

**Scrap Metal Dealers Act 2013 - Guidance**

**1.0 Background**

1.1 This document sets out the Councils guidance for discharging its powers and responsibilities as required by the Scrap Metal Dealers Act 2013, including the issue, review and enforcement of scrap metal site and collector's licenses. It also sets out the arrangements that the Council intends to put in place for ensuring compliance with the law.

1.2 The power to issue, review and enforce the licences issued under the Scrap Metal Dealers Act 2013 ("the Act") are vested in the Licensing Committee and duly authorised council officers under the Schedule of Delegated Powers described Section 14 of this Guidance.

1.3 The power to set, review and amend licence fees under the Act rests with the Cabinet of the London Borough of Hillingdon.

**2.0 Promotion of Equality**

2.1 The Council as the Licensing Authority seeks the elimination of all forms of discrimination in respect of sex, religion, race, disability and sexual orientation in accordance with its established equal opportunities policy (as amended from time to time).

2.2 This guidance has been subject to an Equalities Impact Assessment.

### 3.0 **Legislation**

3.1 This guidance should be read in conjunction with current legislation that applies to scrap metal dealers. The relevant legislation upon which this guidance is based is:

- Scrap Metal Dealers Act 2013;
- Scrap Metal Dealers Act 2013 (Commencement and Transitional Provisions) Order 2013;
- The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013.

Additional guidance on the application of the Act (and its secondary legislation, as noted above) can be found in the following documents:

- Scrap metal Dealers Act 2013 Supplementary Guidance;
- Local Government Association 'Get in on the Act' Scrap Metal Dealers Act 2013;
- Local Government Association Enforcement Guide ;
- Local Government Association Fees Guide ;
- Local Government Association Councillor Handbook;
- Local Government Association Tackling Metal Theft Toolkit.

3.2 The Scrap Metal Dealers Act 2013 replaces the previous registration system under the Scrap Metal Dealers Act 1964 and the Motor Salvage Operators Regulations 2002 and establishes a new licensing regime. Every scrap metal dealer is required to have a current licence, and operating without one is a criminal offence, as from 1st December 2013. The definition of scrap metal dealers now also incorporates motor salvage operators.

3.3 A scrap metal dealer is defined under the Act as “someone whose business consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought; or carries on a business as a motor salvage operator.”

- 3.4 Whether a person or business is classified as a scrap metal dealer varies according to individual circumstances, but generally, where the sale of scrap metal is incidental to the main type of work or business undertaken then no licence will be required.
- 3.5 In order for anyone to carry on business as a scrap metal dealer they have to have a licence. The London Borough of Hillingdon issues licenses that are valid for a period of three years.
- 3.6 There are two types of licences:
- Site Licence – all sites where a licensee carries on a business as a scrap metal dealer have to be identified, and a site manager has to be named for each site. The licence allows the licensee to transport scrap metal to and from the sites in any local authority area;
  - Collector's Licence – this allows the licensee to operate as a collector in the area of the issuing licensing authority only. It does not allow the collector to operate in any other local authority. A separate licence must be obtained from each local authority area the collector wishes to operate in. The licence does not authorise the licensee to operate a site, which will require a site licence from the relevant local authority.
- 3.7 A dealer can only hold one type of licence in any one local authority area. They cannot hold both a site and collector's licence from the same local authority.
- 3.8 The new licensing regime commenced on 1st October 2013.
- 3.9 A collector is defined in the Act as “a person who carries on a business as a scrap metal dealer otherwise than at a site, and regularly engages in the course of that business in collecting waste metal including old, broken, worn out or defaced articles by means of door to door visits.”
- 3.10 A 'site' is defined in the Act as “any premises used in the course of carrying on a business as a scrap metal dealer (whether or not metal is kept there).”

3.11 A dealer also includes someone carrying on a business as in motor salvage operator, which is defined as a business that:

- Wholly or partly recovers salvageable parts from motor vehicles for reuse or resale, and then sells the rest of the vehicle for scrap;
- Wholly or mainly involves buying written off vehicles and then repairing and selling them off;
- Wholly or mainly buys or sells motor vehicles for the purpose of salvaging parts from them or repairing them and selling them off.

3.12 Scrap metal includes any waste or discarded metal or metallic material, and 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. This does not include second hand goods unless they are made from or contain metal that is broken or worn out. The definition does include platinum and a range of rare metals that are now being used in catalytic convertors. The following are not considered to be as scrap metal:

- a. Gold;
- b. Silver;
- c. Any alloy of which two percent or more by weight is attributable to gold or silver.

3.13 Scrap metal dealers are also required to have planning permission to operate a site and are required to have permits or exemptions from the Environment Agency to operate a scrap metal business under the Environmental Protection Act 1990. Those transporting metal to a scrap metal site for profit are required to be registered as a waste carrier. Waste carriers must ensure that the waste goes to a properly licensed or exempt site; they must complete a Waste Transfer Note which must include a description of the waste and be signed by the carrier and the person to whom the waste is given or sold. These regimes are related but separate to the Scrap Metal dealers Act 2013, and outside the scope of this guidance.

#### 4.0 **Licence Applications**

- 4.1 The Residents Services Directorate is responsible for the administration of applications.
- 4.2 Any application must be in the standard form (available via the Council's website or on request from Residents Services) and include the necessary information. Any application that does not contain the necessary information and the correct fee will not be regarded as properly submitted until such time as all documents and information required are provided by the applicant.
- 4.3 A Basic Disclosure for each applicant (including Site Managers, Directors, Company Secretaries, Shadow directors, all Partners in the case of Partnership etc) from Disclosure Scotland will be required alongside the application form and other relevant documentation that is to be submitted.
- 4.4 In the case of applications received after 1 December 2013 the disclosure must not be more than 3 months old at the time the application is accepted by the Licensing Team.
- 4.5 The Basic Disclosure Certificate can be applied for online or by completing a form, and paying a fee to "Disclosure Scotland". Disclosure Scotland will usually be able to provide a certificate with the results of the disclosure application within 14 days.
- 4.6 Detailed information is required to accompany the application including details of bank accounts that are used. Photographic evidence of the applicant's identity will also be required in the form of a passport or driving licence.
- 4.7 On receipt of an application the Council must determine whether the applicant is a suitable person to carry on a business as a scrap metal dealer. In assessing the suitability of the applicant the Council will take into account all information it considers to be relevant, including the following:
- Whether the applicant or site manager has been convicted of a relevant offence, or subject to any relevant enforcement action;

- Whether the applicant has previously been refused a scrap metal dealers licence or an application to renew a licence has been refused (and reasons for refusal);
- Whether the applicant has previously been refused a relevant environmental permit or registration;
- Whether a previously held scrap metal dealer's licence has been revoked.
- Any failure to register with the Information Commissioners Office for data protection purposes.

4.8 The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 at Annex 1 provides a list of the relevant offences and relevant enforcement action that the Council may have regard to in determining the suitability of an applicant.

4.9 In addition to the information contained on the Basic Disclosure document, consultation will be undertaken with the Environment Agency and possibly other local authorities or the police to check for relevant offences not shown on the disclosure.

4.10 Consultation may also be undertaken with the Police, the Council's Regulatory Unit (Anti-Social Behaviour Team) and the Council's Planning Department to help ascertain whether the applicant is considered a suitable person.

4.11 On application the applicants will attend an application interview to submit the paperwork so that the applicant's identification can be verified.

4.12 Additionally, for site licences, a site visit will also be conducted. It is anticipated that following grant of a licence, annual inspections will be undertaken by officers.

4.13 For mobile collectors, it is anticipated the applicant will be given the opportunity to attend the Council for a meeting to assess the application and the applicant's proposed method of record keeping. A licence to be issued that is capable of being displayed on the vehicle for a period of three years. It is therefore not feasible to issue a licence on a piece of paper and a more robust form of licence

will be issued. It is anticipated that mobile collector's records will be inspected twice a year.

4.14 Lack of planning permission or registration with the Information Commissioner's Office under the Data Protection Act would both be considered relevant factors in relation to the suitability of an applicant.

4.15 A scrap metal dealer who holds a site licence must display a copy at each site identified on the licence, a dealer who holds a collector's licence must display a copy of the licence on any vehicle that is being used in the course of the dealer's business so it can be easily read by a person outside the vehicle.

## 5.0 **Fees**

5.1 Fees for applications are set by the Council's Cabinet. A detailed breakdown of the current fees by application type is detailed in Annex 2. A schedule of the current fees is available on the Council's website or on request from the Licensing team of the Public Protection Service.

5.2 For all types of licences – if a licence is not granted, the Delegated Officer has the discretion to give a refund of any costs not incurred. For example, inspection or issue of licence.

## 6.0 **Representations**

6.1 Where the Council proposes to refuse an application, renewal, or to revoke or vary or condition a licence, the applicant will be notified and the reasons for the decision must be included in the notification.

6.2 The notification from the Council must also give the applicant or licensee the opportunity to make representations or let the Council know they wish to make representations in respect of the decision to refuse (or revoke, vary or impose conditions). The applicant or licensee will be given 14 days to do this.

- 6.3 If the applicant chooses not to make any representations, or fails to indicate their intentions to the Council within the 14 days, the Council can refuse the application or renewal or revoke, or impose a condition, or vary the licence.
- 6.4 If the applicant informs the Council that they wish to make representations, a further 14 days will be allowed from the date of the applicant's notification in which to make representations.
- 6.5 If the applicant makes representations either within the initial 14 days' notice period or within the further 14 days, the Council will consider the representations at a hearing of the Licensing Sub-Committee.
- 6.6 Representations may be made in writing by the applicant or alternatively the applicant may wish to make representations orally. If the applicant wishes to make oral representations they should notify the Council of this intention within the 14 day period.
- 6.7 If representations are not made to the Council within the extended 14 day notice period, the Council may refuse an application or renewal, or revoke or vary or impose conditions to the licence.
- 6.8 If the Council refuses an application (or revokes a licence) where no representation have been made by an applicant, the applicant will be given a Notice of Decision, which includes information on the reasons for that decision. The Notice will include information about the appeal process.

## 7.0 **Hearings**

- 7.1 Where an application is proposed to be refused (or revoked or made subject to conditions) and representations are received (in accordance with section 6 of this Guidance), the applicant/licensee will be invited to attend a meeting with a Licensing Sub-Committee when an opportunity will be given to put forward their representations for due consideration.

7.2 If the Sub-Committee refuses the application the applicant will be given a Notice of Decision, which includes information on the reasons for that decision. The Notice will include information about the appeal process. This notice will be sent to the applicant by Licensing Services within five working days of the Sub-Committee hearing.

7.3 The Licensing Committee is responsible for the setting of protocols related to the manner in which a Licensing Sub Committee Hearing is conducted.

## 8.0 **Licence Conditions**

8.1 The ability to impose conditions is limited by the Act. Conditions can only be imposed when issuing a licence, where the applicant or any site manager has been convicted of a relevant offence or where the Council is revoking a licence, until the revocation comes into effect. One or both of the following conditions may be imposed:

- The dealer can receive scrap metal only between 0900 and 1700 hours;
- Any scrap metal received has to be kept in the form the dealer received it for a set period of time which cannot be more than 72 hours;

## 9.0 **Varying the Licence**

9.1 Dealers can apply to vary a licence from a site licence to a collector's licence or vice versa and have to apply to vary the licence where there are any changes in certain details including change of the name of the licensee, any change in the sites and any change in the details of the site managers. Relevant costs detailed in the fee section will apply to these variations.

9.2 Variation cannot be used to transfer the licence from one person to another, anyone wanting to hold a licence to be a scrap metal dealer has to apply for their own licence and cannot take over an existing licence, including where a business has been taken over.

## 10.0 **Revocations**

10.1 The Council may revoke a scrap metal licence if:

- a) It is satisfied that the licensee does not carry on business at any of the sites identified in the licence; or
- b) It is satisfied that a site manager named in the licence does not act as a site manager at any of the sites identified in the licence; or
- c) It is no longer satisfied that the licensee is a suitable person to carry on business as a scrap metal dealer.

10.2 A revocation comes into effect when no appeal (See section 11 of this guidance on appeals) is possible in relation to the revocation, or when any such appeal is finally determined or withdrawn.

10.3 Where the decision is to revoke a licence, the licensee will be notified. The written decision notice will give reasons for the decision and provide information on appeal and when the revocation is to take effect. Section 6 of this guidance on representations applies to revocations.

## 11.0 **Appeals**

11.1 Appeals against the decision of the Council to refuse, revoke, vary or condition a licence can be made on application to the Magistrates Court. They must be made within 21 days of the applicant being given notice of the decision.

## 12.0 **National Register**

12.1 Information that has been supplied to the Council under the Scrap Metal Dealers Act 2013 and relates to a scrap metal licence or to an application for a licence, can be supplied by the Council to any of the following persons who request it for the purposes relating to the Scrap Metal Dealers Act 2013

- a) Any other local authority;
- b) The Environment Agency;
- c) An officer of a police force.

12.2 The Environment Agency must maintain a register of scrap metal licences issued by authorities in England. The registers are available for inspection by the public.

### 13.0 **Enforcement**

13.1 All enforcement action will be consistent with the Residents Services enforcement policy. The aim of enforcement is to ensure a risk based targeted and transparent approach to enforcement.

13.2 The following principles will be applied:

- Proportionate in applying the law and ensuring compliance;
- A second consistency of approach;
- Targeted enforcement action;
- Transparent about how the Local Authority operates and what those regulated may expect;
- Accountable for the local authority's actions.

13.3 A dealer must not receive scrap metal from a person without verifying the person's full name and address and by using an acceptable form of identification.

13.4 A dealer must not pay for scrap metal except by a non transferable cheque or electronic transfer. This includes paying in kind with goods or services.

13.5 The following information must be recorded by any dealer if any scrap metal is received and records should be retained for a 3 year period:

- The description of the metal including its type (or types if mixed), weight and any marks identifying previous owners or other distinguishing features;
- The date and time of its receipt;
- If the metal is received in or on a vehicle , the registration mark;
- If the metal is received from a person, the full name and address of that person;
- If the dealer pays for the metal, the full name of the person who makes the payment acting for the dealer;

- If the dealer received the metal from a person the dealer must keep a copy; of any document which the dealer uses to verify the name and address of that person. If paid by cheque the dealer must keep a copy of the cheque, if paid by electronic transfer the dealer must keep the receipt identifying the transfer if available.

13.6 If the dealer disposes of any metal, the dealer must record the following information:

- The description of the metal including its type (or types if mixed), form and weight;
- The date and time of its disposal;
- If the disposal is to another person, the full name and address of that person;
- If the dealer receives payment for the metal (whether by way of sale or exchange), the price or other consideration received.

13.7 Where the disposal is in the course of a business under a collector's licence the dealer must record the following information:

- The date and time of the disposal;
- If the disposal is to another person, the full name and address of that person.

13.8 All records should be made available for inspection by an authorised officer at any reasonable time.

13.9 A Closure Notice can be issued under the Act if the Council or police are satisfied that the premises are being used by the scrap metal dealer in the course of their business and that the premises are not licensed for such a purpose.

13.10 If the premises continue to be used as part of the business or there is reasonable evidence that it will be used in the future after the service of a Closure Notice, the Magistrates Court can make a Closure Order requiring the premises to be closed immediately and kept closed or for the use of the premises to be discontinued immediately.

- 13.11 Under the Act, police officers or authorised Enforcement Officers have the right to enter and inspect a licensed site (which includes an unlicensed site for which there are reasonable grounds for believing that the premises is being used by a scrap metal dealer in the course of business), but this right does not extend to residential premises.
- 13.12 In accordance with Council practice a visit by authorised Enforcement Officers will often be conducted by two officers and any visits undertaken will be subject to a prior risk assessment.

14.0 **Schedule of Delegations**

<b>Matter to be dealt with</b>	<b>Full Council</b>	<b>Cabinet</b>	<b>Licensing Committee</b>	<b>Licensing Sub Committee</b>	<b>Delegated Officer</b>
Change to Scheme of Delegations for Scrap Metal Dealers Act 2013	<input checked="" type="checkbox"/>				
Changes to Scrap metal Dealers Act Guidance or Fees		<input checked="" type="checkbox"/>			
Adoption of or changes to Sub-committee Hearing Protocol			<input checked="" type="checkbox"/>		
Issuing or varying Licences (where no objections or representations are received)					<input checked="" type="checkbox"/>
Revocation of a licence (where this is uncontested)					<input checked="" type="checkbox"/>
Issuing or revoking licences subject to conditions (where this is uncontested)					<input checked="" type="checkbox"/>
Issuing or varying Licences, where is it proposed that the application will be refused and this is contested by the applicant				<input checked="" type="checkbox"/>	
Revocation of a licence where this is contested by the applicant				<input checked="" type="checkbox"/>	

## **Annex 1 - The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013**

### Primary Legislation

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, 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 1996

Any offence under the Scrap Metal Dealers Act 2013

An offence under sections 1, 8, 9, 10, 11, 17, 18, 22 or 25 of the Theft Act 1968, 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

### Secondary Legislation

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

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 2000

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

## **Annex 2 – Scrap Metal Dealers Act 2013: Schedule of Application Fees**

### **Site Fees:**

New	£550.00
Renewal	£400.00
Variation to change to collector licence	£150.00
Variation to change minor details	£50.00

### **Collector Fees:**

New	£250.00
Renewal	£225.00
Variation to change to site licence	£300.00
Variation to change minor details	£50.00

Duplicate Licence    £25.00