enquiries to ascertain whether or not a licence is required.
- 5.3 It was never attended that businesses such as plumbers, electricians, house clearance and skip hire companies, where scrap metal is generated or collected incidental to the main activity of the business, should be caught by the provisions of this Act. Whether or not a licence is required will be a question of degree depending on the amount a scrap metal generated and the working practices of that business. Officers are ensuring that all dealers have every opportunity to apply for a licence prior to the introduction of the enforcement provisions on the 1 December 2013.
- 5.4 A further update will be provided to Members on the day of the total number of applications received and their current status.

Flow chart showing the process for the refusal, variation or revocation of a licence



Schedule of Relevant Convictions set by the Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013**Relevant offences**

- Control of Pollution (Amendment) Act 1989: Sections 1, 5 or 7
- Customs and Excise Management Act 1979: Section 170 & 170B (where the specific offence concerned relates to scrap metal)
- Environment Act 1995: Section 110
- Environmental Permitting (England and Wales) Regulations 2007: Regulation 38
- Environmental Permitting (England and Wales) Regulations 2010: Regulation 38
- Environmental Protection Act 1990: Sections 33, 34 or 34B
- Food and Environment Protection Act 1985: Section 9
- Fraud Act 2006: Section 1 (where the specific offence concerned relates to scrap metal or is an environment-related offence)
- Hazardous Waste (England and Wales) Regulations 2005
- Hazardous Waste (Wales) Regulations 2005
- Landfill (England and Wales) Regulations 2002: Regulation 17(1)
- Legal Aid, Sentencing and Punishment of Offenders Act 2012: Section 146
- Pollution Prevention and Control (England and Wales) Regulations 2000
- Proceeds of Crime Act 2002: Sections 327, 328, 330, 331 & 332
- Producer Responsibility (Packaging Waste) Regulations 2007
- Scrap Metal Dealers Act 1964
- Scrap Metal Dealers Act 2013
- Theft Act 1968: Sections 1, 8, 9, 10, 11, 17, 18, 22 or 25 (where the specific offence concerned relates to scrap metal or is an environment-related offence)
- Transfrontier Shipment of Waste Regulations 1994
- Transfrontier Shipment of Waste Regulations 2007
- Vehicles (Crime) Act 2001: Part 1
- Waste (Electrical and Electronic Equipment) Regulations 2006
- Waste (England and Wales) Regulations 2011: Regulation 42
- Water Resources Act 1991: Section 85, 202 or 206