

Guide to the Scrap Metal Dealers Act 2013: Applications

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Introduction

The Scrap Metal Dealers Act 2013 replaces the previous registration system for scrap metal dealers created by the 1964 Scrap Metal Dealers Act. In its place it establishes a new licensing regime. This scheme will be run and administered by local authorities, and is based on the legislation for alcohol licences created in the 2003 Licensing Act. Every scrap metal dealer will be required to have a licence, and operating without one will be a criminal offence. Under the new legislation the definition of scrap metal dealers is extended so it now includes motor salvage operators, and the provisions in the Vehicles (Crime) Act 2001 under which they operate will end once the new Act comes into effect.

Whereas under the 1964 Act councils have to register anyone who notifies them that they are operating as a scrap metal dealer, councils will be able to refuse to grant a licence where the applicant is judged not to be a suitable person to operate as a scrap metal dealer. This ability to regulate who is, and who is not, a scrap metal dealer is designed to improve the operating standards of those dealers who do not operate in the same way as the majority of reputable dealers. The transition from the requirement on dealers to register to holding a licence provides an opportunity to ensure that those dealers who have been operating illegally are no longer able to do so.

The Home Office will commence the new regime from 1 October 2013, but with a transitional period to ensure a smooth hand over from the old regime to the new with minimal disruption to scrap metal dealers.

Licences

In order for anyone to carry on business as a scrap metal dealer they have to have a licence. These licences will last for three years. Trading without a licence is a criminal offence.

If convicted of trading without a licence the offender can be fined. The fine will be at Level 5 on the standard scale. Amendments to the size of the fines that courts can impose in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 mean that when the provisions come into force, a fine at that level will be unlimited.

There are two types of licence specified in the Act:

- **Site licence**

All the sites where a licensee carries on business as a scrap metal dealer have to be identified, and a site manager has to be named for each site. This licence allows the licensee to transport scrap metal to and from those sites from any local authority area.

- **Collector's licence**

This allows the licensee to operate as a collector in the area of the

issuing local authority. It does not allow the collector to operate in any other local authority area, so a separate licence has to be obtained from each council the collector wishes to operate in. The licence does not authorise the licensee to operate a site; to do so they will need a site licence from the relevant local authority.

It should be noted that a dealer can only hold one type of licence in any one local authority area. They have to decide whether they are going to have a site or a mobile licence in any one area. They cannot hold both a site and mobile collector's licence from the same council (s2(9)).

Timetable for transition to new regime

The licensing regime created by the Scrap Metal Dealers Act 2013 will commence on 1 October 2013. In order to provide time for councils to process applications without existing businesses being in a position where they cannot operate, the Home Office is implementing a transition process.

The transition arrangements will be implemented by a commencement order which will be made in August 2013. This order will allow councils to set a licence fee for applications from 1 September. It will also specify that the remaining sections in the Act commence on 1 October, apart from the majority of criminal offences and enforcement-related provisions, which will come into force on 1 December. The exception to this will be the ban on using cash to pay for scrap metal which will also come into force on 1 October. 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, provided they submit an application on or before the 15 October. If they do not submit an application their deemed licence will lapse on 16 October. If they wish to trade in the future they would then need to submit an application, but would not be able to legally trade until a licence had been granted.

While their application is being considered by the local authority, these dealers will be able to operate as if they have a licence. No date will be specified in the regulations setting out when councils will have to have made a decision on applications made between 1 and 15 October. We recommend that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1 December 2013. Dealers will therefore be able to continue to trade without disruption during the transition period without fear of being prosecuted for operating illegally. While an actual transitional licence need not be issued, sending the dealer an acknowledgement that the application has been received on or before 15 October 2013 should enable a dealer to satisfy the police that during this period they were legally able to operate.

Where an applicant is not registered under the Scrap Metal Dealers Act 1964 or the Vehicles (Crime) Act 2001 before 1 October then they will not be able to trade legally after 1 October until a licence has been issued. Full

enforcement of the provisions in the 2013 Act will commence from 1 December 2013.

The transition timeline is:

- The Commencement Order will be made in August.
- This will allow local authorities to set a licence fee from 1 September.
- The main provisions of the Act commence on 1 October including the offence of buying scrap metal for cash.
- Dealers and motor salvage operators registered immediately before 1 October will be deemed to have a licence under the Act from 1 October.
- Provided the dealer submits an application for a licence on or before 15 October their deemed licence will last until the council either issues them with a licence or gives them notice of the decision to refuse them a licence, although they will be able to continue trading pending an appeal against the decision not to grant a licence.
- Where a dealer submits an application on or before 15 October but does not supply all the required information with the application form then the deemed licence remains in effect after 15 October.
- Where a dealer with a deemed licence fails to submit an application on or before 15 October the deemed licence will lapse on 16 October.
- Other scrap metal dealers, not previously registered, will be able to apply for a licence from 1 October but will have to wait until a licence is granted before they can legally trade.
- Local authorities will complete suitability checks on applicants and decide whether to issue licences. We recommend that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1 December.
- All other enforcement provisions within the Act commence on 1 December.

What is a scrap metal dealer, what is a site, what is a mobile collector and what is scrap metal?

The 2013 Act defines a scrap metal dealer, a site, a mobile collector and scrap metal.

A dealer is defined under s21(2) of the Act as someone carrying on a business which consists wholly or in part of buying or selling scrap metal, whether or not the metal is sold in the form in which it is bought. However a manufacturing business that sells scrap metal created only as a by-product of the processes it uses, or because it has a surplus of materials, is not caught

by this definition (see s21(3)).

The definition of scrap metal dealer is deliberately quite widely drawn, and there are no further details provided in the Act or the explanatory notes about who potentially might have to apply for a licence. Does it, for example, include firms that hire out skips, or to tradesmen like plumbers or builders who sell scrap metal resulting from any work they do?

The answer to this question varies according to individual circumstances to a certain extent, but generally where the sale of the metal is incidental to the main type of work or business undertaken then a licence will not be needed. In the case of most tradesmen such as plumbers and electricians and some skip hire firms the sale of scrap metal is not an integral part of their business and they will not require to be licensed as a scrap metal dealer. Where though there is a reasonable expectation, for example, that the material deposited in the skip will contain significant amounts of scrap metal, such as skips used where there is demolition activity or ones sited at engineering manufacturing establishments and plumbers' yards, then the skip hire company will generally require a scrap metal dealers licence.

In considering whether a scrap metal dealers licence is needed, questions that local authorities may wish to take into account include:

- Is the applicant a business?
- Is the applicant associated with any other business that might buy or sell metal (eg subsidiaries, businesses run by the same people, companies within a group etc)?
- Do they buy scrap metal in any form as part of the business?
- Is the purchase or sale of scrap metal an integral part of the business?

Is the buying or selling of metal advertised by the business, including on the internet?

- Is any advertising of metal sales etc done separately from the main part of the business?
- Is the metal sold as a by-product from a manufacturing process?
- What happens to any waste metal that is collected by the business?

Dealers under the legislation are further divided into two categories based on the two different types of licence: those operating from fixed sites; and those who are mobile collectors. A collector is defined (by s22(4)) as a person who carries on business as a scrap metal dealer otherwise than at a site, and regularly engages in the course of that business in collecting waste materials and old, broken, worn out or defaced articles by means of door to door visits.

A site is defined in the Act (s22(9)) as 'any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there)'. Due to the wording of the definition this means that someone who trades in scrap metal and is thus defined as a dealer under s21(2) will need a

site licence for their office even if they do not operate a scrap metal store or yard.

A dealer also includes someone carrying on business as a motor salvage operator. This is defined as a business that:

- wholly or in part recovers salvageable parts from motor vehicles for reuse or re-sale, and then sells the rest of the vehicle for scrap
- wholly or mainly involves buying written-off vehicles and then repairing and selling them off
- wholly or mainly buys or sells motor vehicles for the purpose of salvaging parts from them or repairing them and selling them off.

Scrap metal itself includes any old, waste or discarded metal or metallic material, and any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life. This definition is not intended to include second hand goods, but these could be caught by the definition if they are made from or contain metal that is broken or worn out. It will be a question in each case as to whether items fall within the definition. The definition does however include platinum and a range of other rare metals now being used in catalytic converters although gold or silver are not included in the definition of scrap metal. Jewellers or businesses trading in second hand gold and silver jewellery or products are not therefore caught by this definition.

The boundary of what is scrap metal and what is a second hand good containing metal will probably be something that is explored further as the legislation is implemented. There is some concern that some motor salvage operators may argue they are trading in second hand cars, rather than breaking up cars for scrap to avoid the ban on buying scrap metal for cash. Councils will have to take a view according to the circumstances of the case, and perhaps after consultation with police and Environment Agency/NRW colleagues, as to whether a person, partnership or company is really buying or selling scrap metal, or trading in second hand goods and whether they need to apply for a licence or not. Issuing a certificate of destruction would clearly indicate a vehicle is scrap and a trader should not in those circumstances pay cash for it. Where a certificate is not issued, factors such as whether the car has a valid MOT and is driveable without repair, and also whether the dealer has facilities for repairing vehicles and a history of selling vehicles, will indicate if it is second hand or scrap.

Licence applications

Schedule 1 of the Act sets out what information must accompany an application for a scrap metal dealers licence. This includes:

- the full name, date of birth and usual place of residence of an individual applicant (including mobile collectors), anyone proposed

as a site manager for a site, and every partner where a partnership is applying for a licence

- the company name, registered number and registered office address where it is the applicant
- any proposed trading name for the business
- the telephone number and email address (if any) of the applicant.
- where it is a site licence, the address of each proposed site to be included on the licence
- the address of any site in another council area where the applicant already carries on business or proposes to do so
- details of any relevant environmental permit or registration held by the applicant
- details of any other scrap metal licences issued to the applicant within the three years before making this application
- details of the bank account(s) to be used for cashless transactions – where a licensee operates multiple sites different bank accounts may be used
- details of any relevant conviction or enforcement action that relates to the applicant.

There are practical reasons why this information has to be supplied. Either it relates to details that have to be included on the licence if it is granted, it helps in the assessment of an applicant's suitability to hold a licence, or it has to be provided to the Environment Agency for inclusion on the register of scrap metal dealers.

Although the local authority has to be supplied with this information this is not the limit of what it can ask for. Under Schedule 1, paragraph 4(1) councils are entitled to request any further information they regard as relevant to considering the application. If therefore they believe they need more information before they can reach a decision they can request it. Where a council is considering seeking additional information from all applicants, the short timescale for previously registered dealers to submit applications (to take advantage of the deemed licence in the transition period) means that local authorities in this position should consider making their application forms and guidance on completing them available at the earliest opportunity. If councils do not make the application forms and guidance available in good time, there may be legal challenges/complaints from dealers who were previously registered who fail to put in an application by 15 October, and claim that this is the fault of the local authority for not making these essential documents available.

With applications by companies the suitability of any directors, shadow directors and company secretaries need to be assessed so councils should also ask for their details. In the event that an applicant does not supply the

information that has been requested, the council can refuse to proceed with the application. This could be of relevance where an applicant has refused to provide a Basic Disclosure to enable the council to arrive at a view on the suitability of the applicant, which is covered in a later section.

Some other information the authority may consider useful could be:

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.

In order to assist local authorities, and so there is a degree of consistency in what the application form asks for, the LGA has produced a template application form for scrap metal dealers. This is set out in Appendix A. It covers the information the legislation specifies must be provided along with some additional information that it will be helpful to have.

Application fees

Any application must be accompanied by a fee.

Application for a new site licence: £440

Application for renewal of site licence: £220

Application for variation of site licence: £135

Application for a new collectors licence: £295

Application for a renewal of collectors licence: £150

Application for variation of collectors licence: £135.

Assessing the suitability of the applicant

Section 3 of the Act states that a council must not issue a licence unless it is satisfied the applicant is a suitable person to carry on business as a scrap metal dealer – the ‘suitability test’. In the case of a partnership this means assessing the suitability of each of the partners in the partnership, while in the case of a company it means assessing the suitability of any directors, company secretaries or shadow directors.

In assessing an applicant’s suitability the council can consider any information it considers relevant. Applicants’ behaviour in the operation of their business, such as the fact they have been operating for a considerable period of time without planning permission for their site, or that they are not registered with the Information Commissioner’s Office (ICO) under the Data Protection Act,

could be factors that are considered. The template application form requests information on whether the applicant has planning permission for their site. The lack of planning permission can only be taken into account for sites established after 1 November 1990 as sites in use before then will not have needed to obtain planning permission. Using the lack of planning permission as a relevant consideration for a site where it has not been needed could provide valid grounds for appealing the council's decision.

Even the lack of planning permission for a site established after 1 November 1990 or the lack of registration with the ICO would not in our view be enough on its own to arrive at the view an applicant is not suitable to hold a licence. If however there are also a range of other behaviours and activities that suggest an applicant is unsuitable to hold a licence then the lack of planning permission or registration with the ICO might be a factor in reaching an overall decision that the applicant is unsuitable. Councils will be in a stronger position to defend any challenges to their decision to refuse a licence where they made their decision based on the factors specifically listed in the legislation. The list includes whether:

- the applicant or site manager has been convicted of a relevant offence, or subject to any relevant enforcement action
- the applicant has previously been refused a scrap metal dealers licence or an application to renew a licence has been refused
- the applicant has previously been refused a relevant environmental permit or registration
- they had previously held a scrap metal dealers licence that has been revoked.

Much of this information should be set out in the application form, and it is an offence under paragraph 5 of Schedule 1 for the applicant to make a false statement or recklessly make a statement which is false in a material way. However local authorities will undoubtedly want to satisfy themselves that an applicant is a suitable person by checking that they do not have previous relevant convictions, been the subject of any relevant enforcement action or have been refused a licence. There are benefits from the industry's perspective in there being a standardised process when it comes to assessing applicants' suitability, and in having a consistent approach applied to each application.

Agreement has therefore been reached between the Home Office and Disclosure Scotland allowing applicants for a scrap metal dealers licence to apply for a Basic Disclosure as part of the application process. This offers the possibility of providing a fair, transparent and objective means of identifying matters that might lead a council to conclude an applicant was not a suitable person to hold a scrap metal dealers licence.

As part of the application process the applicant should be asked to provide a Basic Disclosure certificate with the application form. The Basic Disclosure certificate will remain the property of the applicant. This would allow them to use it for other

applications to other local authorities. There is no requirement under the Act for applicants to provide a Basic Disclosure certificate, and the deemed licence for previously registered dealers will not lapse if it is not supplied with the application. However refusing to supply a certificate would be grounds for the council to consider what further information it needed to judge whether the applicant was suitable. Refusing to provide a Basic Disclosure certificate would also be grounds under paragraph 4(2) of Schedule 1 for the local authority to decline to proceed with the application.

The Basic Disclosure certificate contains details only of any unspent convictions as of the date the certificate is issued. It can be applied for on-line or by completing a form, and paying a fee of £25. Disclosure Scotland will usually be able to provide a certificate with the results of the disclosure application within 14 days so there should not be any significant delay in the application process. The Basic Disclosure process can also be used for applicants living overseas (such as directors of multinational companies based abroad) to see whether they have any unspent convictions for relevant offences in this country. The older a certificate is, the more likely it is to be out of date. Councils will therefore have to consider at what point they will decide a certificate is not up-to-date enough to provide a reasonable check on an applicant's suitability. As some scrap metal dealers may have already applied for a Basic Disclosure certificate in anticipation of the legislation coming into effect, we would recommend that when considering applications from registered dealers and operators made between 1 to 15 October, councils accept certificates up to three months old.

Once the local authority has received the application they can then compare the results of the certificate with the relevant offences prescribed by the Home Office. The list of offences will be set out in regulations which it is intended will be laid in Parliament in September. The regulations will also set out the relevant enforcement action a local authority may have regard to when considering an application.

Based on the explanatory notes to the Act the LGA expects the offences listed in the regulations will mirror, where possible, those that the Environment Agency consider when granting an environmental permit. It is also likely to include criminal offences relevant to metal theft. The regulations will also set out the relevant enforcement action local authorities may consider when assessing suitability.

Where for example the Basic Disclosure certificate reveals an unspent relevant conviction the council may well wish to seek additional information from the police to enable them to better assess the applicant's suitability. Councils may also wish to do this where there are other indications that an applicant may not be a suitable person, such as operating without planning permission or having registered with the ICO.

Representations

Where a council proposes to reject an application (or revoke it or vary it) the applicant has to be notified what the council proposes to do and the reasons

for it. If having conducted an initial assessment of an applicant's suitability the council is minded to refuse the application, the relevant officer has to write to the applicant to let them know.

In doing so the notice from the council has to give the applicant (or licensee) the opportunity to make representations or let the council know they wish to. The notice must also specify a period of time in which the applicant does this, which cannot be less than 14 days from the date on which the notice is given to the applicant. If the applicant does not make any representations, or does not say that they wish to in that time period, then the council can refuse the application or revoke or vary the licence. Where the applicant states they want to make representations the council has to give them a further period in which to do so, and only if they fail to do so can they refuse the application or revoke or vary the licence.

Where the applicant makes representations the council has to consider them (Schedule 1, paragraph 7(7)), and if the applicant states they want to make oral representations the council must provide them with the opportunity to appear before a licensing committee. This is in our view the most appropriate way of interpreting the requirement in the Act for a person appointed by the council to hear representations (Schedule 1, paragraph 7(8)).

Application hearings

The requirement on councils to allow an applicant to make oral representations means that it will be appropriate to refer any contested applications to a licensing committee. Those applications which are uncontested or where there are no questions about the suitability of the applicant can be delegated to licensing officers to make the decision on whether or not to grant the application. Before that can occur, councils will need to have the appropriate delegations in place.

The most obvious instance where an application should be referred to a licensing committee is where there is information available to the council that suggests the applicant may not be suitable to hold a scrap metal dealers licence. Existing good practice around the consideration of applications by licensing committees should be applied to the consideration of applications for scrap metal dealers licences.

In the event the committee is minded to refuse the application then it will need to carefully consider the grounds on which it has decided to do so. The applicant has to be given the reasons an application has been rejected (see the next section) and if there is an appeal, the council will want to have robust grounds on which to defend its decision not to grant a licence.

Notices of decisions

Where a council has refused an application, revoked a licence or varied a licence it must give the applicant or licensee notice of the decision, which also sets out the reasons for the decision.

The notice also has to inform the applicant or licensee of their right to appeal

the decision; the timeframe for making that appeal; and, where the licence has been revoked or varied, the date under which that comes into effect.

Appeals

Appeals against a decision by the council to refuse an application, to impose a condition on the licence or to revoke or vary the licence are to the magistrates' court.

The dealer has 21 days from the day on which they were given notice of the decision in which to appeal. The magistrates' court then has the power to confirm, vary or reverse the council's decision and issue any directions it considers appropriate having regard to the Act.

As the notice under paragraph 8 to schedule 1 must be in writing, notice will be deemed to have been given when the applicant/dealer has received it. Ordinarily, this will be the next working day if delivered by first class post.

Including conditions in the licence

A council's ability to impose conditions on a licence is very limited. Conditions can be imposed only where the applicant or any site manager has been convicted of a relevant offence, or, where the council is revoking a licence when a condition can be imposed, until the revocation comes into effect. For the majority of applicants therefore it is unlikely that a council will be in a position of being able to consider imposing conditions. In considering whether to issue a licence where the applicant or a site manager has a relevant conviction, the local authority might decide to do so on the basis that a condition is imposed on the licence.

Councils can impose one or both of two conditions. These conditions specify that:

- the dealer can receive scrap metal only between 9.00am and 5.00pm on any day, in effect limiting the dealer's operating hours; and/or
- any scrap metal received has to be kept in the form the dealer received it for a set period of time, which cannot be more than 72 hours.

Varying the licence

Dealers can apply to vary a licence from a site licence to a collector's licence or vice versa, and have to apply to vary the licence where there are any changes in certain details stipulated by the Act (see paragraph 3(2) in Schedule 1). The application has to be made to the council that issued the licence and has to set out the details of how the licence needs to be amended. A variation in a site licence has to be applied for where there are any changes relating to the name of the licensee on the licence; any change in the sites from which the licensee is authorised to carry on business; and any change in the details of a site manager.

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

Councils have to be aware that variations related to changes in the name of the licensee on the licence for a site or a collector's licence cannot be used to effect a transfer of the licence from one person to another. Anyone wanting to hold a licence to be a scrap metal dealer has to apply for their own licence, they cannot take over an existing licence. This includes the situation where one business buys another business.

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

Notifications to the National Register

The Scrap Metal Dealers Act creates a requirement for a register of scrap metal dealers licences. The Environment Agency must maintain a register of scrap metal licences issued in England. This register will be open to the public.

Under the provisions of the Act when councils issue a licence they are obliged to pass on certain information to the Environment Agency to enter on the register.