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SOUTH HAMS LICENSING COMMITTEE - WEDNESDAY, 18TH SEPTEMBER, 2013

Agenda, Reports and Minutes for the meeting

Agenda No Item

1. **Agenda Letter** (Pages 1 - 2)

2. **Reports**

Reports to Licensing:

- a) Item 5 - The appointment, revocation and re-appointment of taxi stands in the District
(Pages 3 - 8)
- b) Item 6 - Implementation of the Scrap Metal Dealers Act 2013 (Pages 9 - 20)
- c) Item 9- EXEMPT - To determine whether there is reasonable cause to suspend or revoke the Hackney Carriage Driver licence - whether the driver is 'fit and proper'
(Pages 21 - 28)

3. **Minutes** (Pages 29 - 40)

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Agenda Item 1

Please reply to: Darryl White
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To: Chairman & Members of the Licensing Committee
(Cllrs Baverstock, Blackler, Carson, Carter, Cuthbert,
Gilbert, Hannaford, May, Pannell, Saltern, Squire and Wright).

Our Ref: CS/KT

cc: Usual officer and press circulation

10 September 2013

Dear Councillor

A meeting of the **Licensing Committee** will be held in the **Cary Room**, Follaton House, Plymouth Road, Totnes on **Wednesday, 18 September 2013** at **10.00 am** when your attendance is requested.

Yours sincerely

Kathryn Trant
Member Services Manager

**FOR ANY QUERIES ON THIS AGENDA, PLEASE CONTACT DARRYL WHITE
DEMOCRATIC SERVICES MANAGER ON DIRECT LINE 01803 861247**

A G E N D A

1. **Minutes** - to approve as a correct record and authorise the Chairman to sign the minutes of the meeting of the Licensing Committee held on 8 November 2012 (pages 1 to 4) and the Licensing Sub-Committees held during the period 9 April 2013 to 30 May 2013 (pages 5 to 14).
2. **Urgent Business** - brought forward at the discretion of the Chairman;
3. **Division of Agenda** - to consider whether the discussion of any item of business is likely to lead to the disclosure of exempt information;
4. **Declarations of Interest** - Members are invited to declare any personal or disclosable pecuniary interests, including the nature and extent of such interests, they may have in any items to be considered at this meeting;

5. **The appointment, revocation and re-appointment of taxi stands in the District** – to consider a report which seeks Member approval for proposals to change two taxi stand provisions in Kingsbridge and to update, review and confirm the Authority's taxi stand provision in the South Hams (pages 15 to 20);
6. **Implementation of the Scrap Metal Dealers Act 2013** – to consider a report that seeks Members endorsement of the updated Constitution in relation to the scrap metal act (pages 21 to 31);
7. **Summary of new/variation of premises licences issued between 1 April 2013 and 17 September 2013 plus licences issued under the Miscellaneous provisions Act 1982 plus other miscellaneous licences** – to consider the list of licences issued between 1 April 2013 and 17 September 2013 and to enable Members the opportunity to make any comments (to be tabled to the meeting).
8. **Exclusion of the Public and Press**

“That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following items of business in order to avoid the likely disclosure to them of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A to the Act”;

9. **To determine whether there is reasonable cause to suspend or revoke the Hackney Carriage Driver licence - whether the driver is 'fit and proper'** – to determine whether there is 'reasonable cause' to suspend or revoke a Hackney Carriage Driver licence in accordance with Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, as amended by Section 52 of the Road Safety Act 2006 (pages 32 to 39).

Members of the public may wish to note that the Council's meeting rooms are accessible by wheelchairs and have a loop induction hearing system

**MEMBERS ARE REQUESTED TO SIGN THE ATTENDANCE REGISTER
THIS AGENDA HAS BEEN PRINTED ON ENVIRONMENTALLY FRIENDLY PAPER**

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AGENDA
ITEM

5

SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM

5

NAME OF COMMITTEE	Licensing Committee
DATE	18 September 2013
REPORT TITLE	The appointment, revocation and re-appointment of taxi stands in the District
Report of	The Business Support / Licensing Manager
WARDS AFFECTED	All Wards

Summary of report:

To approve the proposals of changing two taxi stand provisions in Kingsbridge.
To update, review and confirm the Authority's taxi stand provision in the South Hams.

Financial implications:

With the exception of advertising these proposals (4.1 below) there are no direct financial implications to the Council from this report

RECOMMENDATIONS:

That the Committee resolves to recommend to Council:

1. **To exercise the Council's powers under Section 63 of the Local Government (Miscellaneous Provisions) Act 1976, to revoke the previous appointment of the taxi stand outside Peacocks, 2 Fore Street, Kingsbridge, TQ7 1NY.**

2. **To exercise the Council's powers under Section 63 of the Local Government (Miscellaneous Provisions) Act 1976, to approve the appointment of the South Hams taxi stands set out in Appendices A of this report.**

3. **That the Business Support Manager be authorised to advertise the above proposals required by Section 63(2) of the Local Government (Miscellaneous Provisions) Act 1976.**

4. **That if no written representation or objection is received relating to the notice published in accordance with (3) above within the 28 days period following the publication of that notice, or received and subsequently withdrawn, the taxi stands referred to in paragraph 1 of this recommendation be deemed revoked and accordingly in paragraph 2 the taxi stand(s) be deemed appointed.**

- 5. That following the revocation and appointment of the taxi stands as afore mentioned on paragraphs 1 & 2 that Devon County Council as the Highways Authority be requested to put in place or remove the appropriate legal provisions and to delete or mark out the ranks as appropriate.**

Officer contact:

Graham Munson Business Support / Licensing Manager
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1. BACKGROUND

The South Hams District Council licence 138 Hackney Carriages that operate throughout the district. These vehicles can be seen around the towns and have a 'taxi' roof sign and a SHDC identification plate displayed on the rear of the vehicle. When the vehicles are not booked by a fare paying passenger they will be either plying for hire while making their way to the nearest available taxi stand or will have arrived at a taxi stand and awaiting their next fare paying passenger.

1.1 There are existing taxi stands at the following locations:

- Ivybridge – Centre of Glanvilles Mill Car Park spaces for 5 vehicles (SHDC land)
- Dartmouth – South Embankment – 22 meters of waiting area (DCC highway)
- Totnes – The Railway Station – 26 meters of waiting (British Rail land)
- Totnes – The Plains – 26 meters of waiting (DCC highway)
- Kingsbridge – Lime Grove – 17 meters of waiting outside Morrisons (DCC highway)
- Kingsbridge – the Bus Station – spaces for 5 vehicles (SHDC land)
- Kingsbridge – Bottom of Fore Street outside Peacocks 14 meters of waiting area but restricted to 6pm and 7am daily for taxis.

1.2 The limited waiting stand outside Peacocks is not used by taxis so the intention is to 'revoke' the position and form ('appoint') a new stand in the middle of Fore Street, close to the Reel Cinema and town post office. This is near to where there previously was a taxi stand, before it was removed when Devon County Council (DCC) redesigned the Fore Street traffic flow. It is now proposed to reinstate the stand, albeit in a slightly different position.

1.3 DCC have already carried out consultations for the proposed new rank near to the post office and cinema and will finance the necessary traffic Order, road markings and signage.

1.4 Although DCC write the no parking (except for taxis) traffic Order for the taxi stand, there is an additional requirement for the District Council to formally 'appoint' the stand. This will enable Fixed Penalty Notices to be issued by Civil Enforcement Officers to any non-taxis parked on the stand in contravention of the traffic Order.

- 1.5 As the District Council is required to advertise proposals to 'appoint' and 'revoke' stands in Kingsbridge, it would also be sensible to 're-appoint' the remaining stands in the South Hams so to update the Civil Enforcement Officers authority.

2. PROCEDURE or ISSUES FOR CONSIDERATION

- 2.1 Section 63(1) of the Local Government (Miscellaneous Provisions) Act 1976 states that: 'a District Council may from time to time appoint stands for hackney carriages for the whole or any part of the day on any highway maintained at public expense and, with the consent of the owner, on any other land and from time to time, the Council may also alter or revoke any stand so appointed.
- 2.2 These powers do not allow the Council to appoint stands:
- so as to unreasonably prevent access to premises;
 - so as to impede the use of bus stops or unreasonably interfere with access to passenger road transport operator's stations or depots.
 - on the highway without the consent of the highway authority.
- 2.3 Before exercising its powers, the Council must give notice to the Police and publish the proposal in at least one local newspaper allowing 28 days for objections or representations to be made.

3. LEGAL IMPLICATIONS

- 3.1 There is no right of appeal regarding the designation or amendment of a taxi rank.
- 3.2 The Council is legally required to consult with both the Devon County Council (as the Highways Authority) and the Devon and Cornwall Constabulary. Both the County Council and the Police have indicated that they support the taxi rank provision. The Licensing Office has also had discussions with bus operators and shop proprietors who may be affected by the proposals. The discussions have not resulted in any issues or objections.
- 3.3 It is an offence for any person without reasonable cause to permit any vehicle other than a hackney carriage to wait on a hackney carriage stand.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications to the Council other than advertising costs which will be approximately £400 and will be covered by existing funds in the taxi licensing budget.'

5 RISK MANAGEMENT

5.1 The risk management implications are:

Corporate priorities engaged:	Improving the local economy and promoting community life.
Statutory powers:	Local Government (Miscellaneous Provisions) Act 1976 Section 63 The Town Police Clauses Act 1847
Considerations of equality and human rights:	Compliance with the Human Rights Act 1998
Biodiversity considerations:	Not applicable
Sustainability considerations:	As above under corporate priorities engaged
Crime and disorder implications:	Section 17 of Crime and Disorder Act 1998 applies.
Background papers:	South Hams District Council Conditions of Licence for Hackney Carriage Vehicles/Drivers and Private Hire Vehicles/Drivers/Operators (blue book – March 1999). South Hams District Council Hackney Carriage Byelaws (1988)
Appendices attached:	Appendix A – Location of proposed and existing taxi stands.

No	Risk Title	Risk/Opportunity Description	Inherent risk status			Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel		
1	If taxi stands are not correctly 'appointed' by the District Council and motorist park on them, then Civil Enforcement Officers will not be able to issue Fixed Penalty Notices to the offending motorists.	<p>An opportunity to update the legislative requirements for all the taxi stand in the South Hams, to 'appoint' the new rank, 'revoke' the rank not being used and to 'appoint' (re-appoint) all other existing stands.</p> <p>There is no appeal against the Licensing Committee Decision.</p>	3	2	6 ↔	<p>The matter is being listed before the full Licensing Committee.</p> <p>It will be formally advertised for anybody to comment.</p> <p>If there are objections which are not withdrawn or satisfactory resolved the matter will be referred back to the Licensing Committee.</p>	Business Support Manager

To appoint a taxi stand:

(No waiting at any time except taxis – 24 hrs)

Kingsbridge: to appoint a stand on the west side of Fore Street outside The Shambles from a point 30 meters north of White Hart Passage for a distance of 5 meters in a northerly direction.

To re-appoint taxi stands:

(No waiting at any time except taxis – 24 hrs)

Kingsbridge: to re-appoint a stand on the south side of Lime Grove alongside Morrisons supermarket from a point 85 meters west of its junction with Cookworthy Road for a distance of 17 meters in a westerly direction.

Kingsbridge: to re-appoint an area in the north corner of Kingsbridge Bus Station for 5 vehicles for a distance of 13.1 meters alongside the pavement on the east side.

Dartmouth: to re-appoint a stand on South Embankment on the east side of the road outside Station Restaurant from a point 92 meters north of its junction with Hauley Road for a distance of 22 meters in a northerly direction.

Ivybridge: to re-appoint an area in the centre of Glanvilles Mill Car Park spaces for 5 vehicles each space measuring 2.4 meters x 4.8 meters and adjacent to each other.

Totnes: to re-appoint a stand on The Plains on the west side of the road from a point 18 meters south of its junction with Fore Street for a distance of 10 meters in a southerly direction

Totnes: to re-appoint a stand on The Plains on the east side of the road from a point 38 meters south of its junction with Bridgetown for a distance of 6 meters in a southerly direction.

Totnes: to re-appoint a stand on The Plains on the west side of the road from a point 3 meters south of its junction with Ticklemore Street for a distance of 10 meters in a southerly direction.

Totnes Railway Station: to reappoint a stand on the northwest side of the station approach road from a point 169 meters in a north-easterly direction from its junction with the A385 Station Road for a distance of 26 meters in north-easterly direction bending at the end in a northerly direction.

AGENDA
ITEM

6

SOUTH HAMS DISTRICT COUNCIL

AGENDA
ITEM

6

NAME OF COMMITTEE	Licensing Committee
DATE	18th September 2013
REPORT TITLE	Implementation of the Scrap Metal Dealers Act 2013
Report of	The Business Support / Licensing Manager
WARDS AFFECTED	All Wards

Summary of report:

To seek Members' endorsement of the recommendations to Council, as below:

- a) To note that Part 3 (5)(d) of the updated Constitution (Scheme of Delegation) already lists the Scrap Metal Dealers Act 2013 as a Statute with delegated powers to the Licensing Committee / Sub-committee and the Head of Environmental Health & Housing.
- b) To seek the approval of Members for the proposed fees to be charged for the process;
- c) To seek the approval of Members for the Economy and Environment Scrutiny Panel to regularly review future fees and charges under this legislation.

Financial implications:

There are no direct financial implications to the Council from this report other than the income forecasts and charging basis are set at section 4 of this report.

RECOMMENDATIONS:

That the Committee resolves to recommend to Council:

- 1. To authorise the amendments to Part 3 of the Constitution, Section 5(d), by deleting reference to the Scrap Metal Dealers Act 1964 and deleting reference to the Vehicle (Crime) Act 2001 and Motor Salvage Operators Regulations 2002.**
- 2. To approve the initial fees in respect of Scrap Metal Dealers Site and Collectors Licences as set out in paragraph 4.4 in the body of this report.**
- 3. For the Economy and Environment Scrutiny Panel to regularly review future fees under this legislation and to make recommendations to Council.**

Officer contact:

Graham Munson

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1. INTRODUCTION / BACKGROUND

- 1.1 The Scrap Metal Dealers Act 2013 (the Act) received Royal Assent on the 28 February 2013 delivering much needed reform of the scrap metal sector. The Act will provide effective and proportionate regulation of the sector creating a more robust local authority run licensing regime that will support legitimate dealers yet provide the powers to effectively tackle unscrupulous operators. It should raise trading standards across the whole sector.
- 1.2 The Act will allow local authorities to decide who should and should not be licensed, allowing them to refuse a licence upon application or to revoke a licence at any time if they are not satisfied that the applicant is a suitable person to carry on business as a Scrap Metal Dealer. The Act also creates closure powers for unscrupulous dealers who operate without a licence. It extends the record keeping requirements placed upon Scrap Metal Dealers and requires the verification of the people Scrap Metal Dealers are transacting with. The Act will integrate the separate regulation for motor salvage operators with the scrap metal sector and bring to an end the cash exemption given to some collectors under the 1964 Act.
- The Act creates a fee raising power, to allow local authorities to recover the costs stemming from administering and seeking compliance with the regime. The South Hams have four motor salvage operators and twelve scrap metal dealers presently licensed and again within the new Act, similar to the previous legislation, there is an element of shared compliance responsibility between the local authority and the police.
- 1.3 The Commencement and Transitional Provisions Order was made by Parliament on 6th August 2013 (Statutory Instrument 2013 No. 1966) bringing into force the Act in stages.
- 1.4 The new legislation repeals the Scrap Metal Dealers Act 1964 (and linked legislation) and Part 1 of Vehicles (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Act maintains local authorities as the principal regulator and gives councils the power to better regulate these industries by allowing them to refuse to grant a licence to 'unsuitable' applicants and a power to revoke licences if the dealer becomes 'unsuitable'.

1.5 The Act provides that an application for a licence must be accompanied by a fee. The fee is set locally by each council on a cost recovery basis, but local authorities have a duty to have regard to guidance issued by the Secretary of State. The guidance has outlined the issues that should be considered by councils when setting the fee and what activities the fee can cover. This 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 to ensure compliance (this part of the Act comes into force on 1st September 2013).

1.6 The Act incorporates the separate regulatory scheme for motor salvage operators under the Vehicles (Crime) Act 2001 into this new regime. This is to replace the current overlapping regimes for the vehicle salvage and scrap metal industries with a single regulatory scheme. The Act also revises the definition of 'scrap metal dealer' and 'scrap metal' to ensure they reflect the twenty-first century scrap metal industry.

2. Summary

2.1 What is a scrap metal dealer?

'Carrying on business as a scrap metal dealer' and 'scrap metal'

A person carries on business as a scrap metal dealer if the person—

- (a) carries on a 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)).

2.2 What is a mobile collector?

'Mobile collector' means a person who—

- (a) carries on business as a scrap metal dealer otherwise than at a site, and
- (b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.

2.3 What is a motor salvage operator?

For the purposes of paragraph 2.1(b) above, a person carries on business as a motor salvage operator if the person carries on a business which consists —

- (a) wholly or partly in recovering salvageable parts from motor vehicles for re-use 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), or
- (d) wholly or mainly in activities falling within paragraphs (b) and (c).

- 2.4 The Act defines a “scrap metal dealer” as a person who is for the time being carrying on business as a scrap metal dealer, whether or not authorised by a licence.
- 2.5 It further states that “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.
- 2.6 Attached to this report (Appendix A) is a brief summary of the various sections within the Act.

3. Implementation timetable

- 3.1 The Home Office has released the following implementation timetable:
- The Commencement Order was made on 6th August 2013 which brought the fees element into effect on 1st September.
 - The main provisions of the Act commence on 1st October including the offence of buying scrap metal for cash.
 - Dealers and motor salvage operators registered immediately before 1st October will be deemed to have a licence under the Act from 1st October.
 - Provided the dealer submits an application for a licence on or before 15th October 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 15th October but does not supply all the required information with the application form then the deemed licence remains in effect after 15th October.
 - Where a dealer with a deemed licence fails to submit an application on or before 15th October the deemed licence will lapse on 16th October.
 - Other scrap metal dealers, not previously registered, will be able to apply for a licence from 1st October 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 is recommended that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1st December.
 - All other enforcement provisions within the Act commence on 1st December.
- 3.2 The Council therefore needs to be in a position to take applications (and to charge a fee for applications) from 1st October 2013.

4. Proposed Licence Fees.

What costs can local authorities charge for when issuing a licence?

4.1 The power to set fees has been passed to individual local authorities, so that any fees levied in each local area is set by reference to the actual costs to each authority. The EU services directive states that a licence fee can only be used to pay for the cost 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.

4.2 Local authorities may charge for the assessment of an application for a licence, the assessment of an application to vary a licence, and the assessment of an application for licence renewal. In effect, the costs of a licence should reflect the time spent assessing and administering applications, processing them, having experienced licensing officers review them, storing them, consulting on the suitability of an applicant, reviewing relevant offences, the decision on whether to issue a licence, as well as the cost of issuing licences in a format that can be displayed. Consulting the local authority's enforcement records in order to determine the suitability of the applicant is chargeable within the licence fee costs, as are costs associated with contested licence applications but not appeals to the Magistrates. The licence fee cannot be used to support enforcement activity against unlicensed scrap metal dealers; any activity taken against unlicensed operators must be funded through existing funds. Such activity against unlicensed operators includes issuing closure notices; with applications for closure orders subsequently made to a Magistrates Court. The cost of applying to the Magistrates Court for a warrant (Section 16(5)(6) and (7) of the 2013 Act) for entry to unlicensed premises, by force if necessary, will incur legal costs to be borne by the local authority and police.

4.3 The costs associated with defending a Judicial Review into whether the local authority has failed to have regard to the guidance on fees, is not chargeable under the licence regime.

4.4 Proposed Fees:

Application for the grant of a Site Licence £175.00
Application to renew a Site Licence £125.00
Application to transfer to Mobile Collector £75

Application for the grant of a Mobile Collectors Licence £125.00
Application for the renewal of a Mobile Collectors Licence £80.00
Application for the transfer to a Site Licence £75.00

5. Proposed delegations

- 5.1 The responsibilities under the Scrap Metal Dealers Act 2013 have already been delegated to the Licensing Committee, Licensing Sub-Committee and to The Head of Environmental Health in the updated Constitution and Scheme of Delegation. The matters remaining is to remove mention in the Scheme of Delegation to the Scrap Metal Dealers Act 1964, remove mention of the Vehicle (Crime) Act 2001, remove mention of the Motor Salvage Operators Regulations 2002 and to further delegate from The Head of Environmental Health and Housing to the Business Support / Licensing Manager and Licensing Officer, thus:

The hearing of representations by the Licensing Sub-Committee (three Members) and the determination of applications for a licence of a Scrap Metal Dealer, under the Scrap Metal Dealers Act 2013, where it is proposed by the Head of Environmental Health and Housing / Business Support / Licensing Manager / Officer to refuse or to cancel a licence or to vary a licence under section 4 of the Act and the applicant has given notice to the authority, within the prescribed time, that they require the opportunity to make representations about that proposal.

- 5.2 In respect of the Business Support / Licensing Manager / Officer, it is recommended that Scheme of Delegation from Head of Environmental Health and Housing be amended by the addition of the following:

To licence, renew or vary a licence, of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013.

To serve Notice of his proposal to refuse or cancel a licence of a Scrap Metal Dealer under the Scrap Metal Dealers Act 2013.

To serve Notice of his proposal to vary a licence of a Scrap Metal Dealer under section 4 of the Scrap Metal Dealers Act 2013.

The determination of applications for a licence of a Scrap Metal Dealer, under the Scrap Metal Dealers Act 2013 where it is the intention to refuse or cancel a licence or to vary a licence under section 4 of the Act, where the applicant has not served notice requiring the opportunity to make representations to the authority in respect of the proposal to refuse or cancel a licence, or to impose conditions on a licence.

6. Revocation of a licence and formulating and imposing licence conditions

- 6.1 If a licence has been granted, it may be revoked or licence conditions imposed on a scrap metal dealer if the subsections within Clause 4 of the Scrap Metal Dealers Act are triggered. A local authority may impose conditions pending an appeal against revocation (section 4 (7)) or if the applicant or site manager has been convicted of a relevant offence (section 3 (8)).

7. Variation of licence

- 7.1 Schedule 1 paragraph 3(1) indicates that a local authority may, on an application, vary a licence by changing it from one type to another so a Site Licence may be changed to a Collectors Licence and vice versa.

8. LEGAL IMPLICATIONS

- 8.1 Schedule 1(6) of the Act provides that an 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 with the approval of the Treasury. This Guidance is therefore binding on all licensing authorities to that extent.

9. FINANCIAL IMPLICATIONS

- 9.1 There are no financial implications to the Council for this Agenda Item (**also see above**).

10. RISK MANAGEMENT

- 10.1 The risk management implications are:

Corporate priorities engaged:	Improving the local economy and promoting community life.
Statutory powers:	Scrap Metal Dealers Act 2013. The Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013.
Considerations of equality and human rights:	Compliance with the Human Rights Act 1998
Biodiversity considerations:	Not applicable
Sustainability considerations:	As above under corporate priorities engaged
Crime and disorder implications:	Section 17 of Crime and Disorder Act 1998 applies.
Background papers:	SHDC Constitution and Scheme of Delegation
Appendices attached:	Appendix A – Brief summary of sections within the Act which is useful information but not necessarily required within the main body of this report.

No	Risk Title	Risk/Opportunity Description	Inherent risk status			Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel		
1	Fees	If fees are not approved then the council will be unable to collect payment. Allows the provision of this service to become cost neutral. Previous there was no fee for registering a Scrap Metal Merchant.	3	2	6 ⇄	The matter is being listed before the full Licensing Committee. Fees to be reviewed regularly by the Economy and Environment Scrutiny Panel	Business Support Manager
2	Constitution and Scheme of Delegation	Allows matters to be dealt with by the Licensing Sub-committee.				Could be moved up to the full Licensing Committee if considered necessary.	

Appendix A

Brief summary of Sections within the Scrap Metal Dealers Act 2013

- a) Section 1 of the Act requires that a scrap metal dealer obtains a licence in order to carry on business as a scrap metal dealer. It will be an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. This offence is punishable on summary conviction with a fine not exceeding level 5 on the standard scale (this part of the Act comes into force on 1st October 2013).
- b) Section 2 provides further detail in respect of the licence, including that there will be two types of licence, one for a site and the other for a mobile collector (for those carrying on business otherwise than at a site).
- c) A site licence will be issued by the local authority in whose area a scrap metal site is situated and will require all of the sites at which the licensee carries on the business as a scrap metal dealer within the local authority area to be identified and a site manager to be named for each site. In doing so, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area.
- d) A mobile collector's licence will authorise the licensee to operate as a mobile collector in the area of the issuing local authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal. The licence does not permit the collector to collect from any other local authority area; a separate licence would need to be obtained from each local authority in whose area the individual wished to collect. A licence does not authorise the licensee to carry on a business at a site within any area - should a collector wish to use a fixed site, they would need to obtain a site licence from the relevant local authority. There is no restriction as to the location where the collector can transport and sell their metals.
- e) A licence will be issued for a period of three years from the date of issue. The Secretary of State will have the power under Schedule 1, paragraph 1(4) of the

- f) Section 3 requires that the licensing authority has to be satisfied that an applicant is a suitable person to carry on business as a scrap metal dealer. In considering suitability, the local authority may have regard to any relevant information, including whether any relevant enforcement action has been taken against the applicant or whether the applicant has been convicted of a relevant offence. The Secretary of State has a power to prescribe in regulations the meaning of relevant offence and relevant enforcement action. It is intended that this will be in line with the criteria used by the Environment Agency when issuing environmental permits under the Environmental Protection Act 1990. The authority must also have regard to any guidance on determining suitability which will be issued from time to time by the Secretary of State, and the authority may consult with other organisations to assist in determining suitability.
- g) Section 3 also allows local authorities, when issuing a licence, to include conditions on it if the licensee or site manager has been convicted of a relevant offence. Subsection (8) specifies the two conditions that can be imposed by local authorities on a licence, namely:
 - (a) That the dealer must not receive scrap metal except between 9 a.m. and 5 p.m. on any day;
 - (b) 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.
- h) Section 4 provides the licensing authority with the discretion to revoke a licence on particular grounds, including where the local authority is no longer satisfied that the licensee is a suitable person to carry on the business as a scrap metal dealer. The revocation of a licence can only be carried out by a local authority as the licensing authority.
- i) Section 4 also allows the licensing authority to vary a licence, imposing the conditions stipulated above, if the licensee or a site manager is convicted of a relevant offence.
- j) If the licensing authority proposes to refuse an application for the grant or variation of a licence, or intends to revoke a licence, it must give the applicant or licensee a notice which sets out what the authority proposes to do and the reasons for it. The notice must state that the applicant may make representations against any of these decisions within 14 days.
- k) Section 6 places a duty on the local authority to supply any such information as requested relating to a scrap metal licence to any other local authority, the Environment Agency, the Natural Resources Body for Wales and to police forces.

- l) Section 7 requires that a register of licences issued under the Act should be maintained by the Environment Agency in England and the Natural Resources Body for Wales in Wales. Local authorities will provide the appropriate information on all licences issued in their geographic areas in order that this register can be updated regularly. The register will be made openly accessible to the public and will include: the name of the authority which issued the licence; the name of the licensee; any trading name; the type of licence; the site(s) covered by the licence and the expiry date of the licence.
- m) Section 10 requires that the licensee display a copy of their licence. For site operators this must be in a prominent place in an area accessible to the public. For mobile collectors, it must be in a manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil these requirements. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale.
- n) Section 11 places a requirement on scrap metal dealers, site managers and employees who have been delegated the responsibility to do so, to verify the identity of the person they are receiving metal from and the person's address. This verification must be done by reference to data, documents or other information obtained from a reliable or independent source, such as the Identity and Passport Service, the Driver and Vehicle Licensing Agency, a bank or utility company etc.
The Secretary of State will prescribe in regulations the data or documents which are sufficient, or not sufficient as the case may be, for verifying identity.
- o) It will be an offence not to obtain and verify the seller's identity, punishable by a fine not exceeding level 3 on the standard scale. The offence will apply to the scrap metal dealer, the site manager and any person, who under arrangements made by either the scrap metal dealer or the site manager, has responsibility for fulfilling this requirement on behalf of the business.
- p) Section 13 sets out the record-keeping requirements in respect of any scrap metal received by a scrap metal dealer in the course of their business. Information that is required to be recorded includes the type of metal being purchased; the time/date of the transaction; vehicle registration mark; personal information on the seller; who is acting on behalf of the dealer and proof of the non-cash transaction. Failure to comply with the requirements of this section is an offence attracting a penalty up to level 5 on the standard scale.

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MINUTES OF THE MEETING OF THE LICENSING COMMITTEE HELD AT FOLLATON HOUSE, TOTNES ON WEDNESDAY 18 SEPTEMBER 2013

MEMBERS

* Cllr J H Baverstock - Chairman

* Cllr P K Cuthbert - Vice-Chairman

* Cllr J I G Blackler

* Cllr B E Carson

* Cllr R J Carter

* Cllr P K Cuthbert

* Cllr R D Gilbert

* Cllr M Hannaford

∅ Cllr D W May

∅ Cllr C M Pannell

* Cllr M F Saltern

* Cllr S A E Wright

* Denotes attendance

∅ Denotes apology for absence

Officers in attendance and participating:

All Agenda Items: Business Support Manager, Licensing Officer, Solicitor and Member Services Manager

L.01/13 **MINUTES**

The minutes of the meeting of the Licensing Committee held on 8 November 2012 and the Sub-Committees held during the period 9 April 2013 to 30 May 2013 were all confirmed as a correct record and signed by the Chairman.

L.02/13 **DECLARATIONS OF INTEREST**

Members were invited to declare any interests in the items of business to be considered during the course of the meeting, but none were made.

L.03/13 **THE APPOINTMENT, REVOCATION AND RE-APPOINTMENT OF TAXI STANDS IN THE DISTRICT**

Members were asked to consider a report that asked them to approve the proposals of changing two taxi stand provisions in Kingsbridge, and to update, review and confirm the Authority's taxi stand provision in the South Hams.

The Business Support Manager explained to Members the background to the report. Following a brief discussion, it was then:

RECOMMENDED

That Council be **RECOMMENDED**:

1. To exercise the Council's powers under Section 63 of the Local Government (Miscellaneous Provisions) Act 1976, to revoke the previous appointment of the taxi stand outside Peacocks, 2 Fore Street, Kingsbridge TQ7 1NY;
2. To exercise the Council's powers under Section 63 of the Local Government (Miscellaneous Provisions) Act 1976, to approve the appointment of the South Hams taxi stands set out in Appendix A of the presented report;
3. That the Business Support Manager be authorised to advertise the above proposals required by Section 63(2) of the Local Government (Miscellaneous Provisions) Act 1976; and
4. That if no written representation or objection is received relating to the notice published in accordance with (3) above within the 28 days period following the publication of that notice, or received and subsequently withdrawn, the taxi stands referred to in paragraph 1 of this recommendation be deemed revoked and accordingly in paragraph 2 the taxi stand(s) be deemed appointed.

L.04/13

IMPLEMENTATION OF THE SCRAP METAL DEALERS ACT 2013

The Committee considered a report which sought approval to make recommendations to Council in relation to the Scrap Metal Dealers Act 2013 that had received Royal Assent on 28 February 2013.

The Business Support Manager introduced the report and outlined the new legislation. Mobile scrap dealers would now be required to carry identification and pay a fee to be registered. The legislation had been introduced to prevent cash handling and also to bring motor salvage and general scrap dealers under one piece of legislation.

In discussion, reference was made to:-

- (a) people who had registered to carry scrap metal, even though it was not their main business. It was confirmed that such people would be contacted to see if they still required registration under the new legislation;
- (b) the Police Authority and Environmental Health Department being enforcers of the legislation;
- (c) the various checks that were undertaken when applications to register as a scrap metal dealer were received.

It was then:

RECOMMENDED

That Council be **RECOMMENDED**:

1. To authorise the amendments to Part 3 of the Constitution, Section 5(d), by deleting reference to the Scrap metal Dealers Act 1964 and deleting reference to the Vehicle (Crime) Act 2001 and Motor Salvage Operators Regulations 2002;
2. To approve the initial fees in respect of Scrap Metal Dealers Site and Collectors Licences as set out in paragraph 4.4 of the presented report; and
3. That the Economy and Environment Scrutiny Panel regularly review future fees under this legislation and make recommendations to Council.

L.05/13

SUMMARY OF NEW/VARIATION OF PREMISES LICENCES ISSUED BETWEEN 1 APRIL 2013 AND 17 SEPTEMBER 2013 PLUS LICENCES ISSUED UNDER THE MISCELLANEOUS PROVISIONS ACT 1982 PLUS OTHER MISCELLANEOUS LICENCES

The Business Support Manager circulated a table of licences that had been issued between 1 April 2013 and 17 September 2013 to enable Members to make any comments.

It was agreed that the document would be circulated with the minutes.

Following a brief discussion it was then:

RESOLVED

That the table of licences issued between 1 April 2013 and 17 September 2013 be noted.

L.06/13

EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED

“That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following items of business in order to avoid the likely disclosure to them of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A to the Act”

L.07/13 **TO DETERMINE WHETHER THERE IS REASONABLE CAUSE TO SUSPEND OR REVOKE THE HACKNEY CARRIAGE DRIVER LICENCE – WHETHER THE DRIVER IS ‘FIT AND PROPER’**

Consideration was given to an exempt report which sought to determine whether there was ‘reasonable cause’ to suspend or revoke a Hackney Carriage Driver Licence in accordance with Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, as amended by Section 52 of the Road Safety Act 2006.

The Chairman introduced the report. The Hackney Carriage Driver was in attendance at the meeting and was given the opportunity to address the Committee. Some Members asked questions of the Hackney Carriage Driver and the Business Support Manager confirmed the options that were open to the Committee.

(At this point, the Hackney Carriage Driver was asked to leave the meeting to enable the Committee to make a decision. The Solicitor and Member Services Manager remained in the meeting. It was also agreed that one of the Members of the Committee would not take part in the debate or vote as the Hackney Carriage Driver was known to him).

The Decision

The Chairman then proceeded to announce the decision as follows:

‘The Committee is not willing to suspend or revoke the Hackney Carriage Driver Licence at this time but is minded to give an official warning’.

(Meeting commenced at 10.00 am and concluded at 11.30 am).

Chairman

APPENDIX A

Summary of New / Variation of premises licences and club premises certificates issued between 1 April 2012 to 31 March 2013

Licensing Act 2003 / Gambling Act 2005

Date received	Name of premises	Type of application	Outcome
17.04.12	Bakers Bar, Dartmouth	New	Full hearing – granted with amendments by sub-committee
18.04.12	Morrisons, Totnes	Variation	Application withdrawn following representations
19.04.12	Morrisons, Kingsbridge	Variation	Mediated – approved by sub-committee
25.04.12	The Devon Juicer	New	On hold
12.06.12	Co-operative Food, Modbury	Variation	Advertised incorrectly, returned to applicant. Not re-submitted.
12.06.12	Co-operative Food, Ivybridge	Variation	Advertised incorrectly, returned to applicant. Not re-submitted.
19.06.12	Packhorse Inn, South Brent	Minor variation	Granted by officer
22.06.12	Pickwick Inn, St Ann's Chapel	New	Granted by officer
31.07.12	Kingsbridge Inn, Totnes	Variation	Full hearing – granted with amendments by sub-committee
31.07.12	Dolphin Inn, Newton Ferrers	Minor variation	Representations so not granted. Not re-submitted
01.08.12	Flavel Centre, Dartmouth	Minor variation	Granted by officer
03.09.12	Regal Club, Kingsbridge	Variation	Mediated – approved by sub-committee
11.09.12	South Hams Bingo & Social Club	Variation to bingo licence	Granted by officer
03.10.12	Hermitage Inn, Kingsbridge	Minor variation	Granted by officer

12.10.12	Riverford Farm Shop, Kitley	New	Granted by officer
18.10.12	Smith Street Delicatessen, Dartmouth	New	Granted by officer
29.10.12	Wharfside Brasserie, Kingsbridge	Variation	Mediated – approved by officer
21.11.12	Treby Arms, Sparkwell	Minor variation	Granted by officer
28.11.12	Café Bovisands	New	Granted by officer
30.11.12	Bull Inn, Totnes	Minor variation	Granted by officer
19.12.12	Royal Oak, Malborough	Minor variation	Granted by officer
19.12.12	Thurlestone Golf Club	Minor variation	Granted by officer
19.12.12	Sharpham House, Ashprington	New	Mediated – approved by officer
08.01.13	Kingswear Castle (Vessel)	New	Granted by officer
10.01.13	Gara Rock Restaurant, East Portlemouth	New	Granted by officer
14.01.13	Dartmoor Zoo, Sparkwell	Variation	Mediated – approved by officer
24.01.13	Crabshell Inn, Kingsbridge	Variation	Mediated – approved by officer
08.02.13	Co-operative Food, Newton Ferrers	Variation	Granted by officer
08.02.13	Co-operative Food, Malborough	Variation	Full hearing – granted with amendments by sub-committee
08.02.13	Co-operative Food, Kingsbridge	Variation	Full hearing – granted with amendments by sub-committee
08.02.13	Co-operative Food, Crossroads Service Station, Plymstock	Variation	Granted by officer
08.02.13	Co-operative Food, South Brent	Variation	Full hearing – granted with amendments by sub-committee
08.02.13	Co-operative Food, Totnes	Variation	Full hearing – granted with amendments by sub-committee
08.02.13	Co-operative Food, Dartmouth	Variation	Granted by officer

22.02.13	Anchor Inn, Ugborough	New	Granted by officer
06.03.13	Volksfest, Newnham Park, Plympton	Variation	Granted by officer
06.03.13	Dartmouth Golf & Country Club	Minor variation	Granted by officer
07.03.13	Aune Valley Meat, Loddiswell	New	Granted by officer
08.03.13	Anchorstone Café, Dittisham	Variation	On hold

Issue of licences/Amendments under Licensing Act 2003, Gambling Act 2005 and The Local Government (miscellaneous provisions) Act 1982 in the period 1st April 2012 to 31st March 2013

Transfer of premises licence	35	Issued by officer
Change of designated premises supervisor	114	Issued by officer
Personal Licences New	50	Issued by officer
Temporary Event Notices	610	Acknowledged by officer

Gambling Act 2005

Category D Machines – (fruit machine £70 payout) New	9	Issued by officer
Small Society Lotteries (New)	19	Issued by officer
Occasional Use Notice	4	Issued by officer
Variation to Gambling Premises Licence	1	Issued by officer
Family Entertainment Centre Gaming Machine Permits	1	Issued by officer

The Local Government Miscellaneous Provisions Act 1982

Hackney Carriage Drivers (New and Renewal)	146	Issued by officer
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Vehicles (New and Renewal)	154	Issued by officer
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Private Hire

Drivers (New and Renewal)	23	Issued by officer
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Vehicles (New and Renewal)	18	Issued by officer
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Operators (New and Renewal)	11	Issued by officer
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Combined Driver Licences (New and Renewal)	0	Issued by officer
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Miscellaneous Licensing

Animal Boarding Licence (New and Renewal)	19	Issued by officer
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Pet Shop Licences (New and Renewal)	4	Issued by officer
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Riding Establishments (New and Renewal)	11	Issued by officer
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Skin Piercing (New)	11	Issued by officer
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Motor Salvage Operator (New)	0	Issued by officer
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Scrap Metal Dealer (New and Renewal)	7	Issued by officer
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APPENDIX B

Licensing Act 2003 – mediated applications with agreed amendments approved by officer

Date received	Premises	Type of application	Date granted	Representation	Agreed amendments
29.10.12	Wharfside Brasserie, Kingsbridge	Variation	27.11.12	Police and Environmental Health	Amendment to hours for recorded music, sale of alcohol and opening hours and inclusion of additional conditions. All parties agreed a hearing was not necessary.
19.12.12	Sharpham House, Ashprington	New	18.1.13	Resident	Amendment to hours for music outside and inclusion of additional conditions. Both parties agreed a hearing was not necessary.
14.1.13	Dartmoor Zoo, Sparkwell	Variation	11.2.13	Police	Inclusion of additional conditions. Both parties agreed a hearing was not necessary.
24.1.13	Crabshell Inn, Kingsbridge	Variation	21.2.13	Environmental Health	Inclusion of additional conditions. Both parties agreed a hearing was not necessary.
29.4.13	South Devon Arts Centre, Totnes	New	28.5.13	Police	Inclusion of additional conditions. Both parties agreed a hearing was not necessary.

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