

BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

From: Head of Environment	Report Number: N55
To: Regulatory Committees	Dates of meetings: 13 and 20 September 2013

SCRAP METAL DEALERS ACT 2013

1. Purpose of Report

- 1.1 To report information to the Regulatory Committee to introduce the provisions of the Scrap Metal Dealers Act 2013, which received Royal Assent on 28 February 2013, and to seek the relevant scheme delegations via recommendation to Council.

2. Recommendation to Council

2.1 That the discharge of all functions under the provisions of the Scrap Metal Dealers Act 2013 be delegated to the Head of Environment, with hearings of individual cases where the Head of Environment is minded to not grant a licence to be discharged by the Licensing and Appeals Committee acting as a Sub-Committee of the Council's Regulatory Committee.

2.2 That Part 3 of the Constitution be updated accordingly and that the Council's Monitoring Officer be authorised to make the necessary amendments to the Council's written Constitution to give effect to these changes.

The Committee is asked to make a recommendation to Council on 2.1 and 2.2.

3. Financial Implications

- 3.1 This is a new statutory licensing scheme coming into force during 2013/14. The legislation makes provision for full cost recovery, subject to guidelines issued by Central Government. The fees are self-set by the local authority and may take into account all reasonable costs associated with the implementation, administration and compliance checks of the scheme but cannot generally take into account the costs of enforcement action against unlicensed operators which must be met from core funding.

4. Risk Management

- 4.1 The general purpose of licensing is public protection. Businesses and individuals carrying on licensable activities require licences so they can operate lawfully. Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
Failure to implement the provisions (within the timeframe) may result in legal challenge, reputational harm to the organisation and failure to serve the interests of local communities.	1 – rare (likelihood of failure to implement)	2 – failure to implement would be noticeable by stakeholders	Implement a local scheme, aligned across Babergh and Mid Suffolk, based on the legislative requirements and guidance issued by the Home Office/LGA.

5. Consultations

- 5.1 This is a statutory scheme with some prescriptive requirements. Elements of the scheme, including procedural development where there may be more local discretion, may in due course require consultation with relevant stakeholders as the scheme evolves.

6. Equality Analysis

- 6.1 There are no equality impacts arising directly from the matters contained within this report.

7. Shared Service / Partnership Implications

- 7.1 It is proposed that an aligned scheme, including common fee structure, will be developed across Babergh and Mid Suffolk District Councils and wider if viable. Suffolk-wide discussions have been held in relation to this new function to ensure minimal variation for business and communities across the district and borough boundaries.
- 7.2 The Council's shared services licensing software can accommodate scrap metal licensing functions without any additional purchase and the joint licensing team has conducted any necessary development work to the system within existing resources. This platform will also streamline any information sharing arrangements with the Environment Agency – who will hold and maintain a national register of licensed scrap metal dealers.

8. Key Information

- 8.1 Section 2(1) of the Scrap Metal Dealers Act 2013 requires that a scrap metal licence is to be issued by a local authority, being a district council or London borough as defined by section 22(3)(a) of the 2013 Act.
- 8.2 This legislative reform arises from national problems of metal theft and attempts to both modernise and raise standards from an outdated scheme of *registration* to a full statutory *licensing* regime which facilitates operator suitability assessments, refusal of licences and tougher penalties for illegal operation. It is a challenge for councils to introduce and enforce a new licensing regime at such short notice given delayed central government action and guidance. However, the Council has successfully managed similar transitions with other licensing functions.
- 8.3 Metal theft has over the last few years had a significant impact and burden on communities, businesses and councils themselves. Trains have been disrupted, roofs of community buildings vandalised, and items such as manhole and gully covers, road signage, artwork, and memorials all being targets for metal thieves. High metal prices are likely to remain, driven by industrialisation in China, India and Brazil – meaning the issue of metal theft is unlikely to diminish over the next decade or so.
- 8.4 A survey in early 2012 showed that 70% of councils had been the victims of metal theft at an estimated cost to councils of £5.25m. Babergh District Council itself has recent experience of the disruption and cost involved.

- 8.5 On 6 August 2013 the Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013 was made, which brings into force the Scrap Metal Dealers Act 2013. This new legislation repeals the Scrap Metal Dealers Act 1964 and replaces the system of registration for motor salvage operators under the Vehicles (Crime) Act 2001.
- 8.6 From 1 September 2013 local authorities will be enabled to set a fee that will be payable upon an application for a licence, and in setting fee levels local authorities must have regard to guidance issued by the Secretary of State. Fee levels must also be set so as to be compatible with the European Union Provision of Services Directive and recent case law on fee setting.
- 8.7 Scrap metal dealers who were previously registered under the Scrap Metal Dealers Act 1964 or Vehicles (Crime) Act 2001 are entitled to benefit from a successor temporary licence under the new regime, provided they apply to the local authority on or before 15 October 2013. The transitional timeframe is therefore particularly tight and across Babergh and Mid Suffolk District Councils there are twenty-four existing businesses that will be entitled to benefit from succession arrangements.
- 8.8 Local authorities will complete checks to assess the applicant's suitability to hold a licence between 15 October 2013 and 1 December 2013. A formal licence decision should be issued by 1 December 2013.
- 8.9 New scrap metal dealers that do not hold an existing entitlement may apply from 1 October 2013 but must wait for a new licence to be issued before they can trade legally. On this same date the offence of buying scrap metal for cash will come into force.
- 8.10 Licences under the 2013 Act may be issued to a **site** or to a **collector**. A dealer can only hold one type of licence in any one local authority area. Licences will last for three years and trading without a licence will be a criminal offence carrying the potential of an unlimited fine.
- 8.11 It is considered by the Home Office and Local Government Association that household waste collections by councils or their contractors that pick up metal items thrown out by households and which are to be recycled, along with municipal waste/civic amenity sites ('council tips'), are not caught by the new provisions.
- 8.12 Whilst there is no explicit requirement under the 2013 Act, a hearing is considered good practice, in line with similar licensing regimes involving 'suitability' checks, where there is any doubt over whether an operator should be granted a licence. As the Regulatory Committee is already established as the Council's statutory Licensing Committee under the Licensing Act 2003, and Gambling Act 2005, and has experience of these and other licensing functions such as Taxi and Private Hire hearings via its Licensing and Appeals Committee, then any hearings necessary under the 2013 Act should logically be heard by that Committee. Recommendation 2.1 refers accordingly.
- 8.13 It is proposed that the Head of Environment complete an assessment of the relevant provisions, consider experience of other licensing regimes, and including a time and motion exercise of anticipated activity in this area set fees at a level to enable cost recovery. This preparatory work is already underway.

8.14 Fee levels would be subject to periodic review once the new system has been established and with the benefit of a suitable period of activity assessment. It is proposed as part of this report that delegation of all matters including fee setting be delegated to the Head of Environment.

9. Appendices

9.1 None.

10. Background Documents

10.1 None.

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