

Appendix 1

CAERPHILLY COUNTY BOROUGH COUNCIL

**POLICY ON THE DETERMINATION OF SUITABILITY TO HOLD A LICENCE
UNDER THE SCRAP METAL DEALERS ACT 2013**

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1. Introduction

- 1.1 The Scrap Metal Dealers Act 2013 replaced previous registration requirements in respect of scrap metal dealers operating both as yards and itinerant collectors, and motor salvage operators. The Act introduced a licensing regime to address widespread problems of metal theft and associated criminal activity.
- 1.2 The licensing regime introduced a two tier scheme for Scrap Metal Dealers and Scrap Metal Collectors, definitions for sites and collectors are set out in Appendix 1. Application processes and conditions are prescribed by the Act and relevant regulations and guidance.
- 1.3 The Council is the licensing authority under the Act and is responsible for the issue, renewal, variation and revocation of scrap metal dealer's licences. It also has responsibility for ensuring compliance with the relevant legislation and enforcement of these businesses.
- 1.4 The purpose of this policy is to set out the criteria which the Council will take into account when determining whether or not an applicant or an existing licence holder is suitable to hold a scrap metal dealer's licence. This policy was approved at a meeting of Caerphilly County Borough Council's Cabinet on **** DATE ****
- 1.5 The aim of the policy is to ensure:
- a person licensed as a scrap metal dealer is a suitable person to carry on such a business;
 - the process Caerphilly County Borough Council follow when considering a person's suitability is transparent, fair and proportionate;
 - the protection of the public.
- 1.6 This policy provides guidance to any person with an interest in the business of scrap metal, in particular, but not exclusively:
- the general public
 - Council officers concerned with the determination of applications
 - applicants for scrap metal dealer's licences;
 - existing licensed scrap metal dealers;
 - licensing officers, police and other relevant enforcement bodies;
 - Magistrates Court hearing appeals against local authority decisions.
- 1.7 The Council will determine each application on its individual merits and will have regard to the policy and where the circumstances demand, may depart from the policy. Full reasons for departure from the policy will be provided in writing. At the time of implementation of this policy contested applications are determined by a panel of officers comprising the Head of Public Protection and Head of Legal and Democratic Services or representative in consultation with the relevant Cabinet Member .
- 1.8 The Council reserves the right to amend this policy without consultation where it is necessary to ensure the policy reflects changes to national legislation or statutory guidance.

2. Consultation

- 2.1 In developing this policy, the Council consulted with existing scrap metal dealers and motor salvage operators, Heddlu Gwent Police, other relevant enforcement bodies, British Transport Police, Natural Resources Wales and Industry Associations

3. Legislation and Policy Guidance

3.1 When considering an application for a site licence or collector's licence, in addition to this policy, the Council will have regard to the following legislation and guidance:

- Scrap Metal Dealers Act 2013;
- Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013;
- Any relevant guidance issued by the Secretary of State / Home Office etc; Local Government Association Guide to the Scrap Metal Dealers Act 2013

4. Suitability of Applicants

4.1 A local authority must determine whether the applicant is a suitable person to carry on a business as a Scrap Metal Dealer. A local authority may require that an applicant provide such other information, as it considers relevant, for the purpose of considering the suitability of an applicant.

4.2 The Council will consult with other agencies regarding the suitability of an applicant, including:

- Any other local authority;
- The Environment Agency;
- The Natural Resources Body for Wales;
- Heddlu Gwent Police;
- Local Authority Environmental Health; and
- Trading Standards
- Planning Authority
- Any other agency as is considered appropriate dependant on the circumstances of the case

4.3 In determining an application the Council must have regard to any information it considers to be relevant which will include:

- Whether the applicant or any site manager has been convicted of any unspent relevant offence;
- Whether the applicant or any site manager has been convicted of any other unspent offence;
- Whether the applicant or any site manager has been the subject of any relevant enforcement action;
- Any previous refusal to issue or renew a scrap metal licence;
- Any previous refusal for an environment permit or registration;
- Any previous revocation of a scrap metal licence; and
- Whether the applicant has demonstrated that there will be adequate procedures to comply with the Act.

'Relevant Offences' are prescribed by legislation and are set out in Appendix 2.

4.4 In exceptional circumstances the Authority may consider spent convictions, for example, where the authority is satisfied that justice cannot be done except by admitting or requiring evidence relating to a person's spent convictions and take it into account. In doing so, the authority will have regard to the age, circumstances, relevance and seriousness of the spent convictions. Exceptional circumstances may include offences associated with serious traffic convictions, dishonesty, violence, drugs and sexual offences. Consideration will also be given to any relevant and proportionate information provided by another agency which suggests that an applicant represents a substantial risk to the public.

4.5 The Council may also have regard to any pending prosecutions. Whilst the Council would not consider refusal of a licence on this point alone, it will, however, monitor whether the outcome

results in a conviction and impacts on the person's suitability to hold a licence, and take any necessary action to impose conditions or revoke the licence

All of the above will apply to any director, any secretary of a company or any shadow director of the company if the applicant is not an individual.

5. Determination of Application/Issue of Licence

5.1 Each application will be taken on its own merit and appropriate weight to the information provided will be given.

5.2 Where the Council is satisfied that an applicant is a 'suitable person' it must issue a licence.

5.3 If an applicant or any site manager has been convicted of a relevant offence, the Council may include in the licence one or both of the following conditions:

- To limit the dealer to receiving any metal within the hours of 9.00am to 5.00pm; and
- That any scrap metal must be kept in the form in which it is received for a specified period of time, not exceeding 72 hours.

5.4 Where the Council is not satisfied that an applicant is a 'suitable person' or a licence holder is no longer considered 'suitable' to continue to hold a licence, the Council must consider refusing the application or revoking the licence where a licence has been issued.

6. Right to Make Representations

6.1 If the Council proposes to refuse an application or to revoke/vary a licence it will issue a notice setting out what the authority proposes to do and the reasons for this. The notice will state that, within the period specified, the applicant/licensee may either:

- a) make representations about the proposal; or
- b) inform the authority that the applicant/licensee wishes to do so.

6.2 Section 7, Schedule 1 of the Act prescribes procedures which must be followed in relation to representations.

6.3 Any representations received by the applicant/licensee will be considered by a panel of officers together with any representations made by other agencies.

7. Notice of Decisions

7.1 If an application is refused, or a licence revoked or varied, the Council will give a notice to the applicant/licensee setting out the decision and the reasons for it. The notice will also state appeal rights.

8. Revocation of Licence

8.1 The Council may revoke a scrap metal licence if it is satisfied that :-

- the licensee does not carry on the business of scrap metal dealing at any of the sites identified in the licence.
- a site manager named in the licence does not act as site manager at any of the sites identified in the licence.
- the licensee is no longer a suitable person to carry on a business as a scrap metal dealer.

8.2 A revocation or variation does not come into effect until such time as any appeal has been determined.

8.3 Where the Council considers that the licence should not continue in force without conditions it may by notice provide:-

- that, until a revocation comes into effect, the licence is subject to one or both of the conditions set out in section 5.3, or
- the variation comes into effect immediately

9. Appeals

9.1 An applicant may appeal to the Magistrates' Court in relation to :

- refusal of an application or a variation,
- the inclusion in a licence of a condition,
- the revocation or variation of a licence.

9.2 An appeal must be lodged within 21 days beginning on the day the notice to refuse the application, to include a condition or to revoke or vary the licence, was given. A fee is payable for any appeal made, details of which can be obtained from the Court.

9.3 On appeal, the Magistrates' Court may confirm, vary or reverse the Council's decision, and give such directions as it considers appropriate having regard to the provisions of the Act.

DEFINITIONS

A scrap metal dealer is defined under the Act as someone whose business consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought; or carries on a business as a motor salvage operator. Scrap metal includes:

- a) any old, waste or discarded metal or metallic material, and
- b) 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.

Motor salvage operation 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) wholly or mainly in activities falling within paragraphs (b) and (c).

Anyone wishing to operate a business as a scrap metal dealer, will require a site licence or a collector's licence. The licence is valid for three years and permits the holder to operate within the boundaries of the issuing authority. These are:

- **Site licence** – all sites where a licensee carries on a business as a scrap metal dealer have to be identified, and a site manager has to be named for each site. The licence allows the licensee to transport scrap metal to and from those sites from any local authority area
- **Collectors licence** – this allows the licensee to operate as a collector in the area of the issuing licensing authority only. It does not allow the collector to operate in any other local authority, so a separate licence has to be obtained from each council area the collector wishes to operate in.

RELEVANT OFFENCES

The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013, means any offence specified in the Schedule to these Regulations, and includes an offence of -

- (a) attempting or conspiring to commit any offence falling within the Schedule;
- (b) inciting or aiding, abetting, counselling or procuring the commission of any offence falling within the Schedule, 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 Schedule.

Primary Legislation (a) An offence under section 1, 5, or 7 of the Control of Pollution (Amendment) Act 1989(4)

- (b) An offence under section 170 or 170B of the Customs and Excise Management Act 1979(5), where the specific offence concerned relates to scrap metal
- (c) An offence under section 110 of the Environment Act 1995(6)
- (d) An offence under sections 33, 34 or 34B of the Environmental Protection Act 1990(7)
- (e) An offence under section 9 of the Food and Environment Protection Act 1985(8)
- (f) An offence under section 1 of the Fraud Act 2006(9), where the specific offence concerned relates to scrap metal, or is an environment-related offence
- (g) An offence under section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(10)
- (h) An offence under sections 327, 328 or 330 to 332 of the Proceeds of Crime Act 2002(11)
- (i) Any offence under the Scrap Metal Dealers Act 1964(12)
- (j) Any offence under the Scrap Metal Dealers Act 2013
- (k) An offence under sections 1, 8,9,10, 11, 17, 18, 22 or 25 of the Theft Act 1968(13), where the specific offence concerned relates to scrap metal, or is an environment-related offence
- (l) Any offence under Part 1 of the Vehicles (Crime) Act 2001(14)
- (m) An offence under sections 85, 202, or 206 of the Water Resources Act 1991(15).

Secondary Legislation

- (a) An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007(16)
- (b) An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010(17)
- (c) Any offence under the Hazardous Waste (England and Wales) Regulations 2005(18)
- (d) Any offence under the Hazardous Waste (Wales) Regulations 2005(19)
- (e) An offence under regulation 17(1) of the Landfill (England and Wales) Regulations 2002(20)
- (f) Any offence under the Pollution Prevention and Control (England and Wales) Regulations 2000(21)
- (g) Any offence under the Producer Responsibility (Packaging Waste) Regulations 2007(22)
- (h) Any offence under the Transfrontier Shipment of Waste Regulations 1994(23)
- (i) Any offence under the Transfrontier Shipment of Waste Regulations 2007(24)
- (j) Any offence under the Waste (Electrical and Electronic Equipment) Regulations 2006(25)
- (k) An offence under regulation 42 of the Waste (England and Wales) Regulations 2011(26).

**Summary of Rehabilitation Periods Applicable to Certain Sentences
(Section 5 Rehabilitation of Offenders Act 1974 as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012)**

For Custodial Sentences	
Sentence	Rehabilitation Period (Period of sentence plus the 'buffer' period below which applies from end of sentence)
0-6 months	2 Years
6-30 months	4 Years
30 months – 4 years	7 Years
Over 4 years	Never Spent

For Non - Custodial Sentences	
Sentence	'Buffer' period will apply from end of sentence
Community order (& Youth Rehabilitation Order)	2 Year
Sentence	Period
Fine	1 Year (from date of conviction)
Absolute discharge	None
Conditional discharge, referral order, reparation order, action plan order, supervision order, bind over order, hospital order	Period of Order

The above periods are halved for persons under 18 years at date of conviction (except for custodial sentences of up to 6 months where the buffer period will be 18 months for persons under 18 years at the date of conviction).