



Licensing Committee Tuesday, 10th September, 2013

You are invited to attend the next meeting of **Licensing Committee**, which will be held at:

**Council Chamber, Civic Offices, High Street, Epping
on Tuesday, 10th September, 2013
at 2.30 pm .**

**Glen Chipp
Chief Executive**

**Democratic Services
Officer**

Adrian Hendry (The Office of the Chief Executive)
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Members:

Councillors K Angold-Stephens (Chairman), P Spencer (Vice-Chairman), A Boyce, K Chana, Mrs R Gadsby, P Keska, L Leonard, H Mann, A Mitchell MBE, R Morgan, Mrs M Sartin, Mrs P Smith, Mrs T Thomas and Ms S Watson

PLEASE NOTE THE START TIME OF THE MEETING

1. APOLOGIES FOR ABSENCE

2. DECLARATIONS OF INTEREST

(Assistant to the Chief Executive) To declare interests in any item on this agenda.

3. SCRAP METAL DEALERS ACT 2013 (Pages 3 - 34)

(Assistant Director of Corporate Support Services (Legal)) To consider the attached report and policy document.

4. REVIEW OF LICENSING SUB-COMMITTEE PROCEDURES

To review the proceedings of the Licensing Sub-Committee held during the preceding period and identify any problems of procedure, policy and organisation that have adversely affected the running of the meetings.

5. DATE OF NEXT MEETING

The next meeting of the Licensing Committee has been scheduled for 9 October 2013 at 2.00pm in the Council Chamber.

Report to Licensing Committee

Date of meeting: 10 September 2013

Subject: SCRAP METAL DEALERS ACT 2013



**Epping Forest
District Council**

Officer contact for further information: Kim Tuckey Ext 4034

Committee Secretary: Adrian Hendry, ext.4246

Recommendations/Decisions Required:

That the Committee:

- (1) Notes the licensing requirements of the Scrap Metal Dealers Act 2013**
 - (2) Agrees that the draft guidance subject to any amendments is the subject of a consultation.**
 - (3) Provides comments on the suggested licence fees prior to submission to the Council for approval.**
 - (4) Recommends to the Council that Officers are granted the necessary delegations as specified in the draft guidance so that these are in place at the commencement of the Act in October.**
 - (5) Recommends to the Council that the Director of Corporate Support Services and the Director of Environment and Street Scene have delegated authority to authorize officers to carry out inspections of the sites and vehicles used and conduct investigations and to issue prosecutions that may arise under the Act.**
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EXECUTIVE SUMMARY:

The purpose of this report is to inform Members of impending changes to the regulatory regime for controlling scrap metal dealing to be implemented through provisions of the Scrap Metal Dealers Act 2013, and the increased duties and powers which this gives to the Council.

BACKGROUND

The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013 and is due to come into force in October this year. The new Act will replace the Scrap Metal Dealers Act 1964 and the part of the Vehicle (Crime) Act 2001 that deals with motor salvage operators. The Act revises the regulatory regime for scrap metal dealing and vehicle dismantling. Local authorities will continue to act as the main regulator but the new system gives the Council more powers, including the power to refuse an application for a licence and also to revoke licences if the dealer is considered

unsuitable. Both the local authority and the police have been given powers to enter and inspect premises.

The changes in the legislation have been prompted as a result of the impact of metal theft. This has become an increasing problem as the value of metal across the UK as a whole has risen. A wide range of bodies in both the public and private sectors are commonly affected by this criminal activity. Targets include transport, electricity and telephone links, street furniture, memorials; affecting both commercial and residential buildings, including churches and schools.

In 2012, the Government brought in some initial restrictions through the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and these were 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.

There has already been an increase in the number of people applying for registration as scrap metal dealers in the district since the new legislation was announced

At present, there are 6 registered Scrap Metal Dealers and 7 Itinerant dealers within the Epping Forest District Council.

Key features of the Act

The aim of the legislation is to revise the regulatory regime for scrap metal dealing and vehicle dismantling and to give the police and local authorities more powers to refuse and revoke licences as well as greater rights of entry and inspection.

The Act brings in two types of licences: a 'site licence' and a 'collectors licence'. A person can only hold one licence in a local authority's area but can hold a licence in more than one local authority.

The Authority must not issue or renew a licence unless it is satisfied that the applicant is suitable to carry on business as a scrap metal dealer and in making this decision 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 to issue or renew 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.

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

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; and
- The Police.

The Act has also introduced the requirement for the Environment Agency to keep and maintain a register of scrap metal licences issued in England, which will be open for public inspection.

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 the metal(s) acquired, 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.

Local authority and Police officers have been given the powers to inspect licensed premises and can require 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.

The current legislation for scrap metal dealers only requires basic information to be supplied and no fee is payable. The new Act will require more detailed information to be submitted upon application and will allow the local authority to set a fee. The fee must be fixed to allow cost recovery and local authorities will have to have regard to guidance issued by the Secretary of State.

Next Steps

In preparation for the implementation of these new powers and duties, the Council will need to make arrangements for dealing with applications; set a fee; authorise officers to exercise the new powers; and assign resources to ensure compliance.

A short consultation exercise on the proposed policy will take place with existing local scrap metal dealers and motor salvage operators; Essex Police; British Transport Police; Environment Agency and Industry Associations. This will also serve to make these parties aware of the commencement of the new system.

Dealing with Applications

Licensing Officers, have participated in a small working group of the Essex Licensing Officers Forum to draft a Statement of Licensing Policy, which can be adopted as a model of best practice across the county. A copy of the proposed policy is attached. (with some amendments) This document sets out how applications will be dealt with during the transitional period and for new applicants.

Fee Setting

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 Secretary of State. This will outline the issues that should be considered by them when setting the fee and what activities the fee can cover. This fee will be an essential component of the new regime as it will provide local authorities with the funding they need to administer the regime and to ensure compliance.

A copy of the guidance is attached. The routine review of the level of fee will ultimately form part of the Council's annual adoption of fees and charges. However, because the Council has to be in a position to process applications as soon as the new system comes into effect, in the interim, the Licensing Members will be asked to recommend to the Council the level of fee to be charged, as permitted under the Council's scheme of delegations.

Delegation Arrangements

A schedule of delegations on decision making is included in the draft policy.

It will be necessary for the officers from the Council to have authority to enter onto sites to carry out any necessary investigations and to institute proceedings in case of a breach of the requirements of the Act and members are requested to recommend to the Council that these are granted.

LEGISLATION/POLICY

The Scrap Metal Dealers Act 2013 will come into effect on 1 October 2013 with Transitional Arrangements taking effect from 1 September 2013.

Under Schedule 1 of the Act, an applicant may appeal to the Magistrates' Court against the refusal of an application made under paragraph 2 or 3 of Schedule 1 of the Act.

Resource Implications

Financial Implications

The issue of the licences are intended to be self financing.

Inclusion, Diversity and Community Cohesion Implications

Each application will be dealt with on its own merits, therefore there are no inclusion, diversity and community cohesion implications arising from this report. Further consideration will be given to the means of communicating the policy to target audiences and the policy will be reviewed taking account of the replies to the consultation prior to adoption by the Council.

Legal and Governance Implications:

The Scrap Metal Dealers Act 2013 and guidance issued by the Secretary of State.

Safer, Cleaner and Greener Implications:

The purpose of the Act is to introduce regulation to reduce crime.

Consultation Undertaken:

None. If it is agreed, the draft policy document will be put out to consultation.

Background Papers:

Impact Assessments:

Risk Management Implications

Relevant risks/opportunities in conjunction with this matter have been considered and are referred to in the body of the report, as appropriate.

Scrap Metal Dealer Act 2013: guidance on licence fee charges

Context

The Scrap Metal Dealers Act 2013 (referred to in this guidance as the 2013 Act) received Royal Assent on the 28 February 2013, delivering much needed reform of the scrap metal sector. The 2013 Act will provide effective and proportionate regulation of the sector, creating a more robust, local authority run, licensing regime that will support legitimate dealers yet provide the powers to effectively tackle unscrupulous operators. It will raise trading standards across the whole sector.

Introduction

The 2013 Act will allow local authorities to decide who should and should not be licensed, allowing them to refuse a licence upon application or to revoke a licence at any time if they are not satisfied that the applicant is a suitable person to carry on business as a Scrap Metal Dealer. The act also creates closure powers for unscrupulous dealers who operate without a licence. It extends the record keeping requirements placed upon scrap metal dealers and requires the verification of the people Scrap Metal Dealers are transacting with. The act will integrate the separate regulation for motor salvage operators with the scrap metal sector and bring to an end the cash exemption given to some collectors under the 1964 Act.

Finally, the 2013 Act creates a fee raising power, to allow local authorities to recover the costs stemming from administering and seeking compliance with the regime. This element of the legislation will be the focus of this guidance.

The intention is for the act to be implemented in October 2013.

Licensing requirements placed upon scrap metal dealers

Section one of the 2013 Act requires a scrap metal dealer to obtain a licence in order to carry on business as a scrap metal dealer. It will be an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. This offence is punishable on summary conviction with a fine not exceeding level 5 on the standard scale. In addition, Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the authority.

Aim and scope

Local authorities will be responsible for administration and compliance activity in relation to the 2013 Act. This guidance is provided to local authorities in relation to the carrying out of their fee raising function. It also provides information for the benefit of those who will be applying for a scrap metal dealer's licence and the general public. This guidance applies to local authorities in England and Wales and is produced in accordance with the 2013 Act.

Legal status

Schedule 1(6) of the 2013 Act provides that an application must be accompanied by a fee set by the local authority. In setting a fee, the authority must have regard to any guidance issued from time to time by the Secretary of State with the approval of the Treasury. This Guidance is therefore binding on all licensing authorities to that extent.

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EPPING FOREST DISTRICT COUNCIL

SCRAP METAL DEALERS ACT 2013

STATEMENT OF LICENSING POLICY

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1. Introduction

1.1 This document states Epping Forest 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 named '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 Epping Forest District Council ('the Council') is the Licensing Authority under the Scrap Metal Dealers Act 2013 and is responsible for granting site licence and collector's licences in the Epping Forest 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' the 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 collector's 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, (The Council will implement the transitional process in accordance with Guidance to be issued by Secretary of State).

4.2 Any dealer currently registered under the 1964 Scrap Metal Dealers Act, or a motor salvage operator already registered under the 2001 Vehicles (Crime) Act, will be deemed to have a licence under the 2013 Act, until the council grants a licence or sends the dealer notice of its decision to refuse the licence under the 2013 Act, ***provided that they submit an application on or before the 15th October***

4.3 Applications made after 31 August 2013 will be subject to the full licensing process.

4.4 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.

4.5 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 1.

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 1.

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 2.

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 an applicant or any site manager has been convicted of a relevant offence, 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. The matter will be referred to the Licensing Sub-Committee for determination.

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 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 the 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 Licensing Sub-Committee.

7.8 The Council may revoke a scrap metal dealer's 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, 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. (Please see Appendix 4 for appeal process).

8. Variation of Licence

8.1 An applicant can, on application, apply to the Council to vary 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 by the Licensing Sub-Committee

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 A revocation or variation under this section comes into effect when no appeal under section 16.9 is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn.

9.5 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

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 3.

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.

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. Delegation of Authority

21.1 Decisions on licensing matters will be taken in accordance with the approved scheme of delegation in Appendix 5 aimed at underlining the principles of timely, efficient and effective decision making.

21.2 This scheme will be subject to amendment from time to time as shown in the Council's constitution.

APPENDIX 1

1. APPLICATION PROCESS

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

[The Licensing Manager
Epping Forest District Council
Civic Centre
High Street
Epping
Essex
CM16 4 BZ

]

To apply for a Scrap Metal Dealers Licence, applicants 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 of an individual applicant (including mobile collectors), and anyone proposed as a site manager for a site.;
- 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) Any proposed trading name for the business;
- e) Telephone number and email address (if any) of applicant;
- f) Address of any site within any other local authority where the applicant already carries on business as a scrap metal dealer or propose to do so
- g) Details of 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 of the Act;
- 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 the boundary of the local authority 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

the 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. the 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.

The Council may require the following additional information:

Site licences

- what security arrangements exist to prevent the unlawful purchase, sale or theft of scrap metal
- details of the arrangements to be used to record sales, storage and purchase of scrap metal

Mobile collectors

- details of the vehicles to be used
- where the vehicles are stored when not being used.

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.

APPENDIX 2

RELEVANT OFFENCES

Control of Pollution (Amendment) Act 1989: Sections 1, 5 or 7(3)
Customs and Excise Management Act 1979: Section 170 (for environmental/metal theft related offences only)
Environment Act 1995: Section 110(2)
Environmental Permitting Regulations 2007: Regulation 38
Environmental Permitting Regulations 2010: Regulation 38
Environmental Protection Act 1990: Sections 33 and 34
Food and Environment Protection Act 1985: Section 9(1)
Fraud Act 2006: Section 1 (for environmental/metal theft related offences only)
Hazardous Waste (England and Wales) Regulations 2005
Hazardous Waste (Wales) Regulations 2005
Landfill (England and Wales) Regulations 2002
Legal Aid, Sentencing and Punishment of Offenders Act 2012: Section 146
Pollution Prevention and Control (England and Wales) Regulations 2000
Proceeds of Crime Act 2002: Sections 327, 328, 330, 331 & 332 (for environmental/metal theft related offences only)
Producer Responsibility Obligations (Packaging Waste) Regulations 2007
Scrap Metal Dealers Act 1964 (for environmental/metal theft related offences only)
Scrap Metal Dealers Act 2013
Theft Act 1968: Sections 1, 8, 9, 10, 11, 17, 18, 22 & 25 (for environmental/metal theft related offences only)
Transfrontier Shipment of Waste Regulations 1994
Transfrontier Shipment of Waste Regulations 2007
Vehicles (Crime) Act 2001: Part 1
Waste Electrical and Electronic Equipment Regulations 2006
Waste (England and Wales) Regulations 2011: Regulation 42
Water Resources Act 1991: Section 85, 202 or 206

These are to be confirmed by Home Office Regulations and will be kept under review in accordance with the guidance.

APPENDIX 3

COMPLIANCE - RIGHT OF ENTRY

1. A constable or an officer of the 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 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.
3. (1) and (2) above do not apply to residential premises.
4. A constable or an officer of the 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 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 enterand inspect the premises at any time within one month from the date of the warrant.
8. A constable or an officer of the 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 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.

10. Section 14 below applies if a constable or an officer of the Council who 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 powers the officer must produce that evidence.

12. 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.

APPENDIX 4

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 Council's decision, and give such directions as it considers appropriate having regard to the provisions of the Act.

APPENDIX 5

DELEGATION OF POWERS

MATTER TO BE DEALT WITH	FULL COUNCIL	SUB-COMMITTEE	OFFICERS
Licensing policy	All cases		
Fee Setting - when appropriate	All fees	-	
Application for or renewal of a Site or Collector's licences		Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
Application for a variation to a licence		Where representations have been received and not withdrawn	Where no representations received/ representations have been withdrawn
To issue a closure notice on non-residential premises being used as a scrap metal dealer's site		All cases	All cases
Application to the Magistrates Court for a closure order		All cases	All cases
Termination of a closure order		All cases	All cases
Application to the Magistrates Court to discharge a closure order.		All cases	All cases
Revocation of a licence		All cases	All cases
Consideration of and imposition of conditions		All cases	All cases