

REPORTS FROM THE EXECUTIVE AND COMMITTEES TO COUNCIL

1 REPORT OF THE LICENSING COMMITTEE

Statement of Licensing Policy (Scrap Metal Dealers Act 2013)

- 1.1 This item of business was referred by the Licensing Committee on 3 October 2013 to Full Council with recommendations relating to approval of a licensing policy and amending part 3 of the Council's Constitution relating to responsibility for functions. An extract of the key elements of the report of the Head of Environmental Services to the Committee is attached at appendix 1.
- 1.2 The Licensing Committee considered responses that had been received to the consultation on the draft statement of licensing policy for scrap metal dealers and proposing minor amendments to the draft policy.
- 1.3 The Committee noted that:-
 - Under the new legislation, when individual licences are issued by the Authority to any scrap metal business/collector, an entry would be made on the Environment Agency register including the name and address of the business, together with the names of all key personnel associated with the business. The details would also appear on the Council's website and in an item in the Members' Bulletin.
 - Scrap metal collectors would be able to apply for and hold licences for different Districts and would be able to collect from any such Districts.
 - Collectors would be required to keep detailed records of where they collect from, including any addresses of items collected from private properties in the street.
 - The Council's Licensing Section would keep copies of scrap metal licences. Scrap metal businesses/collectors would be legally required to display a copy of their scrap metal licence in their vehicle.
 - Licence fees collected by the Authority would be retained by the Council, although there would be a charge of £25.00 to the Environment Agency for each entry on the register of scrap metal businesses.
 - An article would appear in the Members' Bulletin in due course providing detailed information about the new legislation and contact details for any scrap metal-related enquiries.
- 1.4 It is proposed that Council **RESOLVES**:-

- (1) That the statement of licensing policy (Scrap Metal Dealers Act 2013), as detailed in appendix D to the officer's report, be approved.
- (2) That the Head of Environmental Services be authorised to incorporate any inconsequential changes to the policy on an on going basis.
- (3) That section 3.6 of part C, Responsibility for Functions, in the Council's Constitution be amended, with the addition of the following paragraph:-

To the Head of Environmental Services

To determine and issue licences for all applications under the Scrap Metal Dealers Act 2013 for which valid representations have not been made. (HES/HLEMS)

STATEMENT OF LICENSING POLICY (SCRAP METAL DEALERS ACT 2013)

1 SUMMARY

- 1.1 This report details the responses to the consultation on the draft statement of licensing policy for scrap metal dealers and proposes minor amendments prior to submission to Full Council for approval.

2 INTRODUCTION

- 2.1 A draft policy was considered and approved for consultation by the Licensing Committee on 6 August 2013, subject to the amendments shown in the Minutes and further consultation with Members. The policy was circulated for consultation and displayed on the Council's website to invite comments or observations between 9 and 26 September 2013. A list of the consultees is shown in appendix A.
- 2.2 Since the draft policy was considered, guidance has been published by the Home Office on the setting of fees by local authorities. Proposed fees have now been incorporated into the policy.

3 CONSULTATION

- 3.1 Responses were received from the British Metals Recycling Association and Nevendon South East Cars. These responses are shown in appendix B, together with an officer comment, and have been incorporated into the text, as necessary. The comments made were generally constructive, although some were associated with the evolving nature of the legislation and the fact that the main Home Office guidance was yet to be published.
- 3.2 Responses received following the publication of the report will be tabled.

4 LICENSING FEES AND APPLICATION PROCESS

- 4.1 The Act provides that authorities set the fees, to allow for the recovery of the costs stemming from administering and seeking compliance with the regime.
- 4.2 In proposing the fees, regard has been given to the guidance issued by the Secretary of State and a benchmarking exercise completed between the Essex authorities. Benchmarking information on the fees proposed by other Essex authorities are shown in appendix C, together with our proposed fees
- 4.3 Applicants will submit their application with a basic criminal record check and photo ID, together with the fee to the Licensing Section. Consultation will then take place with the Environment Agency, the Police, Environmental Health and the British Transport Police to determine whether the applicant, or anyone formally involved with the business, is a 'suitable person'. Applications from

persons considered 'unsuitable' will be put before a Licensing Sub-Committee for determination.

- 4.4 An updated draft statement of licensing policy is shown at appendix D. This incorporates the consultation responses and a schedule of fees. Members are invited to endorse this policy prior to referral to Full Council for approval.
- 4.5 It is also necessary to amend the Council's Constitution in order to formally delegate appropriate functions to the Head of Environmental Services.

5 RISK IMPLICATIONS

- 5.1 In order to meet the statutory timetable for the introduction of this new regime, an approved policy needs to be in place by 1 December 2013. Amendments to the draft policy have therefore to be determined and finalised by this Committee in order that the policy can be placed before Full Council on 22 October 2013.
- 5.2 The Council's reputation could be harmed if successfully challenged on the content to the policy.

6 LEGAL IMPLICATIONS

- 6.1 If the statement of licensing policy has not been approved by Full Council and published by 1 December 2013, there may be a potential for application decisions to become subject to judicial review or appeal.

CONSULTEES	
Nevendon South East Cars	Brickfields Way, Purdeys Industrial Estate
Essex Car Collection	Unit 28 Moorland Industrial Estate Rettendon Common
Hockley Vehicle Dismantlers	Car Breakers Yard Rear Of 2 Murrels Lane
Copart UK Ltd	30 Purdeys Industrial Estate
Roachside Recycling Centre Limited	Welton Way Purdey's Industrial Estate
Nevendon South East Cars	190 Lower Road Hullbridge
Scrapco Metal Recycling LTD	2a Landau Way Darent Industrial Park Erith
Business owner	Rochford Garden Way
Business owner	Tinker's Lane, Rochford
Business owner	Ashingdon Road Rochford
Business owner	The Nest Grapnells Farm Wallasea
Business owner	Pudsey Hall Farm, Pudsey Hall Lane
CWJ Kirby Metal Merchants Ltd	Brickfields Way
Undercover Roofing Supplies Ltd	21 Sirdar Road, Brook Road Industrial Estate
Premier Metals	13 Sovereign Views, 163 Eastern Esplanade Southend on Sea
Business owner	The Gables Service Station, London Road
Business owner	Barling Road, Barling
Business owner	Cliff Road, Dovercourt Harwich
Andy Scrap Ltd	Sterling Place Basildon
S & M Metals	Bournemouth Road, Southend
Essex Police	
Environmental Agency	
Environmental Health	
British Transport Police	
British Metal Recycling Association	
Rochford District Councillors	

Consultation posted on the Council's web site.

Consultation Responses

The comments on these observations are in italics

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Thank you for the opportunity to comment on your draft policy document. Our observations follow.

Para 1.3 As well as Part 1 of the Vehicles Crime Act, the Scrap Metal Dealers' Act 2103 repeals section 35, and paragraphs 1 and 2 of the Schedule. (SMDA S19(1)(d) refers).

Agreed, policy amended.

Para 1.9 Discussions with the Home Office and LGA indicate that, by analogy, a tradesman such as a plumber or electrician disposing of waste or surplus material generated as a by-product of their businesses should not be regarded as a scrap metal dealer.

Agreed, our policy reflects this comment.

Para 3.1 Line 1, after "business" insert "as a scrap metal dealer".

Agreed policy amended.

Para 3.1, 1st bullet: It may be worth adding a note to the effect that "site" means any premises ... (whether or not metal is kept there)" [SMDA2013 S22(9) refers]. In effect, whilst a one-man-band may qualify for a collector's licence, a more complex business may well be considered to have established a "site" and thus require a site licence. The up-side for the collector is that he or she would be authorised by a site licence to collect from any local authority area.

Agreed, policy amended.

Para 3.2 Delete apostrophe in "Council's"

Agreed, policy amended.

Para 4.2 Amend "from October 2013" to read "between 1 October 2013 and 15 October 2013" [Commencement Order Para 5(3) refers.]

Agreed, policy amended.

Para 4.5 There is no provision for applications to be made prior to 1 October.

Agreed, removed from the policy

Para 5.3 We note that the LGA has provided a template form for use by licensing authorities.

Awaiting guidance and application form.

Para 6 & App 2 Councils are required to assess the suitability of site managers, all directors and shadow directors, company secretaries and partners (as is appropriate to the business structure). It would be useful to ensure that those persons all know that they must provide disclosure certificates.

Agreed, policy amended.

Para 7.2 Your text suggests that councils have some latitude to apply restrictive conditions. However, the conditions set out in SMDA2013 S3(8) may be applied only in the event that the applicant or a site manager has been convicted of a relevant conviction [SDA2103 S3(8) refers.]

Agreed, policy amended.

Para 8.1 The text suggests that the only reason for a variation is to change from one type of licence to another, whereas SMDA2013 Sched 1, para3(2) says that a variation must be sought in the event of changes of other details as set out earlier in the Act.

Agreed, policy amended.

Para 12 Whilst there is no requirement for a site licence holder to do so, it may be prudent to recommend that vehicles used by site licensees to collect scrap carry a copy of the site licence for inspection by police officers and other officials who may suspect them to be trading as unlicensed collectors.

Agreed, policy amended.

Para 13.1 Note: more detailed guidance on verification of the suppliers identity will shortly be set out by the Secretary of State in Regulations.

Agreed

Para 16(2)(a) Amend “is” to read “if”.

Agreed, policy amended.

Para 17.1/17.2 NB proportionality. The intention is for the scrap to be adequately described rather than for it to be possible for evermore to pin a particular line in a register to a specific piece of scrap metal. In particular, it would be unreasonable to expect every item in a skip-load to be separately described.

Awaiting guidance

Para 19.1 Suggest amending “Constable and ...” to read “Constable or ...” to avoid the misconception that both must be present – maybe nit-picking.

Agreed, policy amended.

Para 19.1 NB that exercising the right of entry into, and inspection of, unlicensed sites requires a warrant.

Agreed

Appendix 2 A form would be useful. See also my comments against Para 6 above.

Awaiting guidance

Sub-para numbering is a little odd. There appear to be two each of sub paras 1a, 1b, and 1c.

Agreed, policy amended.

2nd sub-para 1c It is not clear to us how the site managers details relate to 1g, 1h, and 1j. For 1g and 1h is it the intention to request site manager details relating to any recent permit, registration or licence held by the applicant, or to establish whether the site manager named in the current application has been associated with other such permits, etc? What is meant in relation to 1j is also unclear.

Agreed, policy amended.

Page 19 We suggest it would be easier to spell out that basic disclosures should be provided by the applicant, including all directors, shadow directors, company secretaries, partners and all named site managers (as appropriate to the business structure).

Agreed, policy amended.

Para 2, 4th bullet. Certificates of good conduct should be used with care to ensure that the ingredients of any offence, and the date of any conviction, are consistent with consideration of unspent relevant convictions.

Agreed

Appendix 4 In view of references (for example) in para 6 to “this section”, when it appears that the relevant paragraphs are really 5, 6, 7 and 8, we suggest adding a sub-heading before para 5 such as “Entry by Warrant”, and before para 9 “Inspection of material and records”

Agreed, policy amended.

Para 12 This refers to “Section 14 below”; should that read para 11?

Agreed, policy amended.

Roger Waterman, Manager
Nevendon South East Cars
Brickfields Way
Purdys Ind. Estate
Rochford

I have reviewed the draft document & have the following comments & suggestions:-

1. It appears from the draft that mobile collectors without premises operating a nationwide collection service or operating within various counties transporting vehicles to a Environmental Agency Authorised treatment Facility or scrap metal to a licensed scrap metal dealer would require a separate licence from every local authority in the UK, even operating this service within a radius of 50 to 75 miles would require a unrealistic volume of licences & it would be financially restrictive & virtually impossible to operate their business in compliant a efficient & sustainable basis, I suggest Collectors licence to be issued by the local authority within the area of the applicants main residence is located & any enforcement could be actioned by any local authority or issuing authority as a more workable & suitable solution.
2. As detailed guidance & instruments & application forms are not currently available & vehicle dismantlers/motor salvage industries are now included within the umbrella of the new act to ensure compliance I suggest both existing registered scrap metal dealers & currently operating dismantling/motor salvage operators are issued with a temporary licence pending the assessment procedure. Temporary licence period to be extended if application forms /detailed guidance/ statutory instruments are not available within adequate time period to complete application.

3. Re licence condition possible limit on operating hours where site location is appropriate i.e. industrial estate without disturbance to adjacent or residential dwellings operating hours are not restricted.

These comments have been into account. As the comments are referring to the legislation rather than our policy, the following response was sent:

Thank you for your comments on our draft policy. I have attached a copy of the Scrap Metal Dealers Act 2013 for you to look over. As you will appreciate we are guided by the legislation to which we have to adhere. The implementation date is now the 1 December, once our fees have been approved I will be sending out application packs to our existing customers and people who have left their details with me for an application pack. If I can be of further assistance please do not hesitate to contact me.

FeesEssex Scrap Metal Dealers Act Fees comparison

	Site			Collector		
	New	Renewal	Variation	New	Renewal	Variation
Basildon	£345	£200		£220	£175	
Braintree	£385	£230	£63	£160	£118	£69
Brentwood	TBA					
Castle Point	£270	£180		£200	£170	
Chelmsford	£430	£270	£50	£200	£180	£50
Colchester	£337	£154	£154	£228	£147	£147
Epping Forest	£375	£275	£40	£225	£225	£40
Harlow	£375	£283	£283	£273	£180	£180
Maldon	£430	£270	£50	£200	£180	£50
Rochford	£327	£260	£63	£217	£180	£63
Southend	£375	£224	£113	£227	£176	£76
Tendring	£320	£189	£31	£198	£128	£31
Thurrock	£494	£408	£112	£315	£262	£112
Uttlesford	TBA					

Some of the local authorities have yet to have their fees approved

Proposed Fees

Application Type	Fee
New Site Licence	£327
Renewal Site Licence	£260
Site Variation	£63
New Collectors Licence	£217
Renewal Collectors Licence	£180
Variation of Collectors licence	£63
Duplicate Licence	£11

The proposed fees are calculated on the basis of estimated officer time.
To be reviewed annually in April.

SCRAP METAL DEALERS ACT 2013

STATEMENT OF LICENSING POLICY

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1. Introduction

- 1.1 This document states Rochford District Council's 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 main provision come into force on 1 December 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 section 35, and paragraphs 1 and 2 of the Schedule 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 principal 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 hereinafter referred to as 'the Council' is the Licensing Authority under the Act 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 Act 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. The Council has chosen to adopt a formal policy for this purpose as this represents best practice.
- 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 scrap metal dealers 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 Council. 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 Council area, to be identified and a site

manager to be named for each site. This will permit the licensee to operate from those sites including transporting scrap metal to and from those sites from any local authority area. A person/business holding a Site Licence may collect from any local authority area.

- **Collectors Licence** – A licence will be issued by the Council in whose area a licence holder wishes to operate as a ‘mobile collector.’ 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, as 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 other 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 Councils, but cannot hold more than one licence issued by any one Council.

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. DETAILED GUIDANCE AND STATUTORY INSTRUMENTS ARE STILL AWAITED

- 4.2 A registered scrap metal dealer will be able to apply for a licence between 1 and 15 October 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 October 2013 to 1 December 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 Act.
- 4.4 If an application is made within the transitional period and the Council fails to determine the application by 1 December 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 Any dealer operating after 1 December 2013 without a licence will be in breach of the Act and may risk being issued with a closure order.
- 4.6 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 give regard to:-
- The Act;
 - 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 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 The Council 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 The Council must determine whether the applicant's Site Manager(s), Director(s), Company Secretary and Partner(s) (as is appropriate to the business structure) are suitable persons 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 is 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 If the applicant has been convicted of relevant convictions listed in appendix 3, 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 on any day; 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 the 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 Council 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 the Council that they do not wish to make representations. Should this period expire and the applicant/licensee has not made representations, or informed the Council of their wish to do so, the Council may refuse the application or revoke or vary the licence.
- 7.6 If, within the period specified, the applicant/licensee informs the Council that they wish to make representations, the Council must allow a reasonable period of time 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 Council that they wish to make oral representations, the Council 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 Licensing Sub-Committee.

- 7.8 The Council may revoke a scrap metal dealer's licence in certain circumstances. (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, the 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. (Refer to Appendix 5 for the appeal process).

8. Variation of Licence

- 8.1 An applicant can, on application, apply to the Council to vary a licence by changing it from one type to another, or change any details on the licence. The variation application must be made to reflect changes to:-

- Site licence – name of licensee, the sites, site manager
- 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 Council and contain particulars of the changes to be made to the licence.

9. Revocation of Licence/Imposition of Conditions

- 9.1 The Council 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 Council may revoke a licence if it is satisfied that a site manager named in the licence does not act as the site manager at any of the sites identified in the licence.
- 9.3 The Council 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 Council may vary the licence by adding one or both of the conditions set out in section 7.2.

- 9.5 A revocation or variation comes into effect when no appeal under paragraph 9 of Schedule 1, is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn.
- 9.6 If the Council considers that the licence should not continue 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 Councils 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 Council 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 Council which issued the licence must notify the Council within 28 days.
- 11.3 If a licence is issued to a business under a trading name the licensee must notify the Council which issued the licence of any change to that name within 28 days.
- 11.4 A Council 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 Council 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 to be easily read by a person outside the vehicle.
- 12.3 Vehicles used by licencees to collect scrap metal will carry a copy of the Site Licence for inspection, upon request by a Police or local authority officer.

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~~ if mixed), form and weight;
 - b) date and time of disposal;
 - c) if to another person, their full name and address;
 - d) if payment is received for the metal (by sale or exchange) the price or other consideration received.
- 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 A defence is available 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

- 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. The fees set by the Council and are subject to annual review.

19. Compliance

- 19.1 The Act provides a Constable or Officer of 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 5.
- 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 Council.
- 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 premises is the owner, leaseholder or occupier of the premises.

Council 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 that the premises are not a licensed site and the reasons for that decision. The Constable or local authority may

apply to the Court for a Closure Order and specify the steps which may be taken to ensure that the alleged use of the premises ceases.

The Closure 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 are part of and the Constable or local authority believes that at the time of giving the notice, 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 Justice of the Peace for a closure order. This may not be made less than 7 days after the date on which the closure notice was given or more than 6 months after that date.

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

The Justice of the Peace 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 the premises be closed immediately to the public and remain closed until a Constable or the local authority makes a termination of a closure order by certificate. The use of the premises by a scrap metal dealer in the course of business is discontinued immediately and that any defendant pays 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 to 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 affected.

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. A Justice of the Peace may issue a summons directed to a constable or the Council, requiring that person to 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

An appeal may be made to the Magistrates' 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 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 4.

1. APPLICATION PROCESS

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

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

To apply for a Scrap Metal Dealers Licence, applicants must be aged over 18 years of age (subject to confirmation) 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 a Site Licence, applicants must also provide:-

- k) Address of each site proposed to be identified in the licence (or if renewal, each site identified for which renewal is sought);
- l) 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);
- m) Site manager's details to be included on all site applications.

Please note the Collector's Licence allows a business or individual to operate within that authority's area, therefore, individuals wishing to collect across a border will be required to obtain a Collector's 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 (Resident's Permit) where applicable;
- National Insurance Number.
- Basic Criminal Record check.

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 the 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 Directors, Secretaries, Partners and all named site managers of a company if the applicant is not an individual.

3. Fee

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

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.

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.

RELEVANT OFFENCES, PENALTIES AND ENFORCEMENT ACTION

When considering the suitability of an applicant, the Council may have regard to any information which it considers to be relevant. Without prejudice to the generality of the foregoing this shall include offences and/or enforcement action under the following statutes:-

- Control of Pollution (Amendment) Act 1989(4) sections 1, 5, or 7
- Customs and Excise Management Act 1979(5) sections 170, 170B
- Environment Act 1995(6) section 110
- Environmental Protection Act 1990(7) sections 33,34 or 34B
- Food and Environment Protection Act 1985(8) section 9
- Fraud Act 2006(9) where the specific offence concerned relates to scrap metal, or is an environment related offence.
- Legal Aid, Sentencing and Punishment of Offenders Act 2012(10) section 146
- Proceeds of Crime Act 2002(11) section 327, 328, or 330 to 332
- Scrap Metal Dealers Act 1964(12)
- Scrap Metal Dealers Act 2013
- Theft Act 1968(13) section 1, 8, 9, 10, 11, 17, 18, 22 or 25 where the offence concerned relates to scrap metal or is environment related offence.
- Vehicles (Crime) Act 2001(14) any offence under part 1
- Water Resources Act 1991(15) section 85, 202 or 206
- Environmental Permitting (England and Wales) Regulations 2007(16) regulation 38
- Environmental Permitting (England and Wales) Regulations 2010(17) regulation 38
- Any offence under the Hazardous Waste (England and Wales) Regulations 2005(18), 2005(19)
- Any offence under regulation 17(1) of the Landfill (England and Wales) Regulations 2002(20)
- Any offence under the Pollution Prevention and Control (England and Wales) Regulations 2000(21)
- Any offence under the Producer Responsibility (Packaging Waste) Regulations 2007(22)
- Any offence under the Trans frontier Shipment of Waste Regulations 1994(23), 2007(24)
- Any offence under the Waste (Electrical and Electronic Equipment) Regulations 2006(25)
- Waste (England and Wales) regulations 2011(26) Regulation 42

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.

Scrap Metal Dealer's 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 a 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 a copy of documents used to verify the name and address of a person bringing metal, or failure to keep a copy of a cheque issued	Level 5
15 (3)	Failure to keep information and records for three years	Level 5
16	Obstruction to right of entry and failure to produce records	Level 3

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

OFFENCES BY CORPORATE BODIES

1. Where an offence under the Act is committed by a corporate body 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 corporate body is guilty of the offence and is liable to be proceeded against and punished accordingly.

2. Where the affairs of a corporate body 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 corporate body.

COMPLIANCE

RIGHT OF ENTRY

- a. A Constable or an authorised officer of the Council may enter and inspect a licensed site at any reasonable time on notice to the site manager.
- b. A Constable or an authorised officer of the Council may enter and inspect a licensed site at any reasonable time, otherwise than on notice to the site manager, if
 - a) reasonable attempts to give notice have been made and failed, or
 - b) entry to the site is reasonably required for the purpose of ascertaining whether the provisions of this Act are being complied with or investigating offences under it and (in either case) the giving of the notice would defeat that purpose.
- c. (1) and (2) above do not apply to residential premises.
- d. A Constable or an authorised officer of the Council is not entitled to use force to enter premises in the exercise of the powers under sections (1) and (2) above.

ENTRY BY WARRANT

- e. A Justice of the Peace may issue a warrant authorising entry (in accordance with section 7 below) to any premises within section 6 if the JP is satisfied by information given under 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.
- f. Premises fall 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
- g. The warrant is a warrant signed by the Justice of the Peace which:-
 - a) specifies the premises concerned, and

- b) authorises a Constable or an authorised officer of a local authority to enter and inspect the premises at any time within one month from the date of the warrant.
- h. A Constable or an authorised officer of the Council may, if necessary, use reasonable force in the exercise of the powers under a warrant under section 5.

INSPECTION OF MATERIAL AND RECORDS

- i. A Constable or an authorised officer of the 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.
- j. Section 11 applies if a Constable or an authorised officer of the Council seeks to exercise powers under this section in relation to any premises.
- k. 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.
- l. In the case of an officer of the 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 was given to refuse the application, to include the condition or to revoke or vary the licence under section 7.

The procedure for an appeal under this paragraph is 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 Council must comply with any directions given by the Magistrates' Court. Although the Council 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 Act, the Council has delegated all aspects of licensing under the Act, other than the approval and publishing of a Statement of Licensing Policy that will be approved by a Full Council.

The Council has established a Sub-Committee, consisting of three members of the Licensing Committee to deal with matters relating to licences issued under the Act.

Delegation of Function

- The Head of Environmental Services is empowered to:-
 - To determine and issue licenses for all applications under the Scrap Metal Dealer's Act 2013 for which valid representations have not been made.

Individual officers are delegated by the Head of Environmental Services to undertake functions under the Act.

Proposed Fees

Application Type	Fee
New Site Licence	£327
Renewal Site Licence	£260
Site Variation	£63
New Collectors Licence	£217
Renewal Collectors Licence	£180
Variation of Collectors licence	£63
Duplicate Licence	£11

The proposed fees are calculated on the basis of estimated officer time. To be reviewed annually in April.