

2 October 2013		ITEM: 5
Licensing Committee		
Scrap Metal Dealers Act 2013		
Report of: Paul Adams, Principal Licensing Officer		
Wards and communities affected: All	Key Decision: Non key	
Accountable Head of Service: Gavin Dennett, Head of Public Protection		
Accountable Director: Lucy Magill – Director of Environment and Public Protection		
This report is Public		
Purpose of Report: To update the Licensing Committee of the progress of the setting of the fee level for all types of application, and the scheme of delegation, under the Scrap Metal Dealers Act 2013		

EXECUTIVE SUMMARY

The Scrap Metal Dealers Act 2013 (“the Act”) received Royal Assent on 28th February 2013 and comes into force from 1st October 2013. This report updates the Licensing Committee on the current position of the implementation of the Act and sets out the proposed scheme of delegation for dealing with matters under the Act and, proposes the fees to be charged for all applications made under the Act.

1. RECOMMENDATIONS:

1.1 That the Committee notes the information contained within the report.

2. INTRODUCTION AND BACKGROUND:

2.1 A report was presented at the Licensing Committee 16 July 2013, outlining the provisions of the Scrap Metal Dealers Act 2013. That report advised that a further report would be brought to that Committee in relation to the fee setting and the delegation of powers.

2.2 The Scrap Metal Dealers Act 2013 (“the Act”) received Royal Assent on 28th February 2013 and is comes into force from 1st October 2013.

2.3 The government when introducing this legislation have made it an executive function to allow for implementation in the short time period that has been given. The Home Office have advised that an amendment will be made in the

near future to make it a non executive function which will return the responsibility for licensing of Scrap Metal Dealers to the Licensing Committee. For now this is an executive function and the responsibility of Cabinet.

3. ISSUES, OPTIONS AND ANALYSIS OF OPTIONS:

Fees

- 3.1 Schedule 1(6) of the Act provides that an application must be accompanied by a fee set by the local authority. The power to raise a fee is designed to ensure that local authorities have the necessary funding to administer the regime and ensure compliance.
- 3.2 In setting a fee, the authority must have regard to any guidance issued by the Secretary of State with approval of The Treasury. Guidance on setting fees was published on 12 August 2013 and provides a general principle as to what can be included in the cost of a Licence.
- 3.3 The authority must be mindful of the principles of the EU Services Directive (Directive 2006/123/EC of The European Parliament and of the Council of 12 December 2006 on services in the internal market) which states “a Licence fee can only be used to pay for the cost associated with the licensing process. In effect, the authority must ensure that the income from fees does not exceed the costs of the administration and issue of the Licence.
- 3.4 Fees are required to be set for three categories of Licence. A fee for the assessment of an application for a new Licence, the assessment of an application to vary an existing Licence, and the assessment of an application for Licence renewal.
- 3.5 Guidance issued states that the cost of the Licence should reflect the time spent on:
 - All the activity required with processing and granting a Licence such as considering applications and assessing the suitability of the applicant.
 - The costs of staff associated with supporting the service, including senior staff with managerial responsibility for the service.
 - Support provided by other parts of the authority to the Licensing Team such as legal services and any other general charges recharges there might be for rooms, heating and lighting etc.
 - The cost of providing advice and guidance to applicants on what will be a new process.
 - Carrying out inspections and ensuring compliance with the law.
 - Training for staff and councillors in the requirements of the new legislation.
 - Costs associated with consulting other agencies and bodies when considering if an applicant is a suitable person.
 - Working with partners in ensuring compliance.
 - Making and reviewing any policies in relation to the operation of the new licensing regime.

- Issuing the Licence.
- Hearings
- Any officer time spent providing information for inclusion in the register of dealers.

- 3.6 The authority must be aware of case law, of which the Court of Appeal case of R (Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2013] EWCA Civ 591; [2013] WLR (D) 203 is especially relevant. The decision determined that the costs associated with enforcement of unlicensed activity should not be included in the Licence fee.
- 3.7 The Home Office guidance also states that fees cannot be used to pay for enforcement action against unlicensed dealers (particularly collectors) or as an economic deterrent or to raise funds for the local authority.
- 3.8 The limitation placed by the EU Services Directive around enforcement means that local authority's cannot recover the cost of issuing closure notices to unlicensed dealers and applying for closure orders from the magistrates' court, or for appeals against the decision to refuse or revoke a licence.
- 3.9 There is no requirement in the Act to consult on fees, and it would not be practical to do so during the transitional arrangements. Guidance, however, recommends that consultation should take place when fees are reviewed and any consultation may assist in reducing the potential for challenge where there has been a transparent and open process for setting them.
- 3.10 A consideration in setting fees will include an estimation of the number of licences the Authority is likely to issue.
- 3.11 The number of Scrap Metal Dealers and Motor Salvage Operators currently registered with the Authority is 65, and it is anticipated that the Authority will issue approximately 31 new site and 34 new Collectors' Licences after 1st October 2013. It is, however, not possible to anticipate the number of applications that may be received from Scrap Metal Dealers that are either not currently registered or will enter the industry in the future.
- 3.12 Based on the Guidance summarised in paragraph 3.6 of this report the fees for 2013/14 have been determined and are shown in the table below.

Licence Type	Site	Collector
New	£494	£315
Renewal	£408	£262
Variation	£112	£112

- 3.13 The fees shown above will be reviewed on an annual basis. The authority must be mindful that the total income generated through the collection of fees not exceed the anticipated costs of issuing Licences or vice versa
- 3.14 Appendix A provides benchmarking for the proposed fees nationally and across Essex, It is important to note the figures that are provided are of the

intended fee, all fees provided as subject to the approval of each authorities Executive.

Scheme of Delegation

- 3.15 In the case of applications received during the transitional arrangements or for any new applications, the authority will consult with the Environment Agency or equivalent and the Police. The authority will reserve the right to also contact any other local authority it feels necessary to determine the suitability of an applicant(s).
- 3.16 In the case where a Basic Disclosure Certificate highlights a relevant conviction the authority will seek further information from the Police to enable the authority to better assess the applicant(s) suitability.
- 3.17 The authority will also check public records held by the Environment Agency or equivalent to assess if any enforcement action has been taken by an individual. In certain circumstances it may also be necessary to make direct contact with the authorities given in 3.18 to assess if any on-going enforcement action is pending, which may not be held on a public register at the time of application.
- 3.18 If the Council should receive information that an applicant(s) have been convicted of a relevant offence a judgement will be made whether to refuse or grant the licence. The Council will take into account any information received by an applicant or other bodies. The Council will also take into account such information when the offence was committed, the nature of the offence or enforcement action, the gravity of the offence or enforcement action, when the enforcement action was taken or any other relevant information as defined by the Act.
- 3.19 In the case where the authority rejects an application(s) or revokes or varies a licence, the Council will notify the applicant or licence holder by way of a written notice. The Council will advise the applicant(s) or licence holder what the authority proposes to do and the reasons behind the action.
- 3.20 The notice will stipulate that the applicant/licence holder has the opportunity to make a representation or let the authority know that they wish to. The applicant/licence holder has at least 14 days from the date the notice to respond.
- 3.21 If the applicant/licence holder does not make a representation, or does not say that they wish to in that time period then the Council can refuse the application or revoke or vary the licence.
- 3.22 Where the applicant states they want to make representations, the authority will provide a further reasonable period in which to do so. If the applicant fails to provide a representation within the agreed period then the authority will refuse the application or revoke or vary the licence.

- 3.23 Where the applicant makes representations the authority has to consider them in accordance with the Act. If the applicant wishes to make oral representations the authority will arrange a hearing. It is anticipated that these hearings will follow the procedures for hearing under the Licensing Act 2003. The Council anticipate that further guidance on hearings will be issued.
- 3.24 Should the Council refuse an application, revoke or vary a licence the applicant/licence holder will receive a Notice of Decision, which will set out the Council's reasons for its decision.
- 3.25 The Notice will inform the applicant or Licence holder of their right to appeal to the Magistrates Court and where the licence has been revoked or varied and the date under which that comes into effect.
- 3.26 In cases where the applicant or any site manager has been convicted of a relevant offence or where the authority is revoking a licence the authority can impose conditions on the licence. The authority can impose one or both of two conditions, these conditions specify that:
- the dealer can receive scrap metal only between 9.00am and 5.00pm on any day, in effect limiting the dealer's operating hours; and/or
 - any scrap metal received has to be kept in the form the dealer received it for a set period of time, which cannot be more than 72 hours.
- 3.27 There is no equivalent set of conditions for collectors.
- 3.28 The Council is required to have the right delegations in place to make decisions and hear appeals if the council is to avoid legal challenge.
- 3.29 As the responsibility under the Act is currently an executive function, it falls to the responsibility of Cabinet, as opposed to the usual route of being delegated to the Licensing Committee. To allow for the timely implementation of responsibilities of the act the following delegations are recommended, until such a time that legislation is provided which will make it a non executive function and can be returned to the Licensing Committee.
- That the Leader of the Council delegate the following "executive" functions associated with the Scrap Metal Dealers Act 2013, as set out below:
 - Where there are no questions about the suitability of the applicant or; where the suitability of the applicant is in question but the applicant has not given notice to the Council, within the prescribed time, that they require the opportunity to make representations, the Principal Licensing Officer be delegated the following functions under the Scrap Metal Dealers Act 2013 for those applications:
 - to grant, renew or vary a scrap metal dealer's licence;
 - to refuse or revoke a scrap metal dealer's licence, or to impose conditions on a licence;

- to serve notice of the proposal to vary, refuse or revoke a scrap metal dealers licence
 - That a Scrap Metal Dealers Act Panel be established and delegated the authority to determine any applications that cannot be processed by the Principal Licensing Officer, where the suitability of the applicant to hold a scrap metal dealer's licence is in question and where the Council, as licensing authority, proposes to vary, refuse, revoke or impose conditions on a licence, provided the applicant has given notice to the Council, within the prescribed time, that they require the opportunity to make representations.
 - That the Scrap Metal Dealers Act Panel comprise the Cabinet Member for Public Protection and two officers comprising any Principal Officer or senior manager of Public Protection.
 - That the Scrap Metal Dealers Act Panel determine any applications using the established procedure rules used by the Licensing Committee / Licensing Sub-Committee when determining licence applications.
- 3.30 If the delegations set out a paragraph 3.32 above are agreed, the Monitoring Officer will reflect these in Chapter 3, Part 4 of the Council's Constitution. The delegations made would remain in force until the government amends the legislation and the function becomes non-executive. At such time, all functions under the Scrap Metal Dealers Act 2013 will revert to the Head of Public Protection, the Licensing Committee and the Licensing Sub-Committee.

4. REASONS FOR RECOMMENDATION:

- 4.1 This has been made an executive function by the Government to allow for a quick implementation in a short time period allowed. In order to receive and determine applications under the Scrap Metal Dealers Act 2013 the feel levels and scheme of delegation must be set. This report is for information only.

5. CONSULTATION (including Overview and Scrutiny, if applicable)

- 5.1 At this stage no consultation has been undertaken or is required.

6. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

- 6.1 None.

7. IMPLICATIONS

7.1 Financial

Implications verified by: **Michael Jones**
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This report is for information only, Cabinet will need to consider that the fee levels have been set on a cost recovery basis based on an estimation of the number of applications that could be received, against the guidance issued under the legislation. These fees should be revived on an annual basis to ensure they remain appropriate.

7.2 Legal

Implications verified by: **David Lawson**
 Telephone and email: **01375 652087**
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The legal implications are included in the body of the report and follow from guidance released recently by the Home Office/DCLG. The report gives a useful summary of the law regarding the setting of fees and the recent *Westminster* decision as well as considerations regarding the scheme of delegation. The Council's decisions are dictated largely by the law and are subject to challenge as to reasonableness so must be objectively justifiable.

7.3 Diversity and Equality

Implications verified by: **Samson DeAlyn**
 Telephone and email: **01375652472**
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There are no diversity Implications contained in this report.

7.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

None

BACKGROUND PAPERS USED IN PREPARING THIS REPORT (include their location and identify whether any are exempt or protected by copyright):

- Scrap Metal Dealers Act 2013.

APPENDICES TO THIS REPORT:

Appendix A – Benchmarking of proposed fees nationally and across Essex

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