

Open

# Licensing and Environmental Committee

## Agenda

10.30am  
Monday, 12th June 2017  
Council Chamber  
Wyre Forest House  
Finepoint Way  
Kidderminster



## Licensing and Environmental Committee

### Members of Committee:

**Chairman: Councillor J A Hart**  
**Vice-Chairman: Councillor J Baker**

**Councillor J Aston**

**Councillor J R Desmond**

**Councillor V Higgs**

**Councillor M Rayner**

**Councillor R J Vale**

**Councillor R Bishop**

**Councillor I Hardiman**

**Councillor F M Oborski MBE**

**Councillor J D Smith**

**Councillor R Wilson**

### Information for Members of the Public:

**Part I of the Agenda includes items for discussion in public. You have the right to request to inspect copies of Minutes and reports on this Agenda as well as the background documents used in the preparation of these reports.**

**Part II of the Agenda (if applicable) deals with items of "Exempt Information" for which it is anticipated that the public may be excluded from the meeting and neither reports nor background papers are open to public inspection.**

### Declaration of Interests by Members – interests of members in contracts and other matters

Declarations of Interest are a standard item on every Council and Committee agenda and each Member must provide a full record of their interests in the Public Register.

In addition, alongside the Register of Interest, the Members Code of Conduct ("the Code") requires the Declaration of Interests at meetings. Members have to decide first whether or not they have a disclosable interest in the matter under discussion.

Please see the Members' Code of Conduct as set out in Section 14 of this constitution for full details.

### Disclosable Pecuniary Interest (DPI) / Other Disclosable Interest (ODI)

DPI's and ODI's are interests defined in the Code of Conduct that has been adopted by the District.

If you have a DPI (as defined in the Code) in a matter being considered at a meeting of the Council (as defined in the Code), the Council's Standing Orders require you to leave the room where the meeting is held, for the duration of any discussion or voting on that matter.

If you have an ODI (as defined in the Code) you will need to consider whether you need to leave the room during the consideration of the matter.

### For further information:

If you have any queries about this Agenda or require any details of background papers, further documents or information you should contact Louisa Bright, Principal Committee and Member Services Officer, Wyre Forest House, Finepoint Way, Kidderminster, DY11 7WF. Telephone: 01562 732763 or email [louisa.bright@wyreforestdc.gov.uk](mailto:louisa.bright@wyreforestdc.gov.uk)

## WEBCASTING NOTICE

This meeting is being filmed\* for live or subsequent broadcast via the Council's website site ([www.wyreforestdc.gov.uk](http://www.wyreforestdc.gov.uk)).

At the start of the meeting the Chairman will confirm if all or part of the meeting is being filmed.

You should be aware that the Council is a Data Controller under the Data Protection Act 1998. The footage recorded will be available to view on the Council's website for 6 months and shall be retained in accordance with the Council's published policy.

**By entering the meeting room and using the public seating area, you are consenting to be filmed and to the possible use of those images and sound recordings for webcasting and or training purposes.**

If members of the public do not wish to have their image captured they should sit in the Stourport and Bewdley Room where they can still view the meeting.

If any attendee is under the age of 18 the written consent of his or her parent or guardian is required before access to the meeting room is permitted. Persons under 18 are welcome to view the meeting from the Stourport and Bewdley Room.

**If you have any queries regarding this, please speak with the Council's Legal Officer at the meeting.**

\* Unless there are no reports in the open session.

Wyre Forest District Council

Licensing and Environmental Committee

Monday, 12th June 2017

Council Chamber, Wyre Forest House, Finepoint Way, Kidderminster

Part 1

Open to the press and public

<b>Agenda item</b>	<b>Subject</b>	<b>Page Number</b>
1.	<b>Apologies for Absence</b>	
2.	<b>Appointment of Substitute Members</b>  To receive the name of any Councillor who is to act as a substitute, together with the name of the Councillor for whom he/she is acting.	
3.	<b>Declarations of Interests by Members</b>  In accordance with the Code of Conduct, to invite Members to declare the existence and nature of any Disclosable Pecuniary Interests (DPI's) and / or Other Disclosable Interests (ODI's) in the following agenda items and indicate the action that they will be taking when the item is considered.  Please see the Members' Code of Conduct as set out in Section 14 of the Council's Constitution for full details.	
4.	<b>Minutes</b>  To confirm as a correct record the Minutes of the meeting held on the 10 <sup>th</sup> April 2017.	6
5.	<b>Draft Scrap Metal Licensing Policy and Guidelines</b>  To receive a report from the Head of Worcestershire Regulatory Services on behalf of Wyre Forest District Council which seeks approval to undertake a 12 week consultation with relevant parties on a proposed draft scrap metal policy and guidelines.	8
6.	<b>To consider any other business, details of which have been communicated to the Solicitor to the Council before the commencement of the meeting, which the Chairman by reason of special circumstances considers to be of so urgent a nature that it cannot wait until the next meeting.</b>	

7.	<b>Exclusion of the Press and Public</b>  To consider passing the following resolution:  “That under Section 100A(4) of the Local Government Act 1972 the press and public be excluded from the meeting during the consideration of the following item of business on the grounds that it involves the likely disclosure of “exempt information” as defined in the paragraph 1 of Part 1 of Schedule 12A to the Act”.	
----	---	--

Part 2

Not open to the Press and Public

8.	<b>To consider any other business, details of which have been communicated to the Solicitor to the Council before the commencement of the meeting, which the Chairman by reason of special circumstances considers to be of so urgent a nature that it cannot wait until the next meeting.</b>	
----	--	--

WYRE FOREST DISTRICT COUNCIL

LICENSING AND ENVIRONMENTAL COMMITTEE

COUNCIL CHAMBER, WYRE FOREST HOUSE, FINEPOINT WAY, KIDDERMINSTER

10TH APRIL 2017 (10.30AM)

---

**Present:**

Councillors: J A Hart (Chairman), J Baker (Vice-Chairman), J Aston, R Bishop, J R Desmond, I Hardiman, V Higgs, F M Oborski MBE, M Rayner, J D Smith, R J Vale and R Wilson.

**Observers:**

There were no members present as observers.

**LIC.22 Apologies for Absence**

There were no apologies for absence.

**LIC.23 Appointment of Substitutes**

No substitutes were appointed.

**LIC.24 Declaration of Interests**

No declarations of interest were made.

**LIC.25 Minutes**

**Decision: The minutes of the meeting held on 6th February 2017 be confirmed as a correct record and signed by the Chairman.**

**LIC.26 Exclusion of the Press and Public**

**Decision: Under Section 100A(4) of the Local Government Act, 1972 the press and public be excluded from the meeting during consideration of the following items of business on the grounds that they involve the likely disclosure of "Exempt Information" as defined in paragraphs 7 of Part I of Schedule 12A of the Act.**

**LIC.27 Application for the Grant of a Hackney Carriage/Private Hire Driver's Licence**

The Committee received a report from the Director of Economic Prosperity and Place that asked Members to consider an application for the grant of a Hackney Carriage/Private Hire Driver's Licence.

The Senior Practitioner – Licensing (WRS) led Members through the report

and highlighted the relevant convictions listed on the DBS disclosure form which was circulated to Members at the meeting.

The applicant and his wife addressed the Committee and asked Members to support the application. Following questions from Members, the applicant outlined the circumstances surrounding his previous convictions. He explained the reasons for his actions and the pressure he was under at the time of the offences.

The Senior Practitioner – Licensing, applicant and his wife left the meeting at this point, (10.53am), for Members to deliberate their decision. The Solicitor, Principal Committee and Member Services Officer and Assistant Committee Services Officer stayed in the meeting whilst the Committee reached their decision.

The Senior Practitioner – Licensing, applicant and his wife re-entered the meeting at this point, (11.25am). The Solicitor read out the decision of the Committee.

**Having carefully considered the application to grant a Hackney Carriage/Private Hire Driver's Licence to the applicant, the Committee has decided that the application to grant a Hackney Carriage/Private Hire Driver's Licence to the applicant be refused on the grounds that the applicant did not appear to the Committee, with due consideration of the Council's "Guidelines relating to the Relevance of Convictions", to be "a fit and proper person" to hold such a Licence as:**

- 1. the applicant has been convicted of two counts of violence against a person and both offences were carried out within the last 5 years; and**
- 2. the applicant did not provide the Committee with exceptional circumstances to justify the Committee to depart from the Council's "Guidelines relating to the Relevance of Convictions".**

There being no further business, the meeting ended at 11.26am.

**WYRE FOREST DISTRICT COUNCIL****LICENSING AND ENVIRONMENTAL COMMITTEE****12<sup>th</sup> June 2017****Draft Scrap Metal Licensing Policy and Guidelines**

<b>OPEN</b>	
<b>DIRECTOR:</b>	Head of Worcestershire Regulatory Services on behalf of Wyre Forest District Council
<b>CONTACT OFFICER:</b>	Niall McMenamin – 01905 822799 <a href="mailto:niall.mcmenamin@worcsregservices.gov.uk">niall.mcmenamin@worcsregservices.gov.uk</a>
<b>APPENDICES:</b>	Appendix 1 – Draft Scrap Metal Policy and Guidelines

**1. PURPOSE OF REPORT**

- 1.1 To seek approval from the Committee to undertake a 12 week consultation with relevant parties on a proposed draft scrap metal policy and guidelines attached at “Appendix 1”.

**2. RECOMMENDATION**

**The Committee is asked:**

- 2.1 **To approve the draft policy and guidelines at “Appendix 1” for the purpose of consultation with relevant parties.**

**3. BACKGROUND**

- 3.1 Wyre Forest District Council is responsible for issuing site and collector licences under the Scrap Metal Dealers Act 2013.
- 3.2 The Scrap Metal Dealers Act 2013 (the Act) was introduced to replace the previous regulatory scheme for scrap metal dealers and for vehicle dismantlers. It requires anyone who deals in scrap metal to obtain and display a relevant licence and gives the police and local authorities more powers of entry and inspection as well as allowing a more thorough application process where licences can be refused and subsequently revoked if dealers are deemed ‘unsuitable’.
- 3.3 The Committee has previously received reports to brief them on the provisions of the Act, which came into force on 1<sup>st</sup> October 2013, with full enforcement powers coming into effect on 1<sup>st</sup> December 2013. The Council has agreed the fees to be charged and the delegation of functions relating to the licensing processes under the Act.



**4. KEY ISSUES**

- 4.1 A draft policy has now been produced which aims to give clear guidance as to how the Council will administer and enforce the requirements of the Act. The policy has been prepared in accordance with the Act and the regulations that govern it.
- 4.2 A copy of the draft policy is attached as **Appendix 1**.
- 4.3 The provision of a policy and guidelines aims to provide residents, applicants and other agencies with a benchmark of the licensing authority's expectations and will assist them in understanding statutory requirements. This document will also assist people to submit complete and accurate applications thereby reducing unnecessary work and delays.
- 4.4 It is intended to ask each of the six district Councils in Worcestershire to adopt a similar policy to improve consistency of practise and decision making across the County.
- 4.5 It is proposed that the draft policy and guidelines be subject to consultation with relevant parties. The results of the consultation would then be brought back to the Committee for consideration before the draft policy and guidelines are finalised and approved.
- 4.6 In addition to consulting with residents and scrap metal dealers, the following stakeholders will be consulted:
- West Mercia Police
  - The Environment Agency
  - Environmental Health (WRS)
  - Trading Standards
  - British Transport Police
  - Relevant Trade Associations
  - The Council's Development Control Team
  - Parish Councils in the District
  - Hereford and Worcester Fire and Rescue Service

**5. FINANCIAL IMPLICATIONS**

- 5.1 The costs involved in carrying out the consultation would be met from existing budgets held by Worcestershire Regulatory Services.

**6. LEGAL AND POLICY IMPLICATIONS**

- 6.1 The Council is under no legal obligation to have a policy in place. However, this policy will assist the Council in achieving consistency, fairness and transparency in its decision making process.
- 6.2 Application of the policy in the decision making process will enable the Council to minimise successful legal challenges and appeals. Officers and the Committee should have regard to all the circumstances of a particular case and would be entitled to have due regard to this policy.

- 6.3 All policies approved by Wyre Forest District Council comply with the Regulators Code. The regulators Code seeks to promote proportionate, consistent and targeted regulatory activity through the development of transparent and effective dialogue and understanding between regulators and those they regulate.

**7. RISK MANAGEMENT**

- 7.1 Application of the policy will provide clarity when determining applications and reduces the risk of challenge and appeal. Consultation with relevant stakeholders will minimise the risk of challenge.

**8. EQUALITY IMPACT ASSESSMENT**

- 8.1 The Licensing and Environmental Committee will ensure it has regard to the desirability of exercising its functions with regard to the need to eliminate discrimination and to increase equality of opportunity.

**9. CONCLUSION**

- 9.1 The introduction of a scrap metal policy will result in the effective, consistent and transparent delivery of this important area of regulatory work.
- 9.2 Approval of the draft policy for the purpose of consultation will ensure that relevant stakeholders have the opportunity to both consider and comment on the policy prior to its adoption. The results of the consultation will be presented to the Committee for consideration before the draft policy and guidelines are finalised and approved.

**10. CONSULTEES**

- 10.1 Solicitor to the Council, Legal Services.

**11. BACKGROUND PAPERS**

- 11.1 Scrap Metal Dealers Act 2013.



# Wyre Forest District Council

**WYRE FOREST DISTRICT COUNCIL**

**STATEMENT OF LICENSING POLICY AND GUIDELINES  
FOR SCRAP METAL**

CONTENTS

SECTION	CONTENT	PAGE NO
1.	Introduction	3
2	Background	4 – 5
3.	Types of Licence	5 – 6
4.	Suitability	6
5.	Supply of Information by Authority	7
6.	Register of Licences	7
7.	Display of Licence	7
8.	Verification of Supplier's Identity	7 – 8
9.	Payment for Scrap Metal	8
10.	Records – Receipt of Metal	8
	Records - Disposal of Metal	9
	Records – Supplementary	9
11.	Right of Entry & Inspection	10
12.	Application Procedure	11 – 12
13.	Appeals	12
14.	Revocation and Imposing Conditions	13
15.	Closure of Unlicensed Sites	13 – 15
16.	Delegation of Functions	15 – 16
17	Enforcement	16
18.	Offences & Penalties	17 – 18

**1. Introduction**

- 1.1 Metal theft over recent years has had a significant impact on communities, businesses and local authorities alike. Such thefts have seen communications and the train network disrupted, historic buildings, churches etc. desecrated, and everybody's safety put at risk with inspection covers, drainage gully covers and road signage being stolen. The Scrap Metal Dealers Act 2013 has been introduced to help prevent some of the previous issues surrounding the sale, collection, storage and disposal of scrap metal. The Act provides a stronger legislative framework to empower local authorities and police forces in their fight against metal thieves, whilst strengthening and supporting legitimate scrap metal dealers.
- 1.2 This Policy outlines the requirements of the Scrap Metal Dealers Act 2013 (the Act). It gives guidance to new applicants, existing licence holders, consultees and members of the public as to how the Council will administer and enforce the requirements of the Act.
- 1.3 Wyre Forest District Council (the Authority) under the Act may depart from this policy if individual circumstances of any case warrant such a deviation. In such cases the Authority must give full reasons for doing so.
- 1.4 This Policy will be reviewed on a regular basis. In the preparation and publication of this Policy in addition to residents and scrap metal dealers, the following will be consulted:
  - a) West Mercia Police
  - b) The Environment Agency
  - c) Environmental Health
  - d) Trading Standards
  - e) British Transport Police
  - f) Existing Licence Holders
  - g) Relevant Trade Associations
  - h) The Council's Development Control Team
  - i) Parish Council's
  - j) Hereford and Worcester Fire & Rescue Service

## 2. Background

- 2.1 The Scrap Metal Dealers Act 2013 came into effect on 1<sup>st</sup> October 2013, with full enforcement powers coming into effect on 1<sup>st</sup> December 2013. It repeals previous legislation and creates a revised regulatory regime for scrap metal recycling and vehicle dismantling industries across England and Wales.
- 2.2 The Act defines a 'scrap metal dealer' as a person who carries on the business which consists wholly or in part of the buying or selling of scrap metal, whether or not the metal is sold in the form it was bought. This does not include manufacturing operations that sell metal as a by-product of the processes being used in that operation. It does, however, include the business of collecting scrap metal, i.e. door to door collectors even if no money is paid for scrap metal collected.
- 2.3 The definition of scrap metal dealer is wide and may include skip hire firms, and tradesmen, such as plumbers and builders who sell scrap metal resulting from their businesses.
- 2.4 In these circumstances, each business will be considered on its own merits, but consideration will be given to the amount of metal sold and how incidental the sale is to the main business. So, in most cases, for plumbers, electricians and builders etc. the sale of metal will be incidental and should not require a licence. However, skips sited at demolition sites, or at engineering manufacturing sites or plumbers' yards, are likely to contain a significant amount of metal, so the skip hire company may require a licence if they are involved in the buying or selling of scrap metal.
- 2.5 The Act identifies the local authority of each district as the principal regulator for their area and gives them the power to regulate these industries by the ability to refuse licences to 'unsuitable' applicants and the power to revoke those licences held by licence holders who become 'unsuitable'.
- 2.6 The Act states that 'scrap metal' includes:
- any old, 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 definition includes platinum and other rare metals now being used in catalytic converters and vehicle exhausts.

- 2.7 The following is **not** considered to be 'scrap metal'
- gold;
  - silver, and
  - any alloy of which 2 per cent or more by weight is attributable to gold or silver.
- 2.8 A scrap metal dealer also includes someone carrying on the business as a motor salvage operator. Motor salvage operator is defined as a business that:

- wholly or in part recovers salvageable parts from motor vehicles for re-use or re-sale, and then sells the rest of the vehicle for scrap;
  - wholly or mainly involves buying written-off vehicles and then repairing and re-selling them;
  - wholly or mainly buys or sells motor vehicles for the purpose of salvaging parts from them or repairing them and re-selling them.
- 2.9 The Act is not intended to include second hand goods. Jewellers or businesses trading in second hand gold, silver and products are not included in this legislation. However, if they buy or sell any other metals at scrap value they may fall within the definition of a scrap metal dealer.
- 2.10 Vehicles without a certificate of destruction, with or without a valid MOT or re-usable & tested parts removed from an end of life scrap vehicle may not be considered as scrap but as a vehicle commodity and could therefore be classed as second hand goods. Other vehicles are likely to be considered scrap. These aspects will be considered when the Council determines whether or not a scrap metal dealer licence is required. It should also help prevent any motor salvage operators attempting to circumvent the legislation and its requirements.
- 2.11 Any words or expressions in this Policy have the meaning assigned to them under the Act.

### **3. Types of Licence**

- 3.1 A licence is required to carry on business as a scrap metal dealer. A licence once granted lasts for three years. Trading without a licence is a criminal offence.
- 3.2 There are two types of licences specified in the Act:

#### **Site Licence**

All sites operating as a scrap metal business must be licensed. Each site must have a named site manager. A site licence allows the licence holder to transport scrap to and from the site from any local authority area.

#### **Collector's Licence**

This licence allows the holder to collect scrap within the area of the issuing local authority. This licence does not permit the holder to operate a scrap metal site, nor does it allow the collection outside of the area of the issuing authority. If a person collects scrap from more than one local authority area, a collector's licence will be required from each local authority he/she collects scrap within.

A scrap metal dealer may not hold more than **ONE** licence issued by any one local authority.

- 3.3 A site under the Act is defined as 'any premises used in the course of carrying on a business as a scrap metal dealer, (whether or not metal is kept there)'. This means a

dealer will require a site licence for an office, even if they do not operate a metal store or yard from those premises.

- 3.4 Holding a site or collector's licence does not exempt the licensee from requiring any other licence or permit to operate a scrap metal business. For example, a waste carrier registration issued by the Environment Agency.

**4. Suitability of Applicant**

- 4.1 The Council must determine if an applicant is a suitable person to carry on business as a scrap metal dealer.

- 4.2 The Council must have regard to any information which it considers to be relevant, this may include:

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

- 4.3 When establishing the applicant's suitability, the Council may consult with other persons, including in particular:

- a) West Mercia Police;
- b) The Environment Agency;
- c) Environmental Health;
- d) Trading Standards;
- e) The Council's Development Control Team
- f) Any other Licensing Authority

- 4.4 Relevant offences or relevant enforcement action are those listed under the Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013.



**5. Supply of Information by Authority**

5.1 Information supplied to the Authority in relation to an application for, or relating to a scrap metal licence must be provided when requested relating to a licence to:

- a) any other local authority;
- b) the Environment Agency; or
- c) an officer of the police force.

This does not limit any other powers and duties the Council has to supply that information.

**6. Register of Licences**

6.1 The Environment Agency will maintain a register of scrap metal licences issued by all local authorities in England. The register will include the following information:

- a) 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 on the licence;
- e) the type of licence, and
- f) the date of expiry of the licence.

The register will be open for inspection by members of the public.

6.2 The Council are required to update the register on a regular basis. The Council will also check the accuracy of the information held on the Environment Agency register on a regular basis and highlight any inaccuracies.

**7. Display of Licence**

7.1 Once granted, a copy of the licence must be displayed at each site identified on the licence, in a prominent place accessible to members of the public.

7.2 A copy of a collector's licence must be displayed on any vehicle that is being used in the course of a dealer's business. It must be displayed in a prominent position so that it can easily be read from outside the vehicle.

**8. Verification of Supplier's Identity**

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

8.2 If suitable verification is not obtained the scrap metal dealer, or site manager, or person who has been delegated responsibility by the dealer or site manager for verifying the name and address, shall be guilty of an offence.

- 8.3 It should be noted that whilst Statutory Instrument 2276 of 2013 sets out documents that are sufficient to verify the identity of a person from whom scrap metal is received, the list is not exclusive and a court may consider other documents to be satisfactory.

**9. Payment for Scrap Metal**

- 9.1 A scrap metal dealer must only pay for scrap metal by either;
- a) a cheque (which is not transferrable under Section 81A of the 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 and services.

**10. Records**

- 10.1 The scrap metal dealer must keep two types of records:

- a) receipt of Metal
- b) disposal of Metal

**10.2 Receipt of Metal**

If metal is received in the course of the dealer's business, the following must be recorded:

- 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 it was delivered by;
- d) full name and address of the person delivering it, and
- e) full name of the person making payment on behalf of the dealer.

- 10.3 The dealer must keep a copy of the documents used to verify the delivery person's name and address.

- 10.4 If payment is by cheque a copy of the cheque must be retained.

- 10.5 If payment is by electronic transfer a receipt identifying the transfer must be retained, or the details of the transfer.

**10.6 Disposal of Metal**

10.7 Disposal under the Act covers metal:

- a) whether or not it is in the same form as when it was purchased;
- b) whether or not it is to another person; or
- c) whether or not it is despatched from a site.

10.8 Disposal records must be recorded, including:

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

10.9 If disposal is in the course of business conducted under a collector's licence, the dealer must record:

- a) date and time of disposal, and;
- b) if to another person, their full name and address.

**10.10 Supplementary**

10.11 The information collected during receipt and disposal must be recorded in such a manner that allows the information and the metal to which it relates to be easily identified.

10.12 The records of receipt must be marked so as to identify the metal to which they relate.

10.13 Records must be kept for a period of 3 years beginning on the day of receipt, or disposal (as may be).

10.14 If suitable records for the receipt or disposal of scrap metal are not kept then the scrap metal dealer, or site manager, or person who has been delegated responsibility by the dealer or site manager for keeping records, shall be guilty of an offence.

10.15 A dealer or site manager may have a defence if they can prove arrangements had been made to ensure the requirement to keep records was fulfilled, or that they took all reasonable steps to ensure those arrangements were complied with.

**11. Right of Entry & Inspection**

- 11.1 An authorised officer of the Council may enter a licensed site at any reasonable time, with or without notice to the site manager.
- 11.2 Entry and inspection without notice would occur, if:
- a) reasonable attempts to give notice had been given and had failed, or
  - b) entry to the site is reasonably required for the purpose of ascertaining whether the provisions of the Act are being complied with or investigating an offence under it, and, in either case, the giving of the notice would defeat that purpose.
- 11.3 Paragraphs 11.1 and 11.2 do not apply to residential premises.
- 11.4 An authorised officer of the Council is not entitled to use force to enter a premises, but may ask a justice of the peace to issue a warrant authorising entry, if they are satisfied there are reasonable grounds for 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.
- 11.5 'Premises' under this section include:
- a) a licensed site, or
  - b) premises that are not licensed, but there are reasonable grounds for believing the premises are being used as a scrap metal dealing business.
- 11.6 An authorised officer of the Council may use reasonable force in the exercise of their powers under a warrant obtained under paragraph 11.4.
- 11.7 An authorised officer of the Council may:
- a) require the production of, and inspect, any scrap metal kept at an licensed premises, and
  - b) require production of, and inspect, any records kept in respect of receipt and disposal of metal, and
  - c) to take copies of or extracts from any such record
- 11.8 An authorised officer of the Council must produce evidence of their identity, and evidence of their authority to exercise these powers, if requested by the owner, occupier, or other person in charge of the premises.

**12. Application Procedure**

12.1 An application form, available from the Council's website or from the Council's Licensing Team must be completed, together with the correct fee and a current Basic Disclosure. A Basic Disclosure is a criminal record check that lists any unspent criminal convictions an applicant may have, and, can be applied for at [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)

12.2 A Basic Disclosure will be valid for 3 months from the date of issue.

12.3 A licence once granted is valid for 3 years.

12.4 A renewal application must be received before the expiry of the current licence which will continue in effect until the application is determined. If the renewal application is withdrawn the licence expires on the date of expiry noted thereon or at the end of the day on which the application was withdrawn, whichever is later.

12.5 If a licence application is refused, the licence expires when no appeal is possible, or an appeal is determined or withdrawn.

12.6 A licence may be varied from one type to another, i.e. site licence to collector's licence.

A variation application must be made to reflect changes to:

- a) name of licensee, site manager, or sites on a site licence, or
- b) name of licensee on a collector's licence

A variation cannot be used to transfer the licence to another person, only to amend the name of a licensee.

An application to vary must be made to the issuing authority.

12.7 The Council may request additional information is provided for the consideration of the application.

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

12.8 The fee is set by the Council under guidance issued by the Home Office with the approval of the Treasury.

12.9 Fees are set after taking into account the cost of processing, administering and compliance costs associated with the licence. The Council is committed to reviewing fees on a regular basis.

12.10 If the Council proposes to refuse an application, or to revoke, or to vary a licence by imposing conditions, a notice must be issued to the licence holder setting out the council's proposals and the reasons for the decision. The notice will indicate the time period in which the applicant or licensee can either:

- a) Make representation about the proposal, or
- b) Inform the Council that the applicant or licensee wishes to do so

This time period must not be less than 14 days beginning on the day the notice was given to the applicant or licensee.

- 12.11 If a notification is received that the applicant or licensee wishes to make representation, the Council will consider each case on its merits and allow for a reasonable period to make representations.
- 12.12 If the applicant or licensee does not make representation or notify the council that they wish to do so, within the time period specified in the notice, the Council may refuse, revoke or vary the licence.
- 12.13 If the applicant or licensee makes representations within the time period specified in the notice or within a time period considered reasonable by the Council, the Council must consider the representations.
- 12.14 If the applicant or licensee informs the Council that they wish to make oral representations, the Council must give them the opportunity of appearing before, and being heard by, the Licensing Sub-Committee.
- 12.15 If the Council refuse the application, or revokes or varies the licence within the time period specified in the notice it will give the applicant or licensee a notice setting out the decision and the reasons for it.

The notice will state:

- a) That the applicant or licensee may appeal against the decision
- b) The time within which such appeal may be brought, and
- c) In the case of a revocation or variation within the time period specified in the notice the date on which the revocation or variation is to take effect.

### **13. Appeals**

- 13.1 An applicant may appeal to the magistrates' court against a refusal of an application or variation,

A licensee may appeal to the magistrates' court against the inclusion on the licence of a condition under Section 3(8) of the Act, or a revocation or variation of a licence under Section 4 of the Act.

The appeals procedure will be in accordance with the Magistrates Courts Act 1980, and must be lodged within 21 days of receipt of the decision notice.

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.

**14. Revocation and Imposing Conditions**

- 14.1 The Council may revoke a scrap metal licence if it is satisfied the licence holder does not carry on a scrap metal business at any of the sites named on the licence.
- 14.2 The Council may revoke a scrap metal licence if it is satisfied the site manager named on the licence does not act as a site manager at any of the named sites on the licence.
- 14.3 The Council may revoke a scrap metal licence if it is no longer satisfied the licence holder is a suitable person to carry on the business.
- 14.4 If the licence holder, or site manager named on a licence is convicted of a relevant offence, the authority may impose one or both of the following conditions:
- a) the dealer must not receive scrap metal except between 9am and 5pm on any day;
  - b) all scrap metal received must be kept in the form in which it was received for a specified period, not exceeding 72 hours, beginning with the time when it was received.

Relevant offences are those listed under the Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013.

- 14.5 A revocation or variation only comes into effect when no appeal under the Act is possible, or when such appeal has been determined or withdrawn.
- 14.6 If the Council considers the licence should not continue without the addition of one or more of the conditions in paragraph 14.4 the licence holder will be given notice:
- a) that, until a revocation comes into effect, the licence is subject to one or both of the conditions, or
  - b) that a variation comes into immediate effect

**15. Closure of Unlicensed Sites**

- 15.1 If an authorised officer of the Council is satisfied premises are being used by a scrap metal dealer in the course of their business and the premises are unlicensed, they may issue a closure notice.

A copy of the notice must be given to:

- a) a person who appears to be the site manager, and
- b) any person who appears to be a director, manager, or other officer of the business

A copy may also be given to any person who has an interest in the business, a person who occupies part of the premises, or where the closure may impede a person's access to that other part of the business.

- 15.2 After a period of 7 days, the Council's authorised officer may apply to a justice of the peace for a Closure Order.

The court must be satisfied the premises will continue to be used by a scrap metal dealer, or there is a reasonable likelihood that the premises will be.

A Closure Order may close the premises immediately, and the premises will remain closed to the public until the Council makes a termination of closure order by certificate. The scrap metal dealer must cease his business immediately. They may also be required to pay a sum into the court, which will not be released until they have complied with the requirements of the order.

Such an Order may have a condition relating to the admission of people into the premises, or may include any other provision the court considers appropriate.

A copy of the Order must be placed on the premises in a prominent position by the Council.

- 15.3 Once the requirements of the Order have been complied with and the Council is satisfied the need for the Order has ceased, a Certificate may be given. The effect of giving a Certificate is that it ceases the Order and the sum of money paid into the court is released.

A copy of the Certificate must be given to any person the closure order was made against, a copy must be given to the court and a copy must be placed on the premises.

A copy of the Certificate must also be given to anyone who requests one.

- 15.4 Anyone issued with a Closure Order may complain to a justice of the peace. The court may discharge the Order, if it is satisfied there is no longer a need for it.

The Licensing Authority may be required by the court to attend and answer the complaint made.

Notice of the hearing must be given to all people issued with the Closure Order.

- 15.5 Appeals 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; or
- d) a decision not to make a discharge order



An appeal must be lodged within 21 days beginning on the day on which the order or decision was made.

Appeals against a) and b) may be made by any person who was issued with a Closure Order.

Appeals against c) and d) may be made by the Licensing Authority.

- 15.6 A person is guilty of an offence, if they allow the premises to be open in contravention of a Closure Order, without reasonable excuse, or fail to comply with, or contravene a Closure Order.
- 15.7 An authorised officer of the Council may enter the premises at any reasonable time to ensure compliance with the Closure Order. They may use reasonable force if necessary.
- 15.8 An authorised officer of the Council must produce evidence of their identity or evidence of their authority to exercise the powers under the Act, if requested to do so.

## **16. Delegation of Functions**

- 16.1 Where there are uncontested applications, or where there are no questions about the suitability of the applicant the determination should be dealt with by officers under delegated powers.
- 16.2 Contested applications where there is relevant information from any of the consultees, or queries regarding an applicant's suitability, or involving the revocation of a licence or the imposition of conditions, will be determined by the Council's Licensing Sub-Committee.
- 16.3 Table 1 below outlines the Delegation of Functions

<b>Table 1. Delegation of Functions</b>			
<b>Matter to be dealt with</b>	<b>Full Committee</b>	<b>Sub Committee</b>	<b>Officers</b>
To recommend to full Council fees for Scrap Metal Dealers licence applications	All Cases		
To recommend to full Council policy for the implementation and delivery of the Scrap Metal Dealers Act 2013	All Cases		
New or Renewal Applications		Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Variation of licence by the imposition of conditions following licence holder or site manger being convicted of relevant offence		All Cases	
Revocation of licence		All Cases	
Variation of licence under Schedule 1, Section 3			All non-contentious cases

**17. Enforcement**

- 17.1 In order to ensure compliance with the legislation and any conditions imposed, licences will be inspected using a risk-based approach. This will allow resources to be more effectively targeted on high-risk or problematic licence holders and prevent over burdensome enforcement on compliant and well managed licences.
- 17.2 Appropriate enforcement action will be taken in accordance with the legislation and any guidance issued under that legislation, the Council’s Enforcement Policy, the Regulators Code and any other enforcement protocols that may be agreed with other agencies.

**18. Offences & Penalties**

18.1 The following paragraphs are only indicative of the general offences and penalties. Independent legal advice should be sought for individual cases.

18.2 Offences relating to scrap metal dealing are described under the relevant piece of legislation.

18.2 Table of Offences – Scrap Metal Dealers Act 2013

Section	Offence	Maximum Penalty
1	Carrying on business as a scrap metal dealer without a licence	Level 5
8	Failure to notify the authority of any changes to details given with the application	Level 3
10	Failure to display site licence or collector's licence	Level 3
11 (6)	Receiving scrap metal without verifying persons full name and address	Level 3
11 (7)	Delivering scrap metal to dealer and giving false details	Level 3
12 (6)	Buying scrap metal for cash	Level 5
13	Failure to keep records regarding receipt of metal	Level 5
14	Failure to keep records regarding disposal of metal	Level 5
15 (1)	Failure to keep records which allow the information and the scrap metal to be identified by reference to one another	Level 5
15 (2)	Failure to keep copy document used to verify name and address of person bringing metal, or failure to keep a copy of a cheque issued	Level 5
16	Obstruction to right of entry and failure to produce records	Level 3

18.4 Current levels of fines:

- Level 1 - £200
- Level 2 - £500
- Level 3 - £1,000
- Level 4 - £2,500
- Level 5- £5,000

18.5 Offences by Bodies Corporate

Where an offence under the Act is committed by a body corporate and is proved:

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

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

Where the affairs of the body corporate are managed by its members, any acts or omissions committed by that member will be treated as though that member were a director of the body corporate.

DRAFT