

REPORT TO:	Council	AGENDA ITEM:
DATE OF MEETING:	26th September 2013	CATEGORY:
		RECOMMENDED
REPORT FROM:	Frank McArdle – Chief Executive	OPEN
MEMBERS' CONTACT POINT:	Stewart Broome – Senior Licensing Officer	DOC:
SUBJECT:	Implementation of the Scrap Metal Dealers Act 2013	REF:
WARD(S) AFFECTED:	All	TERMS OF REFERENCE:

1. Recommendations

That Council:

- (i) Approve the fees set out in paragraph 3.18.
- (ii) Approve the requirement for a criminal records Basic Disclosure Certificate, or Police National Computer search certificate for each applicant and site manager to accompany all applications as set out in paragraph 3.12.
- (iii) Allow applicants to pay the application fee via an instalment plan, during the transitional period as set out in paragraph 3.24.
- (iv) Approve the amendments to the Council's Scheme of Delegation set out in paragraph 3.26.

2. Purpose of Report

- 2.1 To provide Council with information regarding the implementation of the Scrap Metal Dealers Act 2013.
- 2.2 To provide Council with information to set the associated fees.
- 2.3 To allow Council to consider fee payment during the transitional period.
- 2.4 To provide Council with information to amend the current Scheme of Delegation.

3. Detail

Overview

- 3.1 The implementation of the Scrap Metal Dealers Act 2013 (the "Act") repeals the Scrap Metal Dealers Act 1964 and Part 1 of the Vehicles (Crime) Act 2001, creating a new regulatory regime for scrap metal recycling and vehicle dismantling. The Act was passed on 28th February 2013 and is due to come into force on 1st December 2013.
- 3.2 The Act was introduced in response to the growth in metal theft offences, driven by the increased cost of metal worldwide. Wide ranges of sectors have become victims of metal theft including national transport, electricity and telephone links, and residential buildings including churches and schools.

- 3.3 The Government introduced initial changes in 2012 that took steps to prohibit cash payments for scrap metal and amend the powers of entry into unregistered scrap metal sites and increase the existing financial penalties for offences under the Scrap Metal Dealers Act 1964. These changes were brought in under the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- 3.4 The Council currently has 13 registered scrap metal dealers (SMD) and 1 motor salvage operator (MSO). The registration for a 3 year licence is currently undertaken as a mainly administrative function by the Licensing Authority. However under the Act the Council as well as the Police will have powers to take enforcement action for all offences created by the Act. The current fee arrangements for the Council are as follows:
- SMD's – free registration for 3 years (Licensing Authority not permitted to charge a fee)
 - MSO's – pay a fee of £60 for a 3 year licence
- 3.5 The Act places the requirement on scrap metal dealers to obtain a new licence to operate as a scrap metal dealer. "scrap metal dealer" is defined by the Act as anyone:
- i) carrying on a business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
 - ii) carrying on business as a motor salvage operator (so far as that does not fall within the paragraph (i))

For the purposes of item (i), a person who manufactures articles is not to be regarded as selling scrap metal if that person sells scrap metal only as a by-product of manufacturing articles or as surplus materials not required for manufacturing them.

For the purposes of item (ii), a person carries on business as a motor salvage operator if the person carries on a business which consists—

- (a) wholly or partly in recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap,
- (b) wholly or mainly in buying written-off vehicles and subsequently repairing and reselling them,
- (c) wholly or mainly in buying or selling motor vehicles which are to be the subject (whether immediately or on a subsequent re-sale) of any of the activities mentioned in paragraphs (a) and (b), or
- (d) wholly or mainly in activities falling within paragraphs (b) and (c).

There are two types of licence specified in 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 of the area the collector wishes

to operate in. The licence does not authorise the licensee to operate a site; to do so they will need a site licence from the relevant local authority.

- A dealer can only hold one type of licence (i.e. one site licence, or one collector licence) in any one local authority area.
- Applicants 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 a mobile collector's licence from the same Council.

3.6 The following businesses will be included in the new regulatory regime:

- Scrap metal dealers (who operate from a site in the District)
- Motor salvage operators (who operate from a site in the District)
- Mobile collectors (who do not operate from a site but collect in the District), and
- All other businesses who buy or sell scrap metal 'in the course of their business (this does not include businesses who buy or sell scrap as the occasional result of their primary business (e.g. pawnbrokers)).

3.7 The new licensing regime created by the Act will commence on 1st December 2013. In order to provide time for Councils to process applications without existing businesses being in a position where they cannot operate, the Home Office is implementing a transition process. The transitional arrangements are contained in The Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013 ("the Order"), which was made on 6th August 2013.

3.8 The Order also specifies that the remaining sections in the Act commence on 1st October 2013, apart from the majority of criminal offences and enforcement related provisions, which will come into force on 1st December 2013.

3.9 Any dealer currently registered under the Scrap Metals Dealers Act 1964, or a motor salvage operator already registered under the Vehicles (Crime) Act 2001, will be deemed to have a licence under the 2013 Act until the Council grants a licence or sends the dealer notice of its decision to refuse the licence. This provision is subject to them submitting an application on or before the 15th October 2013. Failure to submit an application will result in their existing (or deemed) licence lapsing on 16th October 2013.

3.10 The Act maintains Local Authorities as the principal regulator but gives the powers to better regulate by allowing refusal of a licence, and a power to revoke licences.

3.11 The Act places a requirement on the Authority to ensure that all applicants and site managers are "suitable persons".

3.12 The Local Government Association's current guidance on this matter indicates an Authority can take into account any matters that it feels are relevant, but in particular whether any party to an application has been convicted of a relevant offence, or has been the subject of any previous enforcement action. It is proposed that the only way to be certain of the afore-mentioned is to require all applicants and site managers to provide a Basic Disclosure* certificate, or the results of a Police National Computer check*. It is suggested that these documents should be no older than one calendar month at the time the application is submitted*.

* Identical to the requirement placed on all Personal Licence holders by the Licensing Act 2003.

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

- The Environment Agency
- The Police

and may also consult with any other Local Authority it deems appropriate.

3.14 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.

Fees

3.15 Each licence application must now be accompanied by a fee set locally by each Local Authority on a cost recovery basis only. All Local Authorities must comply with the EU Services Directive, and pay regard to the guidance issued by the Secretary of State which outlines the issues that should be considered when setting the fee.

3.16 The ability to charge fees is an essential part of the new regime, which provides a large proportion of the funding needed to administer and ensure compliance with the new Act. However, it should be noted by Members that it will not be possible to recover all costs associated with the new Act, as the EU Services Directive requires that a licence fee can only be used for the costs associated with the licensing process and can not be used to recover enforcement costs against existing or illegal operators. The fees must not exceed the costs of providing the service.

3.17 It is acceptable to charge different fees for each type of licence under the Act.

3.18 The fee structure below is recommended.

Site Licence (new and renewal)	Total for a 3 year licence £645 + £190 per additional site
Collectors Licence (new and renewal)	Total for a 3 year licence £420

Ancillary Fees:

Conversion from Collectors Licence to Site Licence	£75.00 admin fee
Conversion from Site Licence to Collectors Licence	£75.00 admin fee
Change of name or address notifications	£10.50 admin fee
Addition of new site to a Site Licence	£190 annual fee (per site)
Replacement Licence	£10.50
Site Licence (change of site manager)	£10.50 or £75.00 admin fee*
* Where the proposed site manager has not been "suitable person" tested by the Council the fee will be £75.00	

3.19 In accordance with the EU Services Directive, and recent case law Officers have not conducted a benchmarking exercise with neighbouring Authorities.

- 3.20 The fees contained in the above tables (paragraph 3.18) are an estimate based on the information gathered in a recent time and motion survey. Although this survey was conducted prior to the Act coming into force, it enabled Officers to build an idea of the potential impact that the Act will have on the Authority.
- 3.21 The fees cover the costs of processing, consulting, and issuing the necessary documentation, and a percentage of the ongoing department costs incurred annually including those from specific compliance visits. The site fee is larger as compliance visits to sites are likely to take longer than those to collectors.
- 3.22 Every licence is issued for a period of 3 years. The Council is entitled to charge the full fee upon application. Council are asked to consider allowing transitional applicants to pay the respective fee via an instalment plan.
- 3.23 The Act has been commenced over a very short period of time which has had an impact on the ability of the trade to put aside funds in readiness. Also the proposed costs are considerably higher than those of the previous regime, which may cause hardship on some of the smaller operators.
- 3.24 It is suggested that Council permits the following instalment plan for all transitional applications:

Site Licence	£265.00 upon application + £190.00 at month 12 and month 24
Collector Licence	£190.00 upon application + £115.00 at month 12 and month 24

This suggestion does not come without risk, as there is no power to suspend, revoke, or refuse a licence on the grounds of none payment from a person or company enjoying the benefits of the licence. However, the Council does have clear procedures in place for recovering debts owed by the holders of other types of licence.

- 3.25 Current licence holders were invited to a meeting at the Council Offices on Thursday 5th September 2013, where they were informed of the new regime and the proposed fees. Unfortunately, only representatives of the large operators attended. No feedback has been received following this meeting, but the overwhelming feedback during the meeting was that the fees were reasonable, and the trade welcomed the Act providing the Council and its partners worked to ensure unlicensed operators are punished.

Delegation of Powers

3.26 It is recommended that Council make the following amendments to the Council's Constitution, and the Scheme of Delegation.

Matters to be dealt with	E.D.S Committee	Legal Democratic Services Manager	& (Legal & Democratic Service, and Environmental Health Officers)
Fee setting	X		
Processing applications and supply of information to external agencies			X
Entry, inspection and enforcement			X
Inclusion of conditions under section 3(8)			X
Refusal of licence		If the applicant requests hearing a	If no hearing is requested
Imposition of conditions on a licence under Section 4		If the applicant requests hearing a	If no hearing is requested
Revocation of licence		If the applicant requests hearing a	If no hearing is requested

4. Financial Implications

4.1 The costs of the new regime should be fully covered by the proposed fees. As the Act allows us to charge where the old regime did not a small net reduction in the costs incurred by the Council's general fund is expected. This figure is estimated to be in the region of £1,500 per annum.

5. Corporate Implications

5.1 These proposals will provide a framework for anyone wishing to start their own business, which will contribute directly to the corporate vision to make South Derbyshire a better place to live, work, and visit, and to the theme of sustainable growth and opportunity.

5.2 These proposals will demonstrate to members of the public that the Council takes the protection of local residents, and the reduction of crime seriously, which contributes to the theme of safety and security.