

Property	None	None
Human Rights	As detailed at (c) below	As detailed at (c) below
Health and Safety	None	None
Employment Issues	None	None
Equalities Issues	As detailed at (d) below	As detailed at (d) below
Community Support	None	None
Communications	None	None
Community Safety	None	None
Financial	None	None
Timetable for delivery	For approval by Cabinet on 16 th December	For approval on 16 th December
Project Capacity	None	None
Other	None	None

(c) Human Rights Act and Other Legal Implications

Section 1 and Schedule 1 Parts I & II of The Human Rights Act 1998, apply:

- Article 1 – Every person is entitled to the peaceful enjoyment of his or her possessions including the possession of licence and shall not be deprived of the possession except in the public interest
- Article 6 – That in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

(d) Equalities Impact Assessment

An Equalities Impact Assessment has not be conducted as this is primary legislation and applies nationally and there are no implications locally as enforcement work in respect of scrap metal dealers will be carried out consistently on the basis of risk for all premises and operators across the Borough.

5 Supporting Information

- 5.1 Due to the confused drafting of the legislation for the Scrap Metal Dealers Act 2013 Slough Borough Council is of the opinion that the functions under the Act are Executive Functions and therefore fall within the remit of Cabinet, as with the recently approved Scrap Metal Dealer Fees.
- 5.2 The Council have been in dialogue with the Home Office and have formally requested clarification on as to whether the functions under the Act are Executive Functions which fall to Cabinet or Non-Executive Functions which fall to Council, which at the time of this report being prepared has not been received.
- 5.3 There are various requirements under the Act that will require timely and clear decisions. The proposed Scheme of Delegation for all functions under the Act is set out at Appendix A.

- 5.4 In most cases it is anticipated that applications will be non-contentious, in which case it is proposed that Licensing Officers will grant the licence. Officers will need delegated powers in order to administer applications and grant non-contentious applications.
- 5.5 Where the application is contentious, it is proposed that the Licensing Manager will have delegated powers to determine applications or licences. Those decisions must be based specifically on the criteria with regards to 'Suitability' as detailed within the legislation and any regulations published by the Home Office and as contained in the Home Office Guidance - 'Determining Suitability to Hold a Scrap Metal Dealers Licence', which is attached at Appendix B.
- 5.6 There have not been any contentious applications during the initial implementation of the new regime and it is anticipated that this will be the case in the future due to the specific criteria as detailed above, however suitable processes need to be in place to deal with such applications.
- 5.7 The Act allows both the Police and 'an officer of the Local Authority' to enforce the provisions of the legislation. It is proposed that the following Slough Borough Council Officers are authorised under the Act to enforce the legislation as may be required:
- Licensing Officers
 - Neighbourhood Enforcement Officers (Including EHO's)
 - Trading Standards Officers
 - Health and Safety Officers (Including EHO's)

Representations

- 5.8 Where the Council proposes to reject an application (or revoke it or vary it) the applicant has to be notified what the Council proposes to do and the reasons for it. If having conducted an initial assessment of an applicant's 'Suitability' the Council is minded to refuse the application, the relevant officer has to write to the applicant to let them know.
- 5.9 The notice from the Council has to give the applicant (or licensee) the opportunity to make representations or let the Council know they wish to. The notice must also specify a period of time in which the applicant does this, which cannot be less than 14 days from the date on which the notice is given to the applicant. If the applicant does not make any representations, or does not say that they wish to in that time period, the Council can refuse the application or revoke or vary the licence. Where the applicant states that they want to make representations, the Council has to give them a further period in which to do so, and only if they fail to do so can they refuse the application or revoke or vary the licence.
- 5.10 Where the applicant makes representations the Council has to consider them (Schedule 1, paragraph 7(7)), and if the applicant states that they want to make oral representations the Council must provide them with the opportunity to appear before 'An appointed person of the Authority' and in the proposed Scheme of Delegation this will be the Licensing Manager.
- 5.11 The proposed Scheme of Delegation will be monitored and a review report will be provided to Cabinet in 12 months from the date of implementation to either approve the Scheme of Delegation as a permanent scheme or to make amendments to it.

Appeals

- 5.12 Appeals against any decision by the Council to refuse an application, to impose a condition on the licence or to revoke or vary the licence are to the Magistrates Court. The applicant or licence holder has 21 days from the day on which they were given notice of the decision to appeal.
- 5.13 The Magistrates Court has power to confirm, vary or reverse the Council's decision and issue any directions it considers appropriate having regard to the Act.

6 Comments of Other Committees

- 6.1 An information report went before the Licensing Committee on 18th July 2013 where Members resolved:- That the report be noted and that an update report be submitted once the associated regulations have been published and the commencement order is known.
- 6.2 A further full report went before the Licensing Committee on 30th September 2013 where specifically in relation to the proposed Scheme of Delegation Members Resolved:-
- i) The proposed Scheme of Delegation as contained in Appendix B of the report be approved subject to an amendment to indicate that the determination of fees will be decided by Cabinet.
- 6.3 A report was put before Cabinet on 14th October where Members resolved to approved the proposed fees

7 Conclusion

As the functions under the Scrap Metal Dealers Act 2013 are deemed to be an Executive Function, Cabinet is requested to resolve to approve the proposed Scheme of Delegations with a review report to be put back to Cabinet 12 months after its implementation.

8 Appendices Attached (if any)

- 'A' - Proposed Scheme of Delegation
- 'B' - Home Office Guidance - 'Determining Suitability to Hold a Scrap Metal Dealers Licence'

9 Background Papers

- '1' - The Scrap Metal Dealers Act 1964
- '2' - Legal Aid Sentencing and Punishment of Offenders Act 2012
- '3' - The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013

- '4' - The Scrap Metal Dealers Act 2013 (Prescribed Documents and Information for Verification of Name and Address) Regulations 2013
- '5' - LGA Guide to the Scrap Metal Dealers Act 2013: Applications
- '6' - LGA Scrap Metal Dealers Act - Enforcement Guide
- '7' - The Scrap Metal Dealers Act 2013: guidance on licence fee charges

Appendix A

Scheme of Delegation of Functions under the Scrap Metal Dealers Act 2013

Matter to be dealt with	Cabinet	Licensing Manager	Officers
Determination of fees	All fees		
Application for a Site Licence		If a relevant representation is made	If no relevant representation is made
Application for a Collectors Licence		If a relevant representation is made	If no relevant representation is made
Application to vary a Site Licence		If a relevant representation is made	If no relevant representation is made
Application to vary a Collectors licence		If a relevant representation is made	If no relevant representation is made
Revocation of a Site Licence or Collectors Licence		Where the revocation is contested	Where the revocation is not contested
Refusal to renew a licence		Where the refusal is contested	Where the refusal is not contested
Revocation of a Site Licence or Collectors Licence		Where revocation is contested	Where revocation is not contested
Refusal to vary a licence		Where the refusal is contested	Where the refusal is not contested
The inclusion of conditions on a licence			All cases
Issue of a Closure Notice			All cases
Cancellation of a Closure Notice			All cases
Application for a Magistrates Closure Order		In conjunction with Legal Services	