

# **Scrap Metal Dealers Policy**

**2024 – 2029**

**All applications will be considered on their merits, as well as against the relevant policy and statutory framework.**

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## **INTRODUCTION**

Metal theft over recent years has had a significant impact on communities, business, and local authorities. Metal thefts has been on the rise which is why the Scrap Metal Dealers Act 2013 was introduced in October 2013 and came into force in December 2013. It was a way to try and combat desecration of churches and historic buildings, inspection covers, and road signage being stolen.

This policy outlines the requirements of the Scrap Metal Dealers Act 2013. This policy aims to give guidance to new applicants, existing licence holders, consultees, and members of the public as to how the Council will administer and enforce the requirements of the Act.

## **1 CONSULTATION**

- 1.1 The Scrap Metal Dealers Policy will be kept under review and where any significant amendments are considered necessary these will only be made after consultations have taken place in accordance. Amendments required due to a change in legislation that do not impact on the aims and objectives of the Policy will be made with the approval of the Licensing Officer for the policy to remain legislatively current.
- 1.2 Proper weight, in accordance with the Guidance, has been given to the views of all those consulted. Those consulted in the preparation of this Policy included:
  - the Chief Officer of Police for Kent and British Transport Police
  - the Fire and Rescue authority for Kent
  - Tonbridge and Malling Borough Council's Environmental Protection Team
  - Environment Agency
  - Trading Standards
  - Existing licence holders
  - Relevant trade associations

### 1.3 The Scrap Metal Dealers Policy

1.3.1 The following process steps enabled development of this policy.

Draft consultation agreed at the Licensing Committee	27 September 2023
Public Consultation	9 October 2023 – 30 November 2023
Licensing Committee agrees the policy and recommends to Full Council for adoption	26 March 2024
Full Council adopt policy	9 April 2024
New Policy comes into force	22 April 2024

## 2 BACKGROUND

- 2.1 The Scrap Metal Dealers Act 2013 came into effect on 1 October 2013. It repeals all previous legislation and creates a revised regulatory regime for scrap metal recycling and vehicle dismantling industries.
- 2.2 The Act defines a 'scrap metal dealer' as a person who carries on the business which consists wholly or in part of the buying and selling of scrap metal, whether the metal is sold in the form it was bought. Or carries on a business as a motor salvage operator. This does not include manufacturing operations that sell metal as a by-product of the processes being used in that operations. This includes the business of collection scrap metal, i.e., door to door collectors.
- 2.3 The definition of scrap metal dealers is wide and may include skip hire firms, and tradesman such as plumbers and builders who sell scrap metal resulting from their businesses.
- 2.4 In these circumstances, each business will be considered on its own merits, but consideration will be given to the amount of metal sold and how incidental the sale is to the main business. So, in most cases for plumbers, electricians, and builders etc. the sale of metal will be incidental and should not require a licence. However, skips sited at demolition sites, or at engineering manufacturing sites or plumbers' yards, it is likely the skip will contain a significant amount of metal, so the skip hire company will require a licence.
- 2.5 The Act identifies the local authority as the principal regulator and gives them power to regulate these industries by ability to refuse licences to unsuitable applicants and the power to revoke those licences held by licence holders who become unsuitable.
- 2.6 The Act states that scrap metal includes.
  - Any old, waste, or discarded metal or metallic material
  - 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 does include platinum and other rare metals now being used in catalytic converters in vehicle exhausts.

2.7 The following is not considered to be scrap metal:

- Gold
- Silver
- Any alloy of which 2% or more by weight is attributable to gold or silver.

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

- Wholly or in part recovers salvageable parts from motor vehicles for re-use or re-sale, and then sells the rest of the vehicle for scrap.
- Wholly or mainly buys or sells motor vehicles for the purpose of salvaging parts from them or repairing them and re-selling them.

However, only vehicles without a certificate of destruction, or are capable of being driven without repair, with or without a valid MOT are likely to be classes as second-hand goods. Other vehicles are likely to be considered scrap. These aspects will be considered when the Council determines whether a scrap metal dealer licence is required. It should also help prevent any motor salvage operators attempting to circumvent the legislation and its requirements.

2.9 The Act is not intended to include second hand goods. Jewellers or businesses trading in second hand gold, silver and products are not included in this legislation.

### 3 TYPES OF LICENCE

3.1 A licence is required to carry on the business as a scrap metal dealer. A licence is granted for three years. Trading in scrap metal without a licence is a criminal offence.

3.2 There are two types of licences specified within the Act: Site licence and Collector's licence.

3.3 **Site licence** – all sites operating as a scrap metal business must be licensed. Each site must have a named site manager. A site licence allows the licence holder to transport scrap to and from the site from any local authority area.

3.4 A site under the Act is defined as any premises used while carrying on a business as a scrap metal dealer (whether or not metal is kept there). This

means a dealer will require a licence for an office, even if they do not operate a metal store or yard from those premises.

- 3.5 **Collectors licence** – this allows the licence holder to collect scrap within the area of the issuing local authority. This licence does not permit the holder to operate a scrap metal site, nor does it allow collection outside the area of the issuing authority. If a person collects scrap from many local authority areas, a collector's licence will be required from each local authority where he/she collects scrap.

A dealer can only hold **ONE** type of licence in any one local authority.

- 3.6 Holding a site or collectors' licence does not exempt the licensee from requiring any other licence or permit to operate their scrap metal business.

#### 4 **SUITABILITY OF APPLICANT**

- 4.1 The Council must determine if an applicant is a suitable person to carry on the business as a scrap metal dealer.
- 4.2 The Council may have regard to any information which it considers to be relevant, this may include:
- Whether the applicant or site manager has been convicted or any relevant offence
  - Whether the application or site manager has been the subject of any relevant enforcement action
  - Whether there has been any refusal of an application of the issue or renewal of a scrap metal licence, and the reasons for refusal.
  - Whether there has been any refusal of an application for a relevant environmental permit or registration, and the reasons for the refusal.
  - If there has been any previous revocation of a scrap metal licence and the responses for the revocation.
  - Whether the applicant has demonstrated there will be adequate procedures in place to ensure compliance with the Act.

4.3 When establishing the applicant's suitability, the Council may consult with the following agencies:

- Kent Police
- Her Majesty's Revenue and Customs
- Environment Agency
- The Council's Environmental Protection Team
- Trading Standards

4.4 Relevant offences or relevant enforcement action are those listed under the Scrap Metal Dealers Act 2013 (Prescribed relevant offences and relevant enforcement action) Regulations 2013

## **5 SUPPLY OF INFORMATION BY THE LOCAL AUTHORITY**

5.1 Information supplied to the authority in relation to an application for, or relating to a scrap metal licence must be provided when requested relating to a licence to:

- Any other local authority
- Environment Agency
- An officer of a police force

This does not limit any other power the authority has to supply that information.

## **6 REGISTER OF LICENCES**

6.1 The Environmental Agency will maintain a register for scrap metal licences issued by all local authorities which in England. The register will include.

- Name of the authority that issued the licence.
- Name of the licence holder
- Any trading name of the licence holder
- Address of the site listed on the licence.
- Type of licence



- Expiry date of licence

The register will be open for inspection by members of the public.

6.2 The Council are required to update the register on a regular basis.

## **7 DISPLAY OF LICENCES**

- 7.1 Once granted, a copy of the site licence must be displayed at each site identified on the licence; in a prominent place which is accessible to members of the public.
- 7.2 A copy of a collector's licence must be displayed on any vehicle that is being used during a dealer's business. It must be displayed in a prominent position so that it can be easily read from the outside of the vehicle.

## **8 VERIFICATION OF SUPPLIERS IDENTITY**

- 8.1 Before receiving scrap metal, the dealer must verify a person's full name and address, by reference to documents or data from a reliable and independent source.
- 8.2 If suitable verification is not obtained the scrap metal dealer, or site manager, or person who has been delegated responsibility by the dealer or site manager for verifying the name and address, shall be guilty of an offence.

## **9 PAYMENT FOR SCRAP METAL**

- 9.1 A scrap metal dealer must only pay for scrap metal by either:
- Cheque (which is not transferable under Section 81A of the Bills of Exchange Act 1882)
  - Electronic transfer of funds (authorised by a credit and debit card)

Cash payments and payments in kind with goods and services for scrap metal are not permitted.

## **10 RECORDS**

10.1 Scrap metal dealers must keep three types of records:

- Receipt of Metal –
- Disposal of Metal
- Supplementary

10.2 Receipt of Metal – if metal is received during the dealer's business the following must be recorded:

- Description of the metal, including its type (types if mixed), form, condition, weight, and any marks identifying previous owners or other distinguishing features
- Date and time of receipt
- Registration mark of the vehicle it was delivered by.
- Full name and address of the person delivering it.
- Full name of the person making payment on the behalf of the dealer.

10.3 Disposal of Metal – Disposal under the Act covers metal:

- Whether or not it is in the same form when it was purchased
- Whether or not it is to another person
- Whether or not it is despatched from a site

10.4 Disposal records must be kept and include:

- Date and time of disposal
- If to another person, their full name and address
- If payment is received for the metal (sale or exchange) the price or other consideration received.

10.5 If disposal is during business conducted under a collectors licence the dealer must record:

- Date and time of disposal
- If to another person, their full name and address

- 10.6 Supplementary – The information collected during receipt and disposal must be recorded in such a manner that allows the information and the metal to which it relates to be easier identified.
- 10.7 The records of receipt must be kept for a period of three years beginning on the day of receipt of disposal.
- 10.8 If suitable records for the receipt or disposal of scrap metal are not kept then the scrap metal dealer or site manager, or person who has been delegated responsibility by the dealer or site manager for keeping records shall be guilty of an offence.
- 10.9 A dealer or site manager may have a defence if they can prove arrangements had been made to ensure the requirement to keep records was fulfilled, or they took all reasonable steps to ensure those arrangements were complied with.

## **11 RIGHTS OF ENTRY AND INSPECTION**

- 11.1 An authorised officer of the Council may enter and inspect a licensed site at any reasonable time, with or without notice to the site manager.
- 11.2 Entry to the site is reasonably required for the purpose of ascertaining whether the provisions of the Act are being complied with or investigating offences under it and in either case the giving of the notice would defeat the purpose.
- 11.3 Sections 11.1 and 11.2 do not apply to residential premises for mobile collectors and site licences.
- 11.4 An authorised officer of the Council is not entitled to use force to enter a premises, but may ask a justice of the peace to issue a warrant authorising entry, if they are satisfied there are reasonable grounds for entry to the premises for the purpose of:
- Securing compliance with the provisions of the Act
  - Ascertaining whether those provisions are being complied with
- 11.5 Premises under this section include licensed sites or premises that are not licensed, but there are reasonable grounds for believing the premises are being used as a scrap metal dealing business.
- 11.6 An authorised officer of the Council may use reasonable force in the exercise of the powers under a warrant obtained under section 11.4.

11.7 An authorised officer of the council may require:

- Production of and inspect any records kept in respect of receipt and disposal of metal.
- Require production of and inspect any records in respect of receipt and disposal of metal and take copies or extracts from any such record.

11.8 An authorised officer of the Council must produce evidence of their identity and evidence of their authority to exercise these powers, if requested by the owner occupier or other person in charge of the premises.

## **12 APPLICATION PROCEDURE**

12.1 An application form must be completed and submitted with the fee, and a basic disclosure of criminal convictions, a disclosure will be valid for three months from the date of issue.

12.2 Any applicant for a licence will have to complete a tax check.

[COMPLETE A TAX CHECK FOR A TAXI, PRIVATE HIRE OR SCRAP METAL LICENCE - GOV.UK \(WWW.GOV.UK\)](http://WWW.GOV.UK)

12.3 A licence once granted will be valid for three years.

12.4 A renewal application must be received before the expiry of the current licence.

12.5 If a licence application is refused, the licence expires when no appeal is possible, or an appeal is determined or withdrawn.

12.6 A licence may be varied from one type to another i.e., site licence to collector's licence.

12.7 A variation licence must be made to reflect changes to the name of the licensee, site manager or sites on a site licence or name of the licensee on a collector's licence.

12.8 A variation cannot be used to transfer the licence to another person only amend the name of the licence holder.

12.9 When in receipt of a renewal application, which is subsequently withdrawn, the licence expires at the end of the day on which the application was withdrawn.

- 12.10 Tonbridge and Malling Borough Council may request additional information is provided for the consideration of the application. Failure to provide such information may result in the application being refused.
- 12.11 If Tonbridge and Malling Borough Council proposes to refuse an application, revoke or to vary a licence by imposing conditions, a notice will be issued to the licence holder setting out the Council's proposals and the reasons for the decisions. The notice will indicate details of the Licensing and Appeals panel hearing date, where the applicant or licence holder can either make written or oral representation about the proposal or inform the council that the application or licence holder wishes to do so.
- 12.12 This time must not be less than 14 days beginning on the day the notice was given to the applicant or licence holder. Tonbridge and Malling Council will stipulate a time of 21 days for representations or intentions to be received.
- 12.13 If a notification is received that the applicant or licence holder wishes to make representation, the Council must allow a reasonable period for them to make their representation. The Council will allow 14 days for written representations to be received from the date the application becomes contested, or the Council receives notification of the applicant having a relevant offence. The applicant or licensee may wish to make an oral representation; if this is the case the person must notify the Council within the 14-day time. If this time lapses, without a written representation, or a request for an oral representation being received, the Council may refuse, revoke, or vary the licence.
- 12.14 Where there is a representation a hearing will be arranged, and the case will be presented before the Licensing and Appeals panel, the applicant or licence holder will be invited to attend. The Council will give at least ten working days' notice of the date and time of the hearing to the applicant or licence holder. Any decisions made at this hearing will be given to the application or licence holder in writing outlining the decision and the reasons.
- 12.15 An applicant or licence holder may appeal to the magistrate's court against a refusal of an application or a variation. Any appeal must be lodged with the magistrate's courts within 21 days of receipt of the decision notice.

### **13 REVOCATION AND IMPOSING CONDITIONS**

- 13.1 The Council may revoke a scrap metal licence if it is satisfied the licence holder does not carry on a scrap metal business at any of the sites named on the licence.

- 13.2 The Council may revoke a scrap metal licence if it is satisfied the site manager named on the licence does not act as a site manager at any of the named sites on the licence.
- 13.3 The Council may revoke a scrap metal licence if it is no longer satisfied the licence holder is no longer a suitable person to carry on the business.
- 13.4 If the licence holder or site manager named on a licence is convicted of a relevant offence the Council may impose one or both of the following conditions
- The dealer must not receive scrap metal except between the hours of 9am and 5pm on any day.
  - All Scrap metal must be kept in the form in which it was received for a specified period not exceeding 72 hours, beginning with the time it was received.
- 13.5 A revocation or variation only comes into effect when no appeal under the Act is possible or when such appeal has been determined or withdrawn.
- 13.6 If the Council considers the licence should not continue without the addition of one or more conditions in section 13.4 the licence holder will be given notice that until the revocation comes into effect the licence is subject to one or both conditions or that a variation comes into immediate effect.

## **14 CLOSURE OF UNLICENSED SITES**

- 14.1 If an authorised officer of the council is satisfied premises are being used by a scrap metal dealer during their business and premises are unlicensed, they may issue a closure notice. A copy of this notice will be given to the person who appears to be the site manager and any person who appears to be a director, manager or other officer of the business.
- 14.2 A copy of this notice may also be given to any person who has an interest in the business, a person who occupies part of the premises, or where the closure may impede a person's access to other parts of the premises.
- 14.3 After a period of seven days, the authorised officer of the Council may apply to a justice of the peace for a closure order. The Court must be satisfied the premises will continue to be used by a scrap metal dealer, or there is a reasonable likelihood that the premises will be. A closure order will close the premises immediately and the premises will remain closed to the public until the Council makes a termination of the closure order by certificate. The scrap metal dealer must cease their business immediately. It will require the

defendant to pay a sum into the court, which will not be released until the person has complied with the requirements of the order.

- 14.4 Such an order may have a condition relating to the admission of people into the premise or may include a provision the court considers appropriate.
- 14.5 A copy of the order must be placed on the premises in a prominent position by the Council.
- 14.6 Once the requirements of the order have been complied with and the Council is satisfied the need for the order has ceased, a certificate may be made. This ceases the order and the sum of money paid into the court is released.
- 14.7 A copy of the certificate must be given to any person the closure order was made against and a copy must also be given to the court and placed on the premises. A copy must also be given to anyone who requests one.
- 14.8 Anyone issued with a closure order may complain to a justice of the peace. The Court may discharge the order, if it is satisfied there is no longer a need for the closure order. The Council may be required by the Court to attend and answer the complaint made.
- 14.9 Appeals may be made to the Crown Court against closure order, decisions not to make a closure order, a discharge order of the decision not to make a discharge order. Any appeal must be lodged within 21 days beginning on the day on which the order or decision was made.
- 14.10 A person is guilty of an offence if they allow the premises to open in contravention of a closure order.
- 14.11 An authorised officer of the Council may enter the premises at any reasonable time to ensure compliance with the order. They may use reasonable force if necessary.
- 14.12 An authorised officer of the Council must produce evidence of their identity or evidence of their authority to exercise the powers under the Act if requested to do so.

## **15 ENFORCEMENT**

- 15.1 It is the policy of Tonbridge and Malling Borough Council to ensure that scrap metal dealers are licensed correctly and carry out their trade in accordance with both the relevant law and the conditions (if any) attached to the licences.
- 15.2 Any enforcement action has regard for the Regulators' Compliance Code and the regulatory principles set out in the Legislative & Regulatory Reform Act

2006. The Council will seek to adopt a positive and proactive approach towards ensuring compliance.

- 15.3 All enforcement action, be it verbal warnings, the issue of written warnings, appearance before the Licensing and Appeals committee or prosecution, will primarily be based upon the seriousness of the breach and the possible consequences arising out of it. Enforcement action will not, therefore, constitute a punitive response to minor technical contraventions of legislation.
- 15.4 Authorised officers, when making enforcement decisions, will abide by this policy. Any departure from the policy must be exceptional, capable of justification, be fully considered and be endorsed by the Head of Service for Licensing, Community Safety and Customer Services or above before the decision is taken (unless it is considered that there is significant risk to the public in delaying the decision).
- 15.5 Officers will be authorised by the Head of Service for Licensing, Community Safety and Customer Services to take enforcement actions relevant and appropriate to their level of competence. Competency will be assessed individually by reference to qualifications and experience.
- 15.6 Achieving and maintaining a consistency of approach to making all decisions that concern Scrap Metal licensing and enforcement action, including prosecution, is of paramount importance. To achieve and maintain consistency, it is vital that the policy guidelines are always considered and followed where appropriate.
- 15.7 Enforcement decisions must always be consistent, balanced, and proportionate and relate to common standards which ensure that the public is adequately protected. In reaching any decision many criteria must be considered including the: -
- seriousness of any offences.
  - consequence of non-compliance.
  - likely effectiveness of the various enforcement options.
  - the economic consequences of enforcement
  - danger to the public.
- 15.8 Having considered all relevant information and evidence, the choices for action are:
- take no action.
  - take informal action.
  - revoke a licence.
  - vary a licence by way of including conditions on the licence.



- use simple cautions.
- prosecute.
- a combination of any of the above.

15.9 The decision to prosecute is a very significant one as it may impact on the licence holder's future employability. Prosecution will, in general, be restricted to those circumstances where the law is blatantly disregarded, legitimate requirements of the Council are not followed and / or the public is put at serious risk. Such circumstances are, however, in a minority. It is important that the criteria on which a decision to prosecute is made provide common standards which ensure a consistent approach.

15.10 The circumstances which are likely to warrant prosecution may be characterised by one or more of the following: -

- where there is a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law-abiding are placed at a disadvantage to those who disregard it.
- where there have been repeated breaches of legal requirements.
- where a particular type of offence is prevalent.
- where a particular contravention has caused serious public alarm.

15.11 When circumstances have been identified which may warrant a prosecution, all relevant evidence and information must be considered, to enable a consistent, fair, and objective decision to be made.

15.12 Before referring a matter to the Legal Section for possible prosecution, the Head of Service for Licensing, Community Safety and Customer Services must be satisfied that there is relevant, admissible, substantial, and reliable evidence that an offence has been committed by an identifiable person or company. There must be a realistic prospect of conviction; a bare prima facie case is not enough. With insufficient evidence to prosecute, the issue of a simple caution is not an alternative.

15.13 In addition to being satisfied that there is sufficient evidence to provide realistic prospect of conviction, it must be established that it is in the public interest to prosecute. The Code for Crown Prosecutors, issued by the Crown Prosecution Service, provides guidance which will be considered, including relevant public interest criteria.

15.14 When a decision is being taken on whether to prosecute, the factors to be considered may include: -

- the seriousness of the alleged offence.
- the risk or harm to the public.

- identifiable victims.
- disregard of safety for financial reward.
- the previous history of the party concerned.
- offences following a history of similar offences.
- failure to respond positively to past warnings.
- the credibility of any important witnesses and their willingness to cooperate.
- the willingness of the party to put right the loss or harm that has occurred,
- whether a prosecution would have a significant positive impact on maintaining community confidence.
- whether other action, such as issuing a simple caution in accordance with the Home Office Circular 016. /2008 would be more appropriate or effective.

15.15 This list is not exhaustive, and regard will be to the matters set out in the Code for Crown Prosecutors.

15.16 A simple caution may be used as an alternative to a prosecution in certain circumstances.

15.17 The purposes of the simple caution are: -

- to deal quickly and simply with less serious offences where the offender has admitted the offence.
- to divert offenders where appropriate from appearing in the criminal Courts.
- to reduce the chances of re-offending
- To safeguard the suspected offender's interests, the following conditions should be fulfilled before a caution is administered: -
- there must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction.
- the suspected offender must have made a clear and reliable admission of the offence.
- the suspected offender must understand the significance of a simple caution and give informed consent to being cautioned.
- A simple caution must be appropriate to the offence and the offender.

15.18 If there is insufficient evidence to consider taking a prosecution, then by implication, the above criteria is not satisfied for the use of a simple caution. A simple caution should not be used where the suspected offender does not make a clear and reliable admission of the offence. (It should be noted that there is no legal obligation for any person to accept the offer of a simple caution and no pressure should be applied to the person to accept a caution).

- 15.19 Where a person declines the offer of a simple caution, it will be necessary to consider taking alternative enforcement action. Whilst this will usually mean prosecution, this is not necessarily inevitable. For example, it may be considered that a written warning would be appropriate.
- 15.20 Following the completion of an investigation into a complaint or any enforcement activity, the licence holder will be informed of the action intended to be taken.
- 15.21 Any written documentation issued or sent will: -
- contain all the information necessary to understand the offence and what needs to be done to rectify it. Where works are required, the period allowed for them to be completed will be indicated.
  - indicate the legislation or conditions contravened and measures which will enable compliance with the legal requirements and point out, where appropriate, that other means of achieving the same effect may be chosen.
  - clearly indicate any recommendations of good practice under an appropriate heading, to show that they are not a legal requirement.
- 15.22 There is a clear distinction between legal requirements and matters which are recommended as good practice. Recommendations in all enforcement action, even if only giving verbal advice, is vitally important.

## 16 REFERENCE INFORMATION

- 16.1 A copy of the **Scrap Metal Dealers Act 2013** can be found using this link:

<http://www.legislation.gov.uk/ukpga/2013/10/enacted>

- 16.2 A copy of the latest revision to the **Guidance for the Scrap Metal Dealers Act 2013**, updated on the 2 March 2023 can be found using this link:

[Scrap Metal Dealers Act 2013: supplementary guidance \(accessible\) - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/644444/Scrap_Metal_Dealers_Act_2013_supplementary_guidance_accessible.pdf)