
SCRAP METAL DEALERS ACT 2013

**Responsible Cabinet Member – Councillor Chris McEwan
Economy & Regeneration Portfolio**

Responsible Director – Ian Williams, Director of Economic Growth

SUMMARY REPORT

Purpose of the Report

1. To invite Members to approve the delegation of powers in respect of dealing with applications and variations of licences to collect scrap metal ; the reviews of such licences and the setting of fees in respect of both mobile collector and site licences.

Summary

2. This report provides information for Members in respect of the licensing regime for collectors of and dealers in scrap metal following the introduction of the Scrap Metal Dealers Act 2013
3. This is a further report on this matter. An earlier report was presented to Council on 26 September 2013. Explanatory detail is set out in the main body of the report.

Recommendation

4. It is recommended that :-
 - (a) That all of the powers available to the Council from the Scrap Metal Dealer's Act 2013 be delegated to the Assistant Director, Regulatory Services and that the Officers Scheme of Delegation as set out in Part 2 of the Council's Constitution (Responsibility for Functions) be updated to reflect this
 - (b) That in circumstances where it is proposed to refuse, cancel or vary a licence under the Act and where the Council has received notice from the applicant within the prescribed time, that a hearing be convened for the matter to be more fully considered. The Assistant Director, Regulatory Services will appoint a senior officer to conduct a hearing of the matter (anticipated in most circumstances to be the Licensing, Parking, Trading Standards and CCTV Manager).
 - (c) That Cabinet approves the licence fees in respect of the Scrap Metal Dealer's Act 2013, as detailed in paragraph 27 of this report

- (d) That schedule 4 of the Council's Constitution be amended to add the Scrap Metal Dealers Act 2013 to the list of Prosecuting Acts.

Reasons

- (e) To ensure that the Council can meet its statutory obligations as set out in the 2013 Act

Ian Williams
Director of Economic Growth

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Background Papers

The Scrap Metal Dealers Act 1964
The Vehicles (Crime) Act 2001
The Scrap Metal Dealers Act 2013
The Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013

S17 Crime and Disorder	The legislation referred to in this report addresses issues in respect of the prevention of crime in that it provides for implementation of legislation controlling the scrap metal trade.
Health and Wellbeing	There are no issues which this report needs to address
Efficiency	This report has no impact on the Council's Efficiency Programme.
Diversity	This report does not impact on the Council's diversity programme
Carbon Impact	There are no issues which this report needs to address
Wards Affected	The proposals affect all Wards
Groups Affected	The proposal potentially affects all members of the public
Budget and Policy Framework	The Budget and Policy framework is not affected
Key Decision	The proposals do not represent a key decision
Urgent Decision	This is an urgent decision as the transitional provisions of this legislation came into effect on 01 October 2013
One Darlington: Perfectly Placed	The regulation of scrap metal trade will provide protection to the legitimate dealers

MAIN REPORT

Information and Analysis

5. The Scrap Metal Dealers Act 2013 (The SMDA 2013), which commenced on the 1st of October 2013, replaced the Scrap Metal Dealers Act 1964 and the Motor Vehicles Crime Act 2001. It created a new licensing regime for motor salvage operators and also collectors of scrap metal, the latter of which was formerly subject to a registration scheme.
6. The SMDA 2013 started life as a Private Members Bill and received Royal Assent on 28 February 2013. Its purpose is to regulate the scrap metal trade and reduce metal theft rates by creating a new regulatory scheme. While the Scrap Metal Dealers Act 1964 has been repealed, section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 has been re-enacted. This retains the offence of buying scrap metal for cash which has been in effect since 03 December 2012. The Act can be enforced both by officers of the local authority and the Police
7. The SDMA 2013 requires that scrap metal dealer sites and mobile collectors dealers are licensed to carry on the business of collecting scrap metal. It also gives Councils the power to refuse to grant a licence where the applicant (whether an individual or director or company secretary of a Company) for such a licence is deemed to be unsuitable to operate as a scrap metal dealer. Applicants for licences are subject to a basic criminal record check and a list of relevant offences has been specified in regulations made by the Secretary of State. Further guidance about suitability may be issued from time to time by the Secretary of State. The guidance issued on 01 October 2013 is binding on local authorities.
8. A Site licence authorises the licensee to carry on a scrap metal business at any site in the Council's area which is identified in the licence. There may be multiple sites identified in one licence and each site requires a site manager. The licence permits the licence holder to transport scrap metal to and from each site from any local authority area.
9. A Collector's licence allows the licence holder to operate as a collector only in the area of the issuing local authority. A separate licence is required from every local authority area that the collector wishes to operate in. A Collector's licence does not authorise the licence holder to operate a site.
10. A scrap metal dealer can only hold one type of licence in any one local authority area and therefore an applicant must decide whether they wish to apply for a site licence or a collector's licence. Licences last for 3 years and trading without the requisite licence is a criminal offence which currently attracts a fine of up to £5000.

Timescales For Introduction Of The New Regime

11. The licensing regime for the SMDA 2013 commenced on 01 October 2013. The Home Office created a transitional process to enable existing businesses (i.e.

currently registered collectors and motor salvage operators) to continue to operate while at the same time providing time for local authorities to process applications.

12. A Commencement Order made on 06 August 2013 provided for the transitional arrangements to be introduced. A scrap metal dealer who immediately before 01 October 2013 was registered under either section 1 of the Scrap Metal Dealers Act 1964 (2) or section 1 of the Vehicles (Crime) Act 2001 (3) was deemed to be authorised by a licence from 01 October 2013 until they were either issued with a licence or informed of the Council's decision to refuse a licence. This was however subject to the dealer submitting an application for a licence under the SMDA 2013 from 01 October and no later than 15 October 2013. If a dealer failed to make such an application the deemed licence lapsed on 16 October 2013 and there was no right of appeal. If however a dealer made an application which was subsequently refused by the Council there is a right of appeal to the Magistrates Courts and the dealer will be permitted to carry on trading until the appeal has been disposed of. The trading may however be subject to specific conditions in the case of a refusal because of convictions for relevant offences.
13. Where an applicant was not registered under the 1964 Act or the 2001 Act before 1 October 2013 they were able to apply for a licence from 01 October 2013 but were unable to trade after 1 October 2013 until a licence was issued. Local authorities therefore needed to deal with applications before 01 December 2013 when the full enforcement of the provisions of the SMDA 2013 commenced.
14. The offence of dealing in scrap metal for cash was re-enacted and re-commenced on 01 October 2013.
15. As part of the application process in respect of determining the suitability of the applicant the council may consult other persons, including:-
 - (a) Any other local authority
 - (b) The Police
 - (c) The Environment Agency

The National Register

16. The SMDA 2013 has created a requirement for a national register of scrap metal dealers which will be maintained by the Environment Agency for all licences issued in England. Local Authorities are required to pass on specified information to the Environment Agency whenever a licence is issued, varied or revoked. This register is a public register.

Delegations

17. The LGA guide to the SMDA 2013 advised that that the scheme was to be run by local authorities and was to be based on the legislation for alcohol licences created in the 2003 Licensing Act. Members will be aware that with a few statutory exceptions the majority of functions of the 2003 Act are delegated to the Licensing

Act 2003 Committee and in turn the power to determine contested application or review licences is further delegated to sub committees of 3 Members from the parent committee. Officers then deal with all uncontested applications.

18. On 26 September 2013 a report similar to this report was considered by full Council. Full Council approved the delegation of powers and the setting of fees and the General Licensing Committee further approved the actual scheme of delegation. This approach was taken by the vast majority of councils in England.
19. Since the introduction of the new legislation Officers have granted 16 site licences and 15 collector licences. It has not been necessary to refer any applications, to date, to the Licensing Sub Committee.
20. It has subsequently come to light that the Home Office has erred by not updating the Local Authorities (functions and Responsibilities) (England) Regulations 2000. Schedule 1 to these Regulations specifies those functions which are **not** to be the responsibility of an Authority's Executive (i.e. require referral to full Council) and most licensing functions are detailed in this section. The Scrap Metal Dealers Act 1964 fell within this Schedule until it was repealed by the SMDA 2013. It is clear that the Scrap Metal Dealers Act 2013 should have replaced the 1964 Act but it has been overlooked by the Home Office. Consequently the omission makes the function an executive function.
21. When Local Authorities became aware of this the issue was raised through the Local Government Association and other bodies and it was anticipated that an amendment would be made through a Statutory Instrument to resolve the matter. Unfortunately more than 5 further months have passed without the matter being addressed and this therefore leaves the Council vulnerable to challenge, particularly if an application is to be refused and subsequently appealed to the magistrates' courts.
22. In the light of information Cabinet is requested to approve an amended Scheme of Delegation which will operate until such time as the anomaly is resolved. The options available to Cabinet are to retain the decision making process in its entirety or to delegate to a Sub Committee of Cabinet, to an individual Cabinet Member or to an Officer the power to determine all applications, but in particular contested applications, and also to review existing licences. Cabinet cannot delegate these functions to a non – Cabinet Committee or Sub Committee such as the Council's Licensing Committee.
23. The determination of contested applications and reviews of licences will require a hearing, at which the applicant/licence holder will be invited to attend along with a licensing officer who will present the matter and a legal officer to support the person hearing the matter. All uncontested applications can be delegated to Officers to process in the normal way.
24. It is proposed therefore that Cabinet delegates the decision making function to the Assistant Director , Regulatory Services, in respect of the granting of uncontested applications, the issuing the initial intention to refuse notification and the determination of the outcome of contested applications and reviews of licence and

he, in turn will delegate it to a suitable officer. This will permit expedited hearings and ensure the legality of all decisions made until such times as the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 have been amended to make this a non -executive function in line with other licensing functions.

Application Fees

25. An application for either a Site or a Collector's licence must be accompanied by a fee. Local Authorities were able to set fees from 01 September 2013 but had to have regard to guidance issued by the Home Office, the requirements of the European Union Services Directive and any licensing case law. Attention is specifically drawn to the recent case of Hemming v Westminster City Council which makes it clear that a fee cannot cover the cost of enforcement (and prosecution) against unlicensed traders. Officers understand from an LGA training event that the cost of appeals against decisions of the Council also cannot be included in any fee.
26. When setting fees the cost of processing and granting Applications (including hearings), support services, training of staff and Members, providing advice to applicants, carrying out inspections , making and reviewing policies, issuing licences and time spent in providing information for the national register can be taken into account.
27. A calculation of fees has been undertaken, based on previous Home Office Guidance on hourly rates for officers. This was discussed by the 5 Tees Valley Authorities in an attempt to harmonise fees given that a Collector's licence is required for each local authority area in which a collector works and the anticipation that collectors will work across 2 or more of the Tees Valley areas. As a result of this work a harmonisation exercise was undertaken and the following fees were proposed by Darlington, Middlesbrough and Redcar and Cleveland Councils

Collector's licence

New Application	£150
Renewal	£15
Minor Variation	£150
Major Variation	£50
	(and in the case of a change from a Collector to a Site licence a further £65 per site per year remaining on licence)

NB a minor variation would be a straightforward change in personal details e.g. a change of personal address.

Site licence

New Application	£350 + £195 for every additional site
Renewal	£270 + £195 for every additional site
Minor Variation	£15
Major Variation	£50 (+ £65 per additional site per year remaining on licence where variation adds a site)

All licences last for a period of 3 years

Equalities Impact Assessment

28. An impact assessment has not been undertaken as this is a new statutory function over which the Council has very little influence. In addition the time scale provided to meet the requirements of the new legislation has been extremely limited.

Conclusion

29. The delegation of the functions detailed above will enable the Council to meet its statutory function of accepting and dealing with applications made under the Scrap Metal Dealers Act 2013.