
SCRAP METAL DEALERS ACT 2013

1 SUMMARY

- 1.1 The purpose of this report is to inform Members of impending changes to the regulatory regime for scrap metal dealers, which are to be implemented through the provisions of the Scrap Metal Dealers Act 2013. Council is to be recommended to delegate these new functions to the Licensing Committee. Approval is sought to undertake public consultation on the draft Statement of Licensing Policy which is appended.

2 INTRODUCTION

- 2.1 The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013 and is due to come into force on 1 December 2013. The new Act will replace the Scrap Metal Dealers Act 1964 and part of the Vehicle (Crime) Act 2001 that deals with motor salvage operators. The statute revises the regulatory regime for scrap metal dealing and vehicle dismantling. Local authorities will continue to act as the main regulator but the new statute gives the authority more powers, including the power to refuse and revoke licences if the dealer is considered unsuitable. Both the local authority and the Police have been given powers to enter and inspect premises.
- 2.2 The changes in the legislation have been prompted by the impact of metal theft – this has become an increasing problem across the UK as the value of metal has risen. A wide range of bodies in both the public and private sectors are commonly affected. Targets include transport, electricity and telephone infrastructure, street furniture and memorials - this affects commercial and residential buildings, together with churches and schools.
- 2.3 In 2012 the Government brought in some initial steps through the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, as follows:-
- to prohibit cash payments for scrap metal;
 - to amend Police powers of entry into unregistered scrap metal sites; and
 - to increase the existing financial penalties for offences under the Scrap Metal Dealers Act 1964.
- 2.4 There has already been an increase in the number of people applying for registration as scrap metal dealers in the District, possibly as a result of recent enforcement activity carried out by Essex Police.
- 2.5 At present, there are 13 registered Motor Salvage Operators and 4 Scrap Metal Collectors within the Rochford District.

Key Features of the Act

- 2.6 The aim of the legislation is to revise the regulatory regime for scrap metal dealing and vehicle dismantling and to give Police and local authorities more powers to refuse and revoke licences, as well as greater rights of entry and inspection.
- 2.7 The Act brings in two types of licences, a 'site licence,' or a 'collector's licence'. A person can only hold one licence in a local authority's area but can hold a licence with more than one local authority.
- 2.8 An applicant for a licence must be suitable and when determining suitability, the local authority can have regard to:-
- Whether the applicant or any site manager has been convicted of any relevant offence;
 - Whether the applicant or any site manager has been the subject of any relevant enforcement action;
 - Any previous refusal for issue of or renewal of a scrap metal licence;
 - Any previous refusal for an environment permit or registration;
 - Any previous revocation of a scrap metal licence; and
 - Whether the applicant has demonstrated that there will be adequate procedures to comply with the Act.

Where the applicant is not an individual, all of the above will apply to any site manager, director, any secretary of a company or any shadow director of the company.

- 2.9 Once an application has been received, the local authority must consult with:-
- Any other local authority (if an application has been made or licence issued to the same applicant);
 - The Environment Agency;
 - The Police.
- 2.10 The Act has also introduced the requirement for the Environment Agency to keep and maintain a register of scrap metal licences issued in England and that register will be open for public inspection.
- 2.11 The Act will introduce the requirement for scrap metal dealers to verify the identity and full name and address of the metal supplier and keep copies of proof of identification. In addition the dealer must keep records of the type of description of metal(s) including weight and identifying marks, the date and time of receipt, the vehicle registration of any vehicle delivering the metal and copies of cheques used to pay for metal. All records must be kept for 3 years. The Act also prohibits the payment of cash for metals.
- 2.12 Local authority and Police officers have been given the powers to inspect licensed premises and can require the production of any scrap metal at the

premises, inspect records kept and take copies of those records. The Act provides Police and local authority powers to issue closure notices to unlicensed scrap metal dealing premises and apply to a Justice of the Peace for a closure order.

- 2.13 The current legislation only permits registration with basic information and no fee is payable. The new Act will require more detailed information to be submitted on application and will allow the local authority to set a fee. The fee must be set on a cost recovery basis and local authorities must have regard to guidance issued by the Secretary of State.
- 2.14 At the time of writing this report, the Home Office is expected to issue Guidance and Regulations imminently.

3 NEXT STEPS

- 3.1 In preparation for the implementation of these new duties, the Council will need to make arrangements for dealing with applications, formalise a Statement of Licensing Policy, set fees and provide resources to deal with compliance, having regard to any statutory guidance issued by the Secretary of State.
- 3.2 The Licensing Service has been working in conjunction with a small working group made up of Licensing Officers from the Essex Licensing Officers Forum to draft a Statement of Licensing Policy. A copy of the initial draft policy is shown in the appendix to this report. Members are invited to approve this document for the purposes of consultation only. Subsequently the Licensing Committee will be invited to review any feedback received and to recommend to Council the approval of the policy, together with the necessary delegated powers to administer the function (see implementation table below).

Fee Setting

- 3.3 Fees are to be set locally by each authority on a cost recovery basis, but local authorities will have a duty to have regard to guidance issued by the Secretary of State. This guidance will outline the issues that should be considered when setting the fee and what activities the fee can cover. These fees will be an essential component of the new regime as they will provide local authorities with the funding they need to administer the regime and to ensure compliance. In preparation for the awaited guidance from the Secretary of State, the Licensing Service is taking the opportunity to consider what activities the fees should include.
- 3.4 This guidance is expected shortly and the proposed fees will be included in the next report to the Licensing Committee, following consultation on the draft policy. Subsequently, these fees will form part of the Council's annual schedule of fees and charges.

Delegation Arrangements

- 3.5 It is anticipated that this new regime will mirror that of other licensing regimes that are already in place and for the Licensing Act and Gambling Act, such that where applications are received that fall within the policy agreed by Council, officers will have delegated authority to issue a licence. Where applications fall outside the policy, i.e., contested applications, these will be dealt with by the Licensing Sub-Committee.

Timetable for Implementation

- 3.6 The table below sets out the proposed timetable of events for the implementation of the Scrap Dealers Act 2013.

Action	Date Due	Outcome
Draft policy put before the Licensing Committee for consultation.	6 August 2013	Agreement of draft policy and consultation arrangements.
External Consultation.	12 August – 16 September 2013	Observations/comments received.
Final policy and proposed fees put before Committee for consideration.	16 September 2013	Recommendations made to Full Council for adoption of the policy and agreement of fees.
Policy agreed by Full Council.	22 October 2013	Policy Approved.
Policy published.	1 November 2013	Policy published.

4 RISK IMPLICATIONS

- 4.1 Relevant risks and opportunities in conjunction with this matter have been considered and are referred to in the body of the report, as appropriate. The proposed implementation timetable may change if there are delays in the publication of the necessary guidance and Statutory Instruments.

5 CRIME AND DISORDER IMPLICATIONS

- 5.1 The Scrap Metal Dealers Act 2013 has been introduced to reduce the levels of crime and disorder within the scrap metal industry.

6 LEGAL IMPLICATIONS

- 6.1 The Scrap Metal Dealers Act 2013 imposes a duty on the local authority to enforce the legislation.

7 EQUALITY AND DIVERSITY IMPLICATIONS

- 7.1 Each application will be dealt with on its own merits, therefore there are no inclusion, diversity and community cohesion implications arising from this report.

8 RECOMMENDATION

- 8.1 It is proposed that the Committee **RESOLVES**

That the draft Scrap Metal Dealers Act Statement of Licensing Policy be approved for public consultation, as outlined in the report.

Richard Evans

Head of Environmental Services

Background Papers:-

None

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SCRAP METAL DEALERS ACT 2013

STATEMENT OF LICENSING POLICY

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1. Introduction

1.1 This document states Rochford District Council Policy on the regulation of Scrap Metal Dealers.

The Law

1.2 The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013 and is expected to come into force on 1 October 2013.

1.3 The Scrap Metal Dealers Act 2013, hereinafter referred to as 'the Act' repeals the Scrap Metal Dealers Act 1964 and Part 1 of the Vehicle (Crime) Act 2001, Paragraph 1 of schedule 3 of the Vehicle Excise and Registration Act 1994, Paragraph 168 of schedule 17 to the Communications Act 2003 and section 145 to 147 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The Act brings forward a new regime for scrap metal dealing and vehicle dismantling industries.

1.4 The Act maintains local authorities as the principle regulator. It also gives them better powers to regulate these industries by allowing them to refuse to grant a licence to 'unsuitable' applicants and a power to revoke licences if the dealer becomes 'unsuitable'.

1.5 Rochford District Council here in after referred to as 'the Council' is the Licensing Authority under the Scrap Metal Dealers Act 2013 and is responsible for granting site licences and collector's licences in the Rochford District in respect of businesses that deal in scrap metal and vehicle dismantling.

1.6 When assessing applications, the Council must be satisfied that the applicant is a 'suitable' person to hold a licence. Unsuitability will be based on a number of factors including any relevant criminal convictions.

- 1.7 The Scrap Metal Dealers Act 2013 makes it a requirement for a scrap metal dealer to have a licence in order to carry on in business as a dealer. It is an offence to carry on a business without first obtaining a licence. The Act incorporates the separate regulatory scheme for motor salvage operators under the Vehicle (Crime) Act 2001 into this new regime. This is to replace the current overlapping regimes for vehicle salvage and scrap metal industries with a single regulatory scheme.

Definition of a Scrap Metal Dealer

- 1.8 A person carries on business as a scrap metal dealer if:-
- a) they wholly or partly buy or sell scrap metal (whether or not sold in the form it was bought in) or;
 - b) they carry on business as a motor salvage operator (see 1.10).
- 1.9 A person selling scrap metal as surplus materials or as a by-product of manufacturing articles is NOT regarded as a scrap metal dealer.
- 1.10 Motor salvage operation is defined in the Act as a business that consists wholly or mainly of:
- a) recovering salvageable parts from motor vehicles for re-use or sale and selling the remainder of the vehicle for scrap;
 - b) buying written-off vehicles, repairing and reselling them;
 - c) buying or selling motor vehicles which are to be the subject of any of the activities mentioned in (a) or (b);
 - d) wholly or mainly in activities falling within paragraphs (b) and (c).
- 1.11 Scrap metal includes:
- a) any old, waste or discarded metal or metallic material, and
 - b) any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.
- 1.12 Scrap Metal does not include:
- a) Gold;
 - b) Silver; or
 - c) Any alloy of which 2% or more by weight is attributable to gold or silver.

2. Consultation

- 2.1 There is no requirement, in the Act, for a Council to have in place a formal policy for dealing with applications made under the Scrap Metal Dealers Act 2013. As a process of 'Best Practice' Rochford District Council has chosen to adopt a formal policy for this purpose.

2.2 In developing this policy statement, the Council will consult with existing scrap metal dealers/motor salvage operators, Essex Police, British Transport Police, Environment Agency and Industry Associations.

3. Types of Licences

3.1 Anyone wishing to operate a business will require a site licence or a collectors licence. The licence is valid for three years and permits the holder to operate within the boundaries of the issuing authority. These are:

- **Site Licence** – A licence will be issued by the Council in whose area a scrap metal site is situated. A site licence will require all of the sites at which the licensee carries on the business as a scrap metal dealer, within the local authority area, to be identified and a site manager to be named for each site. This will permit them to operate from those sites including transporting scrap metal to and from those sites from any local authority area.
- **Collectors Licence** – authorises a licence holder to operate as a 'mobile collector' in the area of the issuing local authority area. This permits them to collect any scrap metal as appropriate, including commercial and domestic scrap metal. It does not permit the collector to collect from any other local authority area, separate licences should be obtained from each local authority. Also, the licence does not permit a licensee to carry on a business at a site within any area. If a collector wishes to use a fixed site, they will need to obtain a site licence from the relevant local authority. There is no restriction as to the location where the collector can transport and sell their material.

3.2 A person may hold more than one licence issued by different authorities, but may NOT hold more than one licence issued by any one local authority.

4. **Transitional Process 'Grandfather Rights'**

4.1 During the transitional period, there will be special arrangements in place, (Guidance to be issued by Secretary of State). The procedure for conversion is detailed in Appendix 1.

NB. THIS PROCEDURE IS STILL AWAITING DETAILED GUIDANCE AND STATUTORY INSTRUMENTS

4.2 It is expected that currently registered scrap metal dealers will be able to apply for a licence from 1 August 2013 in order to be automatically issued with a temporary licence, pending completion of the suitability assessment carried out by the Council.

- 4.3 A temporary licence will be issued for a period of 2 months (1 September 2013 to 1 November 2013) when it is expected that the Council would be in a position to complete the licensing process and issue/refuse to grant a licence under the Scrap Metal Dealers Act 2013.
- 4.4 If an application is made within the transitional period and the Council fails to determine the application by 1 November 2013, the Council will then be unable to make a closure order against a temporary licensed site. Prosecution will also not be possible, unless there is a subsequent refusal.
- 4.5 Applications made after 31 August 2013 will be subject to the full licensing process.
- 4.6 Any dealer operating after 1 November 2013 without a licence will be in breach of the Scrap Metal Dealers Act 2013 and may risk being issued with a closure order.
- 4.7 Continuing to operate, in breach of a closure order, may result in an unlimited fine.

5. Application Process

- 5.1 When the Council is considering an application, it will have regard to:
- The Scrap Metal Dealers Act 2013;
 - Guidance issued by the Secretary of State;
 - Any supporting regulations
 - This statement of licensing policy.
- 5.2 This does not undermine the rights of any person to apply under the 2013 Act for a licence and have the application considered on its individual merits.
- 5.3 A person carrying on, or proposing to carry on, a business as a scrap metal dealer may apply to the Council to be licensed. The application must be in writing and contain the appropriate mandatory particulars, as set out in Appendix 2.
- 5.4 A local authority may request that an applicant provide such other information, as it considers relevant, for the purpose of considering the suitability of an applicant. The additional information that is required is set out in Appendix 2.
- 5.5 The application must be accompanied by the appropriate fee.

5.6 If the applicant fails to provide the information requested, including the additional supporting documentation, the Council may decline to accept the application as a valid application.

6. Suitability of Applicants

6.1 A local authority must determine whether the applicant is a suitable person to carry on a business as a Scrap Metal Dealer.

6.2 In determining this, the Council may have regard to any information it considers to be relevant, including whether any relevant enforcement action has been taken against the applicant or whether the applicant has been convicted of a relevant offence. A list of relevant offences are set out in Appendix 3.

6.3 The Council must also have regard to any guidance on determining suitability which is issued by the Secretary of State.

6.4 The Council may consult other agencies regarding the suitability of a applicant, including:

- Any other local authority;
- The Environment Agency;
- The Natural Resources Body for Wales; and
- An officer of a police force.

7. Determination of Application/Issue of Licence

7.1 Where the Council is satisfied that an applicant is a 'suitable person' to hold a Scrap Metal Dealers Licence, it must issue a licence.

7.2 The Council may include, in the licence, one or both of the following conditions:

- To limit the dealer to receiving any metal within the hours of 9.00am to 5.00pm; and
- That any scrap metal must be kept in the form in which it is received for a specified period of time, not exceeding 72 hours.

7.3 Where the Council is not satisfied that an applicant is a 'suitable person' to hold a Scrap Metal Dealers Licence, or a licence holder is no longer considered 'suitable' to continue to hold a licence, the Council must consider refusing the application or revoking the licence where a licence has been issued.

Right to Make Representations

7.4 If Rochford District Council proposes to refuse an application or to revoke/vary a licence a notice must be issued to the applicant/licensee setting out what the authority proposes to do and the reasons for this.

The notice must also state that within the period specified the applicant/licensee can either:

- a) make representations about the proposal; or
- b) inform the authority that the applicant/licensee wishes to do so.

- 7.5 The period specified in the notice must be not less than 14 days beginning with the date on which the notice is given to the applicant/licensee. Within this time the applicant/licensee must notify Rochford District Council that they do not wish to make representations. Should this period expire the applicant/licensee has not made representations, or informed the authority of their wish to do so the authority may refuse the application, or revoke or vary the licence.
- 7.6 If, within the period specified, the applicant/licensee informs the authority that they wish to make representations, the authority must allow a reasonable period to make representations and may refuse the application or revoke or vary the licence if they fail to make representations within that period.
- 7.7 If the applicant/licensee notifies the authority that they wish to make oral representations, the authority must give them the opportunity of appearing before, and being heard by, a person appointed by the authority. In this instance, this will be before the Miscellaneous Licensing Sub-Committee.
- 7.8 The Council may revoke a scrap metal dealers licence in certain circumstances. Please refer to Section 9 for circumstance of revocation.

Notice of Decisions

- 7.9 If the application is refused, or the licence is revoked or varied, Rochford District Council must give a notice to the applicant/licensee setting out the decision and the reasons for it. The notice must also state that the applicant/licensee may appeal against the decision, the time within which the appeal may be brought and, if revoked or varied, the date on which the revocation or variation is to take effect. (Please see Appendix 5 for appeal process).

8. Variation of Licence

- 8.1 An applicant can, on application, apply to the Council to vary a licence a licence by changing it from one type to another. The variation application must be made to reflect changes to:
- o Site licence – name of licensee, the sites, site manager
 - o Collector's licence – name of licensee

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

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

9. Revocation of Licence/Imposition of Conditions

- 9.1 The authority may revoke a scrap metal licence if it is satisfied that the licensee does not carry on the business of scrap metal dealing at any of the sites identified in the licence.

- 9.2 The authority may revoke a licence if it is satisfied that a site manager named in the licence does not act as site manager at any of the sites identified in the licence.

- 9.3 The authority may revoke a licence if it is no longer satisfied that the licensee is a suitable person to carry on a business as a scrap metal dealer.

- 9.4 If the licensee or any site manager named in a licence is convicted of a relevant offence, the authority may vary the licence by adding one or both of the conditions set out in section 7.2.

- 9.5 A revocation or variation under this section comes into effect when no appeal under section (???) Appeals is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn.

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- 9.6 If the authority considers that the licence should not continue in force without conditions, it may by notice provide:

- a) that, until a revocation under this section comes into effect, the licence is subject to one or both of the conditions set out in section 7.2; or
- b) that a variation under this section comes into effect immediately.

10. Register of Licences

- 10.1 The Environment Agency must maintain a register of scrap metal licences issued by authorities in England.

- 10.2 Each entry must record:

- a) the name of the authority which issued the licence;
- b) the name of the licensee;
- c) any trading name of the licensee;
- d) the address of the site identified in the licence;
- e) the type of licence; and
- f) the date on which the licence is due to expire.

10.3 The registers are to be open for inspection to the public.

11. Notification Requirements

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

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

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

11.4 An authority must notify the Environment Agency, of –

- a) any notification given to the authority under section 11.2 or 11.3;
- b) any variation made by the authority under section 8 (variation of type of licence or matters set out in licence); and
- c) any revocation of the authority of a licence.

11.5 Notification under subsection 11.4 must be given within 28 days of the notification, variation or revocation in question.

11.6 Where the authority notifies the Environment Agency under subsection 11.4, the body must amend the register under section 10 accordingly.

12. Display of Licence

12.1 A copy of a site licence must be displayed at each site identified in the licence. The copy must be displayed in a prominent place in an area accessible to the public.

12.2 A copy of a collector's licence must be displayed on any vehicle that is being used in the course of the dealer's business. This must be displayed in a manner which enables it easily to be read by a person outside the vehicle.

13. Verification of Supplier's Identity

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

13.2 Should verification not be gained then each of the following are guilty of an offence:

- a) the scrap metal dealer;
- b) if metal is received at the site, the site manager;
- c) any person who, under arrangements made by a person within paragraph (a) or (b), has responsibility for verifying the name and address.

14. Payment for Scrap Metal

14.1 A scrap metal dealer must only pay for scrap metal by either:

- a) a cheque (which is not transferrable under Section 81A Bills of Exchange Act 1882); or
- b) electronic transfer of funds (authorised by a credit, debit card or otherwise).

14.2 Payment includes payment in kind – with goods or services.

15. Records: Receipt of Metal

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

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

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

15.3 If payment is made via cheque, the dealer must retain a copy of the cheque.

15.4 If payment is made via electronic transfer, the dealer must keep a receipt identifying the transfer, or (if no receipt identifying the transfer) record particulars identifying the transfer.

16. Records: Disposal of Metal

16.1 The act regards the metal to be disposed of:

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

16.2 Where the disposal is in the course of business under a site licence, the following must be recorded:

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

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

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

17. Records: Supplementary

17.1 The information in sections 15 and 16 must be recorded in a manner which allows the information and the scrap metal to which it relates to be readily identified by reference to each other.

17.2 The records mentioned in section 15 must be marked so as to identify the scrap metal to which they relate.

17.3 Records must be kept for a period of 3 years beginning with the day on which the metal is received or (as may be the case) disposed of.

17.4 If a scrap metal dealer fails to fulfil a requirement under section 15 and 16 or this section each of the following is guilty of an offence:

- a) the scrap metal dealer;
- b) if the metal is received at or (as the case may be) despatched from a site, the site manager;
- c) any person who, under arrangements made by a person within paragraph (a) or (b) has responsibility for fulfilling the requirement.

17.5 It is a defence for a person within subsection 17.4 (a) or (b) who is charged with an offence under this section to prove that the person

- a) made arrangements to ensure that the requirement was fulfilled, and
- b) took all reasonable steps to ensure that those arrangements were complied with.

18. Fees

NB. AWAITING DETAILED GUIDANCE AND STATUTORY INSTRUMENTS

18.1 A Council may make a charge for a licence on a cost recovery basis (subject to Guidance issued by the Secretary of State).

19. Compliance

19.1 The Act provides a Police Constable and an Officer from the Council with a right to enter and inspect the premises of licensed and unlicensed scrap metal dealers. The full provisions of the powers are set out in Appendix 6.

19.2 The Act does not provide an Officer of the Council with the power to inspect premises of licensed and unlicensed scrap metal dealers outside the area of the authority.

19.3 The Council delivers a wide range of compliance services aimed at safeguarding the environment and the community and at providing a 'level playing field' on which businesses can fairly trade.

19.4 The administration and compliance of the licensing regime is one of these services.

19.5 Compliance will be based on the principles that businesses should:

- Receive clear explanations from regulators of what they need to do and by when;
- Have an opportunity to resolve differences before compliance action is taken, unless immediate action is needed;
- Receive an explanation of their right of appeal.

19.6 The council recognises the interest of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law. The council has set clear standards of service and performance that the public and businesses can expect.

19.7 In particular, a compliance policy has been created that explains how the council will undertake its role as Licensing Authority and how the principles of effective compliance will be achieved

19.8 The council has also established a compliance protocol with Essex Police and British Transport Police on compliance issues. This protocol provides for the targeting of resources towards high-risk premises and activities that require greater attention, while providing a lighter touch in respect of low risk premises that are well operated.

20. Closure of Unlicensed Sites

20.1 Interpretation

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

Local authority powers are exercisable only in relation to premises in the authority's area.

20.2 Closure Notice

Not applicable if the premises are residential premises.

A constable or the local authority must be satisfied that the premises are being used by a scrap metal dealer in the course of business and that the premises are not a licensed site.

A 'closure notice' may be issued by a constable or local authority which states they are satisfied of the above, the reasons for that, that the constable or local authority may apply to the court for a closure order and specifies the steps which may be taken to ensure that the alleged use of the premises ceases.

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

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

20.3 Cancellation of Closure Notice

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

20.4 Application for Closure Order

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

A complaint under this paragraph may not be made if the constable or authority is satisfied that the premises are not (or are no longer) being used by a scrap metal dealer in the course of business and there is no reasonable likelihood that the premises will be so used in the future.

The justice may issue a summons to answer to the complaint. This must be directed to anyone whom the closure notice was given and must include the date, time and place at which the complaint will be heard.

20.5 Closure Order

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

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

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

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

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

20.6 Termination of Closure Order by Certificate

Once a closure order has been made and a constable or local authority is satisfied that the need for the order has ceased a certificate may be made. This ceases the closure order and any sum paid into a court is to be released by the court to the defendant.

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

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

20.7 Discharge of Closure Order by Court

A closure order may be discharged by complaint to a justice of the peace. This can be done by any person to whom the relevant closure notice was given or any person who has an interest in the premises but to whom the closure notice was given.

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

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

20.8 Appeal

Appeal may be made to the Crown Court against:

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

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

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

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

20.9 Enforcement of Closure Order

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

If the closure order has been made, a constable or a person authorised by the local authority may (if necessary using reasonable force) enter the premises at any reasonable time, and having entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order.

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

21. Delegated Authority

- 21.1 Decisions on licensing matters will be taken in accordance with an approved scheme of delegation aimed at underlining the principles of timely, efficient and effective decision making.
- 21.2 Details of delegation of powers are shown in Appendix 6.

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TRANSITIONAL PROCESS

AWAITING DETAILED GUIDANCE AND STATUTORY INSTRUMENTS

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APPENDIX 2

1. APPLICATION PROCESS

An application for a licence should be made to the following address:

Licensing Section
Rochford District Council
South Street
Rochford
Essex SS4 1BW

To apply for a Scrap Metal Dealers Licence, applicants must be over ??? years of age and will need to complete an application form and send it to the Licensing Authority together with:-

- a) Full name of applicant (if an individual), date of birth and usual place of residence;
- b) Name and registered number of the applicant (if a company) and registered office;
- c) If a partnership – full name of each partner, date of birth and usual place of residence;
- d) Proposed trading name;
- e) Telephone number and email address (if any) of applicant;
- f) Address of any site within any other local authority at which carry on business as a scrap metal dealer or propose to do so;
- g) Any relevant environmental permit or registration in relation to the applicant;
- h) Details of any other scrap metal licence issued to the applicant within a period of 3 years ending with the date of the application;
- i) Details of the bank account which is proposed to be used in order to comply with section 15;
- j) Details of any relevant conviction or enforcement action taken against the applicant.

For site licence, must also provide:

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

Please note the collectors licence allows a business or individual to operate within that authority's area, therefore individuals wishing to collect across border will be required to obtain a collectors licence from the relevant local authority where they wish to collect and sell.

You are required to provide a basic disclosure of criminal convictions with your application. This can be obtained direct from www.disclosurescotland.co.uk or by telephoning the Disclosure Scotland Helpline on 0870 609 6006. Please note that the disclosure is valid for one month from the date it was issued.

2. Further information, in addition to that required above

Rochford District Council may request (at the time of the application or later) an applicant to supply such further information as is considered relevant for the purpose of considering the application.

Rochford District Council requires the following additional evidence:

- Photographic evidence (Current valid Passport, driving licence photo ID and counterpart);
- Birth Certificate;
- Utility bill or other recent document which confirms the address of the applicant (must be less than 3 months old);
- Certificate of good conduct for applicants that have been out of the country for long periods, from the age of 10 years;
- Document showing a right to work (Residents Permit) where applicable;
- National Insurance Number.

The council may have regard to the following information, when considering the suitability of an applicant:

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

All of the above will apply to any director or any secretary of a company if the applicant is not an individual.

3. Fee

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

4. Renewal

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

Refusal of application – licence expires when no appeal under Section ??

Making a false statement

An applicant who, in an application or in response to a request, makes a statement knowing it to be false in a material particular or recklessly makes a false statement is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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APPENDIX 3

RELEVANT OFFENCES & PENALTIES

When considering the suitability of an applicant, Rochford District Council will take into consideration relevant offences, these include:

- Environmental Offences
- Customs and Excise Management Act 1979 (section 170)
- Fraud Act 2006 (section 1)
- Proceeds of Crime Act 2002 (sections 329, 330, 331 and 332)
- Theft Act 1968 (sections 1,8,9,10,11,17,18,22 & 25)
- Scrap Metal Dealers Act 1964
- Scrap Metal Dealers Act 2013
- Legal Aid, Sentencing and Punishment of Offenders Act 2012 (section 146)
- Vehicle (Crime) Act 2001 (as motor salvage operators)

This document should not be relied upon as an accurate statement of the law, only indicative of the general offences and penalties. You should seek independent legal advice if you are unsure of any information in this document.

Offences relating to scrap metal dealing and motor salvage are described below under the relevant statute.

In relation to the maximum penalties specified, the levels of fine are currently as follows:-

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

Scrap Metal Dealers Act 2013

Section	Offence	Max Penalty
1	Carry on business as a scrap metal dealer without a licence	Level 5
8	Failure to notify authority of any changes to details given within application	Level 3
10	Failure to display site licence or collectors licence	Level 3
11 (6)	Receiving scrap metal without verifying the 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 of document used to verify name and address of person bringing metal, or failure to keep a copy of a cheque issued	Level 5
15 (3)	Failure to keep information and record for three years	Level 5
16	Obstruction to right of entry and failure to produce records	Level 3

OFFENCES BY BODIES CORPORATE

1. 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 other similar officer; or
- b) to be attributable to any neglect on the part of any such individual.

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

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

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COMPLIANCE

RIGHT OF ENTRY

1. A constable or an officer of Rochford District Council may enter and inspect a licensed site at any reasonable time on notice to the site manager.
2. A constable or an officer of Rochford District Council may enter and inspect a licensed site at any reasonable time, otherwise than on notice to the site manager, if
 - a) reasonable attempts to give notice have been made and failed, or
 - b) entry to the site is reasonably required for the purpose of ascertaining whether the provisions of this Act are being complied with or investigating offences under it and (in either case) the giving of the notice would defeat that purpose.
3. (1) and (2) above do not apply to residential premises.
4. A constable or an officer of Rochford District Council is not entitled to use force to enter a premises in the exercise of the powers under sections (1) and (2) above.
5. A justice of the peace may issue a warrant authorising entry (in accordance with section 7 below) to any premises within section 6 below if the justice is satisfied by information on oath that there are reasonable grounds for believing that entry to the premises is reasonably required for the purpose of:
 - a) securing compliance with the provisions of the Act, or
 - b) ascertaining whether those provisions are being complied with.
6. Premises are within this section if:
 - a) the premises are a licensed site, or
 - b) the premises are not a licensed site but there are reasonable grounds for believing that the premises are being used by a scrap metal dealer in the course of business
7. The warrant is a warrant signed by the justice which:
 - a) specifies the premises concerned, and
 - b) authorises a constable or an officer of a local authority to enter and inspect the premises at any time within one month from the date of the warrant.

8. A constable or an officer of Rochford District Council may, if necessary, use reasonable force in the exercise of the powers under a warrant under section 5.
9. A constable or an officer of Rochford District Council may:
 - a) require production of, and inspect, any scrap metal kept at any premises mentioned in section 1 or 2 or in a warrant under section 5;
 - b) require production of, and inspect, any records kept in accordance with section 15 or 16 and any other records relating to payment for scrap metal;
 - c) take copies of or extracts from any such records.
10. Section 14 below applies if a constable or an officer of Rochford District Council seeks to exercise powers under this section in relation to any premises.
11. If the owner, occupier or other person in charge of the premises requires the officer to produce
 - a) evidence of the officer's identity, or
 - b) evidence of the officer's authority to exercise those powersthe officer must produce that evidence.
12. In the case of an officer of Rochford District Council, the powers under this section are exercisable only in relation to premises in the area of the authority.

APPEALS

An applicant may appeal to the Magistrates' Court against the refusal of an application or a variation. The licensee may appeal to a Magistrates' Court against the inclusion in a licence of a condition under section 7.2 or the revocation or variation of a licence under section 9.

An appeal must be made within 21 days beginning on the day the notice to refuse the application, to include the condition or to revoke or vary the licence under section 7 was given.

The procedure on an appeal under this paragraph is to be by way of complaint for an order and in accordance with the Magistrates' Court Act 1980.

For the purposes of the time limit for making an appeal, the making of the complaint is to be treated as the making of the appeal.

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

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

DELEGATION OF POWERS

Full details of the Council's Constitution can be found on the Council website www.rochford.gov.uk and the terms and references and the delegation of functions of the Licensing Committee are described in full.

In respect of responsibilities under the Scrap Metal Dealers Act 2013, the Council has delegated all aspects of licensing under the Act, other than the approval and publishing of a Licensing Police that will be approved by a Full Council.

The Council will establish a panel, consisting of three members of the Licensing Committee to deal with matters relating to licences issued under the Scrap Metal Dealers Act 2013.

Delegation of Function

- The Manager of Environmental Health Services and Licensing Officers, are empowered to:-
 - Deal with all aspects of the Scrap Metal Dealers Act 2013, where no representations or objections have been made by a relevant agency.
- The Manager of Environmental Health Services and Licensing Officers, in consultation with the Chairman or Vice Chairman of the Licensing Committee, be empowered to:-
 - Vary the licence by adding one or both of the conditions set out in section 3 (8) of the Act.

FEES

APPENDIX 7

AWAITING DETAILED GUIDANCE AND STATUTORY INSTRUMENTS

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