



# SCRAP METAL DEALERS POLICY

as required by

**The Scrap Metal Dealers Act 2013**

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**It is the Council's clear intention that this Statement of Principles is read as one complete document rather than a series of individual sections. Reading individual sections in isolation may not fully explain the consistent threads running throughout the statement or the relationship of an individual section with other aspects of the statement. The Council strongly recommends that applicants read the entire statement as part of any application process.**

## **A. Introduction**

### **A1. Overview of the Scrap Metal Dealers Policy ('the Policy')**

- A1.1 This document states North Hertfordshire District Council's ('the Council') policy on the regulation of scrap metal dealers in its capacity as the relevant local authority for the purposes of the Scrap Metal Dealers Act 2013 ('the Act').
- A1.2 The Policy outlines the requirements of the Act and gives guidance to new applicants, existing licence holders, consultees and members of the public as to how the Council will administer and enforce the requirements of the Act.

### **A2. The Law**

- A2.1 The Act received Royal Assent on 28 February 2013 and came into force on 1 October 2013, with its enforcement powers subsequently coming into force on 1 December 2013. The Act repeals 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.
- A2.2 The Act maintains local authorities as the principal regulator, but replaces the old registration system with a full licensing regime. It grants power to refuse a licence to unsuitable applicants and a power to revoke licences if the licence holder becomes unsuitable.
- A2.3 The Act requires a scrap metal dealer to obtain a licence in order to carry on a business as a scrap metal dealer.

### **A3. Consultation**

- A3.1 This Policy balances protecting the public against the need to encourage business and fully supports North Hertfordshire District Council's vision of:

***“making North Hertfordshire a vibrant place for people to live, work and prosper”***

- A3.2 The Council consulted appropriately with regards to this Policy before adopting and publishing the final version.

- A3.3 In preparing and reviewing this Policy the Council consulted with:

- Hertfordshire Constabulary
- Hertfordshire Fire & Rescue Service
- The Environment Agency
- North Hertfordshire District Council Environmental Health
- Existing licence holders
- Neighbouring authorities

### **A4. Review of the Statement of Principles**

- A4.1 This Policy will take immediate effect and will be kept under review and amended as and when necessary to reflect changes in legislation, case law, statutory guidance and best practice.

#### A4.2 Administrative Policy Amendments

A4.2.1 Administrative amendments to this Policy (required by virtue of legislative changes, revised statutory guidance, a Council restructure or administrative procedural changes) may be made by the Licensing Manager acting on behalf of the Council.

A4.2.2 Amendments under this section are restricted to those required to accurately reflect the current legal or administrative position rather than amendments that change the focus of local policy.

#### A4.3 Minor Policy Amendments

A4.3.1 The Policy will be periodically reviewed to ensure it remains fit-for-purpose and either amended where necessary or approved for continuation by the Licensing Manager acting on behalf of the Council, in consultation with the Executive Member for Housing and Environmental Health and the Chair of the Licensing and Appeals Committee.

A4.3.2 Amendments under this section are restricted to those not falling within the definition of a substantial amendment in section A4.4 below.

#### A4.4 Significant Policy Amendments

A4.4.1 In the event of any significant amendment to the Policy, a full public consultation will be undertaken prior to consideration by the Licensing and Appeals Committee who will make a recommendation for consideration by the Executive Member for Housing and Environmental Health.

A4.4.2 For the purpose of this section, a significant amendment is defined as one that:

- (a) Will have a significant financial impact on applicants, licence holders or the public;
- (b) Will have a significant procedural impact on applicants, licence holders or the public;
- or
- (c) May not be perceived by the trade or the public to be consistent with the policy objectives set out in this Policy.

### **A5. Each application determined on its own merits**

A5.1 It is important to note that this Policy will not override the right of any person to make an application, or make representations about an application, or for enforcement action to be taken, as the Council will consider each application and/or circumstances on its own individual merits and in accordance with the statutory requirements of the Act.

A5.2 Any premises licence or permit granted by the Council relates solely to the provisions of the Scrap Metal Dealers Act 2013 and considerations related thereto.

A5.3 Any licence is issued without prejudice to any other consent, licence, approval or other authorisation required by other functions or responsibilities of the Council or any other statutory body. The possession of a licence/permit under the Act does not supersede or replace any other statutory provision.

### **A6. Departure from the Policy**

A6.1 In exercising its discretion in carrying out its regulatory functions, the Council will have regard to this policy document however it may depart from its policy if the individual circumstances of any case warrant such a deviation. In all such cases the Council must give full reasons for doing so.

A6.2 However it is likely that departures from policy will be restricted to genuinely exceptional circumstances, not used to circumvent the reasonable requirements of the Policy.

A6.3 Substantial departure from Policy

A6.3.1 Where it is necessary for the Council to depart substantially from this Policy, clear and compelling reasons for doing so must be given. The Licensing Manager, having consulted the Executive Member for Housing and Environmental Health, may authorise a departure from the Policy in accordance with this section if he/she considers it necessary in the specific circumstances and will advise Councillors of such decisions via the Members Information Service (MIS).

A6.4 Minor departure from Policy

A6.4.1 Where an applicant is able to demonstrate that a minor departure from this Policy, based on the individual circumstances of that application, would still ensure that the policy objectives are achieved, the Licensing Manager may authorise a licence to be issued.

## A7. Relationship to other Statutory Duties

A7.1 The Council accepts that when determining licensing applications, as a public body, it also has a statutory duty to consider the following legislative requirements:

- (a) Crime and Disorder Act 1998  
Local authorities are required to have due regard to the crime and disorder implications of any decision it makes.
- (b) Human Rights Act 1998  
Local authorities are required to implement the Act in a manner consistent with the Human Rights Act 1998 by giving due consideration to the European Convention on Human Rights and Fundamental Freedoms.
- (c) Equality Act 2010  
Local authorities are required to implement the Act in a manner consistent with its responsibilities to consider the equality implications of any decision it makes.

## B. Definitions under the Scrap Metal Dealers Act 2013

B1. A person carries on business as a **scrap metal dealer** if:

- (a) They wholly or partly buy or sell scrap metal (whether or not sold in the form it was bought); or
- (b) They carry on business as a motor salvage operator.

B2. The selling of scrap metal merely as surplus materials or as a by-product of manufacturing articles is not to be regarded as 'carrying on a business' as a scrap metal dealer.

B3. **Motor salvage operation** is defined in the Act as a business that consists wholly or mainly of:

- (a) Recovering salvageable parts from motor vehicles for re-use or sale and selling the remainder of the vehicle for scrap;
- (b) Buying written-off vehicles, repairing and reselling them;
- (c) Buying or selling motor vehicles which are to be the subject of any of the activities mentioned in (a) or (b);
- (d) Wholly or mainly in activities falling within paragraphs (b) and (c);

- B4. **Scrap metal** includes:
- (a) Any old, waste or discarded metal or metallic material; and
  - (b) Any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.
- B5. **Scrap metal does not include:**
- (a) Gold;
  - (b) Silver;
  - (c) Any alloy of which 2% or more by weight is attributable to gold or silver.
- B6. **Licensed site** means a site identified in a scrap metal licence.
- B7. **Mobile collector** means a person who:
- (a) Carries on business as a scrap metal dealer other than at a site; and
  - (b) Regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.
- B8. **Police officer** includes a constable of the British Transport Police Force.
- B9. **Premises** includes any land or other place (whether enclosed or not).
- B10. **Relevant environmental permit or registration** means:
- (a) Any environmental permit under regulation 13 of the Environmental (Permitting) Regulations 2016 (SI 2016/1154) authorising any operation by the applicant in the local authority's area;
  - (b) Any registration of the applicant under Schedule 2 to those Regulations in relation to an exempt waste operation (within the meaning of regulation 5 of those Regulations) carried on in that area;
  - (c) Any registration of the applicant under Part 8 of the Waste (England and Wales) Regulations 2011 (carriers, brokers and dealers of controlled waste).
- B11. **Relevant offence and relevant enforcement action** have the meaning given by section 3(3) of the Scrap Metal Dealers Act 2013 and prescribed in the regulations made by the Secretary of State.
- B12. **Site** means any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there).
- B13. **Site manager**, in relation to a site at which a scrap metal dealer carries on business, means the individual who exercises day-to-day control and management of activities at the site. (An individual may be named in a licence as site manager at more than one site; but no site may have more than one site manager named in relation to it).
- B14. **Trading name** means a name, other than that stated in the licence under which a licensee carries on business as a scrap metal dealer.

## **C. Types of Licence**

### **C1. General**

- C1.1 Anyone wishing to operate a business as a scrap metal dealer will require either a site licence or a collector's licence.

- C1.2 The licence is valid for three (3) years and permits the licence holder to operate within the boundaries of North Hertfordshire.
- C1.3 A person may hold more than one licence issued by different local authorities but may not hold more than one licence issued by any one authority.

## **C2. Site Licence**

- C2.1 The site licence authorises the licence holder to carry on business at the site(s) identified in the licence and permits the licence holder to act as a collector.
- C2.2 The site licence must include:
- (a) The name of the licensee;
  - (b) The name of the authority;
  - (c) Identify all the sites in the authority's area at which the licensee is authorised to carry on business;
  - (d) The name of the site manager of each site;
  - (e) The date of expiry.

## **C3. Collector's Licence**

- C3.1 The collector's licence authorises the licensee to carry on business as a mobile collector within the boundaries of North Hertfordshire but not store or process scrap at a premises.
- C3.2 The collector's licence must include the name of the licensee, the name of the authority and the date of expiry.

## **D. Applicant Suitability**

### **D1. General**

- D1.1 The Council must determine whether the applicant is a suitable person to carry on a business as a scrap metal dealer; and may not issue a licence unless satisfied the applicant is suitable.
- D1.2 In determining a person's suitability the Council will have regard to Statutory Guidance on determining suitability, which is issued from time to time by the Secretary of State, and this Policy.
- D1.3 Notwithstanding the existence of this policy, the Council, when determining a person's suitability for the purposes of the Act, will treat each case on its own individual merits.

### **D2. Determining Suitability**

- D2.1 In addition to this policy and statutory guidance, the Council, when determining a person's suitability, may have regard to any other information it considers relevant, in particular, but not limited to whether:
- (a) The applicant or site manager has been convicted of any relevant offence;
  - (b) The applicant or site manager has been the subject of any relevant enforcement action;
  - (c) There has been any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal);

- (d) There has been any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal);
  - (e) There has been any previous revocation of a scrap metal licence (and the reasons for the revocation);
  - (f) The applicant has demonstrated there will be adequate procedures in place to ensure compliance with the Act.
- D2.2 In determining suitability the Council will require the applicant to produce a Disclosure and Barring Service Certificate (DBS).
- D2.3 In determining whether a company is suitable to carry on business as a scrap metal dealer, the Council will have particular regard as to whether any of the following are a suitable person:
- (a) Any director of the company;
  - (b) Any secretary of the company;
  - (c) Any shadow director of the company (that is to say, any person in accordance with those directions or instructions the directors of the company are accustomed to act).
- D2.4 In determining whether a partnership is suitable to carry on business as a scrap metal dealer, the Council will have particular regard as to whether each of the partners are a suitable person.
- D2.5 The Council may consult other persons regarding the suitability of an applicant, including, but not limited to:
- (a) Any other local authority;
  - (b) The Environment Agency;
  - (c) The Natural Resource Body for Wales;
  - (d) An officer of a police force.
- D2.6 If the applicant or any site manager has been convicted of a relevant offence, the Council may include in the licence one or both of the following conditions:
- (a) That the dealer must not receive scrap metal except between 9am and 5pm on any day;
  - (b) That all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding seventy-two (72) hours, beginning with the time when it is received.
- D2.7 Having regard to the objectives of the Act the Council have determined there will be a presumption to refuse an application where the applicant or any other person required to be named or identified in the application has been convicted of any of the relevant offences laid down in the Act.
- D2.8 The Act prescribes relevant offences for the purpose of ascertaining an applicant's suitability and these are set out in Appendix A<sup>1</sup>.
- D2.9 While the Act states the Council must have regard to the above-mentioned relevant offences, the Council is not limited to taking into account only those offences. As such the Council may consider other offences that, in the Council's opinion, may be relevant in determining an applicant's suitability.

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<sup>1</sup> Appendix A may be updated to reflect any amendment or replacement legislation without formal approval for business efficacy purposes

- D2.10 Having regard to the objectives of the Act the Council have determined there will be a presumption to refuse an application where the applicant or any other person required to be named or identified in the application has been the subject of any of the following forms of enforcement action within the period of three (3) years prior to the application:
- (a) Closure notice pursuant to the Act;
  - (b) Closure order pursuant to the Act;
  - (c) Action for recovery of possession of out of date or discontinued licences.
- D2.11 Having regard to the objectives of the Act, the Council has determined it will consider the following offences, or enforcement actions relating to any person relevant to the licence, as being of particular relevance to the suitability of the licence holder:
- (a) Written warning relating to scrap metal licence compliance;
  - (b) Waste Regulations 2011 - enforcement, compliance and stop notices;
  - (c) Permitting regulations notices;
  - (d) Planning Breach of Condition / Enforcement Notices;
  - (e) Statutory nuisance abatement notice;
  - (f) Breach of statutory nuisance abatement notice.
- D2.12 The authority is aware of its duty not to fetter its discretion and, notwithstanding the matters that the Council may take into account when determining a person's suitability, each case shall be treated on its own individual merits.

## **E. Supply of Information**

- E1. This section applies to information which has been supplied, to the Council, under the Act relating to a scrap metal licence or to an application for, or relating to, such licence.
- E2. The Council must supply any such information to any of the following persons who request it for purposes relating to this Act:
- (a) Any other local authority;
  - (b) The Environment Agency;
  - (c) The Natural Resources Body for Wales;
  - (d) A police officer.
- E3. This section does not limit any other power the Council may have to supply that information.

## **F. Register of Licences**

- F1. The Environment Agency maintains a register of scrap metal licences issued by authorities in England and each entry will record:
- (a) The name of the authority which issued the licence;
  - (b) The name of the licensee;
  - (c) Any trading name of the licensee;
  - (d) The address of the site identified in the licence;
  - (e) The type of licence; and
  - (f) The date on which the licence is due to expire.
- F2. The registers are to open to the public for inspection.



## **G. Notification Requirements**

- G1. An applicant for a scrap metal licence, or for the renewal, or for a variation to a licence, must notify the Council of any changes which materially affect the accuracy of the information which the applicant has provided in connection with the application.
- G2. A licensee who is not carrying on business as a scrap metal dealer in the North Hertfordshire area must notify the Council within twenty-eight (28) days from the date on which the licence holder ceased to be carrying on their business.
- G3. If a licence is issued to a business under a trading name the licensee must notify the Council of any change to that name within twenty-eight (28) days of the change occurring.
- G4. The Council must notify the Environment Agency of:
- (a) Any notification given to the Council under paragraph G1;
  - (b) Any variation made by the Council under Section N (variation of type of licence or matters set out in licence); and
  - (c) Any revocation by the Council of a licence

## **H. Display of Licence**

- H1. A copy of a site licence must be displayed at each site identified in the licence. The copy must be displayed in a prominent place, in an area accessible to the public.
- H2. A copy of a collector's licence must be displayed on any vehicle that is being used in the course of the dealer's business. This must be displayed in a manner which enables it easily to be read by a person outside the vehicle.

## **I. Verification of Suppliers' Identity**

- I1. A scrap metal dealer must verify the name and address of any person they receive scrap metal from.
- I2. When verifying the person's name and address, the scrap metal dealer must do so by way of documents, data or other information obtained from a reliable and independent source.
- I3. Should verification not be gained then each of the following may be guilty of an offence:
- (a) The scrap metal dealer;
  - (b) If metal is received at the site, the site manager;
  - (c) Any person who, under arrangements made by a person within subparagraph (a) or (b), has responsibility for verifying the name and address.

## **J. Payment for Scrap Metal**

- J1. A scrap metal dealer must only pay for scrap metal by either:
- (a) A cheque (which is not transferrable under Section 81A Bills of Exchange Act 1882); or
  - (b) Electronic transfer of funds (authorised by a credit, debit card or otherwise).
- J2. Payment includes payment in kind, for example goods or services.

## **K. Record Keeping**

### **K1. Records**

K1.1 A scrap metal dealer must keep three types of records:

- (a) Receipt of Metal;
- (b) Disposal of Metal; and
- (c) Supplementary

### **K2. Receipt of Metal**

K2.1 If any metal is received in the course of the dealer's business the dealer must record the following information:

- (a) Description of the metal, including its type (or, types if mixed), form, condition, weight and any marks identifying previous owners or other distinguishing features;
- (b) Date and time of receipt;
- (c) The registration mark of the vehicle delivered by;
- (d) Full name and address of person delivering it;
- (e) Full name of the person making payment on behalf of the dealer;

K2.2 The dealer must keep a copy of any documents used to verify the name and address of the person delivering the metal.

K2.3 If payment is made by cheque, the dealer must retain a copy of the cheque.

K2.4 If payment is made via electronic transfer, the dealer must keep a receipt identifying the transfer or, if there is no receipt identifying the transfer, a record of particulars identifying the transfer.

### **K3. Disposal of Metal**

K3.1 The Act regards metal as being disposed of whether or not:

- (a) In the same form it was purchased;
- (b) The disposal is to another person; or
- (c) The metal is despatched from a site.

K3.2 Where a scrap metal dealer disposes of metal in the course of business under a site licence, the following must be recorded:

- (a) Description of the metal, including its type (or types if mixed), form and weight;
- (b) Date and time of disposal;
- (c) If to another person, their full name and address; and
- (d) If payment is received for the metal (by sale or exchange) the price or other consideration received.

K3.3 If disposal is in the course of business under a collector's licence, the dealer must record the following information:

- (a) The date and time of the disposal; and
- (b) If to another person, their full name and address.

## **K4. Supplementary**

- K4.1 The information collected during receipt and disposal must be recorded in a manner which allows the information and the scrap metal to which it relates to be readily identified by reference to each other.
- K4.2 The records of receipt must be marked so as to identify the scrap metal to which they relate.
- K4.3 Records must be kept for a period of three (3) years beginning with the day on which the metal is received or disposed of as may be the case.
- K4.4 If a scrap metal dealer fails to fulfil a requirement under this section, each of the following may be guilty of an offence:
- (a) The scrap metal dealer;
  - (b) If the metal is received at or (as the case may be) despatched from a site, the site manager;
  - (c) Any person who, under arrangements made by a person within paragraph (a) or (b), has responsibility for fulfilling the requirement.
- K4.5 A scrap metal dealer or site manager may have a defence to any offence if they can prove arrangements have been made to ensure the requirement to keep records was justified, or that they took all reasonable steps to ensure those arrangements were complied with.

## **L. Rights of Entry & Inspection**

- L1. A police officer or an authorised officer of the Council may enter and inspect a licensed site at any reasonable time on notice to the site manager.
- L2. A police officer or an authorised officer of the Council may enter and inspect a licensed site at any reasonable time, otherwise than on notice to the site manager, if:
- (a) Reasonable attempts to give notice have been made and failed; or
  - (b) Entry to the site is reasonably required for the purpose of ascertaining whether the provisions of this Act are being complied with or investigating offences under it, and in either case, the giving of the notice would defeat that purpose.
- L3. Paragraphs L1 and L2 do not apply to residential premises.
- L4. An authorised officer of the Council is not entitled to use force to enter a premises but may ask a Magistrate to issue a warrant authorising entry if they are satisfied there are reasonable grounds for entry to the premises for the purpose of:
- (a) Securing compliance with the provisions of the Act; or
  - (b) Ascertaining whether those provisions are being complied with.
- L5. A police officer or an authorised officer of the Council may use reasonable force in exercising the powers contained within a warrant issued under the circumstances contained within paragraph L4.
- L6. Officers of the Council will undertake where reasonable and practicable to give a notice of their powers and the licence holder's rights on entry to any site licensed pursuant to the Act.

- L7. A police officer or an authorised officer of the Council must produce evidence of their identity, and evidence of their authority to exercise these powers, if requested by the owner, occupier or other persons in charge of the premises.
- L8. A police officer or an authorised officer of the Council may:
- (a) Require production of, and inspect, any scrap metal kept at any licensed premises;
  - (b) Require production of, and inspect, any records that are required to be kept in accordance with the Act; and
  - (c) Take copies of or extracts from any such records.

## **M. Application Procedure**

### **M1. Term of Licence/Renewal**

- M1.1 A licence is valid for three (3) years beginning from the date it is issued.
- M1.2 If a renewal is received before the expiry of the existing licence the existing licence will continue to have effect, and:
- (a) If withdrawn, the licence expires at the end of the day of withdrawal; or
  - (b) If refused, and there is no appeal possible, the existing licence will expire or, where there is a right of appeal, the licence will not expire until any such appeal is finally determined or withdrawn.
- M1.3 If a licence is renewed, the licence expires at the end of the three (3) year period from the date of the renewal.

### **M2. Application**

- M2.1 The application forms are available from the Licensing Department, or from the Council's website. Guidance notes on how to complete the application form are also available.
- M2.2 Please note the collectors licence allows a business or individual to operate only within the North Hertfordshire area, therefore individuals wishing to collect across borders will be required to obtain a collectors licence from the relevant local authority where they wish to collect and sell.
- M2.3 All applicants are required to provide a basic Disclosure and Barring Service (DBS) Certificate with the application; the DBS must be dated within three (3) calendar months of the receipt of the application. Information on convictions held by those having lived outside the United Kingdom will also be required.
- M2.4 An application must be accompanied by the fee, set by the Council, and will not be considered as duly made without correct payment. Details of the current fees can be found on the Council's [website](#).

### **M3. Renewal**

- M3.1 A valid renewal application and correct fee must be received before the expiry of an existing licence. The renewal process may be commenced up to three (3) months prior to the expiration of the existing licence.
- M3.2 Where a renewal application is refused, the existing licence will expire either:
- (a) At the end of the period in which an appeal may be lodged; or
  - (b) If an appeal is lodged, at the point that the appeal has been disposed of.

## **N. Variation of Licence**

- N1. A licence may be varied from one type to the other. A variation application must be made to reflect changes to:
- (a) Site licence
    - (i) The name of licensee;
    - (ii) The site location(s); or
    - (iii) The site manager.
  - (b) Collector's licence
    - (i) The name of licensee
- N2. The variation application can:
- (a) Change the type of licence i.e. from site to collectors or vice versa; or
  - (b) Change the content of the licence i.e. site layout, site manager, trading name, other licence details.
- N3. Any change of trading name must be notified to the Council no later than twenty-eight (28) days after the change of name took effect.
- N4. A variation application cannot be used to transfer a licence from one person / partnership / company to another person / partnership / company; this would require a new application.
- N5. The application to vary a licence must be made to the issuing authority and contain particulars of the changes to be made to the licence.

## **O. Revocation of Licence / Imposition of Conditions**

- O1. The Council may revoke a scrap metal licence if it is satisfied that the licensee does not carry on the business of scrap metal dealing at any of the sites identified in the licence.
- O2. The Council may revoke a licence if it is satisfied that a site manager named in the licence does not act as site manager at any of the sites identified in the licence.
- O3. The Council may revoke a licence if it is no longer satisfied that the licensee is a suitable person to carry on business as a scrap metal dealer and the Council shall have particular regard to any "relevant offences" and "relevant enforcement action" and to those matters contained in section D of this Policy.
- O4. If the licensee or any site manager named in a licence is convicted of a relevant offence, the Council may vary the licence by adding one or both of the conditions set out in paragraph D2.6
- O5. A revocation or variation comes into effect when no appeal is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn.
- O6. If the Council considers that the licence should not continue in force without conditions, it may by notice provide:
- (a) That, until a revocation comes into effect, the licence is subject to one or both of the conditions set out in paragraph D2.6, or
  - (b) That a variation under this paragraph comes into effect immediately.

- O7. All licences issued by the Council pursuant to the Act remain the physical property of the Council and must be returned to the Council as required on expiry or revocation of the relevant licence.
- O8. Action may be taken for the recovery of any licence not returned as required by the Council and any such action may be taken into account in relation to any future application for a licence.

## **P. Further Information**

- P1. The Council may request (at the time of application or later) any additional information it considers relevant for the purpose of determining an application.
- P2. Failure to provide such information is likely to result in the application being refused.

## **Q. Right to Make Representations**

### **Q1. Notice Period**

- Q1.1 If the Council proposes to refuse an application or to revoke/vary a licence, a notice shall be issued to the applicant/licensee setting out what the Council proposes to do and the reasons for this. The notice shall also state that, within the period specified, the applicant/licensee can either:
- (a) Make written representations about the proposal; or
  - (b) Inform the authority that the applicant/licensee wishes to do so.
- Q1.2 The period specified in the notice shall be not less than fourteen (14) days beginning with the date on which the notice is given to the applicant/licensee.
- Q1.3 Within the period specified in the notice the applicant/licensee must notify the Council whether the applicant / licensee wishes to make representations.
- Q1.4 Should this period expire and the applicant/licensee has not made representations, or informed the Council of their wish to do so, the Council may refuse the application, or revoke or vary the licence.
- Q1.5 If, within the period specified in the notice, the applicant/licensee informs the Council that they wish to make representations, the Council will allow a reasonable period to make written representations and may refuse the application or revoke or vary the licence if they fail to make representations within that period.
- Q1.6 Save for genuinely exceptional circumstances, only written representations will be accepted. If the applicant/licensee notifies the Council that they wish to make oral representations, and the Council accept that exceptional circumstances exist, they will be given the opportunity to appear in person before the delegated decision-maker.

### **Q2. Notice of Decision**

- Q2.1 If the application is refused, or the licence is revoked or varied, notice shall be given in writing to the applicant/licensee setting out the decision and the reasons for it. The notice shall also state that the applicant/licensee may appeal against the decision, the time within which the appeal may be brought and, if revoked or varied, the date on which the revocation or variation is to take effect.

### **Q3. Appeals**

Q3.1 An applicant may appeal to a Magistrates Court against:

- (a) The refusal of an application or a variation;
- (b) The inclusion on a licence of a condition under Section 3(8) of the Act; or
- (c) The revocation or variation of a licence.

Q3.2 An appeal must be made within twenty-one (21) days beginning on the day the notice to refuse the application, to include the condition or to revoke or vary the licence was given.

Q3.3 On appeal, the Magistrates Court may confirm, vary or reverse the authority's decision, and give such directions as it considers appropriate having regard to the provisions of the Act.

### **R. Closure of Unlicensed Sites**

#### **R1. Closure Notice**

R1.1 An authorised officer of the Council or, a police officer, may issue a 'closure notice' where they are satisfied that the premises are being used by a scrap metal dealer in the course of business and that the premises are not a licensed site.

R1.2 The closure notice will state the reasons for the closure notice being issued and specify the steps which may be taken to ensure that the alleged use of the premises ceases.

R1.3 The closure notice will also state the Council may apply to the Courts for a 'closure order' should the 'closure notice' not be complied with.

R1.4 The closure notice shall be given to the person who appears to be the site manager of the premises and any person who appears to be a director, manager or other officer of the business in question. The notice may also be given to any person who has an interest in the premises.

R1.5 A person with an interest in premises will be considered to be the owner, leaseholder or occupier of the premises.

R1.6 The closure notice shall be given to a person who occupies another part of any building or structure of which the premises form part and the police officer or local Council believes at the time of giving the notice, that the person's access to that other part would be impeded if a closure order were made in respect of the premises.

#### **R2. Cancellation of Closure Notice**

R2.1 A police officer or the Council may cancel a closure notice. This takes effect when a notice of cancellation is given to any one of the persons to whom the closure notice was given.

R2.2 The notice of cancellation must also be given to any other person to whom the closure notice was given.

#### **R3. Application for Closure Order**

R3.1 When a closure notice has been given, a police officer or the Council shall make a complaint to a Magistrate for a closure order. This may not be made less than seven (7) days after the date on which the closure notice was given or more than six (6) months after that date.

R3.2 A complaint under this paragraph may not be made if the police officer or the Council are satisfied that the premises are not, or are no longer, being used by a scrap metal dealer in the course of business and there is no reasonable likelihood that the premises will be so used in the future.

#### **R4. Closure Order**

R4.1 A closure order requires that a premises be closed immediately to the public and remain closed until a police officer or the Council makes a termination of closure order by certificate, the use of the premises by a scrap metal dealer in the course of business be discontinued immediately and that any defendant pay into court such sum as the court determines and that the sum will not be released by the court to that person until the other requirements of the order are met.

R4.2 The closure order may include a condition relating to the admission of persons into the premises, the access by persons to another part of any building or other structure of which the premises form part.

R4.3 A closure order may include such provision as the court considers appropriate for dealing with the consequences if the order should cease to have effect.

R4.4 As soon as practicable after the closure order is made, the complainant must fix a copy of it in a conspicuous position on the premises in respect of which it was made.

R4.5 A sum ordered to be paid into court under a closure order is to be paid to the designated officer for the court.

#### **R5. Termination of Closure Order by Certificate**

R5.1 Once a closure order has been made and a police officer or the Council satisfied that the need for the order has ceased a certificate may be issued. This ceases the closure order and any sum paid into a court is to be released by the court to the defendant.

R5.2 As soon as is practicable after making a certificate, a police officer or local authority must give a copy to any person against whom the closure order was made, give a copy to the designated officer for the court which made the order and fix a copy of it in a conspicuous position on the premises in respect of which the order was made.

R5.3 A copy of the certificate must be given to any person who requests one.

#### **R6. Discharge of Closure Order by Court**

R6.1 A closure order may be discharged by complaint to a Magistrate. This can be done by any person to whom the relevant closure notice was given or any person who has an interest in the premises but to whom the closure notice was not given.

R6.2 The court will make a discharge order if it is satisfied that there is no longer a need for the closure order. The Magistrate may issue a summons directed to a police officer as the Magistrate considers appropriate or the local authority, requiring that person to appear before the Magistrates Court to answer to the complaint.

R6.3 If a summons is issued, notice of the date, time and place at which the complaint will be heard must be given to all persons to whom the closure notice was given, other than the complainant.



## **R7. Appeal in relation to Closure Orders**

R7.1 An appeal may be made to the Crown Court against a:

- (a) Closure order;
- (b) Decision not to make a closure order;
- (c) Discharge order;
- (d) Decision not to make a discharge order.

R7.2 The appeal must be made before the end of twenty-one (21) days beginning with the day on which the order or decision in question was made.

R7.3 An appeal under (a) or (b) above may be made by any person to whom the relevant closure notice was given or any person who has an interest in the premises but to whom the closure notice was not given.

R7.4 An appeal under (b) or (c) above may be made by a police officer or the Council.

## **R8. Enforcement of Closure Order**

R8.1 A person is guilty of an offence, if without reasonable excuse they permit premises to be open in contravention of a closure order, or fail to comply with, or do an act in contravention of a closure order.

R8.2 If the closure order has been made, a police officer or an authorised officer of the Council may (if necessary using reasonable force) enter the premises at any reasonable time, and having entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order.

R8.3 If the owner, occupier or other person in charge of the premises requires the officer to produce evidence of identity or evidence of authority to exercise powers, the officer must produce that evidence.

## **S. Enforcement and Compliance**

### **S1. General Principles**

S1.1 In considering its responsibilities for enforcement action, the Council will have regard to its Corporate Enforcement Policy which is available on the Council's [website](#).

S1.2 The Council has implemented a risk-based inspection programme based on ensuring compliance with the Act and this Policy.

S1.3 The Council's main enforcement and compliance role in terms of the Act is to ensure compliance with the licences which it authorises. The Environment Agency is the enforcement body for wider environmental issues.

### **S2. Offences and Penalties**

S2.1 Table of Offences under the Act

<b>Section</b>	<b>Offence</b>	<b>Level</b>
1	Carrying on a business as a scrap metal dealer without a licence	5
8	Failure to notify the authority of any changes to details given with an application	3

10	Failure to display a site licence or collectors licence	3
11(6)	Receiving scrap metal without verifying a person's full name and address	3
11(7)	Delivering scrap metal to a scrap metal dealer and giving false details	3
12(6)	Buying scrap metal for cash	5
13	Failure to keep records regarding the receipt of metal	5
14	Failure to keep records regarding the disposal of metal	5
15(1)	Failure to keep records which allow the information and the scrap metal to be identified by reference to one another	5
15(2)	Failure to keep a copy of a document used to verify a name and address of a person bringing metal, or failure to keep a copy of a cheque issued	5
15(3)	Failure to keep information and records for three years	5
16	Obstruction to the right of entry and failure to produce records	3

## S2.2 Current levels of Fines

Level	Maximum Fine
1	£200
2	£500
3	£1,000
4	£2,500
5	unlimited

S2.3 The above table is only intended to be indicative of the general offences and penalties; the Courts will have the ability to apply any amended maximum as at the date of a conviction. Independent legal advice should be sought for individual cases.

## S3. **Offences by Bodies Corporate**

S3.1 Where an offence under this Act is committed by a body corporate and it is proved:

- (a) To have been committed with the consent or connivance of a director, manager, secretary or other similar officer; or
- (b) To be attributable to any neglect on the part of any such individual,

the individual as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.

S3.2 Where the affairs of a body corporate are managed by its members, section T3.1 applies in relation to the acts and omissions of a member in connection with that management as if the member were a director of the body corporate.

## T. **Delegation of Functions**

T1. The administration of the Act is a function of the Council's Executive.

T2. Where there are uncontested applications, or where there are no questions about the suitability of the applicant, the determination will be dealt with by the Council's Licensing Officers in accordance with the Council's scheme of Delegation.

T3. All decisions below are reserved for the Council's Licensing Manager in accordance with the Council's Scheme of Delegation:

- (a) Contested applications where there is relevant information from any of the consultees, or queries regarding an applicant's suitability;
- (b) Revocation of a licence;
- (c) The imposition of conditions on a licence;
- (d) The issuing of a closure notice;
- (e) The cancellation of a closure notice;
- (f) The application for a closure order\*; or
- (g) Enforcement action\*.

\*Where required by the Council's Constitution, formal legal action must be authorised by the Council's Service Director: Legal and Community (or as delegated in accordance with the Scheme of sub-delegations).

<p><b>Appendix A</b></p> <p><b>Relevant Offences for the purposes of the Scrap Metal Act 2013</b></p>
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- An offence under section 1, 5, or 7 of the Control of Pollution (Amendment) Act 1989
- An offence under section 170 or 170B of the Customs and Excise Management Act 1979(5), where the specific offence concerned relates to scrap metal
- An offence under section 110 of the Environment Act 1995
- An offence under sections 33, 34 or 34B of the Environmental Protection Act 1990
- An offence under section 9 of the Food and Environment Protection Act 1985
- An offence under section 1 of the Fraud Act 2006, where the specific offence concerned relates to scrap metal, or is an environment- related offence
- An offence under section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012
- An offence under sections 327, 328 or 330 to 332 of the Proceeds of Crime Act 2002
- Any offence under the Scrap Metal Dealers Act 1964
- Any offence under the Scrap Metal Dealers Act 2013
- In offence under sections 1, 8,9,10, 11, 17, 18, 22 or 25 of the Theft Act 1968(13), where the specific offence concerned relates to scrap metal, or is an environment-related offence
- Any offence under Part 1 of the Vehicles (Crime) Act 2001
- An offence under sections 85, 202, or 206 of the Water Resources Act 1991
- An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007
- An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010
- An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2016
- Any offence under the Hazardous Waste (England and Wales) Regulations 2005
- Any offence under the Hazardous Waste (Wales) Regulations 2005
- An offence under regulation 17(1) of the Landfill (England and Wales) Regulations 2002
- Any offence under the Pollution Prevention and Control (England and Wales) Regulations 200
- Any offence under the Producer Responsibility (Packaging Waste) Regulations 2007
- Any offence under the Transfrontier Shipment of Waste Regulations 1994
- Any offence under the Transfrontier Shipment of Waste Regulations 2007
- Any offence under the Waste (Electrical and Electronic Equipment) Regulations 2006
- An offence under regulation 42 of the Waste (England and Wales) Regulations 2011