

Agenda

Decision Making Session for the Cabinet Member for Leisure & Tourism

Tuesday 11 October 2022 at 11.30 am
At Committee Room 1 - Sandwell Council House, Oldbury

This agenda gives notice of items to be considered in private as required by Regulations 5 (4) and (5) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

1 Apologies for Absence

To receive any apologies for absence.

2 Declarations of Interest

Members to declare any interests in matters to be discussed at the meeting.

3 Exclusion of the Public and Press

That the public and press be excluded from the rest of the meeting. This is to avoid the possible disclosure of exempt information under Schedule 12A to the Local Government Act, 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006, relating to information relating to any individual.



4 **Application for a Scrap Metal Site Licence**

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To Consider the Application for a Scrap Metal Site Licence

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Distribution
Councillor Rollins

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Members who cannot attend the meeting should submit apologies by contacting Democratic Services (democratic_services@sandwell.gov.uk)



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Report to Cabinet Member

Tuesday 11 October 2022

Not for Publication

[Exempt Information – information relating to any individual]

Subject:	Scrap Metal Dealers Act 2013, Application for a scrap metal site licence
Director:	Director —Borough Economy— Alice Davey
Contact Officer:	Makhan Singh Gosal Senior Licensing Officer licensing team@sandwell.gov.uk

1 Recommendations

- 1.1 For the Cabinet Member to determine an application for the grant of a scrap metal site licence.

2 Reasons for Recommendations



This is a new application for the grant of a Scrap Metal Dealers Licence under the Scrap Metal Dealers Act 2013.

The Scrap Metal Dealers Act 2013 states that a Local Authority must not issue a scrap metal licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer.

If a local authority purpose to refuse an application or revoke or vary a licence the authority must give the applicant or licensee a notice which sets out what the authority propose to do and the reasons for it. If the applicant or licensee makes representations the authority must consider the representations. If the applicant or licensee informs the authority that the applicant or licensee wishes to make oral representations, the authority must give the applicant or licensee the opportunity of appearing before, and being heard by, a person appointed by the authority.



3 How does this deliver objectives of the Corporate Plan?

	<p>Strong resilient communities Our communities are built on mutual respect and taking care of each other, supported by all the agencies that ensure we feel safe and protected in our homes and local neighbourhoods, all local partners are focused on what really matters in people's lives and communities.</p>
	<p>A strong and inclusive economy Investing in people and jobs. Licensed premises provide employment in the Borough and help to support the Borough's economy. It is the Authority's aim to offer a wide choice of high quality and well managed entertainment and cultural venues within a safe, orderly and attractive environment; valued by those who live here, work here and come to visit. We want to ensure that businesses operate responsibly and safely so that our residents live in decent neighbourhoods and have a good quality of life.</p>

4 Context and Key Issues

- 4.1 The Police are objecting to the grant of a site licence in this case.
- 4.2 The Scrap Metal Dealers Act 2013 came into force on 1 October 2013.
- 4.3 Any person carrying on a business involving the buying or selling of scrap metal is required to have a licence.
- 4.4 The Act creates two types of licence; a site licence and a collectors licence. A site licence authorises the licensee to carry on business as a scrap metal dealer at any site within the council's area. A collectors licence authorises the licensee to carry on business as a mobile collector in the Council's area
- 4.5 In determining whether the applicant is a suitable person to hold a licence, the Council may have regard to any information it considers to be relevant including in particular:
 - whether the applicant or site manager has been convicted of any relevant offence;



- whether the applicant or site manager has been the subject of any relevant enforcement action;
- any previous refusal of an application for the issue of a scrap metal licence;
- any previous refusal of an application for a relevant environmental permit or registration;
- any previous revocation of a scrap metal licence (and the reasons for revocation);
- whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of the Act are complied with.

- 4.6 In determining an applicant's suitability the Council must have regard to Guidance issued by the Secretary of State.
- 4.7 The Guidance defines what is meant by a 'relevant offence' and 'relevant Enforcement action'.
- 4.8 The Act also allows the council to consult with other bodies regarding the suitability of an applicant. These include:-
- The Environment Agency;
 - The Police;
 - any other local authority.
- 4.9 A licence, once granted, lasts for a period of 3 years.
- 4.10 The Local Authority has to refer to the Home Office guidance issued 1 October 2013, reviewed May 2014 (Scrap Metal Dealer Act 2013 determine suitability to hold a scrap metal dealers licence).
- 4.11 The Council has no discretion when it comes to imposing conditions on the grant of a scrap metal licence.
- 4.12 If the 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:-
- the dealer must not receive scrap metal except between the hours of 9am and 5pm on any day;
 - all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time it was received.



4.13 An applicant has a right of appeal to the Magistrates Court against the refusal of an application for the grant of a scrap metal licence.

5 Implications

Resources:	Any costs to the Council arising from applications will currently be absorbed within existing budgets.
Legal and Governance:	<p>Section 3 (1) of the Scrap Metal Dealers Act 2013 states that a local authority must not issue a scrap metal licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer.</p> <p>Paragraph 7 of schedule 1 to the Scrap Metal Dealers Act 2013 states that if an applicant or licensee informs the authority that the applicant or licensee wishes to make oral representations the authority must give the applicant or licensee the opportunity of appearing before, and being heard by, a person appointed by the authority. The person appointed is the Cabinet Member for Highways and Environment.</p> <p>4.3 In determining the application(s) the Cabinet Member must have regard to Guidance on determining suitability issued by the Secretary of State under Section 3(6) of the Scrap Metal Dealers Act 2013.</p> <p>Article 6 of Part 1 Schedule 1 of the Human Rights Act 1998, states that in determination of a person's civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Article 8 states that everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>Part II, Article 1 of the Act states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.</p>



Risk:	Section 3(1) of the Act states that a local authority must not issue a scrap metal licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer.
Equality:	There are no direct implications for equality arising from this decision.
Health and Wellbeing:	There are no direct implications of the proposals on health and wellbeing arising from this decision.
Social Value:	There are no direct implications for social value arising from this decision.
Climate Change:	There are no direct implications for climate change arising from this decision.

6 Appendices

- Appendix 1 — New scrap site licence application
- Appendix 2 — West Midlands Police objection
- Appendix 3 – Notice of intention to refuse your application for a scrap metal dealer’s licence
- Appendix 4 — Licensing Enforcement Officer Statements
- Appendix 5 - Applicant’s documentation
- Appendix 6 — Determining suitability to hold a scrap metal dealer’s licence

7. Background Papers

Scrap Metal Dealers Act 2013;
Home Office Guidance on determining suitability to hold a scrap metal licence.



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Home Office

Scrap Metal Dealers Act 2013

Determining suitability to hold a scrap metal dealer's licence

Statutory guidance for local authorities in England and Wales

First publication: issued 1 October 2013

Revised: May 2014

Introduction

The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013. The majority of the provisions within the Act commence on 1 October 2013 including the requirement in section 1(1) to be authorised by a licence in order to carry on business as a scrap metal dealer. Section 3(1) of the Act states that a local authority must not issue or renew a scrap metal dealer's licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer. Section 3(6) states that a local authority must have regard to any guidance on determining suitability issued by the Secretary of State.

Status of the guidance

This is statutory guidance and local authorities are under a duty to have regard to it.

Whose suitability should be assessed?

When assessing an application for a scrap metal dealer's licence, you should consider the suitability of:

- the individual applicant;
- each partner within a partnership;
- any director(s), secretary(s) or shadow director(s) of a company.

You should consider whether a site manager (if an application for a site licence is submitted) has been convicted of a relevant offence or relevant enforcement action and whether this impacts on the applicant's suitability to hold a scrap metal dealer's licence.

What information may you have regard to?

Under section 3(2) of the Scrap Metal Dealers Act 2013, you may have regard to any information which you consider to be relevant when determining the suitability of a person to hold a scrap metal dealer's licence, including:

1. whether the applicant or any site manager has been convicted of any relevant offence

Under Schedule 1, Para 2 (1) (j), of the Act, a person applying for a scrap metal dealer's licence must provide details of any conviction for a relevant offence. The relevant offences, prescribed by the Secretary of State, can be found in Part 1 and 2 of the Schedule of The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 using the following link:

<http://www.legislation.gov.uk/id/uksi/2013/2258>. Under Regulation 2, a relevant offence is also "attempting or conspiring to commit any offence falling within the Schedule; inciting or aiding, abetting, counselling or procuring the commission of any offence falling within the Schedule, and 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". These offences should also be considered when determining suitability.

- A conviction for a relevant offence should not automatically lead to the refusal of a scrap metal dealer's licence. You may consult your local police force (section 3 (7)) for further details about the offence including both the seriousness of the offence and the date of when it was committed. Once you have this, you should consider it alongside any other information you may have regard to when determining suitability. If a site manager has been convicted of a relevant offence, the same process applies.

- Under section 4 (5) of the Act, if a person has been convicted of a relevant offence or is convicted of a relevant offence once a licence has been issued, you may wish to consider, imposing one or both of the following conditions on the licence if you think this is necessary:
 - that the dealer must not receive scrap metal except between 9am and 5pm on any day;
 - that all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.
 - These conditions are set out at section 3 (8) of the Act and could be applied until you are satisfied that the inclusion of such a condition in the licence is no longer necessary under all the circumstances.
 - If, during your checks, you discover that the applicant has a relevant conviction which was not detailed in a person's application you should request further information from the applicant (Schedule 1, Para 4). You should also consider whether this is a deliberate omission and therefore impacts on suitability. Making a false statement in an application is a criminal offence (Schedule 1, Para 5) and, where this has happened, it will be at your discretion as to whether you refer this to the police.
 - Generally, local authorities should not consider spent convictions when making a decision on suitability and should disregard any spent convictions on the part of the applicant. Only if the local authority is satisfied that justice cannot be done except by admitting or requiring evidence relating to a person's spent convictions may the authority require the evidence and take it into account. In doing so, the local authority must have regard to the age, circumstances, relevance and seriousness of the spent convictions¹.
2. whether the applicant or any site manager has been the subject of any relevant enforcement action
- The relevant enforcement action you may have regard to when considering suitability to hold a scrap metal licence has been prescribed in Regulation 3 of The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 by the Secretary of State which can be found at: <http://www.legislation.gov.uk/id/ukSI/2013/2258>.
 - Under Regulation 3(a), a person is the subject of relevant enforcement if *'the person has been charged with an offence specified in the Schedule to these Regulations, and criminal proceedings in respect of that offence have not yet concluded'*. However, you should **not** refuse a licence on this point alone as the action (pending prosecution) is ongoing. If an applicant details a pending prosecution in their application form, you should note this and monitor the outcome. Only once the action is completed should you consider whether the outcome, if a conviction, impacts on a person's suitability to hold a scrap metal dealer's licence and take any necessary action for instance to impose conditions or, ultimately, to revoke.
 - Under Regulation 3 (b), a person is the subject of relevant enforcement action if *"If an environmental permit granted in respect of the person under the Environmental Permitting (England and Wales) Regulations 2010 has been revoked in whole, or partially revoked, to the extent that the permit no longer authorises the recovery of metal"*. You should consult the Environment Agency (in England) or Natural Resources Wales (section 3 (7)) to find out

¹ Section 7 (3) Rehabilitation of Offenders Act 1974. We are amending the statutory guidance to ensure that the guidance properly reflects this Act and is in line with the existing legal framework.

the reasons for the whole or partial revocation and consider if the reasons impact on their suitability.

3. any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal)
 - You should check your local authority area's records to find out whether a scrap metal dealer has previously been refused a scrap metal dealer's licence, taking into consideration the reasons for the refusal. Section 3 (7) of the Act states that you may consult other persons regarding the suitability of an applicant, including in particular, any other local authority or officer of a police force. It will be undesirable for a person who has been refused a licence by one local authority area to be issued a licence by another, therefore if a person has been refused a licence in a different local authority area, it will be important to scrutinise the reasons for the refusal. For example, the refusal may have been given because the applicant has not demonstrated that there will be adequate procedures in place to comply with the Act (section 3 (2) (f)) but the applicant has now implemented sufficient changes and the reason no longer applies.
4. any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal)
 - You should routinely check whether an applicant is on the Environment Agency's register of permits and registrations. If you have any concerns or would like to find out further information you should contact the Environment Agency (in England) or Natural Resources Wales. Additionally, if the applicant does not appear on the register and, therefore, does not hold a relevant environmental permit, exemption, or registration, then you may also wish to consult the Environment Agency or Natural Resources Wales as the applicant should not be operating as a scrap metal dealer without one or other of these.
5. any previous revocation of a scrap metal licence (and the reasons for the revocation)
 - You should routinely check the register of scrap metal licences, hosted by the Environment Agency/Natural Resources Wales, to find out if a scrap metal dealer has had a licence revoked in another local authority area. If a person has had a licence revoked, you should contact that local authority to understand the reasons why the licence was revoked (section 3 (7)). It will be important for you to scrutinise the reasons for refusal and consider whether these still apply. The reasons for revoking a licence may not always impact on suitability (section 4 (1) (2)).
6. whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with
 - Where you have information that raises concerns about the adequacy of procedures that the applicant or site manager has in place to comply with section 11 (verifying the supplier's identity), section 12 (offence of buying scrap metal for cash) or section 15 (records: supplementary), you may wish to obtain further information about how the applicant will ensure compliance with the requirements of the Act. For example, where you have concerns about the procedures around the offence of buying scrap metal for cash, you may wish to check the details of the bank account which the applicant proposes to use. This information should be included in the application form (Schedule 1, Para 2 (1) (i)).

Further information

Although section 3 (2) sets out some information you may have regard to, you may request any relevant information from the applicant (either when the application is made or later) to help you consider the application (Schedule 1, Para 4 (1)), this will include determining suitability.

Reasons for refusal

If a licence applicant is refused, you should provide full reasons for your decision. This will not only help the applicant to understand the refusal but will allow a Magistrates Court to clearly understand the reasons should the applicant appeal the decision.

