

REPORT TO CONSTITUTION COMMITTEE

REPORT OF: Head of Environmental Services

REPORT NO: ENV592

DATE: 26 September 2013

TITLE:	Scrap Metal Dealers Act 2013	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	Amendment to the Constitution to enable delegated authority for the implementation of the Scrap Metal Dealers Act 2013	
PORTFOLIO HOLDER: NAME AND DESIGNATION:	Councillor John Smith Portfolio Holder: Healthy Environment	
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INITIAL IMPACT ANALYSIS:	Carried out and Referred to in paragraph (7) below	Full impact assessment Required:
Equality and Diversity	Amendments are mandated by Statute.	Not applicable.
FREEDOM OF INFORMATION ACT:	This report is publicly available via the Your Council and Democracy link on the Council's website: www.southkesteven.gov.uk	
BACKGROUND PAPERS	Scrap Metal Dealers Act 2013: http://www.legislation.gov.uk/ukpga/2013/10/enacted	

1. RECOMMENDATION

- 1.1 That the Constitution Committee recommends the Cabinet endorses the scheme of delegation set out in appendix 2 of this report for Council to adopt as an amendment to the Constitution.**

2. PURPOSE OF THE REPORT

- 2.1 This report outlines the details of the Scrap Metal Dealers Act 2013 including proposals for implementation and recommendations for delegations.

3. DETAILS OF REPORT

- 3.1 The increased cost of metal world-wide has resulted in an increase in metal theft across the UK. Police believe that the scrap metal industry offers the principal outlet for stolen metal in the UK.

- 3.2 The Scrap Metal Dealers Act 2013 comes in to force in October this year. It repeals and replaces the Scrap Metal Dealers Act 1964 and those parts of the Vehicles (Crime) Act 2001 that deal with Motor Salvage Operators.

- 3.3 The Act revises the regulatory regimes for scrap metal dealing and vehicle dismantling, giving Local Authorities more powers including powers to refuse and revoke licences and to enter and inspect premises.

- 3.4 In order for anyone to carry on in business as a scrap metal dealer they will have to have a licence which will last for three years. Unlicensed trading is a criminal offence.

- 3.5 Local Authorities have to make provision for the issue, administration and enforcement of scrap metal dealers' licences. This includes provisions to deal with any contested applications as well as setting fees.

- 3.6 The current framing of the legislation requires the whole process to fall to the Executive of the Authority. The Council needs to take action now to make sure that the proposals detailed in the main report are considered and adopted correctly in time to receive the first applications in October.

4. OTHER OPTIONS CONSIDERED

- 4.1 Officers had hoped to recommend adoption of an alternative scheme of delegation through the Licensing Committee of South Kesteven District Council, as it already has structures in place to provide a democratic forum to deal with contested applications and to oversee any dealings with problem premises. However the Home office has not yet legislated for this, and indeed may not do so. This proposal is obligated by the Home Office policy and the construction of the new Act. It meets the requirements of the legislation in the required timescales.

5. RESOURCE IMPLICATIONS

- 5.1 There will be an increase in workload for the Environmental Protection teams in undertaking scheduled compliance visits, together with the implications of ad-hoc enforcement work done in partnership with other agencies.
- 5.2 Licence fees can be set that will be based on cost recovery, including some checks of compliance. There will be an increase in income because the current legislation only allows for a partial cost recovery.

6. RISK AND MITIGATION

Risk has been considered as part of this report. No serious risks were identified. The Council has a statutory duty to adopt the provisions of the Scrap Metal Act 2013.

7. ISSUES ARISING FROM IMPACT ANALYSIS

- 7.1 No equality analysis is required. The proposed changes reflect new national government legislation.

8. CRIME AND DISORDER IMPLICATIONS

- 8.1 The new legislation has been introduced to reduce metal theft and reduce Crime and disorder.

9. COMMENTS OF FINANCIAL SERVICES

- 9.1 Financial Services comments are incorporated within the report.

10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES

- 10.1 The Scrap Metal Dealers Act 2013 replaces the Scrap Metal Dealers Act 1964 and provides a revised regulatory regime for scrap metal dealing. The Act has a phased introduction. The recommendation in the report will enable the Council to meet its duties as the Act is implemented.
- 10.2 At the time of writing, local authorities are awaiting clarification of the classification of this licensing function. The functions within the Act are likely to be non-executive functions of full council and authority from the full council is needed to delegate powers to officers to enable the council to respond appropriately under the new regime.

11. COMMENTS OF OTHER RELEVANT SERVICES

- 11.1 None.

12. APPENDICES:

- Appendix 1: summary of Scrap Metal Dealers Act 2013
- Appendix 2: proposed scheme of delegations

Appendix 1

1. Scrap Metal dealers Act 2013: SYNOPSIS

The Scrap Metal Dealers Act 2013 (the Act) was passed on 28 February 2013 and is due to come in to force in October this year. The new Act replaces the Scrap Metal Dealers Act 1964 and those parts of the Vehicles (Crime) Act 2001 that deal with Motor Salvage Operators.

The Act has revised the regulatory regimes for scrap metal dealing and vehicle dismantling. Local Authorities will continue to act as the principle regulator but the new act will give the authorities more powers including the new powers of refusal and revocation of licences if the dealer is considered unsuitable. In addition local authorities and Police have been given powers to enter and inspect premises. In order for anyone to carry on in business as a scrap metal dealer they will have to have a licence. Licences will last for three years. Trading without a licence is a criminal offence.

2. Background

The increased cost of metal world-wide has resulted in an increase in metal theft across the UK. The cost to the UK economy is between £220 million and £777 million a year according to two recent estimates. A wide range of sectors have been hit including national transport, electricity and telephone links, street furniture, and commercial and residential buildings including schools. Churches and war memorials have been desecrated. Police believe that the scrap metal industry offers the principal outlet for stolen metal in the UK.

The Government introduced initial changes in 2012 that took steps to prohibit cash payments for scrap metal and increase the existing financial penalties for offences under the Scrap Metal Dealers Act 1964.

The key features of the new Act include:

- Locally set licence fees.
- Suitability test.
- Revocation powers.
- Entry and inspection powers.
- Licence conditions supported by legislation.
- Closure powers for unlicensed sites.
- Requirement to display licences and identity badges.
- National register of licensed dealers.

3. How it Works

Two types of licence are specified within the Act:

Site licence.

- All the sites where a licensee carries on business as a scrap metal dealer have to be identified, and a site manager has to be named

for each site. This licence allows the licensee to transport scrap metal to and from those sites from any local authority area.

Collector's Licence.

- This allows the licensee to operate as a collector in the area of the issuing local authority. It does not allow the collector to operate in any other local authority area, so a separate licence has to be obtained from each council the collector wishes to operate in. The licence also does not authorise the licensee to operate a site. To do so they will need a site licence from the relevant local authority.

It should be noted that a dealer can only hold one type of licence in any one local authority area. They have to decide whether they are going to have a site or a mobile licence in any one area. They cannot hold both a site and mobile collector's licence from the same council but can hold a licence in more than one Local Authority.

The Act completely replaces the previous registration scheme local authorities operated for scrap metal dealers. Local government will now be responsible for the licensing of scrap metal dealers and ensuring compliance with the licensing regime in partnership with the police.

Local Authorities have to make provision for the issuing of scrap metal dealers' licences. South Kesteven District Council currently has 34 businesses recorded as scrap metal dealers and/or motor salvage operators. Home Office advice is to double this figure when planning implementation to allow for itinerant traders.

Appropriate procedures are required for considering applications and deciding whether an applicant is a suitable person to carry on business as a scrap metal dealer. No method of deciding licensing applications is set out in the Act, so an appropriate scheme of delegation will be required.

As part of the process by which an applicant's suitability is assessed they must submit a standard criminal record disclosure with their application. The local authority can also have regard to:

- 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.

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

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

Draft application forms have been prepared but are still subject to amendment and revision by the Home Office.

We are obliged to ensure that any licences issued are placed on the national register of licences maintained by the Environment Agency or Natural Resources Wales. We do not, as yet, have any information from the Home Office about how this process will work.

The new record keeping regime includes the requirement for dealers to verify the identity including the full name and address of the metal supplier and keep copies of proof of identification. In addition the dealer must keep records of the type and description of the metal, including weight and identifying marks, the date and time of receipt, the registration number of any vehicle delivering the metal, how the metal was disposed of and copies of any cheques used to pay for metal. All records must be kept for 3 years. The Act prohibits the payment of cash for metals.

4. Transitional Arrangements

The transitional arrangements were agreed by the Home Office on 8th August as follows:

- Local Authority power to set fees from **1 September**.
- All scrap metal dealers can apply for a scrap metal dealers licence from **1 October**.
- A scrap metal dealer who is currently registered under the Scrap Metal Dealers Act 1964 or Vehicles (Crime) Act 2001 needs to submit an application on or by **15 October** and will be deemed to have a temporary licence which is valid until a licence decision is issued.
- It is recommended that a formal licence decision is issued by local authorities by **1 December**.
- Local authorities will complete checks to assess applicants' suitability to hold a licence between 15 October and **1 December**.
- Formal decision and issue of licence, if appropriate, on **1 December**.
- If a registered scrap metal dealer does not submit an application on or by 15 October their deemed licence will lapse on 16 October. A deemed temporary licence which has lapsed does not give rise to a right to appeal. The dealer must submit an application and wait for a licence to be issued before they can trade legally.

- A local authority can impose conditions on a deemed temporary licence pending an appeal for the refusal of a licence.
- Scrap metal dealers who are not registered under the Scrap Metal Dealers Act 1964 or the Vehicles (Crime) Act 2001 can apply for a licence from 1 October but must wait for a licence to be issued before they can trade legally.
- The offence of buying scrap metal for cash will come into force on **1 October**.
- Local authority officers and police officers will have the right to enter and inspect premises from **1 October**.
- The majority of the other enforcement provisions within the Act will come into force on **1 December**.

5. Fees

Local authorities can charge fees for the issuing of licences, and must have regard to the guidance issued by the Home Office on 12 August. Any initial fee set will be reviewed during the first year of the new licensing regime and amended if appropriate.

The Provision of Services Regulations 2009: Regulation 18 (4) states that –

Any charges provided for by a competent authority which applicants may incur under an authorisation scheme must be reasonable and proportionate to the cost of the procedures and formalities under the scheme and must not exceed the cost of those procedures and formalities.

In addition recent case law (R (Hemming and Others) v Westminster City Council 2012) has highlighted the aspects of the licensing regime that can legally be recovered in charges that are levied by Licensing Authorities. In brief summary, the case established the important principles:

*“that where a Council profits from licence fees in that its expenditure is exceeded by its fee income, it must carry the surplus forward in determining the fee for future years;
that in authorisation schemes covered by the Provision of Services Regulations, enforcement costs may not be recharged to licensed operators.”*

All licence fees are reviewed annually to ensure cost recovery and compliance with the above legislation and principles as far as possible.

The proposals for application fees have not yet been finalised. It is recommended that fees set in South Kesteven should be made in reference to other Lincolnshire Authorities, which are currently being decided. It is recommended that a further report will be submitted to Cabinet with fee proposals.

Appendix 2

Scrap Metal Dealers Act 2013 – Scheme of Delegations

Delegations

Given the provisions in the Act for relevant persons to make representations in certain circumstances your officers consider it appropriate that applications which officers are minded to refuse, as well as cases where revocation or variation of the licence is being considered, ought to be heard by the Licensing Committee.

It is unfortunate that the current framing of the legislation precludes this as an option and instead requires the whole process to fall to the Executive of the Authority. We expect this anomaly to be clarified when further regulations are published sometime in October, but the Council needs to take action now to make sure that the delegated authority has been approved

Function:	Delegated to:
Fee setting	The S151 Chief Finance Officer in consultation with the relevant portfolio holder.
Administration & Enforcement of the Act – including powers to enter an inspect premises (Section 16) and serve Notices under Schedule 1, Section 7 (proposals to refuse, revoke or vary licences).	Operations Director or anyone authorised by them in writing
Grant of a site or collectors licence without conditions.	Operations Director or anyone authorised by them in writing
Grant of a site or collectors licence with conditions.	Operations Director or anyone authorised by them in writing
Refusal, revocation or variation of a site or collectors licence.	Operations Director or anyone authorised by them in writing
Power to make closure order	Licensing Committee