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**SCRAP METAL DEALERS ACT 2013 - DELEGATION OF POWERS**

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

**Responsible Director – Richard Alty, Director of Services for Place**

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**Purpose of 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 a new licensing regime for collectors of and dealers in scrap metal following the introduction of the Scrap Metal Dealers Act 2013.

**Recommendations**

3. That the authority to grant, refuse, vary or revoke a licence in respect of the collection of scrap metal in accordance with the Scrap Metal Dealer's Act 2013 be delegated to the Council's General Licensing Committee and that Part 2 of the Council's Constitution (Responsibility for Functions) be updated to reflect this new legislation.
4. That Council approves the charging of fees in respect of the Scrap Metal Dealer's Act 2013, that the authority to determine the appropriate fees be delegated to the Director of Services for Place and that schedule 4 of the Council's Constitution (Exceptions – Finance) be updated to reflect this new responsibility.
5. That schedule 4 of the Council's Constitution be amended to add the duties and powers available to the Council within the Scrap Metal Dealers Act 2013 to the list of functions delegated to the Assistant Director Policy and Regeneration.
6. 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

7. To ensure that the Council can meet its statutory obligations as set out in the 2013 Act.

**Richard Alty**  
**Director of Place**

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### BACKGROUND PAPERS

- (i) The Scrap Metal Dealers Act 1964
- (ii) The Vehicles (Crime) Act 2001
- (iii) The Scrap Metal Dealers Act 2013
- (iv) 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	This report does not change the Budget or Policy Framework.
Key Decision	The proposals do not represent a key decision
Urgent Decision	This is an urgent decision as the transitional provisions of this legislation come 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

8. The Scrap Metal Dealers Act 2013 (The SMDA 2013), which commences on the 1st of October 2013, replaces the Scrap Metal Dealers Act 1964 and the Motor Vehicles Crime Act 2001. It creates 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.
9. 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.
10. 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 will be subject to a basic criminal record check and a list of relevant offences will be 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.
11. 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.
12. 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.
13. 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 will 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**

14. The licensing regime for the SMDA 2013 will commence on 1 October 2013. The Home Office has 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
15. A Commencement Order made on 06 August 2013 provides 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) will be deemed to be authorised by a licence from 1 October 2013 until they are either issued with a licence or informed of the Council's decision to refuse a licence. This is however subject to the dealer submitting an application for a licence under the SMDA 2013 from 1 October and no later than 15 October 2013. If a dealer fails to make such an application the deemed licence will lapse on 16 October 2013 and there will be no right of appeal. If however a dealer makes an application and this is subsequently refused by the Council there will be 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.
16. Where an applicant has not been registered under the 1964 Act or the 2001 Act before 1 October 2013 they may apply for a licence from 1 October 2013 but they will not be able to trade after 1 October 2013 until a licence has been issued. Local authorities will need to deal with applications before 1 December 2013 when the full enforcement of the provisions of the SMDA 2013 will commence.
17. The offence of dealing in scrap metal for cash is re-enacted and will re-commence on 1 October 2013
18. 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**

19. 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 will be required to pass on specified information to the Environment Agency whenever a licence is issued, varied or revoked. This register will be a public register.

## **Application Fees**

20. An application for either a Site or a Collector's licence must be accompanied by a fee. Local Authorities are able to set fees from 01 September 2013 but must 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.
21. When setting fees the Council can take into account 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.

## **Additional Information**

22. At the time of writing this report (22 August 2013) further guidance and the Regulations in respect of the SMDA 2013 had not been published. Such information is needed to enable fees to be set, application forms to be produced etc prior to 01 October 2013. If this information is not available it is difficult to see how the Act can be implemented from 01 October 2013.

## **Delegations**

23. The LGA guide to the SMDA 2013 advises that the scheme will be run by local authorities and is 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. It is therefore proposed that the same principle is adopted for this new piece of legislation (although it cannot be dealt with by the Licensing Act 2003 Committee and therefore needs to be delegated to the General Licensing Committee) and subject to the approval of Council a further report will be taken to the General Licensing Committee with a proposed scheme of delegation as described above. Approval of this delegation by Council will require an updating of the scheme of delegation within the Council's Constitution.

24. One of the statutory functions of the Licensing Act 2003 which was reserved for Council was the setting of fees. This has not been replicated in the case of the Scrap Metal Dealers Act 2013 and therefore it is proposed that the setting of the actual fees to be charged in respect of this function be delegated to the Director of Services for Place. This will enable the fees to be set quickly in respect of the SMDA 2013 should the guidance and regulations be further delayed rather than trying to call a special meeting of the General Licensing Committee. Because of the lack of information available and the deadline to set a fee before 01 October 2013 it will not be possible to consult with the affected trade on this occasion. Officers are however working closely with other local authorities in the North East Region to try to ensure some commonality in fee, particularly as collectors will require licences in each local authority area in which they trade. All fees are reflected annually in the medium term financial plan and it is proposed that the Cabinet Member is consulted in respect of the fees set for the SMDA 2013. Approval of this delegation by Council will require an updating of the scheme of delegation within the Council's Constitution.

### **Equalities Impact Assessment**

25. 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 is extremely limited.

### **Conclusion**

26. 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.