



Report for:	Regulatory Committee	Item Number:	
Title:	Scrap Metal Dealers Act 2013- Fee setting and delegation of functions.		
Report Authorised by:	Stephen McDonnell Deputy Director of Operations and Community Safety		
Lead Officer:	Daliah Barrett		
Ward(s) affected: All	Report for Key/Non Key Decisions: No		

1. Describe the issue under consideration

- 1.1 This report sets out the implications for the council arising from the Scrap Metal Dealers Act 2013 (“the 2013 Act”) which establishes a new licensing regime for scrap metal dealers.
- 1.2 The proposed process for dealing with these new licences is outlined, including decision making arrangements both by officers, under delegated powers, and by the Regulatory Committee and Licensing Sub-Committees.
- 1.3 Licence fees to cover the cost of administering the new licensing regime are presented for agreement.

2. Cabinet Member introduction

- 2.1 The Scrap Metal Dealers Act 2013 received Royal Assent in February 2013, delivering much needed reform of the scrap metal sector. The 2013 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 will raise trading standards across the whole sector. It is being implemented in key stages between stages between 1 September 2013 and 1 December 2013.



3. Recommendations

That the committee:

3.1 Notes the requirements of the Scrap Metal Dealers Act 2013 and the proposed arrangements for its operation by the council, including decision making by this Committee and the Licensing Sub-Committees and, subject to Full Council agreement, officer delegation.

3.2 Agrees the proposed new licensing fees set out in paragraph 5.14 of the report.

4. Alternative options considered

4.1 The licensing regime created by the 2013 Act is mandatory and suitable arrangements need to be put in place for its operation by the council.

5. Background information

5.1 The Scrap Metal Dealers Act 2013 enables local authorities to decide who should and should not be licensed to deal with scrap metal, allowing them to refuse a licence upon application or to revoke a licence at any time if they are not satisfied as to the suitability of a person to carry on business as a scrap metal dealer.

5.2 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 with whom scrap metal dealers are transacting. The Act will integrate the separate regulation of motor salvage operators with the scrap metal sector and bring to an end the cash exemption given to some collectors under the Scrap Metal Dealers Act 1964 (“the 1964 Act”) which is being repealed.

5.3 The 2013 Act creates a fee raising power, to allow local authorities to recover the costs stemming from administering and seeking compliance with the regime.

5.4 In terms of recent background history, the Government had introduced initial changes in 2012 through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which amended the 1964 Act. This was broadly in response to an increase in metal theft across the UK which impacted on a number of service sectors including transport, electricity, street furniture, memorials, churches and schools. Cash payments for scrap metal were prohibited, the powers of entry into unregistered scrap metal sites were amended and the existing financial penalties for offences were increased.

5.5 The aim of the 2013 Act is to further strengthen the regulatory regime. It does so by giving the police and local authorities powers to refuse and revoke licenses, the ability to issue “closure notices” on scrap metal sites, imposing requirements on licence holders in respect of record keeping and the display of licences, and



increasing the rights of entry, inspection and the range of offences that may be prosecuted.

5.6 The 2013 Act brings in two types of licences:

- **Site Licence:** A site licence requires 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.
- **Collector's Licence:** A collector's licence authorises 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 should be obtained from each local authority from which the individual wishes to collect in. A collector's 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 will need to obtain a site licence from the relevant local authority.

5.7 An applicant for a licence must be suitable and the local authority, when determining suitability, may have regard to any information it considers relevant including in particular:

- Whether the applicant or any site manager has been convicted of any relevant offence;
- Whether the applicant or any site manager has been the subject of any relevant enforcement action;
- Any previous refusal for issue or renewal of a Scrap Metal Licence;
- Any previous refusal for an environmental permit or registration;
- Any previous revocation of a Scrap Metal Licence;
- Whether the applicant has demonstrated that there will be adequate procedures to comply with the Act.

The same considerations also apply to any director or company secretary of a company if the applicant is not an individual.

5.8 Once an application has been received the Local Authority may consult with:

- Any other local authority (if an application has been made or licence issued to the same applicant);
- Environment Agency;
- Police.



The Act has also introduced the requirement for the Environment Agency to keep and maintain a register of all scrap metal licences issued in England and that register will be open for public inspection.

Fee Setting Criteria

5.9 The 2013 Act provides that an application for a licence must be accompanied by a fee set by the local authority. This fee raising power is an essential component of the legislation as it will provide local authorities with the funding they need to administer the regime and ensure compliance. 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.

5.10 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.

5.11 The Licensing team's proposed fee structure has been established from a detailed workflow assessment and analysis and is:

	Collectors Licence	Site Licence
New application	£250.00	£350.00
Variation	£250.00	£350.00
Renewal	£190.00	£250.00
Replacement licence	£25.00	£25.00
Replacement of vehicle licence ID	£10.00	£10.00

The fees are comparatively in line with those being established by other London Boroughs, but it is important to bear in mind that each borough has to set fees according to its own cost of administering the process.

5.12 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



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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.

5.13 The envisaged procedure for the application will be as follows (not an exhaustive list):

- a) the individual dealer will complete an application form;
- b) there will be a review of this form by licensing officers to ensure it is complete, carry out the CRB checks receive the fees and create the records;
- c) the consultation process will commence with the Police and the Environment Agency;
- d) an initial visit will be carried out of the site by 2 officers to familiarise ourselves;
- e) the applicant will be given the opportunity to attend at a Licensing sub-committee to make representations to seek to persuade the committee to either grant an application, not to revoke a licence, or for conditions not to be imposed on the licence, if these actions have been proposed by the relevant Licensing officer;
- f) the licence will be issued, if granted;
- g) there will need to be an inspection after the licence is issued;
- h) if refused, partial refund to be granted.

5.14 In view of the nature of these businesses, it would not be appropriate for 1 officer to carry out inspections on their own. Site visits will therefore be carried out by 2 officers routinely. We have yet to establish if the local police will put resources into this although we currently liaise with a BTP Officer. The inspection regime is proposed to be every 6 months. This is to ensure that the purpose of the legislation can be implemented, namely to ensure that there is an audit trail for transactions relating to the trade of scrap metal and to attempt to reduce the related crimes.

5.15 The licensing team will also need to create an administrative and inspection regime for mobile collectors who will need a separate licence for each area of their operation and who may not live in the borough. The procedure for the application will be similar to that outlined above for a site licence.

5.16 We will need to have in place an inspection of records regime in carrying out follow up inspections with those that we license. A license also has to be displayed in any vehicles used for the business of collecting scrap.

Delegation of functions

5.17 The functions under the 2013 Act fall within the Regulatory and Licensing Sub-committee's terms of reference. It is proposed, however, that the majority of functions under the Act, including uncontested applications, be processed by officers and therefore delegated to them. This would reflect a similar set up to uncontested premises licence applications under the Licensing Act 2003 with which comparisons may be made. Such delegations must be approved by Full



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Council and it is intended that a report will be submitted for the meeting on 18 November 2013 for this purpose. The likely recommendation will be for the relevant parts of the Act to be delegated to the Regulatory Services Manager and to the Neighbourhood Action Team Manager.

5.18 It will be proposed however that the decision should be retained by the Licensing Sub-Committees in the following circumstances:

- i) the licensing service intends to refuse to grant an application;
- ii) the licensing service proposes to impose conditions on a licence;
- iii) the licensing service intends to revoke a licence; and
- iv) in all the above, the applicant has informed the local authority that they wish to make oral representations (i.e. to be considered by a Licensing Sub-Committee).

5.19 Under the 2013 Act, the principal functions imposed on the local authority apply from 1 October 2013. This means that we must, for example, be in a position to accept new applications from this date. Until Full Council has delegated functions under the Act to officers, i.e. for the period 1 October 2013 – 18 November 2013, these functions fall to the Regulatory Committee and, in the case of individual applications (even uncontested ones), to the Licensing Sub-Committees. As a practical approach to deal with this, any uncontested applications may be placed on the agenda of an upcoming Licensing Sub-committee (which has other business) for approval which will take very little time due to their uncontested nature.

5.20 Transitional provisions have been published dealing with licence holders under the 1964 Act e.g. they will be deemed to have a licence up until 15 October 2013 following which it will lapse if a new application has not been submitted.

6. Comments of the Chief Finance Officer and financial implications

6.1 Proposed fees have been set in line with Government guidelines in order to recoup costs of administering the license scheme. Therefore there is no impact on wider Council budgets.

6.2 As the fees are new, the fee level will need to be monitored to ensure compliance with statutory requirements.

7. Head of Legal Services and legal implications

7.1 The functions under the 2013 Act are non-executive and any delegations to officers must be approved by Full Council. Until that time, principal functions under the Act fall to the Regulatory Committee and, in the case of individual applications, to the Licensing Sub-committees. The fee raising power sits with the Regulatory Committee and officers have had regard to the statutory guidance issued by the Home Office specifically dealing with these fees. The fee raising power only came into effect on 1 September 2013. Notwithstanding the fact that the Regulatory and Licensing Sub committees' terms of reference are considered



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to cover the functions under the 2013 Act, due to the wider range of functions created by the Act, it is considered that amending the committees' terms of reference to specifically refer to "scrap metal dealing" will ensure better clarity.

8. Equalities and Community Cohesion Comments

8.1 The Council has a public sector equality duty to, in all its functions, have due regards to the need to, amongst other things, eliminate discrimination, harassment and victimisation of persons who possess any of the characteristics protected by section 4 of the Equality Act 2010 and promote equality of opportunity between people who possess those characteristics and those who do not.

8.2 The protected characteristics include Age, Disability, Sex (formerly Gender), Race, Sexual Orientation, Religion and Belief, Gender Reassignment, Marriage and Civil Partnership and Pregnancy and Maternity.

8.3 In carrying out its responsibilities for administration and compliance activities in relation to the Scrap Metals Dealers Act, for example, when assessing an application for a licence, granting or refusing a licence, revoking or varying a licence etc, the Council must be mindful of this duty and ensure that all applicants are treated fairly whatever their protected characteristics.

9. Use of Appendices

None

10. Local Government (Access to Information) Act 1985

10.1 Home Office Fee Guidance

10.2 LGA guidance to Local Authorities