

Waverley Borough Council

Decision-making Protocol for Scrap Metal Dealers

[MONTH] 2015

## **1. Introduction**

- 1.1.** The Scrap Metal Dealers Act 2013 (the 2013 Act) introduced a new licensing regime which replaced two registration systems – those for scrap metal dealers found under the Scrap Metal Dealers Act 1964 and for Motor Salvage Operators under the Vehicles (Crime) Act 2001.
- 1.2.** The 2013 Act was introduced in response to a number of factors, including the rising impacts of metal theft which adversely affected communities, businesses and councils and led to costs of millions of pounds a year.
- 1.3.** Every scrap metal dealer is now required to have a licence, and operating without one is a criminal offence. Under the new legislation the definition of scrap metal dealers is extended and some businesses that did not previously need to be registered now require a licence to operate.
- 1.4.** The 2013 Act and subsequent Regulations define scrap metal dealing and the licensing regime as a whole, including assessing the suitability of applicants<sup>1</sup>. Local Authorities have the responsibility to administer and enforce Scrap Metal Dealer licensing and may set fees locally to recover the costs of doing so. Local Authorities are also responsible for the initial stages of the regime's appeals procedure.
- 1.5.** This Protocol, "Waverley Borough Council Decision-making Protocol for Scrap Metal Dealers", gives guidance and advice on local practices and procedures relating to an applicant's right to make representations that arises if the Council proposes to refuse an application, renewal or variation or where a licence is proposed to be revoked.

## **2. Scrap Metal Dealers' Licences**

- 2.1.** In order for anyone to operate a business as a scrap metal dealer they must have a licence. Licences last for three years. Dealing in scrap metal without a licence is a criminal offence. There are two types of licence specified:

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<sup>1</sup> Home Office: Scrap Metal Dealers Act 2013 – Determining suitability to hold a scrap metal dealer's licence, October 2013

**2.1.1. Site Licence;** all 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.

**2.1.2. Collector's Licence;** this allows the licensee to operate as a collector in the area of the issuing local authority – i.e. travelling from door-to-door to collect items of scrap. It does not allow the collector to operate in any other local authority area, so a separate licence has to be obtained for each area in which the collector wishes to operate. 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.

**2.2.** It should be noted that a dealer can only hold one type of licence in any one local authority area. S2(9) of the 2013 Act prevents holding both a site and collector's licence from the same council.

**2.3.** The definitions of scrap metal dealer, site, collector and scrap metal are contained in the 2013 Act. Regulations and Guidance have been produced<sup>2</sup> and Waverley Council will give appropriate weight to these or subsequent guidance and, if deviating from them, will give reasons for so doing.

### **3. Considerations**

**3.1.** The regime specifies the steps taken in the application process and what shall or may be taken into account by the Licensing Authority when dealing with an application or assessing suitability.

**3.2.** The Council's Scheme of Delegation in relation to this function is summarised in the table at Appx.1. Routine determinations are delegated to the Environmental Health Manager and Representations arising out of proposals to refuse, etc. are the responsibility of the Head of Environmental Services.

**3.3. Proposed refusal of an application** – a licence application may be for a new licence, a renewal or to vary from one type to another. Section 3 of the 2013 Act deals with relevant information and paragraph 7 of Schedule 1 specifies the process to be followed where refusal is proposed.

**3.3.1.** In summary<sup>3</sup> if a local council proposes to refuse an application, it must give the applicant notice of the proposed decision. The applicant has 14 days in which to make representations. When the local council has made

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<sup>2</sup> E.g. LGA Guide to the Scrap Metal Dealers Act 2013 (revision 5), August 2013

<sup>3</sup> Home Office, Scrap Metal Dealers Act 2013 – Supplementary guidance, October 2013

a final decision, it provides a notice of the decision with reasons. The applicant then has 21 days in which to appeal to a magistrates' court.

**3.3.2.** Reasons for refusal may include:

- whether the applicant is a suitable person to carry on a business as a scrap metal dealer
- whether the applicant or site manager has been convicted of a relevant offence or been the subject of relevant enforcement action
- any previous refusal of a licence application or renewal
- refusal of a relevant environmental permit
- revocation of a scrap metal licence
- whether the applicant has demonstrated that there will be adequate procedures in place to ensure the provisions of the Act are complied with
- any other information which the Licensing Authority considers relevant

**3.4. Proposal to revoke or vary a licence** – section 4 of the 2013 Act deals with revocations (and variations arising out of relevant convictions) and paragraph 7 of Schedule 1 specifies the processes to be followed.

**3.4.1.** In summary, the process is the same as at 3.3.1. above

**3.4.2.** Licences can be revoked by the Council for the following reasons:

- it is satisfied that the licensee does not carry on business at any of the sites identified in the licence
- that a site manager named in the licence does not act as a site manager at any of the sites identified in the licence
- it is no longer satisfied that the licensee is a suitable person to carry on business as a scrap metal dealer (considerations as listed at 3.3.2.)

**3.5. Closure Orders** – Section 9 of the 2013 Act allows for the closure of unlicensed sites. Schedule 2 specifies the process, by way of Notice and a Magistrates' Court decision. There is no right of representation to the Local Authority under this process and this decision-making protocol is not engaged.

## **4. Decision-making in Waverley**

**4.1.** When determining applications or considering the continuity of existing licences the case-officer will ensure that all relevant information is gathered. This includes anything further the Council considers to be relevant once a valid application has been made.

**4.2.** Determinations of suitability will have regard, but not exclusively, to the relevant guidance (as at footnote 1 above).

- 4.3.** Tacit consent should not apply in relation to scrap metal dealer licence applications as there is an overriding public interest in ensuring that the suitability of applicants is assessed before the licence is issued. However, where the results are non-contentious the application will normally be granted.
- 4.4.** Information likely to lead to a proposal to revoke a licence, will normally be shared with the licence-holder prior to any decision - in order to provide them with an opportunity to refute, etc. the evidence.
- 4.5.** Contentious applications and evidence likely to lead to a revocation will be discussed with the case-officer's line manager. The resultant recommendation will be passed to the Environmental Health Manager (or in their absence the Deputy Environmental Health Manager) for a final decision. The details of the case will not be shared with the Head of Service (Environmental Services) in case either the applicant or licence-holder decides to make a representation.
- 4.6.** Any decision falling under 3.3 or 3.4 above will engage the process detailed in Schedule 1 of the 2013 Act. Representations arising out of this process will be dealt with as detailed below.

## **5. Representations**

- 5.1.** The Notice issued to the licence-holder or applicant will specify a period within which they must either make representations about the proposal or inform the council that they wish to do so.
- 5.2.** The Council will allow a reasonable period if the latter applies – this will normally be 10 working days beginning with the date on which the notification from the applicant or licence-holder is received by the Council. The Council may refuse the application or revoke or vary the licence if they fail to make representations within that period.
- 5.3.** The recipient of the Notice at 5.1 may notify the council that they wish to make oral representations. In such cases they will be given the opportunity to be heard by the delegated officer (currently Head of Environmental Services). A meeting will be arranged in order to facilitate this as soon as practicable but with at least 10 working days' notice given to the person making representations. They may choose to waive this period in order to allow for an earlier, mutually convenient, meeting.

- 5.4.** The Notice at 5.1 will contain reasons for the proposed decision. The delegated officer will consider any written or oral representations against the criteria contained in the Notice or in light of any other information considered to be relevant. A decision should be made as soon as possible thereafter.
- 5.5.** Where oral representations are made the applicant or licence-holder may request to be accompanied by another person and this should normally be allowed. Where appropriate, the delegated officer may require other officers, including for legal advice, to be present throughout the meeting or at any point during the meeting.
- 5.6.** Where the decision is grant the licence or to vary it from one type to the other, the licence will be issued as soon as is practicable and, in any case, within 10 working days.
- 5.7.** Where the decision is to refuse, revoke or vary due to relevant convictions a notice will be sent to the relevant person setting out the decision and reasons for it, together with details of any rights of appeal. This notice will be provided as soon as practicable and, in any case, within 10 working days of the decision. The right of appeal is to the Magistrates' Court and must be made within 21 days of the date of the decision notice.

**APPENDIX 1**

Table of relevant delegated powers

<b>Item</b>	<b>Considerations</b>	<b>Environmental Health Manager or nominated officer</b>	<b>Head of Environmental Services</b>	<b>Committee</b>
Approval of Decision-making protocol	Scrap Metal Dealers Act 2013 and associated regulations / guidance	X	X	Yes – Executive function
Application for Site Licence or Collector's Licence. Application to vary from Site to Collector's (& vice-versa)	Scrap Metal Dealers Act 2013, associated regulations / guidance and Waverley Protocol	Yes – if non-contentious	Yes – if representations	X
Revocation of Licence. Varying licence due to relevant convictions	Scrap Metal Dealers Act 2013, associated regulations / guidance and Waverley Protocol	Yes – if non-contentious	Yes – if representations	X
Closure Orders	Scrap Metal Dealers Act 2013 and associated regulations / guidance	Yes – in conjunction with legal services	X	X