

Taunton Deane Borough Council

Licensing Committee – 20th September 2017

Scrap Metal Dealers Policy

This matter is the responsibility of Executive Councillor Patrick Berry

Report Author: Mark Banczyk-Gee Licensing Officer

1 Executive Summary / Purpose of the Report

- 1.1 Members are asked to accept the attached Policy document as an approved manner in which the council will deal with all matters relating to Scrap Metal dealers.

2 Recommendations

- 2.1 That the document be accepted as the policy to be used when dealing with scrap metal dealer's issues.

3 Risk Assessment (if appropriate)

Risk Matrix

Description	Likelihood	Impact	Overall
That policy can be contested	2	2	2

Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
Impact							

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

- 4.1 Following a recent application for a scrap metal dealer's licence that went to committee it became apparent to councillors they had no guidance in respect of the options available to them when dealing with such matters.
- 4.2 Much of the scrap metal dealers act 2013 covers the procedure required to apply, vary or appeal in respect of a scrap metal dealers licence, however as with all legislation it can be confusing for practitioners and even more so for councillors.
- 4.3 As a result a policy document has been compiled (appendix1) which clearly shows what any persons applying for a scrap metal dealer's licence or collectors licence can expect.
- 4.4 The policy covers definitions, and procedures to be adopted should matters go to a hearing.
- 4.5 It also explains on what basis an applicant or holder of such a licence will be judge to be a fit and proper person to hold a licence.
- 4.6 The policy clearly shows the role of the committee as the nominated person as directed by the legislation covering the application, issue, variation or refusal of a licence and the actions both applicant and committee will take.

5 Links to Corporate Aims / Priorities

5.1 By adopting this policy the council's corporate policy will be endorsed as it supports transparency and gives clarity to prospective applicants.

6 Finance / Resource Implications

6.1 None

7 Legal Implications

7.1 None

8 Environmental Impact Implications

8.1 None

9 Safeguarding and/or Community Safety Implications

9.1 None

10 Equality and Diversity Implications

10.1 None

11 Social Value Implications

11.1 None

12 Partnership Implications

12.1 None

13 Health and Wellbeing Implications

13.1 None

14 Asset Management Implications

14.1 None

15 Consultation Implications

15.1 None

16 Scrutiny Comments / Recommendation(s)

16.1 None

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Cabinet/Executive – No**
- **Full Council – No**

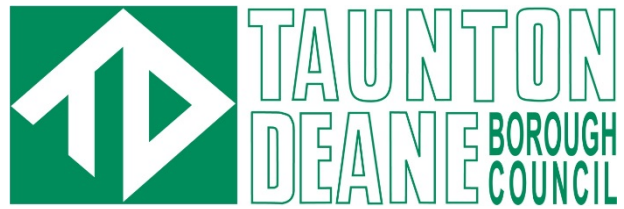
Reporting Frequency : **Once only** **Ad-hoc** **Quarterly**
 Twice-yearly **Annually**

List of Appendices

Appendix A	New Policy document
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West Somerset Council and
Taunton Deane Borough Council

Scrap Metal Dealer Licensing Policy

Version 1.0 – July 2017

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1. Introduction

- 1.1 The Scrap Metal Dealer's Act 2013 ("the Act") was introduced in law as a better deterrent against the trade in stolen scrap metal which, was impacting on business and enforcement agencies disproportionately.
- 1.2 Since the commencement of the Act, West Somerset Council and Taunton Deane Borough Council has entered into a joint management and shared services project, whereby there are two separate democratic licensing authorities (Licensing Committees) but a single, shared workforce. This policy is to be adopted to ensure consistency across both districts, for the benefit of the public, business community and councils.
- 1.3 This document states West Somerset Council's and Taunton Deane Borough Council's policy on the regulation of Scrap Metal Dealers in their capacity as the relevant local authorities for the purposes of the Act.
- 1.4 The policy acts as a guide to new applicants, existing licence holders, consultees and members of the public as to how both councils (herein referred to as the 'licensing authority') will administer and enforce the requirements of the Act. This includes the approach taken in relation to the acceptance of individuals as suitable applicants, conditions which must be met to continue operating within the business of scrap metal and the processes followed when applying for the grant or renewal of licences. Either council may depart from this policy if the individual circumstances of any case warrant such a deviation. In such cases, the relevant council must give full reasons for doing so.

Definitions of terms used in the policy

2. Definitions and interpretation

Scrap metal dealer

- 2.1 The Act defines a 'scrap metal dealer' as being someone (whether licensed or not) who is carrying on a business which consists:
 - a) Wholly or in part of buying or selling scrap, whether or not the metal is sold in the form in which it is bought; or
 - b) The carrying on of a business as a motor salvage operator.
- 2.2 A 'motor salvage operator' 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) activities falling within paragraphs (b) and (c).
- 2.3 Since the definition of 'scrap metal dealer' has been widely drawn, the licensing authority has decided to apply the principals contained within the 'Guide to the Scrap Metal Dealer's Act 2013' published by the Local Government Association, August 2013 ("the guide") when considering if a licence is required or not.
- 2.4 The main principal of this guide is that 'where the sale of the metal is incidental to the main type of work or business undertaken, then a licence will not be needed.' The guide goes on to explain that '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.'
- 2.5 Applying these principals, manufacturing businesses that sell scrap metal created only as a by-product of the processes it uses, or because it has a surplus of materials, would also not require a licence.
- 2.6 In determining whether it is required, the licensing authority will consider the following issues:
- Is the applicant a business (see paragraph 2.7)?
 - Is the applicant associated with any other business that might buy or sell metal (e.g. 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?
- 2.7 To assist in determining whether an individual is operating a business, the licensing authority will consider HM Revenues & Customs 'nine badges of trade':
- Profit seeking motive;
 - The number of transactions;
 - The nature of the asset;
 - Existence of similar trading transactions or interests;
 - Changes to the asset;
 - The way the sale was carried out;
 - The source of finance;
 - Interval of time between purchase and sale;
 - Method of acquisition.

Scrap metal

- 2.8 This is defined in section 21 of the Act. "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."

Collector's licence

- 2.9 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.

Site licence

- 2.10 This is required for any premises used in the course of carrying on a business as

a scrap metal dealer (whether or not metal is kept there or whether or not it is enclosed). 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.

Nominated person

- 2.11 Schedule 1 section 7 ss8 talks of the applicant having the opportunity to appear before a person nominated by the authority. In this case that person is represented by the licensing committee.

SMD

- 2.12 Scrap Metal Dealers Act 2013

All definitions in section 22 of the scrap metal dealer's act 2013 are used when referring to this policy.

3 Licence applications, renewals and variations.

- 3.1 Any licence issued will last for three years, we will consult with anybody we see fit but in particular the Police, environmental agency, the national resources body for Wales, planning and any other local authority.
- 3.2 Compliance with the legislation is expected and the provisions and requirements made by SMD will be followed.
- 3.4 There is no time limit in respect of receiving the application and it being issued, however the authority would expect to complete the process within three months.
- 3.5 Renewals must be received three months before the expiration of the current licence variations do not include transfer of said licence.

4 Applicant suitability

- 4.1 The SMD section 3 deals with applicant's suitability and the local authority will consider this section of the act when accepting applications or renewals.
- 4.2 Sub section F talks about adequate procedures in place, this is to meet the requirements of the act.
- 4.3 This authority will consult with whomever it feels is relevant to the concerns it has in relation to the applicant. Any evidence of repeated actions as identified at part 3 section 2 sub section A to F of the scrap metal dealers act could lead to the refusal or rejection of the licence application.

- 4.5 In essence the following factors are considered:
- a) Whether the applicant or site manager has been convicted of a relevant offence, or subject to any relevant enforcement action
 - b) Whether the applicant has previously been refused a scrap metal dealers licence or an application to renew a licence has been refused- we will look at the reasons for refusal.
 - c) Whether the applicant has previously been refused a relevant environmental permit or registration- again the reasons will be considered.
 - d) Whether the applicant had previously held a scrap metal dealers licence that has been revoked – again the reasons will be considered.
 - e) Whether the applicant has been convicted of an offence involving dishonesty or violence.
 - f) Whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the obligations placed upon licence holders under the Act can be met.
 - g) Any guidance issued by central government
- 4.6 It is an offence under paragraph 5 of Schedule 1 of the Act for an applicant to knowingly or recklessly make a statement which is false in a material way. The Council reserves the right to prosecute any person who appears to have committed such an offence. Any conviction may be publicised so as to deter others from making false statements.
- 4.7 Conditions as outlined in the scrap metal dealers act may be imposed by the authority at point of issue of the licence or following a hearing of the licensing committee (nominated person)
- 4.8 Scrap dealers have to be registered with the Environment Agency because they still fall within the Environmental Permitting Regulations with regards to processing treating and transporting waste
- 4.9 For example scrap dealers would need an exemption/permit to break down waste for parts, and a waste carrier's license to pick up/transport the waste
- 4.10 Despite being registered at a Local Authority level, you still require these permits/licenses to carry out the types of activities listed due to those being activities regulated by the environment agency

5 Relevance of offences

Applicants with previous convictions

- 5.1 The Licensing Authority will use the following guidelines to make fair and consistent decisions when considering relevant criminal convictions, cautions, reprimands, warnings, information or complaints
- 5.2 Each case will be decided on its merits. The Licensing Authority will endeavour to make consistent decisions but is not bound by or obliged to follow previous decisions made by them in relation to the holders of licences.
- 5.3 It may be appropriate to depart from the general policy in some cases, for example; situations where the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour, which will be taken into account.
- 5.4 The guidelines are not an attempt to define what a suitable person is.

Relevant offences

- 5.5 The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 specifies certain offences which are relevant in terms of assessing the suitability of an applicant or licence holder. Due to their nature e.g. they are of significance and added weight will be given to convictions for relevant offences, above other convictions, where an applicant or licence holder has been convicted of one or more.
- 5.6 A list of relevant offences has been prescribed by the Secretary Of State in relation to scrap metal licences. "Relevant Offence" means any offence detailed below; and includes an offence of - The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013
 - a) attempting or conspiring to commit any offence falling within the list below;
 - b) inciting or aiding, abetting, counselling or procuring the commission of any offence falling within the list below, and
 - c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) committed in relation to any offence falling within the list below.

"Relevant Enforcement Action" – a person is the subject of relevant enforcement action if –

- a) the person has been charged with an offence specified in the list below, and criminal proceedings in respect of that offence have not yet concluded; or

- b) an environmental permit granted in respect of the person under the Environmental Permitting (England and Wales) Regulations 2010 (1) has been revoked in whole, or partially revoked, to the extent that the permit no longer authorises the recovery of metal.

6 Revocation and conditions

- 6.1 If the authority decides to refuse the application or revoke a licence or to add /change conditions on a licence, a notice of their decision must be sent to the applicant giving them a specified period within which they must make the authority aware of whether the applicant wishes to make representations to the refusal/revocation/conditions.
- 6.2 This period must be between 14 and 30 days from the date the notice is sent or given to the applicant.
- 6.3 Conditions can only be added or removed as per the SMD act of 2013.
- 6.4 The applicant then has 14 days to make said representations from the date of declaring they intend to make representations. They can elect to make the representation orally in either case a written notice of the representation is required before the hearing can be convened.
- 6.5 Once these representations are received and/or notice served that they are to be presented orally the authority will arrange to have the matter heard before a licensing committee who are appointed by the authority (nominated person). This will be done within 30 days of receipt of the representation.
- 6.6 The applicant can appeal to the magistrates in respect of decisions made by the authority this has to be done with 21 days of the date the licensing committee made the decision.
- 6.7 Any court procedure will be in compliance with the Magistrates court act 1980 and schedule 1 section 9 sub sections 4 to 8.

7 National Register

- 7.1 On receipt of any new application or variation of existing licence the authority will update the national register as required by the scrap metal dealer's act 2013.
- 7.2 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, and Natural Resources Wales must maintain a register of scrap metal licences issued in Wales. Both registers will be open to the public.

- 7.3 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. The information that has to be passed on about each licence is:
- a) the name of the council which issued the licence
 - b) the name of the licensee
 - c) any trading name under which the licensee conducts business as a dealer
 - d) the address of any site identified in the licence
 - e) the type of licence (site or mobile)
 - f) the date the licence expires.

8. Fees

- 8.1 The Act enables local authorities to set an application fee, having had regard to any guidance issued from time to time by the Secretary of State, with the approval of the Treasury.
- 8.2 As well as any Secretary of State guidance, the licensing authority has set its scrap metal licence fees having regard to the Provision of Services Regulations 2009, which dictates that fees must be reasonable and proportionate to the cost of the processes associated with a particular licensing scheme i.e. a profit cannot be made.
- 8.3 Fees have been set to ensure full cost recovery across four areas:
- Application Processing.
 - Consumables;
 - Administration;
 - Monitoring Compliance.
- 8.4 Application fees are published on the respective council websites, alongside the relevant forms.

9 Enforcement and compliance

- 9.1 All holders of a scrap metal dealers licence or collectors licence will be expected to comply with the legislation laid down in respect of their relevant activities. The authority will use the legislation laid down as a guide in respect of inspections, enforcement and prosecution.