A.2 – APPENDIX A

Tendring District Council

SCRAP METAL POLICY

Adopted on XXXX
Tendring District Council: www.tendringdc.gov.uk

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1. INTRODUCTION

1.1 This policy sets out the guiding principles the Council will generally apply when making decisions on scrap metal applications. It also sets out information about the application process, what is expected of applicants and how people can make objections about applications. It also sets out the types of controls that are available to the Council when decisions are made about licence applications and explains what action can be taken if complaints are received.

1.2 The policy document is intended as a guide to applicants, licence holders, people who want to object to applications and members of the Licensing Committee who are responsible for determining contested applications. It also aims to guide and reassure the public and other public authorities, ensuring transparency and consistency in decision making."

2. BACKGROUND

2.1 The Scrap Metal Dealers Act 2013 came into force on 1 December 2013. It repeals previous legislation and creates a new regulatory regime for scrap metal recycling and vehicle dismantling.

2.2 The act defines a “scrap metal dealer” as a person who carries on a business which wholly or in part involves the buying and selling of scrap metal, whether or not the metal is sold in the form it was purchased.

2.3 This does not include manufacturing operations that sell metal as a by-product of the operation. However it does include the business of collecting scrap metal, i.e. door to door collectors.

2.4 The definition of a scrap metal dealer is wide and may include skip hire firms, and tradesman, such as plumbers and builders who sell scrap metal resulting from their businesses.

2.5 The Act identifies the local authority as the principal regulator and gives them powers to regulate, refuse and to revoke licences.

2.6 The Act states that “scrap metal” 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 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, and
- any alloy of which two per cent 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 involves buying written-off vehicles and then repairing and re-selling them
- Wholly or mainly buys or sells motor vehicles for the purpose of salvaging parts from them or repairing them and re-selling them.

3. TYPES OF LICENCE

3.1 In order for anyone to carry on a business as a scrap metal dealer, or collector they must have a licence. A licence is valid for three years from the date of issue. Trading without a licence is a criminal offence.

3.2 There are two types of licences specified in the Act:

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.

Collector's Licence

This licence allows the holder to collect scrap within the area of the issuing local authority, (Tendring District Council) This licence does not permit the holder to operate a scrap metal site, nor does it allow collection outside of the area of the issuing authority. If a person collects scrap from numerous local authority areas, a collector's licence will be required from each local authority he/she collects scrap within.

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

3.3 A site under the Act is defined as 'any premises used in the course of 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.

3.4 Holding a site or collector's licence does exempt the licensee from the requirements for any other licence or permit to operate their scrap metal business. i.e. waste carrier's certificate.

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 consider to be relevant, this may include:

- Whether the applicant or site manager has been convicted of any relevant offence; or
- Whether the applicant or site manager has been the subject of any relevant enforcement action; or
- Whether there has been any refusal of an application of the issue or renewal of a scrap metal licence, and the reasons for the refusal; or
- Whether there has been any refusal of an application for a relevant environmental permit or registration, and the reasons for the refusal; or
- If there has been any previous revocation of a scrap metal licence, and the reasons for the revocation; or
- 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:

- Essex Police
- Her Majesty's Revenue and Customs
- Environmental Agency
- The Council's Environmental Health Department
- Essex County Council Trading Standards
- Any Other Licensing Authority

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. APPLICATION PROCEDURE

5.1 An application form, available from the Council's website or from the Licensing Team must be completed, together with the correct fee and a current Basic Disclosure of Criminal Convictions. A Basic Disclosure will be valid for 3 months from the date of issue

5.2 A licence once granted is valid for 3 years.

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

5.4 If a licence application is refused, the licence expires when no appeal is possible, or an appeal is determined or withdrawn.
5.5 A licence may be varied form one type to another, i.e. site licence to collector's licence.
5.6 The Council may request additional information is provided for the consideration of the application.
5.7 Failure to provide such information may result in the application being refused.
5.8 The fee is set by the Council under guidance issued by the Home Office with the approval of the Treasury.
5.9 Fees are set after taking into account the cost of processing, administering and compliance costs associated with the licence. The Council is committed to reviewing fees on a regular basis.

6. RIGHT TO MAKE REPRESENTATIONS

6.1 If the Council proposes to refuse an application or to revoke/vary a licence a notice must be issued to the applicant/licensee setting out what the authority proposes to do and the reasons for this. The notice must also state that within the period specified the applicant/licensee can either:
- make representations about the proposal; or
- inform the authority that the applicant/licensee wishes to do so.

6.2 The period specified in the notice must be not less than 14 days beginning with the date on which the notice is given to the applicant/licensee. Within this time the applicant/licensee must notify the Council that they do not wish to make representations. Should this period expire the applicant/licensee has not made representations, or informed the authority of their wish to do so the authority may refuse the application, or revoke or vary the licence.
6.3 If, within the 14 day period the applicant/licensee informs the authority that they wish to make a representation, the Council will allow a further period of 14 days for the applicant/licensee to make representations. The Council may refuse the application or revoke or vary the licence if they fail to make representations within this period.
6.4 If the applicant/licensee notifies the authority that they wish to make oral representations, the authority must give them the opportunity of appearing before, and being heard by, a person appointed by the authority.
6.5 The Council may revoke a scrap metal dealer's licence in certain circumstances.

7. APPEALS

7.1 An applicant may appeal to the magistrates' court against a refusal of an application or variation.
7.2 The licensee may appeal to the magistrates' court against the inclusion on the licence of a condition under Section 3(8) of the Act, or a revocation or variation of a licence under Section 4 of the Act.
7.3 The appeal procedure will be in accordance with the Magistrates' Courts Act 1980, and must be lodged within 21 days of receipt of the decision notice.
7.4 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.

8. REVOCATION AND IMPOSING CONDITIONS

8.1 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.
8.2 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.
8.3 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.
8.4 If the licence holder, or site manager named on a licence is convicted of a relevant offence, the authority may impose one or both of the following conditions:
- The dealer must not receive scrap metal except between 9am and 5pm on any day;
- All scrap metal received must be kept in the form in which it was received for a specified period, not exceeding 72 hours, beginning with the time when it was received.

8.5 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.

8.6 If the authority considers the licence should not continue without the addition of one or more of the conditions in section 8.4, the licence holder will be given notice:

- that, until a revocation comes into effect, the licence is subject to one or both of the conditions, or
- that a variation comes into immediate effect.

9. CLOSURE OF UNLICENSED SITES

9.1 If an authorised officer of the Council is satisfied premises are being used by a scrap metal dealer in the course of their business and the premises are unlicensed, they may issue a closure notice.

9.2 After a period of 7 days, the authorised officer 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 closure order by certificate. The scrap metal dealer must cease his business immediately. It will require the defendant to pay a sum into the court, which not be released until the person has complied with the requirements of the order.

Such an order may have a condition relating to the admission of people into the premises, or may include a provision the court considers appropriate.

A copy of the order must be placed on the premises in a prominent position by the Council.

9.3 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.

A copy of the certificate must be given to any person the closure order was made against, give a copy to the court and place a copy on the premises.

A copy must be given to anyone who requests one.

9.4 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 a closure order.

The licensing authority may be required by the court to attend and answer the complaint made.

Notice of the hearing must be given to all people issued with the closure order.

9.5 Appeal may be made to the Crown Court against:

a) a closure order;
b) a decision not to make a closure order;
c) a discharge order; or
d) a 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.

Appeal a) and b) may be made by any person who was issued with an order. Appeal c) and d) may be made by the Licensing Authority.

9.6 A person is guilty of an offence, if they allow the premises to be open in contravention of a closure order, without reasonable excuse, or fails to comply with, or contravenes a closure order.

9.7 An authorised officer of the Authority may enter the premises at any reasonable time to ensure compliance with the order. They may use reasonable force if necessary.

9.8 An authorised officer must produce evidence of their identity or evidence of their authority to exercise the powers under the Act, if requested to do so.

10. ENFORCEMENT AND COMPLIANCE

10.1 The Act provides a Police Constable and an Officer from the Council with a right to enter and inspect the premises of licensed and unlicensed scrap metal dealers.

10.2 The Act does not provide an Officer of the Council with the power to inspect premises of licensed and unlicensed scrap metal dealers outside the area of the authority.

10.3 The Council delivers a wide range of compliance services aimed at safeguarding the environment and the community and at providing a 'level playing field' on which businesses can fairly trade.

10.4 The administration and compliance of the licensing regime is one of these services.

10.5 The council recognises the interest of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law.