



General Licensing and Registration Committee

Date **Thursday 17 October 2013**
Time **10.00 am**
Venue **Committee Room 2, County Hall, Durham**

Business

Part A

1. Apologies for Absence
2. Substitute Members
3. Declarations of Interest (if any)
4. The Minutes of the Meeting held on 19 January 2012 (Pages 1 - 2)
5. Scrap Metal Dealers Act 2013 - Guidance (Pages 3 - 28)
6. Such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration.

Colette Longbottom
Head of Legal and Democratic Services

County Hall
Durham

9 October 2013

To: **The Members of the General Licensing and Registration Committee**

Councillor C Carr (Chairman)
Councillor E Bell (Vice-Chairman)

Councillors B Alderson, A Batey, D Bell, J Bell, J Blakey,
P Crathorne, I Geldard, B Glass, B Graham, O Gunn, C Hampson,
J Hart, D Hicks, A Hopgood, K Hopper, I Jewell, J Lee, T Nearney,
J Maitland, L Marshall, P May, J Shuttleworth, D Stoker and A Willis

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DURHAM COUNTY COUNCIL

At a Meeting of **General Licensing and Registration Committee** held in Committee Room 2 - County Hall, Durham on **Thursday 19 January 2012 at 10.00 am**

Present:

Councillor C Carr (Chair)

Members of the Committee:

Councillors B Arthur (Vice-Chair), B Alderson, J Bailey, E Bell, J Blakey, D Bowman, D Boyes, D Brown, J Gray, D Marshall, P May, J Shiell, L Thomson, R Todd and J Wilkinson

Apologies:

Apologies for absence were received from Councillors P Charlton, P Gittins, B Graham, K Holroyd, A Hopgood, J Hunter, J Lee, C Marshall, D Stoker, A Wright and M Williams

1 Declarations of Interest (if any)

Councillor P May declared a personal but not prejudicial interest as he held a Hackney Carriage and Private Hire Drivers Licence.

2 The Minutes of the Meeting held on 28 April 2011

The Minutes of the Meeting held on 28 April 2011 were agreed as a correct record and were signed by the Chair.

3 Police Reform and Social Responsibility Act 2011

Consideration was given to the joint report of Resources Corporate Management Team, Corporate Director, Resources and The Cabinet Portfolio Holder for Strategic Environment and Leisure in relation to the Police Reform and Social Responsibility Act 2011 (for copy see file of Minutes).

The purpose of the report was to inform Members of the implications of the Police Reform and Social Responsibility Act 2011. Part 2 of the Act paved the way for a number of reforms to the Licensing Act 2003, under which Durham County Council had powers and duties as a licensing authority.

Members were advised that since the report had been circulated advice had been received that the timeframe for implementation of measures relating to Late Night Levy's and Early Morning Restriction Orders was expected to be Autumn 2012.

Details of the elements of the licensing regime which were affected as a result of the Act were set out in the report for information and Members discussed the impact of the proposed changes in detail.

RESOLVED

That the contents of the report, be noted.

- 4 Such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration.**

Hackney Carriage/Private Hire Drivers

A Member referred to the standards required of hackney carriage/private hire drivers, particularly in relation to their knowledge of local areas.

De-regulation and the removal of zoning meant that taxi drivers could now operate across the County and applicants were often from outside the area which further emphasised the importance of local knowledge. Members were advised that all applicants were required to undertake a locality test which tested their knowledge of key areas and landmarks but it would be unreasonable to expect an extensive knowledge of all locations.

Whilst Members appreciated this they considered that the test should be stringent and asked that it be reviewed to ensure that applicants' knowledge was tested to a level where they should be able to identify key landmarks and areas within the County.

Following discussion it was **RESOLVED**

That Members be provided with a copy of the locality test and be invited to make any suggestions for improvement.

**General Licensing and Registration
Committee**

17th October 2013



Scrap Metal Dealers Act 2013

Guidance

**Report of Joanne Waller, head of Environment, Health and
Consumer Protection**

Purpose of the Report

- 1 The purpose of this report is to provide members with information and guidance on the Scrap Metal Dealers Act 2013 (the Act)

Background

- 2 The Act came into force on the 1 October. It harmonised the previous scrap metal registration scheme and the motor vehicle salvage operators regimes into one Act. The term "scrap metal dealers" includes scrap metal dealer sites and mobile collectors
- 3 The Act introduced a new licensing system requiring anyone operating as a scrap metal dealer to apply for a licence. Previously, the only requirement was to register with their local authority. Councils are able to refuse to grant a licence where the applicant is judged not to be a suitable person to operate as a scrap metal dealer. This ability to regulate who is and who is not a scrap metal dealer is designed to improve the operating standards of those dealers who do not operate in the same way as the majority of reputable dealers.
- 4 In order for anyone to carry on business as a scrap metal dealer, a licence will be necessary. These licences will last for three years and trading without a licence will be a criminal offence. If convicted of trading without a licence the offender could be fined up to Level 5 on the standard scale. Amendments to the size of the fines that courts can impose in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 mean that when the provisions come into force, a fine at that level will be unlimited.
- 5 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 the collector wishes to operate in. The licence does not authorise the licensee to operate a site. It should be noted that a dealer could only hold one type of licence in any one local authority area so they will 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 mobile collector's licence from the same council.

Timetable for Transition to the New Regime

6 In order to provide time for councils to process applications without existing businesses being in a position where they cannot operate, the Home Office has implemented a transition process. The transition timeline is:

- The Commencement Order was made in August, which allowed local authorities to set a licence fee from 1 September.
- The main provisions of the Act commenced on 1 October.
- Dealers and motor salvage operators registered immediately before 1 October are deemed to have a licence under the Act from that date.
- Provided the dealer submitted an application for a licence on or before 15 October their deemed licence will last until the council either issues them with a licence or gives them notice of the decision to refuse them a licence, although they will be able to continue trading pending an appeal against the decision not to grant a licence.
- Where a dealer submitted an application on or before 15 October but does not supply all the required information with the application form then the deemed licence remains in effect after 15 October.

Application Fees

7 Any application under the Scrap Metal Dealers Act 2013 must be accompanied by a fee. Local Authorities were able to set fees under this Act from 1 September 2013. The fee is set by the local authority having had regard to guidance issued by the Home Office with the approval of the Treasury and the Local Government Association. These figures have been used by many local authorities when setting their fees. In setting their fees, local authorities must have regard to the requirements of the European Union Services Directive and any licensing case law, of which the recent case in the Court of Appeal of *Hemming v Westminster City Council* is especially relevant.

The following aspects have been considered in calculating the DCC fees:

- Consultation with the trade and other relevant parties
- Advice and guidance to prospective applicants
- Fee processing
- Application processing
- Consideration of application
- Formal committee hearings where required
- Production of licence, including licences that can displayed in vehicles
- Production and maintenance of a register
- Post licence inspection(s)
- Staff and Member training
- Policy preparation
- Application forms, licence and guidance preparation
- Printing costs
- Pre-enactment reports and fee setting

8 It is expected that these costs are likely to differ over the period from the initial grant of a licence through to the renewal of the licence three years later and therefore be considered as a matter of course with the annual review of all fees and charges.

9 The fees in relation to the costs of hearing is a best estimate as Democratic services are unable to provide a figure which shows the overall costs as they consider that there are too many variable factors.

10 It is expected that the Council will receive at least one hundred and seventy applications during the first two weeks of the act coming into force. This figure has been used when calculating the fee. It is anticipated that 20% of the applications will be contested and determined by General Licensing Committee. This percentage figure is consistent with other local authorities across the region when setting their fees.

11 The estimated cost of holding the committees, the general costs and materials such as window stickers have been added together and divided between the estimated figure of 170 applications being received.

Fees

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Type of Licence	Proposed Fee
Site Licence - New	£354
Site Licence Variation	£162
Site Licence Renewal	£338
Collectors Licence - New	£219
Collectors Licence Variation	£155
Collectors Licence Renewal	£219

Guidance

In the absence of a policy, to assist Members and officers in dealing with applications under the Act, DCC guidance has been produced and is attached as appendix 2. A policy on the subject will be produced in 2014.

Background papers

The Scrap Metal Dealers Act 1964

The Scrap Metal Dealers Act 2013

The Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order

2013

Vehicles (Crime) Act 2001

Scrap Metal Dealers Act 2013 Supplementary Guidance

Scrap Metal Dealers Act 2013 Determining Suitability to hold a Scrap Metal Dealers licence

Contact: Joanne Waller Tel: 03000 260924

Appendix 1: Implications

Finance - Licensing under the Scrap Metal Dealers Act 2013 will be funded through a schedule of fees which will recover all costs associated with the service except any enforcement against unlicensed traders. The fees will be reviewed annually. As the licence lasts for three years, any income received will not be annual and should not be considered as part of an annual income target. Once the existing licence holders receive their new licence it is not anticipated that there will be many other applications for the site licences and it is unknown how many mobile collectors will be operating in County Durham.

Staffing – Licensing staff will process applications and consult with other agencies when applications are received. Should an application be contested licensing staff will process this to committee stage with colleagues in Democratic Services.

Risk - Risks associated with the regime are managed by the Service.

Equality and Diversity / Public Sector Equality Duty - All applicants and other parties under the Scrap Metal Dealers Act 2013, will be treated equally by the Local Authority. No decision taken under the Act should in any way discriminate against any person or group in society.

Accommodation - None

Crime and Disorder - Every application will be accompanied by a basic disclosure certificate notifying of any unspent convictions. Further consultation will then take place with the police is deemed appropriate so that they have an opportunity of visiting premises and making a comment on the application.

Human Rights - None

Consultation - None

Procurement - None

Disability Issues - None

Legal Implications - The Scrap Metal Dealers Act 2013 commences on the 1 October 2013 and repeals the Scrap Metal Dealers Act 1964 and the Motor Vehicles Crime Act 2001. The new Act which received Royal Assent on 28 February 2013 consolidates scrap metal dealers and motor salvage operators under one licensing regime. The timeframe for processing the each application from 1 October are outlined in the Act. Based on recent case law the fees are set to include all costs associated with operating the licensing regime and do not cover the costs of enforcing the non-licensed traders.

Clare Greenlay in Legal and Democratic services has seen this report and method of calculation.

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Appendix 2

SCRAP METAL DEALERS ACT 2013 DURHAM COUNTY COUNCIL DRAFT GUIDANCE

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1 INTRODUCTION

1.1 The Guidance

1.1.1 This document provides guidance 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 (and the expressions “Council” and “local authority” shall be construed accordingly).

1.2 The Law

1.2.1 The Scrap Metal Dealers Act 2013 (“the Act”) received Royal Assent on 28 February 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.

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 dealer becomes “unsuitable”.

The Act requires a scrap metal dealer to obtain a licence in order to carry on business as a scrap metal dealer.

1.3 Definition of a Scrap Metal Dealer

1.3.1 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 (see 1.3.3).

1.3.2 Ancillary sales - a person selling scrap metal merely as surplus materials or as a by-product of manufacturing articles is NOT regarded as a scrap metal dealer.

1.3.3 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)

1.3.4 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.

1.3.5 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

2 TYPES OF LICENCE

2.1 Anyone wishing to operate a business as a scrap metal dealer will require:

- I. a site licence; or
- II. a collector's licence.

The licence is valid for three years and permits the licence holder to operate within the boundaries of the issuing authority.

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.

2.2 Site Licence

2.2.1 The site licence authorises the licensee to carry on business at the site(s) identified in the licence.

2.2.2 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

2.2.3 The site licence also permits the licence holder to act as a collector.

2.3 Collector's Licence

2.3.1 The collector's licence authorises the licensee to carry on business as a mobile collector within the authority's area.

2.3.2 The collector's licence must include:

- (a) the name of the licensee
- (b) the name of the authority
- (c) the date of expiry

3 SUITABILITY OF APPLICANT

3.1 A local authority must determine whether the applicant is a suitable person to carry on business as a scrap metal dealer and may not issue a licence unless satisfied that the applicant is suitable.

3.2 In determining this, the authority may have regard to any information, which it considers to be relevant, in particular:

- (a) whether the applicant or site manager has been convicted of any relevant offence;
- (b) whether the applicant or site manager has been the subject of any relevant enforcement action;
- (c) any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal);
- (d) any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal);
- (e) any previous revocation of a scrap metal licence (and the reasons for the revocation);
- (f) whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with.

3.3 In this section:

- (a) "site manager" means an individual proposed to be named in the licence as a site manager
- (b) "relevant offence" means an offence which is prescribed for the purposes of the Act in regulations made by the Secretary of State, and
- (c) "relevant enforcement action" means enforcement action which is so prescribed by regulations.

- 3.4 In determining whether a company is suitable to carry on business as a scrap metal dealer, a local authority is to have regard, in particular, to whether any of the following is 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)
- 3.5 In determining whether a partnership is suitable to carry on business as a scrap metal dealer, a local authority is to have regard, in particular, to whether each of the partners is a suitable person.
- 3.6 The authority must also have regard to any guidance on determining suitability which is issued from time to time by the Secretary of State
- 3.7 The authority may consult other persons regarding the suitability of an applicant, including in particular:
- (a) any other local authority;
 - (b) the Environment Agency;
 - (c) an officer of a police force;
- 3.8 If the applicant or any site manager has been convicted of a relevant offence, the authority 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 72 hours, beginning with the time when it is received.
- 3.9 Having regard to the objectives of the Act the authority has determined that applicants with convictions, cautions, reprimands or final warnings for offences involving violence or dishonesty, which are less than 3 years old, from the date of application, will be included in the consideration of whether the applicant is a fit and proper person to hold a licence.

The authority is aware of its duty not to fetter its discretion and shall permit representations from the applicant as to any exceptional circumstances indicating that it may nevertheless be appropriate to receive a licence.

3.10 Insofar as the offence types contained in 3.9 above are not prescribed as “relevant offences” for the purposes of the Act the authority may nevertheless require further information from the applicant to assist in determining the suitability of the applicant. The authority may not treat any such offence or enforcement action as a “relevant offence” or “relevant enforcement action” for the purposes of the Act but shall nevertheless consider such an offence as a significant offence in relation to the suitability of the applicant to hold a licence.

3.11 Having regard to the objectives of the Act the authority has determined that it will presume that the applicant is unsuitable to be issued with a licence where an applicant or any other person required to be named or identified in the application has been the subject of any relevant enforcement action within the period of three years prior to the application:

- **Closure notice pursuant to the Act**
- **Closure order pursuant to the Act**
- **Action for recovery of possession of out of date or discontinued licences**

The authority is aware of its duty not to fetter its discretion and shall permit representations from the applicant as to any exceptional circumstances indicating that it may nevertheless be appropriate to receive a licence. The authority may not treat any such enforcement action as a “relevant enforcement action” for the purposes of the Act but shall nevertheless consider such an action as a significant issue in relation to the suitability of the applicant to hold a licence.

3.12 Having regard to the objectives of the Act the authority has determined that 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:

- **Written warning relating to scrap metal licence compliance**
- **Waste regulations 2011 – enforcement, compliance and stop notices**
- **Permitting regulations notices**
- **Planning Breach of Condition / Enforcement Notices**
- **Statutory nuisance abatement notice**
- **Breach of a statutory nuisance abatement notice**

4 REVOCATION OF LICENCE/IMPOSITION OF CONDITIONS

4.1 The authority 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.

- 4.2 The authority 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.
- 4.3 The authority 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 authority shall have particular regard to any “relevant offences” and “relevant enforcement action” and to those matters contained in paragraphs 3.10, 3.11, 3.12 and 3.13 of this policy.
- 4.4 If the licensee or any site manager named in a licence is convicted of a relevant offence, the authority may vary the licence by adding one or both of the conditions set out in paragraph 3.8.
- 4.6 A revocation or variation comes into effect when no appeal under paragraph 16.9 is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn.
- 4.7 If the authority 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 3.8, or
 - (b) that a variation under this paragraph comes into effect immediately.
- 4.8 All licences and identification signage issued by the Council pursuant to the Act remain the physical property of the Council and must be returned as required on expiry or revocation of the relevant licence or copy licence. 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.
- 4.9 All reference in this policy to copy licences shall be construed as original copies officially endorsed and issued by the Council as the licensing authority.

5. SUPPLY OF INFORMATION BY AUTHORITY

- 5.1 This section applies to information which has been supplied to a local authority under this Act and relates to a scrap metal licence or to an application for or relating to a licence.
- 5.2 The local authority 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) an officer of a police force.

5.3 This section does not limit any other power the authority has to supply that information.

6. REGISTER OF LICENCES

6.1 The Environment Agency maintains a register of scrap metal licences issued by authorities in England and each entry must 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

6.3 The registers are to open for inspection to the public

7. NOTIFICATION REQUIREMENTS

7.1 An applicant for a scrap metal licence, or for the renewal or variation of a licence, must notify the authority to which the application was made of any changes which materially affect the accuracy of the information which the applicant has proved in connection with the application.

7.2 A licensee who is not carrying on business as a scrap metal dealer in the area of the authority which issued the licence must notify the authority within 28 days.

7.3 If a licence is issued to a business under a trading name the licensee must notify the authority which issued the licence of any change to that name within 28 days.

7.4 The authority must notify the Environment Agency, of –

(a) any notification given to the authority under paragraph 7.2 or 7.3

(b) any variation made by the authority under paragraph 16.3 (variation of type of licence or matters set out in licence), and

(c) any revocation by the authority of a licence

7.5 Notification under paragraph 7.4 must be given within 28 days of the notification, variation or revocation in question.

8. DISPLAY OF LICENCE

- 8.1 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.
- 8.2 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.

9. VERIFICATION OF SUPPLIER'S IDENTITY

- 9.1 Prior to receiving scrap metal the scrap metal dealer must verify the person's full name and address by reference to documents, data or other information obtained from a reliable and independent source.

Should verification not be gained then each of the following are 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.

10. PAYMENT FOR SCRAP METAL

- 10.1 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)

Payment includes paying in kind – with goods or services.

11. RECORDS: RECEIPT OF METAL

- 11.1 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 (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
- 11.2 The dealer must keep a copy of any documents used to verify the name and address of the person delivering the metal.
- 11.3 If payment is made via cheque, the dealer must retain a copy of the cheque.
- 11.4 If payment is made via electronic transfer, the dealer must keep a receipt identifying the transfer, or (if no receipt identifying the transfer) record particulars identifying the transfer.

12. RECORDS: DISPOSAL OF METAL

- 12.1 The Act regards the metal to be disposed of:
- (a) whether or not in the same form it was purchased,
 - (b) whether or not the disposal is to another person
 - (c) whether or not the metal is despatched from a site
- 12.2 Where the disposal is 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
 - (d) if payment is received for the metal (by sale or exchange) the price or other consideration received
- 12.3 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
 - (b) if to another person, their full name and address

13. RECORDS: SUPPLEMENTARY

- 13.1 The information in paragraphs 11 and 12 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.

- 13.2 The records mentioned in paragraph 11 must be marked so as to identify the scrap metal to which they relate.
- 13.3 Records must be kept for a period of 3 years beginning with the day on which the metal is received or (as may be the case) disposed of.
- 13.4 If a scrap metal dealer fails to fulfil a requirement under paragraph 11 or 12 or this paragraph each of the following is guilty of an offence by way of section 15 of the Act:
- (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.
- 13.5 It is a defence for a person within who is charged with an offence under section 15 of the Act to prove that the person:
- (a) made arrangements to ensure that the requirement was fulfilled, and
 - (b) took all reasonable steps to ensure that those arrangements were complied with

14. RIGHT OF ENTRY & INSPECTION

- 14.1 A constable or an officer of the Council may enter and inspect a licensed site at any reasonable time on notice to the site manager.
- 14.2 A constable or an 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.
- 14.3 Paragraphs 14.1 and 14.2 do not apply to residential premises.
- 14.4 A constable or an officer of the Council is not entitled to use force to enter premises in the exercise of the powers identified in paragraphs 14.1 and 14.2.
- 14.5 A justice of the peace may issue a warrant authorising entry in accordance with section 16 of the Act to any premises within paragraph 14.6 if the justice is satisfied by information on oath that there are reasonable grounds for believing that entry to the premises is reasonably required for the purpose of:

- (a) securing compliance with the provisions of the Act, or
- (b) ascertaining whether those provisions are being complied with

14.6 Premises are within this paragraph if

- (a) the premises are a licensed site, or
- (b) the premises are not a licensed site but there are reasonable grounds for believing that the premises are being used by a scrap metal dealer in the course of business.

14.8 A constable or an officer of the Council may, if necessary, use reasonable force in the exercise of the powers under a warrant under section 16 of the Act.

14.9 A constable or an officer of the Council may:

- (a) require production of, and inspect, any scrap metal kept at any premises mentioned in paragraphs 14.1 or 14.2 or in a warrant under section 16.
- (b) require production of, and inspect, any records kept in accordance with section 13 or 14 of the Act and any other records relating to payment for scrap metal
- (c) take copies of or extracts from any such records.

14.10 Officers of the Council will undertake where reasonable and practicable to give a notice of their powers and your rights on entry to any site licensed pursuant to the Act and the licence holder, site managers and other operatives should note that officers may use recording to assist them in their duties whilst on site.

15. APPLICATION PROCEDURE

15.1 Term of Licence

A licence is valid for three years beginning from the day it is issued. A renewal application must be received prior to the licence expiry.

If withdrawn the licence expires at the end of the day of withdrawal.

If refused, the licence expires with no appeal is possible or any such appeal is finally determined or withdrawn.

If renewed, the licence expires at the end of the three year period from the date of the renewal.

15.2 Application

The application form, available from the Licensing Department, should be accompanied by:

- a) full name of applicant (if an individual), date of birth and usual place of residence
- b) name and registered number of the applicant (if a company) and registered office
- c) if a partnership – full name of each partner, date of birth and usual place of residence
- d) proposed trading name
- e) telephone number and email address (if any) of applicant
- f) address of any site within any other local authority at which carry on business as a scrap metal dealer or propose to do so
- g) any relevant environmental permit or registration in relation to the applicant
- h) details of any other scrap metal licence issued to the applicant within a period of 3 years ending with the date of the application.
- i) details of the bank account which is proposed to be used in order to comply with section 11
- j) details of any relevant conviction or enforcement action taken against the applicant.

For site licence, the applicant must also provide:

- a) the address of each site proposed to be identified in the licence (or if renewal, each site identified for which renewal is sought)
- b) the full name, date of birth and usual place of residence of each individual proposed to be named in the licence as a site manager (other than the applicant).
- c) site manager details to be included for (g) (h) and (j) above

Please note the collectors licence allows a business or individual to operate only within that authority's 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.

All applicants are required to provide a basic disclosure of criminal convictions with the application.

15.3 Variation of Licence

A licence may be varied from one type to the other. A variation application must be made to reflect changes to:

- Site licence – the name of licensee, the sites, site manager
- Collector's licence – name of licensee

The variation can amend the name of the licensee but cannot transfer the licence to another person.

Application is to be made to the issuing authority and contain particulars of the changes to be made to the licence.

15.4 Renewal

When a licence is renewed the three year validity period commences on the day of receipt. Should a renewal application be withdrawn, the licence expires at the end of the day on which the application is withdrawn.

Where a renewal application has been refused – the licence expires when no appeal has been made under paragraph 2 of Schedule 1 of the Act or any such appeal has resulted in confirmation of the refusal.

15.5 Further Information

The Council may request (at the time of application or later) that additional information is provided, as may be considered relevant for the purpose of considering the application.

Failure to provide such information may result in the application being declined.

15.6 Fee

The application must be accompanied by the fee set by the Council, under guidance from the Secretary of State with the approval of the Treasury.

15.7 Right to Make Representations

In cases where applications will need to be determined by the Licensing Committee applicants will be written to in order to detail the objections received giving them 14 days to make a written representation. The letter will also offer the opportunity to proceed to the Licensing Committee to make an oral representation.

15.8 In the event that no written representation is received, the application will still proceed to the Licensing Committee for it to be determined.

15.9 Notice of Decision

If the application is refused, or the licence is revoked or varied, notice shall be given 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 (21 days beginning with the day on which notice of the decision was given) and, if revoked or varied, the date on which the revocation or variation is to take effect.

15.10 Appeals

An applicant may appeal to a magistrates' court against the refusal of an application or a variation. The licensee may appeal to a magistrates' court against the inclusion in a licence of a condition under Section 3(8) of the Act or the revocation or variation of a licence.

An appeal must be made within 21 days beginning on the day the notice to refuse the application, to include the condition or to revoke or vary the licence under section 4 was given.

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.

The authority must comply with any directions given by the magistrates' court. Although the authority need not comply with such directions until the time for making an application under section 111 of the Magistrates' Courts Act 1980 has passed or if such an application is made, until the application is finally determined or withdrawn.

16. CLOSURE OF UNLICENSED SITES

16.1 Interpretation

A person with an interest in premises is the owner, leaseholder or occupier of the premises.

16.2 Closure Notice

These are not applicable if the premises are residential premises.

A constable or the local authority must be 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.

In such circumstances a “closure notice” may be issued by a constable or local authority which states they are satisfied of the above, the reasons for that, that the constable or local authority may apply to the court for a closure order and the notice shall specify the steps which may be taken to ensure that the alleged use of the premises ceases.

The 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.

The notice shall be given to a person who occupies another part of any building or structure of which the premises form part and the constable or local authority 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.

16.3 Cancellation of Closure Notice

A “cancellation notice” issued by a constable of local authority may cancel a closure notice. This takes effect when it is given to any one of the persons to whom the closure notice was given. This must also be given to any other person to whom the closure notice was given.

16.4 Application for Closure Order

When a closure notice has been given, a constable or the local authority shall make a complaint to a justice of the peace for a closure order. This may not be made less than 7 days after the date on which the closure notice was given or more than 6 months after that date.

A complaint under this paragraph may not be made if the constable or authority is 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.

16.5 Closure Order

A closure order requires that a premises be closed immediately to the public and remain closed until a constable or the local authority 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.

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.

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.

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.

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

16.6 Termination of Closure Order by Certificate

Once a closure order has been made and a constable or the local authority is 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.

As soon as is practicable after making a certificate, a constable 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.

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

16.7 Discharge of Closure Order by Court

A closure order may be discharged by complaint to a justice of the peace. 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.

The court will make a discharge order if it is satisfied that there is no longer a need for the closure order. The justice may issue a summons directed to a constable as the justice considers appropriate or the local authority, requiring that person appear before the magistrates' court to answer to the complaint.

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).

16.8 Appeal in relation to Closure Orders

Appeal may be made to the Crown Court against:

- a) a closure order
- b) a decision not to make a closure order
- c) a discharge order
- d) a decision not to make a discharge order

The appeal must be made before the end of 21 days beginning with the day on which the order or decision in question was made.

An appeal under (a) or (b) 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.

An appeal under (b) or (c) may be made by a constable or the local authority.

16.9 Enforcement of Closure Order

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.

If the closure order has been made, a constable or a person authorised by the local authority 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.

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.

17. OFFENCES & PENALTIES

The following are prescribed by the Act as criminal offences:

Section 1	Carrying on business as a scrap metal dealer without licence (level 5)
Section 8	Failure to notify authority of any changes to details given with application (level 3)
Section 10	Failure to display site licence or collectors licence (level 3)
Section 11(6)	Receiving scrap metal without verifying persons full name and address (level 3)
Section 11 (7)	Delivering scrap metal to dealer and giving false details (level 3)
Section 12 (6)	Buying scrap metal for cash (level 5)

Section 13	Failure to keep records regarding receipt of metal (level 5)
Section 14	Failure to keep records regarding disposal of metal (level 5)
Section 15 (1)	Failure to keep records which allow the information and the scrap metal to be identified by reference to one another (level 5)
Section 15 (2)	Failure to keep copy of document used to verify name and address of person bringing metal, or failure to keep a copy of a cheque issued (level 5)
Section 15 (3)	Failure to keep information and records for three years (level 5)
Section 16	Obstruction to right of entry and fail to produce records (level 3)
Section 17	<p>Where an offence under this Act is committed by a body corporate and it is proved—</p> <p>(a) to have been committed with the consent or connivance of a director, manager, secretary or other similar officer, or</p> <p>(b) to be attributable to any neglect on the part of any such individual,</p> <p>the individual as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.</p> <p>(2)Where the affairs of a body corporate are managed by its members, subsection (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.</p>

DEFINITIONS

“Licensed site” means a site identified in a scrap metal licence.

“Mobile collector” means a person who—

- a) carries on business as a scrap metal dealer otherwise 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.

“police officer” includes a constable of the British Transport Police Force.

“Premises” includes any land or other place (whether enclosed or not).

“Relevant environmental permit or registration” means—

- a) any environmental permit under regulation 13 of the Environmental (Permitting) Regulations 2010 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).

“Relevant offence” and “relevant enforcement action” have the meaning given by section 3(3) of the Scrap Metal Dealers Act 2013.

“Site” means any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there).

“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).

“Trading name” means a name, other than that stated in the licence under which a licensee carries on business as a scrap metal dealer.