

DONCASTER COUNCIL

SCRAP METAL DEALERS ACT 2013

**STATEMENT OF LICENSING
POLICY
AND
GUIDANCE FOR APPLICANTS.**

Contents

Part 1 The Act and its purpose

- 1 Background
- 2 Summary of the Act

Part 2 Who needs a licence

Part 3 Application Process

- 1 Transitional Provisions
- 2 Submitting an application

Part 4 Determination of Applications

Part 5 Licensing Board Procedure

Part 6 Enforcement

Part 1 The Act and its Purpose

1 Background

- 1.1 The Scrap Metal Dealers Act 2013 (the 'Act') received Royal Assent on 28 February 2013 and commences on 1 October 2013.
- 1.2 The Act repeals the Scrap Metal Dealers Act 1964 (and linked legislation) and Part 1 of the Vehicles (Crime) Act 2001 relating to Motor Salvage operators, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Act maintains local authorities as the principal regulator but gives them the power to better regulate these industries by allowing them to refuse to grant a licence to 'unsuitable' applicants and a power to revoke licences if a dealer becomes 'unsuitable'.
- 1.3 The Act aims to raise trading standards across the scrap metal industry by requiring more detailed and accurate records of transactions as well as a requirement to verify the identity of those selling metal to them and a total prohibition on making cash payments for scrap.
- 1.4 The Act incorporated the separate regulatory scheme for motor salvage operators under the Vehicles (Crime) Act 2001 into the new regime, thus replacing the overlapping regimes for the vehicle salvage and scrap metal industries.
- 1.5 The definition of 'scrap metal dealer' and 'scrap metal' has also been revised to ensure they reflect the 21st Century scrap metal industry.

2 Summary of the Act

- 2.1 The Act defines a 'scrap metal dealer', a site, a mobile collector and scrap metal
- 2.2 A dealer is defined under s21(2) of the Act as someone carrying on a business which consists wholly or in part of buying and selling scrap metal, whether or not the metal is sold in the form in which it is bought.

However a manufacturing business that sells scrap metal created only as a by-product of the processes it uses, or because it has a surplus of materials, is not caught by this definition. (s21(3))
- 2.3 A site is defined in the Act under s22(9) as 'any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there).
- 2.4 It further states that '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.
- 2.5 Gold, silver, and any alloy of which 2% or more by weight is attributable to gold or silver is not considered to be 'scrap metal'.
- 2.6 Provisions within the Act allow the Secretary of State by order to amend the definition of 'scrap metal'.
- 2.7 **Section 1** of the Act requires that a scrap metal dealer obtains a licence from the local authority in order to carry on business as a scrap metal dealer. It is an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. The offence is punishable on summary conviction with a fine not exceeding level 5 (£5000) on the standard scale.
- 2.8 **Section 2** provides further detail of the licence, including the two types of licence, a site licence, and a mobile collector's licence for those carrying on business otherwise than at a site. Only one type of licence can be held in any authority area, either site or collector's, not both.
- 2.9 The site licence is issued by the local authority in whose area a scrap metal site is situated and requires all of the sites at which the licence holder carries on the business as a scrap metal dealer to be identified, as well as a site manager to be named for each site. In doing so they are permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area.
- 2.10 A mobile collector's licence authorises the licence holder to operate in the area of the issuing local authority only, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal. The licence does not permit the collector to collect from any other local authority area – a separate licence is required in each local authority area that the person wishes to collect. A mobile collector's licence does not authorise the licence holder to carry on a business at a site within any area. Should a fixed site be used then the person must obtain a site licence from the relevant local authority.

There is no restriction regarding the location to where the collector can transport and sell scrap metal.

- 2.11 **Section 3** requires that the licensing authority has to be satisfied that an applicant is a suitable person to carry on business as a scrap metal dealer. In considering suitability, the local authority may have regards to any relevant information, including whether any relevant enforcement action has been

taken against the applicant or whether the applicant has been convicted of a relevant offence. (*Awaiting publication*) The authority must also have regard to the guidance issued by the Secretary of State and may consult with other organisations to assist in determining suitability.

- 2.12 **Section 3** allows the local authority, when issuing a licence, to include conditions on it if the licence holder or site manager has been convicted of a relevant offence, these are set out in Subsection (8) of the Act:-
- a that the dealer must not receive scrap metal except between 09.00 and 17.00 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 time when it is received.
- 2.13 **Section 4** provides the licensing authority with the discretion to revoke a licence on particular grounds, including where the local authority is no longer satisfied that the licence holder is a suitable person to carry on the business as a scrap metal dealer. A licence can only be revoked by the issuing licensing authority.
- 2.14 **Section 4** allows the licensing authority to vary a licence, imposing the conditions stipulated at 2.10 above, if the licence holder or a site manager is convicted of a relevant offence.
- 2.15 **Section 5** sets out the procedure for issuing licences. A licence lasts for 3 years unless revoked, although the Secretary of State has the power to vary the length of the licence period. It also states that a fee will be charged by the local authority – *to be determined*
- 2.16 **Section 6** places a duty on the local authority to supply any such information as requested relating to a scrap metal licence to any other local authority in England and Wales, the Environment Agency, the Natural Resources Body for Wales and to Police Forces.
- 2.17 **Section 7** requires that a register of licences issued under the Act is maintained by the Environment Agency in England and the Natural Resources Body for Wales in Wales. As the local authority we provide the appropriate information on all licences issued in our area. The register is openly accessible to the public and includes the name of the authority which issued the licence; the name of the licence holder; any trading name; the type of licence; the site(s) covered by the licence and expiry date of the licence.
- 2.18 **Section 8** imposes an obligation on a dealer to notify the local authority of any material changes in the information they have supplied in support of an application made e.g. change of trading name, change of site manager, or if

they have ceased to trade in the local authority area in which they are licensed. The local authority is then required to notify the changes to the Environment Agency so that changes can be made to the register, and of any changes that materially affect the accuracy of any information provided in connection with the application. Failure to do so is punishable upon summary conviction to a fine not exceeding level 3 on the standard scale (£1000).

- 2.19 **Section 9** deals with the closure of unlicensed sites. It gives a police officer or local authority power to issue a closure notice on a non-residential premises being used as an unlicensed scrap metal dealer's site. Once issued it allows the police or local authority (unless cancelled) to apply to a Magistrates Court for a closure order who are able to make the order where it is satisfied that the premises continues to be used as a dealer's site or there is a reasonable likelihood it will in the future. The order can require a site to close immediately or for a sum to be retained by the court until the requirements of the court are met.

An appeal can be made to the Crown Court against the making of a closure order and a discharge order as well as decisions not to grant a closure or discharge order.

Failure to comply with a closure order is an offence, and a police officer or authorised person can (using force if necessary) enter premises and do anything reasonably necessary to ensure compliance with the closure order. It is an offence to obstruct a police officer or authorised person in exercising their powers which is punishable, along with failure to comply with a closure order, of a fine not exceeding level 5 (£5000).

- 2.20 **Section 10** requires the licence holder to display a copy of the licence. For site operators this must be in a prominent place in an area accessible to the public. For mobile collectors, it must be displayed on any vehicle, if used, in a manner which enables the licence to be easily read by a person outside the vehicle.

A criminal offence is committed by any scrap metal dealer who fails to fulfil these requirements. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale (£1000).

- 2.21 **Section 11** places a requirement on scrap metal dealers, site managers and employees who have been delegated the responsibility to do so, to verify the identity of the person they are receiving the metal from and the person's address. This verification must be done by reference to data, documents or other information obtained from a reliable or independent source, such as the Identity and Passport Service, the Driver and Vehicle Licensing Agency, a bank or utility company.

2.22 It is an offence not to obtain and verify the seller's identity, punishable by a fine not exceeding level 3 on the standard scale (£1000). The offence applies to the scrap metal dealer, the site manager and any person, who under arrangements made by either the scrap metal dealer or the site manager, has responsibility for fulfilling this requirement on behalf of the business.

2.23 **Section 12** makes it an offence for a dealer to pay cash for scrap metal. The only authorised means of paying for scrap metal are non-transferable cheque or an electronic transfer of funds. The Secretary of State can allow other methods of payment.

Mobile collectors are not exempt from this requirement.

Paying for scrap metal in breach of these requirements is punishable upon conviction of a fine not exceeding level 5 (£5000).

2.24 **Sections 13 and 14** set out the record keeping requirements in respect of any scrap metal received by a scrap metal dealer in the course of their business. Information that is required to be recorded includes the type of metal being purchased; the time/date of the transaction; personal information on the seller; who is acting on behalf of the dealer and proof of the non-cash transaction.

Where metal is disposed of, the dealer must keep a record of its description, the date and time of its disposal, and the name and address of any person it is sold to.

Failure to comply with the requirements of this section is punishable upon summary conviction of a fine up to level 5 (£5000) on the standard scale.

2.25 **Section 15** provides further details on the record keeping requirements and failure to comply with the provisions under sections 13 and 14. A dealer or site manager has defence if they have made arrangements for the requirements in sections 13 and 14 to be met and have taken all reasonable steps to ensure those arrangements have been complied with.

2.26 **Section 16** gives police officers and local authority officers the power to enter and inspect any licensed site at any reasonable time provided they have given notice. Where giving notice would prevent the police or local authority officer checking the legislation has been complied with, or they have tried to give notice but have failed, then they can still enter the site.

When needed a warrant allowing the force of entry can be obtained from a magistrate.; anyone obstructing an officer's right of entry is guilty of an offence punishable upon conviction of a fine not exceeding level 3 (£1000).

Police and local authority officers can also inspect any scrap metal records.

- 2.27 **Section 17** provides that where any 'body corporate' is liable under any offences in the Act, a director or manager is also guilty of an offence if it is proved the offence has been committed with their consent or connivance.
- 2.28 **Section 18** places a duty on the Secretary of State to review the Act within by 1 October 2018 and publish a report establishing whether the aims and objectives of the Act have been achieved and whether it is appropriate to retain the Act.
- 2.29 **Sections 19 to 23** set out various amendments to other Acts, definitions of what parts of the Act mean and commencement provisions. A full copy of the Act can be seen on the government's official website.

<http://www.legislation.gov.uk>

Part 2 Who needs a licence

- 2.1 The definition of scrap metal dealer is deliberately quite widely drawn, (see Part 1, para 2.2) but there are no further details provided in the Act or explanatory notes about who may potentially need a licence.
- 2.2 The answer to the question 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.
- 2.3 In the case of most tradesmen such as plumbers and electricians, the sale of scrap metal is not an integral part of the business and they are not required to be licensed as a scrap metal dealer.
- 2.4 A skip hire company may require a scrap metal dealers licence where there is a reasonable expectation, for example, that the material deposited in a skip will contain significant amounts of scrap metal, such as skips used where there is demolition activity or ones sited at engineering manufacturing establishments and plumbers' yards.
- 2.5 In considering whether a scrap metal dealers licence is required we will take into account the following:
 - 2.5.1 Is the applicant a business?
 - 2.5.2 Is the applicant associated with any other business that might buy or sell metal (eg subsidiaries, businesses run by the same people, companies within a group etc)?
 - 2.5.3 Do they buy or sell scrap metal in any form as part of the business?
 - 2.5.4 Is the purchase or sale of scrap metal an integral part of the business?
 - 2.5.5 Is the buying or selling of scrap metal advertised by the business, including on the internet?
 - 2.5.6 Is any advertising of metal sales etc done separately from the main part of the business?
 - 2.5.7 Is the metal sold a by-product from a manufacturing process?
 - 2.5.8 What happens to any waste material that is collected by the business?

2.6 Scrap Metal Dealers are divided into two categories based on two different types of licence:-

Those operating from fixed sites – which is defined as ‘any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there) – this includes where a scrap metal dealer has an office even if they do not operate a scrap metal store or yard, and also includes those carrying on business as a **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.
- **Those operating as mobile collector** – which is defined 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 collecting waste materials and old, broken, worn out or defaced articles by means of door to door visits.

Part 3 Application process

3.1 Transitional Provisions

- 3.1.1 Scrap metal dealers and motor salvage operators registered immediately before 1 October 2013 will be deemed to have a licence under the Act from 1 October.
- 3.1.2 Those registered will be required to submit an application for a licence on or before 15 October 2013 and the deemed licence will last until the Council either issues a new licence or gives notice of the decision to refuse a licence. Trading may continue pending an appeal against the decision not grant a licence.
- 3.1.3 If you submit an application on or before 15 October 2013 but do not supply all the required information with the application form then the deemed licence remains in effect after 15 October 2013.
- 3.1.4 Where a dealer with a deemed licence fails to submit an application on or before 15 October 2013 then the deemed licence will lapse on 16 October 2013.
- 3.1.5 Any site or person not previously registered will be able to apply for a new licence from 1 October 2013 but will have to wait until a licence is granted before they can legally trade.

3.2 Submitting an Application

- 3.2.1 The application form must be completed in full and submitted with relevant documentation as prescribed, along with the relevant application fee.
- 3.2.2 A Basic Disclosure for each applicant (including Site Managers, Directors, Company Secretaries etc) from Disclosure Scotland will be required alongside the application form and other relevant documentation that is to be submitted.
 - 3.2.2.1 In the case of transitional applications submitted before 15 October 2013 the disclosure may not be more than 3 months old at the time the application is submitted to the Licensing Team.
 - 3.2.2.2 In the case of new applications received after 1 December 2013 the disclosure must not be more than 1 month old at the time the application is accepted by the Licensing Team.
- 3.2.3 The Basic Disclosure Certificate can be applied for online or by completing a form, and paying a fee. Disclosure Scotland will usually be able to provide a certificate with the results of the disclosure application within 14 days.

3.2.4 In order that the application can be assessed fully we may ask for further information/documentation as part of the process of determining the application. Failure to provide such information may be taken into account when making a decision refuse to proceed further with the application or particularly if the Council are mindful to refuse the application because of the existence of relevant convictions or other matters.

4 Determination of Applications

Grant/Renewal

- 4.1 On receipt of an application with all requested documentation and appropriate fee the process of determining the application will commence. Receipt of the application will be acknowledged which will state the date received and giving detail any additional information required in order to process the application further. If this is the case then a date will be given when the information is required by. The Licensing Office must be informed if the if the deadline given cannot be complied with.
- 4.2 In order to avoid unnecessary delays dealing with an application it is important that the application form is completed accurately and submitted together with all documentation required.
- 4.3 Once all information is received the process of assessing the suitability of the person(s) applying for the licence will start. The Council must not issue a licence unless it is satisfied the applicant(s) is/are a suitable person(s) to carry on business as a scrap metal dealer – the ‘suitability test’.
- 4.4 In the case of a partnership this means assessing the suitability of each of the partners in the partnership, while in the case of a company it means assessing the suitability of any directors, company secretaries or shadow directors.
- 4.5 In assessing an applicant’s suitability the council can consider any information it considers relevant.
- 4.6 Factors which may be taken into account in the ‘suitability test’ include :-
 - The applicant or site manager has been convicted of a relevant offence, or subject to any relevant enforcement action.
 - The applicant has previously refused a scrap metal dealers licence or an application to renew a licence has been refused.
 - The applicant has previously been refused a relevant environmental permit or registration.
 - A previously held scrap metal dealer’s licence has been revoked.
 - Premises operated without planning permission.
 - Failure to register with the Information Commissioners Office for data protection purposes.

4.7 Relevant Offences. (See Appendix ???)

Where an applicant has been convicted of a relevant offence this does not automatically become grounds for refusing to grant a licence. We will take into account how long ago the offence was committed, the nature of the offence or enforcement action; the gravity of the offence and any sentence; when the enforcement action was taken; along with any other relevant information. See 5 below for more information when an application requires to be referred to Licensing Panel.

4.8 Relevant Enforcement Action is

Insert

Checks with other Authorities/Persons

4.9 As part of the process of assessing your application and suitability, we will consult with:

South Yorkshire Police.

The Environment Agency.

Information Commissioner's Office

Any other Local Authority in England or Wales.

Any other public/private body or person deemed necessary in order to make an assessment of the application.

4.10 This will be carried out to verify information contained on the application form and supporting documentation received.

Inspection of Premises

4.11 In the case of Transitional and Grant applications an inspection of your premises will be made. This will enable an assessment to take place as to the suitability of the premises and checks to be made whether required records are being maintained and whether the requirements of the Act are being met – particularly the requirement that payment for scrap is a cashless transaction /identity of sellers is being checked/scrap received is recorded and maintained etc

In the case of renewal applications a decision whether to carry out an inspection will be taken on an individual case by case basis depending on whether in the time since the licence was granted any concerns have been highlighted about the operation of the business etc. Applicants may be required to submit records for inspection

- 4.12 Where there are no relevant convictions/enforcement action/other matters to be taken into account after the 'suitability test' has been applied then a licence will be granted for a period of 3 years.

In the case of transitional applications the licence will commence on 1 December 2013.

Varying a licence

- 4.13 Application can be made to vary a licence from a site licence to a collectors licence or vice versa, and also where there are any changes in certain details:-

Insert

Application must be made to the issuing Authority setting out details of the variation.

A variation in a site licence has to be applied for where there are any changes relating to the name of the licensee on the licence; any change in the sites from which the licensee is authorised to carry on business; and any change in details of a site manager.

In the case of a collector's licence a variation is required where there is a change in the details relating to the name of the licensee.

Variations related to changes in the name of the licensee on the licence for a site of a collector's licence cannot be used to effect a transfer of 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, they cannot take over an existing licence. This includes where one business buys another business.

Failure on the part of the licensee to apply for a variation is an offence punishable by a fine not exceeding level 3 on the standard scale.

Refusal/Revocation/Refusal to Vary Licence or consideration of Attachment of Conditions to Licence

- 4.14 Where there are reasons to refuse an application or revoke, vary a licence or impose conditions on a licence, the applicant(s) will be notified in writing of the reasons.

Including conditions on the licence

- 4.15 Conditions can only be imposed where an applicant or any site manager has been convicted of a relevant offence, or where the Council are proposing to revoke a licence, when a condition can be imposed until the revocation comes into effect.

In considering whether to issue a licence where the applicant or a site manager has a relevant conviction, the Council may decide to do so on the basis that a condition is imposed on the licence.

There are two conditions which can be imposed on a licence, and a decision can be to impose one or both, these are:

- The dealer can receive scrap metal only between 09.00 and 17.00 on any day – in effect limiting the dealer's operating hours
- And/or
- 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.

Giving notice to applicant(s)

- 4.16 The notice will state the reasons for the decision and will invite the applicant(s) to a hearing of the Licensing Panel where representation can be made orally before a decision is taken whether to refuse/grant/revoke/vary the licence. **See 5 below for Licensing Panel Procedure**

If representation is not received via attendance at the hearing or in a written submission to the meeting then the application will be refused or licence revoked or varied licence refused.

If the date of the meeting is not suitable then contact will be required to be made as soon as practicably possible to allow deferral of the matter to another date.

- 4.17 Once the hearing has taken place, or in the case of no representation being made by an applicant(s), then a notice of decision to refuse/vary licence or attach conditions will be sent to the applicant(s) giving the reasons for the decision.

The notice will detail the right of appeal to the decision, the timeframe for making that appeal and where the licence has been revoked or varied, the date on which that comes into effect.

Appeals

4.18 Any appeal against the decision of the Council to refuse an application, to impose a condition on the licence or to revoke or vary the licence need to be made to the Magistrates' Court within 21 days of receipt of the notice.(deemed as next working day if served by 1st class post).

Notifications to National Register

4.19 A national register of scrap metal dealer licences will be maintained by The Environment Agency. Once a licence has been issued the Council have a duty to inform The Environment Agency of certain details contained on that licence. They will then publish this information alongside other licences issued by other Local Authorities on the national register which is open to the public to inspect. The Council is also required to notify details of any variation or revocation of a licence.

4.20 The information that has to be notified in respect of each licence is:-

- The name of the Council which issued the licence
- The name of the licensee
- Any trading name under which the licensee conducts business as a dealer
- The address of any site identified on the licence
- The type of licence (site or mobile)
- The date the licence expires

Display of Licence

4.21 In the case of a site, the licence has to be displayed on site where it can be clearly seen.

4.22 In the case of a mobile collector, the licence has to be displayed in any vehicle used in such a way that it can be read by a person outside the vehicle.

5 Licensing Panel Procedure

- 5.1 Where an application is refused and representations are received, or it is considered that there are grounds for the licence to be conditioned or revoked, the applicant/licence holder will be invited to attend a meeting with a Licensing Panel when opportunity will be given to put forward their representations for due consideration.
- 5.2 The Licensing Panel will consist of a tribunal of three officers of Doncaster Council Regulation and Environment Department.
- 5.3 Following the meeting a final decision whether to refuse or revoke the licence will be taken and the applicant/licence holder will be notified in writing within seven days.
- 5.4 On receipt of the notice to refuse condition or revoke the licence then an appeal may be made to the Magistrates Court within 21 days.

6 Enforcement

Doncaster Council will liaise with partnership agencies including South Yorkshire Police, British Transport Police and Environment Agency to ensure that the provisions of the Act are complied with. Non-compliance may result in enforcement action being taken.

The conviction of a licenced scrap metal dealer or site manager for one or more relevant offences, will usually result in the licence being reviewed, and may result in conditions being imposed or where considered appropriate revocation.