
THE SCRAP METAL DEALERS ACT 2013

PURPOSE OF THE REPORT

1. To inform Members of the enactment of the Scrap Metal Dealers Act 2013
2. To invite Members to approve the scheme of delegation as detailed within the report

RECOMMENDATIONS

3. Members are invited to delegate to Licensing Officers the power to grant or vary all uncontested applications in respect of the collection and purchase and selling of scrap metal in accordance with the Scrap Metal Dealers Act 2013 and to delegate to sub committees of 3 Members the power to grant, refuse or vary all contested applications for licences in respect of the collection and storage of scrap metal; to place conditions on such licences and/or revoke such licences as detailed in paragraphs 23-24 of this report.
4. Members are invited to note the proposed fees as detailed at paragraphs 17-21 of this report.

INFORMATION

5. 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.
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 While the Scrap Metal Dealers Act 1964 has been repealed, section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 has been re-enacted.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.
7. The SDMA 2013 requires that scrap metal dealer sites and mobile collectors dealers are licensed to carry on the business of collecting, buying and selling 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.

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 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

11. The licensing regime for the SMDA 2013 will commence on 01 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.
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) will be deemed to be authorised by a licence from 01 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 01 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.

13. 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 01 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 01 December 2013 when the full enforcement of the provisions of the SMDA 2013 will commence.
14. The offence of dealing in scrap metal for cash is re-enacted and recommences 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:
 - Any other local authority
 - The Police
 - 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 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

17. 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 Council has been invited to delegate the setting of the actual fees to be charged in respect of this function to the Director of Services for Place in the same way that setting of pavement café licence fees is delegated. This will enable the fees to be set quickly in respect of the SMDA 2013 should the guidance and regulations be further delayed. Because of the lack of information available and the deadline to set a fee before 01 October 2013 it has not been possible to consult with the affected trade on this occasion. All fees are however reflected annually in the medium term financial plan.
18. 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 for licences in respect of scrap metal 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 that the cost of appeals against decisions of the Council also cannot be included in any fee.

19. 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.
20. At the time of writing this report (16 September 2013) further guidance and all of the Regulations in respect of the SMDA 2013 had not been published. A calculation of fees has therefore been undertaken, based on previous Home Office Guidance on hourly rates for officers. This has been 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 has been undertaken and the following fees have been proposed by Darlington, Middlesbrough and Redcar and Cleveland Councils

Collector's licence

New Application	£150
Renewal	£150
Minor Variation	£15
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 will last for a period of 3 years

21. Subject to approval from Full Council approval for the above fees will be sought from the Director of Place and a verbal update will be given to Members at Committee.
22. For information officers can advise that Hartlepool Council's proposed fee for a Site licence is also £350 + £195 per additional site and for renewal is £270 + £195 per additional site. The remaining proposed fees are either slightly higher or slightly lower than the fees proposed by Darlington. Similarly Stockton Council's proposed fees are currently higher than those proposed by Darlington however both Hartlepool and Stockton have not yet finalised their fees and it may be that further harmonisation will occur.

DELEGATIONS

23. The LGA guide to the SMDA 2013 advises that 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 by Council 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. Delegation has been sought from Council to the General Licensing Committee as it cannot be delegated to the Licensing Act 2003 Committee. Council are due to consider this at their meeting on 26 September 2013 and subject to their approval (of which a verbal update will be given at Committee) it is proposed that the same principle as detailed above in respect of the Licensing Act 2003 is adopted for this new piece of legislation

24. The effect of such delegation will be that sub committees of 3 Members will be drawn from the parent General Licensing Committee to hear any contested applications or review of licences and officers will deal with all uncontested applications.

CONCLUSION

25. The SMDA 2013 aims to address the increasing rise in metal theft and to remove many of the loopholes in the previous legislation that have been exploited by unscrupulous traders and sellers. It will allow licensing authorities to consider the suitability of an applicant, including reference to any criminal record and any previous refusals of licence. It will also reinforce the prohibition on the sale of metal for cash and the requirement to have an audit trail from purchaser through to disposal of scrap metal. It is anticipated that such regulation will deter criminal activity and raise accountability.

Richard Alty
Director of Services for Place

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

Contact officer: Pam Ross: Extension 2647