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SCRAP METAL DEALERS ACT 2013

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REPORT FOR INFORMATION

**Purpose of Report**

1. To advise Members of a change to 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.

**Information and Analysis**

2. The Scrap Metal Dealers Act 2013 (The SMDA 2013), which commenced on 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.
3. The SMDA 2013 started life as a Private Member's 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 While the Scrap Metal Dealers Act 1964 has been repealed, section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 has been re-enacted.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 3 December 2012. The Act can be enforced both by officers of the local authority and the Police
4. 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 1 October 2013 is **binding** on local authorities.
5. 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.

6. 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.
7. 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.

## Delegations

8. The LGA guide to the SMDA 2013 advised 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.
9. On 26 September 2013 a 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.
10. Since the introduction of the new legislation Officers have granted 16 site licences and 15 collector licences. It was not necessary to refer any applications to the Licensing Sub Committee.
11. 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.
12. 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 passed without the matter being addressed and this therefore left the Council vulnerable to challenge, particularly if an application was to be refused and subsequently appealed to the magistrates' courts.
13. In the light of information Cabinet, at its meeting on 2 September 2014, was requested to approve an amended Scheme of Delegation which will operate until such time as the anomaly is resolved and also requested to approve the fees set in

respect of this function. The options that were available to Cabinet were

- (a) to retain the decision making process in its entirety, or
  - (b) 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.
14. Cabinet could not however delegate these functions to a non-Cabinet Committee or Sub Committee such as the Council's Licensing Committee.
15. It was proposed that Cabinet delegate 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.
16. Cabinet duly approved the fees and delegated the function to the Assistant Director of Regulatory services and he in turn has delegated it to the Licensing, Parking, Trading Standards & CCTV Manager. This delegation will remain until the Home Office amend the delegations through a Statutory Instrument; at which time the delegations will revert to Officers and the Licensing sub Committees.
17. The 31 licences already granted have since been re considered on the basis of the previous applications and reissued in accordance with the revised delegation.

### **Recommendation**

18. That Members note the contents of this report.

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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
- (v) Scrap Metal Dealers Act 2013 Council Report 26 September 2013
- (vi) Scrap Metal Dealers Act 2013 Cabinet Report 2 September 2014