

Scrap Metal Dealers Act 2013



Introduction

The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013 and its measures are to be implemented with effect from 1 October 2013. The new Act repeals the Scrap Metal Dealers Act 1964 (currently administered by Tonbridge and Malling Borough Council) and Part 1 of the Vehicles (Crime) Act 2001 (currently administered by Kent County Council) creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries in England and Wales.

The Act was introduced in response to the growth in metal theft offences, driven by increased commodity costs, which in addition to the direct impact on the victims of theft have also had a damaging and disruptive effect on the country's infrastructure. The current regulation of the scrap metal industry consists of a simple registration scheme which has done little to prevent this type of crime.

The Councils role

Tonbridge and Malling Borough Council will become the principal regulator. The new licensing regime will provide stronger regulation, including the power to refuse to grant a licence to "unsuitable" applicants and a power to revoke licences if the dealer becomes "unsuitable". The cashless trading measures brought into force via the Legal Aid, Sentencing and Punishment of Offenders Act 2012 are incorporated into the new Act, which also closes off loopholes in the earlier legislation by drawing vehicle dismantlers and former itinerant collectors into the cashless trading regime.

Scrap metal dealer

A person carries on business as a scrap metal dealer if the person –

- Carries on a business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold on the form in which it was bought

Motor salvage operator

A person carries on business as a motor salvage operator if the person –

- Wholly or partly is recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the vehicle for scrap
- Wholly or mainly is buying written-off vehicles and subsequently repairing and reselling them

Definition of scrap metal

The Act states that "scrap metal" is:

- Any old, waste or discarded metal or metallic materials, 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

The following is **not** considered to be "scrap metal"

- Gold, silver or any alloy of which 2 per cent or more is attributable to gold or silver

Types of licence

There are two types of licence specified in the Act, both of which last for a **3 year period**:

- **Site licence** – all the sites where a licensee carries on business as a scrap metal dealer have to be identified and a site manager 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 licensing authority. It does not allow the collector to operate in any other local authority area, so a separate licence has to be obtained for 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.

Enforcement responsibility

The legislation places a shared enforcement responsibility for this new statutory duty on both Tonbridge and Malling Borough Council and the Kent Police.

Key Features of the Act

These include:

- Requiring all individual and businesses to complete an enhanced application process that includes a criminal records check to obtain a scrap metal dealer licence. Local authorities will have the power to turn down unsuitable applicants.
- Giving local authorities the power to revoke a licence.
- Requiring all sellers of metal to provide personal identification at the point of sale, which is then recorded by the scrap metal dealer.
- Extending the offence of buying metal with cash to itinerant metal collectors.
- New powers for the police and local authorities to enter and inspect sites.
- Activity against unlicensed operators will include closure notices, with applications for closure orders subsequently made to a Magistrates' Court.
- Creating a central public register, hosted by the Environment Agency, of all individuals and businesses licensed as scrap metal dealers.
- Widening the definition of a scrap metal dealer to include motor salvage operators

Full details of the provisions of the Act are attached with this briefing pack.

Timetable for transition to new regime

The new regime under 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 timeline is:

- The Commencement Order was made on 6 August 2013.
- Local authorities can set licence fees from 1 September 2013.

- The main provisions of the Act commence on 1 October 2013 including the offence of buying scrap metal for cash.
- ***Dealers and motor salvage operators registered immediately before 1 October 2013 will be deemed to have a licence under the Act from 1 October 2013.***
- Provided the dealer submits an application for a licence on or before 15 October 2013 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 2013 but does not supply all the required information with the application form then the deemed licence remains in effect after 15 October 2013.
- Where a dealer with a deemed licence fails to submit an application on or before 15 October 2013 the deemed licence will lapse on 16 October 2013.
- Other scrap metal dealers, not previously registered, will be able to apply for a licence from 1 October 2013 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. It has been recommended by the Local Government Association that decisions on whether to grant or refuse a licence to previously registered dealers are made before 1 December 2013.

All other enforcement provisions within the Act will commence on 1 December 2013.

Fee setting

Licence fees will be set locally by each local authority on a cost recovery basis, with local authorities having due regard to guidance recently issued by the Home Office. (This guidance is attached as Appendix 4 to this report). The guidance outlines the issues that should be considered by when setting a fee and what activities the fee can cover. The fee will be an essential component of the new regime as it will provide local authorities with the funding needed to administer the regime and ensure compliance.

It is recognised that there will be an initial start-up cost which can be recovered from the licence fee and therefore the true cost of procedures and formalities may well be lower once the scheme is established. This can then be reflected in a reduction in fees following a review.

The Provision of Services Regulations 2009 states that a licence fee can only be used to pay for the costs associated with the licensing process. In effect, each local authority must ensure that the income from fees charged for each service does not exceed the costs of providing the service.

The licence fee cannot be used to support enforcement activity against unlicensed scrap metal dealers. Also fees cannot be used as an economic deterrent nor to raise funds. This was borne out in the recent *R (Hemming and Other) v Westminster City Council* judgement in the High Court

The Cabinet Office guidance makes clear that in calculating licence fees we may not take into account the costs of any appeals to Magistrates Court against decisions to condition, refuse, revoke or vary a licence.

Make up of fees

- All the activity required with processing and granting a licence such as considering applications and assessing the suitability of the applicant, and considering representations.
- The costs of staff associated with supporting the service, including senior staff with managerial responsibility for the service.
- Support provided by other parts of the council to the licensing team such as legal services and committee services and any recharges there might be for rooms, heating and lighting from the centre of the authority
- The cost of providing advice and guidance to applicants on what will be a new process
- Carrying out inspections to ensure compliance with the law
- Training staff and councillors in the requirements of the new legislation
- Costs associated with consulting other agencies and bodies when considering if an applicant is a suitable persons
- Working with partners in ensuring compliance
- Issuing the licence
- Any officer time providing information for inclusion in the central register of dealers

A potentially significant cost not explicitly mentioned above, could be the holding of hearings to consider whether to grant a licence or whether to revoke or vary a licence. As the cost for these will be spread across licence fees as a whole, an estimate will have to be made when setting the fees of how many potential hearings there may be. Given the likely number of applicants to assess it would be sensible once at the end of the first review of operation of the licensing system to review how many hearings there have been and revise the fees accordingly. Council are assisted by one of the decisions from the Hemming case which allows deficits or surpluses to be carried over into the next financial year.

Tonbridge and Malling implementation timetable

In view of the short timeframe the following implementation process steps will take effect as follows:

Currently registered as a scrap metal dealer or a motor salvage operator

If you are currently registered as a scrap metal dealer or a motor salvage operator you will be able to apply for a licence from 1st August 2013. As long as you submit your application before 15th October you will be automatically issued with a temporary licence pending completion of formal suitability assessments. There will be a fee payable. If you do not submit an application within this time frame you will be treated as if you are a new applicant. This would mean that you would not be able to legally trade until a licence was granted to you.

Currently trading but not registered

If you are not currently registered as a scrap metal dealers or a motor salvage operators you will not be able to trade until a licence has been issued. Full enforcement of the provisions of the 2013 Act will commence from 1st December 2013.

Ordinary licence applications

- You will need to complete the application form and the disclosure of convictions declaration.
- If you are a company you must give details of all directors of the company and the site manager
In addition to the application form and disclosure of convictions declaration form all applicants (including mobile collectors) are to submit a Basic Disclosure of Criminal Convictions that must be obtained from Disclosure Scotland. This can be obtained by contacting Disclosure Scotland on 0870 609 6006 and requesting an application pack for a basic disclosure. You can also apply online at www.disclosurescotland.co.uk. See below for further details. The Basic Disclosure Certificate remains your property so that you can use it to apply for licences in other areas. This authority will not process an application for a licence without this Disclosure Certificate. The Certificate must be less than three months old.
- You will need to provide two photographs of each person that will be licensed. The photo will form part of your licence or identity badge.
- If you have a relevant conviction your application will be discussed with the police
- There will be a fee payable

Disclosure Scotland application process

- If your current address is in the UK and if you have been living at this address for at least 12 months you can apply online. If you do not satisfy these criteria you will have to apply using a paper application form.
- The fee for a Basic Disclosure is £25. You will need to pay using a credit or debit card.
- You will be asked for a photocopy of your passport, driving licence or national insurance number. You will not be able to proceed without supplying at least one of these pieces of information.

You will also need to provide

- Information from a utility bill (gas, electricity or telephone) at your home address
- The number of any previous disclosure
- Your address details covering at least the past five years

Your licence

- Will last for three years.
- Details will be recorded on a national register that will be maintained by the Environment Agency
- If you hold a site licence you must display it at the premises in a prominent place in an area accessible to the public
- If you hold a mobile collectors licence you must display a copy of the licence on any vehicle that you use for the purpose of collecting scrap metal. It must be displayed so that it can easily be read by a person outside the vehicle
- If you fail to display your licence properly you could be fined up to £1,000
- If you are a mobile collector you will no longer be able to buy scrap metal for cash.
- If you are a mobile collector you will also need to keep full records of all your transactions.

Extracts from the Scrap Metal Dealers Act 2013 regarding cash payments and record keeping are enclosed with this guidance note

At the moment the Home Office has yet to publish its advice on what will be deemed as a relevant offence under the ac. However to assist please find attached a draft of offences it is anticipated will become relevant offences under the Act.

When you have completed the application form and the disclosure of conviction's form, please submit this, together with your check from Disclosure Scotland, two photographs and the fee to:

Licensing Section
Tonbridge and Malling Borough Council
Gibson Building
Gibson Drive
Kings Hill
West Malling
Kent ME19 4LZ

Telephone Number: 01732 876368

Email: licensing.services@tmbc.gov.uk

EXTRACT FROM SCRAP METAL DEALERS ACT 2013

11 Verification of supplier's identity

- (1) A scrap metal dealer must not receive scrap metal from a person without verifying the person's full name and address.
- (2) That verification must be by reference to documents, data or other information obtained from a reliable and independent source.
- (3) The Secretary of State may prescribe in regulations—
 - (a) documents, data or other information which are sufficient for the purpose of subsection (2);
 - (b) documents, data or other information which are not sufficient for that purpose.
- (4) If a scrap metal dealer receives scrap metal in breach of subsection (1), each of the following is guilty of an offence—
 - (a) the scrap metal dealer;
 - (b) if the metal is received at a 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.
- (5) It is a defence for a person within subsection (4)(a) or (b) who is charged with an offence under subsection (4) to prove that the person—
 - (a) made arrangements to ensure that the metal was not received in breach of subsection (1), and
 - (b) took all reasonable steps to ensure that those arrangements were complied with.
- (6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) A person who, on delivering scrap metal to a scrap metal dealer, gives a false name or false address is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale

12 Offence of buying scrap metal for cash etc

- (1) A scrap metal dealer must not pay for scrap metal except—
 - (a) by a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or
 - (b) by an electronic transfer of funds (authorised by credit or debit card or otherwise).
- (2) The Secretary of State may by order amend subsection (1) to permit other methods of payment.
- (3) In this section paying includes paying in kind (with goods or services).

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- (4) If a scrap metal dealer pays for scrap metal in breach of subsection (1), each of the following is guilty of an offence—
 - (a) the scrap metal dealer;
 - (b) if the payment is made at a site, the site manager;
 - (c) any person who makes the payment acting for the dealer.

- (5) It is a defence for a person within subsection (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 payment was not made in breach of subsection (1), and
 - (b) took all reasonable steps to ensure that those arrangements were complied with.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

13 Records: receipt of metal

- (1) This section applies if a scrap metal dealer receives any scrap metal in the course of the dealer's business.
- (2) The dealer must record the following information—
- (a) the description of the metal, including its type (or types if mixed), form, condition, weight and any marks identifying previous owners or other distinguishing features;
 - (b) the date and time of its receipt;
 - (c) if the metal is delivered in or on a vehicle, the registration mark (within the meaning of section 23 of the Vehicle Excise and Registration Act 1994) of the vehicle;
 - (d) if the metal is received from a person, the full name and address of that person;
 - (e) if the dealer pays for the metal, the full name of the person who makes the payment acting for the dealer.
- (3) If the dealer receives the metal from a person, the dealer must keep a copy of any document which the dealer uses to verify the name or address of that person.
- (4) If the dealer pays for the metal by cheque, the dealer must keep a copy of the cheque.
- (5) If the dealer pays for the metal by electronic transfer—
- (a) the dealer must keep the receipt identifying the transfer, or
 - (b) if no receipt identifying the transfer was obtained, the dealer must record particulars identifying the transfer.

14 Records: disposal of metal

- (1) This section applies if a scrap metal dealer disposes of any scrap metal in the course of the dealer's business.
- (2) For these purposes metal is disposed of—
- (a) whether or not it is in the same form in which it was received;
 - (b) whether or not the disposal is to another person;
 - (c) whether or not the metal is despatched from a site.

- (3) Where the disposal is in the course of business under a site licence, the dealer must record the following information—
- (a) the description of the metal, including its type (or types if mixed), form and weight;
 - (b) the date and time of its disposal;
 - (c) if the disposal is to another person, the full name and address of that person;
 - (d) if the dealer receives payment for the metal (whether by way of sale or exchange), the price or other consideration received.
- (4) Where the 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 the disposal is to another person, the full name and address of that person.

15 Records: supplementary

1. The information mentioned in sections 13(2) and (5) and 14(3) and (4) 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.
2. The records mentioned in section 13(3) and (4) must be marked so as to identify the scrap metal to which they relate.
3. The dealer must keep the information and other records mentioned in sections 13(2) to (5) and 14(3) and (4) for a period of 3 years beginning with the day on which the metal is received or (as the case may be) disposed of.
4. If a scrap metal dealer fails to fulfil a requirement under section 13 or 14 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.
5. It is a defence for a person within subsection (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.
6. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale

SCRAP METAL DEALERS ACT 2013 - DRAFT RELEVANT OFFENCES

1. The list of relevant offences for a scrap metal dealer's licence will mirror the list that the EA consider when granting an environmental permit [as far as possible] – the environmental related offences are listed below. It is proposed not to reduce the list of offences as this goes against the original intention and it could lead to a situation whereby a scrap metal dealer may be considered suitable for an environmental permit but not a scrap metal dealer licence or vice versa.

- Control of Major Accident and Hazards Regulations 1999
- (1999 No 743)
- Control of Pollution (Amendment) Act 1989: Section 1, 5 or 7(3)
- (1989 C14)
- Environment Act 1995: Sections 110(1), (2) and (3)
- Environmental Permitting Regulations 2007: Regulation 38
- Environmental Permitting Regulations 2010: Regulation 38
- Environmental Protection Act 1990: Section 33 and 34 and 34B
- Food and Environment Protection Act 1985: Section 9(1) and (2)
- Hazardous Waste (England and Wales) Regulations 2005
- Landfill (England and Wales) Regulations 2002: Regulation 17(1)
- Pollution Prevention and Control (England and Wales) Regulations 2000
- Producer Responsibility Obligations (Packaging Waste) Regulations 2007
- Transfrontier Shipment of Waste Regulations 1994
- Transfrontier Shipment of Waste Regulations 2007
- Waste Electrical and Electronic Equipment Regulations 2006
- Waste (England and Wales) Regulations 2011: Regulation 42
- Water Resources Act 1991: Section 85, 202 or 206

The following will also be included as a relevant offence:

- Attempting or conspiring to commit any of the offences listed above or below
- Inciting or aiding, abetting, counselling or procuring the commission of any offence listed above or below
- An offence under Part 2 of the Serious Crime Act 2007(a) (encouraging or assisting crime) committed in relation to any of the offences listed above or below

2. Also to be included are the following list of non-environmental offences which also mirrors [as far as possible] the environmental permitting regime. The permitting regime only considers convictions after 2 July 2012 for these offences as relevant as that is the date they were added to the operational instruction, however we are not going to have this time restriction. Offences under these Acts are limited to environmental and metal theft related offences only which is the same as the environmental permitting regime.

- Customs and Excise Management Act 1979: Section 170 and section 170B (to include metal related offences only)
- Fraud Act 2006: Section 1
- Proceeds of Crime Act 2002: Sections 329, 330, 331 & 332 [we are also now including sections 327 and 328 but are not including section 329. We are not limiting the offence to metal/environment related only for offences under this Act].
- Theft Act 1968: Sections 1, 8, 9, 10, 11, 17, 18, 22 & 25

3. Environment related offences are defined as the following which is based on the definition of environmental pollution in section 1 of the Pollution Prevention and Control Act 1999 to cover carriers, duty of care, TFS and hazardous waste movements which states that:

An offence is environment related -

if it relates to:

- (1) the transportation, shipment or transfer of waste; or
- (2) the prevention, minimisation or control of pollution of the air, water or land which may give rise to any harm; and for the purposes of this definition (but without prejudice to its generality)—
 - (a) “pollution” includes pollution caused by noise, heat or vibrations or any other kind of release of energy;
 - (b) “air” includes air within buildings and air within other natural or man-made structures above or below ground.

For the purpose of the definition of “environment related offence” “harm” means— (a)harm to the health of human beings or other living organisms; (b)harm to the quality of the environment, including— (i)harm to the quality of the environment taken as a whole, (ii)harm to the quality of the air, water or land, and (iii)other impairment of, or interference with, the ecological systems of which any living organisms form part; (c)offence to the senses of human beings; (d)damage to property; or (e)impairment of, or interference with, amenities or other legitimate uses of the environment.”]

4.

- Scrap Metal Dealers Act 1964 (the permitting regime currently only consider environment and metal theft related offences)
- Scrap Metal Dealers Act 2013
- Section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012
- Vehicles (Crime) Act 2001: Sections 1, 10, 12, 35 and 39

5. Although local authorities may have regard to a relevant offence (or relevant enforcement action) this does not determine the outcome of whether a scrap metal dealer licence is granted, continued or renewed. If a person has been convicted of a relevant offence or had enforcement action taken against them, the local authority, if it thinks it right to do so, may decide to grant a licence or grant a licence with conditions. The local authority may consider the relevant offences and enforcement action; the seriousness of the offence or enforcement action; when the offence was committed or the enforcement action was taken, along with any other relevant information as set out in Section 3 (2) of the Scrap Metal Dealers Act 2013.