

Report to Executive

Agenda
Item:

A.10

Meeting Date: 30th September 2013
Portfolio: Finance, Governance and Resources
Key Decision: No
Within Policy and Budget Framework: No
Public / Private: Public

Title: Scrap Metal Dealers Act 2013
Report of: Director of Governance
Report Number: GD 44/13

Purpose / Summary:

The Scrap Metal Dealers Act 2013 comes into force progressively from 1st October 2013. Local Authorities are required to determine applications for scrap metal licences and set the application fee. The purpose of this Report is to ensure that the Council has the appropriate approvals and systems in place to administer the new arrangements.

Recommendations:

- (1) The Leader amend his Scheme of Delegation in the manner described in paragraph 2.2 (a) – (d) of this report;
- (2) The Executive note the recommendation of the Regulatory Panel meeting of 11th September 2013 and determine the appropriate fees to be charged.

Tracking

Executive:	
Overview and Scrutiny:	
Council:	

1. BACKGROUND

- 1.1** The Scrap Metal Dealers Act 2013 (“the 2013 Act”) received Royal Assent on 28 February 2013 and will come into force progressively from 1st October 2013.
- 1.2** The 2013 Act replaces the Scrap Metal Dealers Act 1964, which is listed in Schedule 1 to the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 (“the Functions Regulations”), along with the majority of other licensing matters, as not being the responsibility of the Executive. In effect this means that it is a Council function as opposed to one which falls within the remit of the Executive. The City Council has to date delegated the function to the Regulatory Panel. In addition, the Director of Governance and Licensing Manager each have delegated powers to deal with such applications.
- 1.3** In accordance with normal practice it was expected that the Functions Regulations would be amended by the Government to include reference to the 2013 Act, therefore all local authorities have been working towards their licensing/regulatory committees dealing with this. A report was prepared for the Regulatory Panel on 11th September 2013 for their information and consideration of fees, and this is attached hereto.
- 1.4** Since submission of that report, however, it has become apparent that the Home Office has not yet amended (and will not amend before the commencement date) the Functions Regulations to include the 2013 Act. The information is that they are aware it needs to be done but do not have this programmed in to their schedule. Subject to what is said below, contrary to how all other licensing matters operate, this may mean that responsibility for determining fees and applications under the Scrap Metal Dealers Act 2013 falls to the Executive.
- 1.5** Despite the above, there is an alternative position. Section 17 of the Interpretation Act 1978 provides that “Where an Act repeals and re-enacts, with or without modification, a previous enactment then, unless the contrary intention appears ... any reference in any other enactment to the enactment so repealed shall be construed as a reference to the provision re-enacted”. If the 2013 Act is taken to repeal and re-enact the 1964 Act, then, there is no requirement for an amendment to the Functions Regulations. At the time of writing this report, that is not the position which has been taken by Department for Communities and Local Government or the Local Government Association, who maintain that a change to the Functions Regulations will be needed.

- 1.6** A considerable number of Local Authorities have taken the opposing view, however, and they have put pressure on the LGA to confirm its position. The LGA is meeting with the Department for Communities and Local Government on 13th September and will confirm its position shortly thereafter. Executive will be advised verbally the outcome of this meeting. Whichever route is chosen, what is important for Carlisle is to have a properly made decision to underpin the administration of the new regime.
- 1.7** On 11th September, the Regulatory Panel considered a report detailing the proposed charges to be levied, and made appropriate decisions. If the LGA confirms that the new Act is a 're-enactment' of its predecessor (and consequently the Interpretation Act does apply), nothing further needs to be done. The current scheme of delegation of Council functions will continue to apply.
- 1.8** If, however, the Department of Communities and Local Government advise that the new Act is not a 're-enactment' of its predecessor (and consequently the Interpretation Act does not apply) then, until the Functions Regulations are amended, the 2013 Act will be an Executive function, there would be no scheme of delegation in place and all applications would need to be brought to the Executive for consideration. This report is therefore being brought to Executive in order to protect the Council's position and enable it to effectively deal with applications, which will begin to be submitted on 1st October 2013.

2. PROPOSALS

- 2.1** Section 9E of the Local Government Act 2000 provides that, where a function is the responsibility of the Executive, the senior Executive Member (ie the Leader) may arrange for the discharge of any of those functions by another member of the Executive or by an officer of the Authority.
- 2.2** Accordingly, until the Government amends the Functions Regulations to include the 2013 Act, the Leader is asked to amend the his scheme of delegation so as to:
- (a) delegate power to determine (including the imposition of conditions) all types of applications regarding Site Licences and Collectors' Licences (where no objection is made) to each of the Licensing Manager and the Director of Governance;
 - (b) delegate power to determine (including the imposition of conditions) all types of applications regarding Site Licences and Collector's Licences (where an

objection is made) to the Portfolio Holder for Finance, Governance and Resources and the Director of Governance acting together.

- (c) delegate power to otherwise refuse or revoke Site Licences and Collectors' Licences to the Portfolio Holder for Finance, Governance and Resources and the Director of Governance acting together;
- (d) delegate power to institute, defend or participate in any action or legal proceedings in respect of any matter relating to the 2013 Act (including but not limited to the service of any notice or order, the exercise of any power of entry or inspection; the commencement of a prosecution for any offence under the 2013 Act or the defence of any appeal against a decision of the Council made under the 2013 Act) in any case where the Director of Governance considers that such action is necessary to protect or progress the Council's interests, to the Director of Governance.

2.3 The Executive is further asked to note the recommendation of the Regulatory Panel meeting of 11th September 2013 and determine the appropriate fees to be charged.

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 Licensing Manager

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Appendices 1. Report to Regulatory Panel 11 September 2013
attached to report: 2. Minutes from Regulatory Panel 11 September 2013

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- Scrap Metal Dealers Act 2013, Local Authorities (Functions and Responsibilities)(England) Regulations 2000, Interpretation Act 1978, Local Government Association and Home Office Guidance

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's – N/A

Community Engagement – N/A

Economic Development – N/A

Governance – This report was prepared by the Licensing Manager in conjunction with the Legal Services Manager and legal comments are included within.

Local Environment – Scrap metal theft has risen due to the increase in its value world-wide. This has affected communities and transport. The Act should help tackle these issues and improve the environment we live in. The Scrap Metal Dealers Act 2013 has been introduced to reduce the levels of crime and disorder within the scrap metal industry.

Resources – The legislation allows each local authority to set the fees on a cost recovery basis, excluding enforcement of unlicensed operators.

EXCERPT FROM THE MINUTES OF THE REGULATORY PANEL HELD ON 11 SEPTEMBER 2013

RP.43/13 SCRAP METAL DEALERS ACT 2013

The Licensing Manager submitted report GD.42/13 regarding the Scrap metal Dealers Act 2013.

The Licensing Manager reported on the impending changes to the regulatory regime for scrap metal dealers which would be implemented through the provisions of the Scrap Metal Dealers Act 2013 (the Act) and would come into force progressively from 1 October 2013.

Carlisle City Council had thirty four scrap metal dealers registered, of which ten have premises and twenty four are itinerants. In addition the Council had two motor salvage operators registered.

The Licensing Manager explained that the Act repealed the Scrap metal Dealers Act 1964 (and linked legislation) and Part 1 of Vehicles (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. He gave brief details of the provisions which included:

- Maintaining the local authority as the principle regulator
- Giving the local authority power to regulate who should and should not be licensed, allowing them to refuse a licence upon application or to revoke a licence at any time if they are not satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer.
- Creating closure powers for unscrupulous dealers who operated without a licence.
- Giving the local authority and the Police powers to enter and inspect premises.
- Extending the record keeping requirements placed upon scrap metal dealers and required the verification and identification of the people scrap metal dealers were transacting with.
- The Act would integrate the separate regulation for motor salvage operators with the scrap metal sector
- It also created a fee raising power, to allow local authorities to recover the costs stemming from administering and seeking compliance with the regime.
- The Act brought to an end the cash exemption given to itinerant collectors under the 1964 Act.

The Licensing Manager highlighted the definition of “scrap metal dealer” and what was and was not included under the term “scrap metal”. He then outlined each section of the Act drawing Members attention to the application process and the transitional arrangements. He also highlighted Section 2 which specified the two types of licence with the Act, one for a Site Licence and the other was a Collector’s Licence. The Site

Licence authorised the licensee to carry on business at the sites listed in it and the Collector's Licence authorised the licensee to carry on business within the local authority area.

He explained that the Licensing Section had kept itself apprised of Government updates, kept the trade informed, acted upon regulations when published and attended training courses while also preparing application forms, procedures and licence formats. It had been anticipated that the new regime would mirror that of other licensing regimes and therefore following the same procedures for applications through delegated authority or the Regulatory Panel.

The fee would be set by each authority on a cost recovery basis which should reflect a number of considerations as set out in the report. The fees would differ due to the extra work involved in processing Site Licences to Collectors Licences. He reminded the Panel that the licence fee could not be used to support enforcement activity against unlicensed scrap metal dealers; any action against unlicensed dealers would be funded through existing funds.

The Legal Services Manager explained that, while it had been anticipated that responsibility for dealing with the 2013 Act would fall to the Regulatory Panel, as with other regulatory matters, in fact the Government has not yet amended the Local Authorities (Functions and Responsibilities) England Regulations 2000. This means that the new Act is an Executive function. Information has recently been received which suggests that the Government does intend to amend the Regulations and the LGA is due to meet with the Department for Communities and Local Government to discuss their position.

In the meantime, however, this is an Executive function and, unless an amendment to the Regulations is made beforehand, a report will be taken to the Executive on 30th September, in order that applications can be properly dealt with from 1st October.

In response to questions the Licensing Manager confirmed that:

- The Act did not allow traders to have both a Collectors Licence and a Site Licence with the same authority, however Collectors could licence with other authorities.
- Scrap Metal Dealers had been made aware of the changes some months ago to enable them to prepare for the move to non cash trading.
- Scotland operated under different legislation and customers from England may sell scrap in Scotland for cash but Dealers from Scotland could not trade in Carlisle, without a licence.
- All Scrap Metal Dealers in the Carlisle area had been invited to the Civic Centre on 24 September for a presentation on the changes and some guidance on application forms. Members were invited to attend the session if they so wished.
- It was intended that the changes would discourage unscrupulous dealers as they would have to pay and be paid in cheque or card format and no sale or purchase may be made without the verification of identification and an audit trail.

RESOLVED – 1) That report GD.42/13 Scrap Metal dealers Act 2013 be noted;

2) That, having considered the Home Office Guidance and the information as set out in report GD.42/13, the Regulatory Panel recommends that the Executive approve the following fees:

Site Licence

Grant	£280.00
Renewal	£280.00
Variation	£54.00

Collector's Licence

Grant	£140.00
Renewal	£140.00
Variation	£54.00