



Scrap Metal Dealers Act Licensing Policy 2019

Table of contents

1. Introduction	5
2. The licensing objectives	6
3. The licensing approach	6
4. Integration with other statutes	7
5. Requirement for a scrap metal licence	9
6. Types of scrap metal licence	10
7. Policy for determining the suitability of applicants	131
8. Supply of information and data sharing by the council	16
9. Application procedure for grant or renewal	165
10. Determination of applications for grant or renewal	18
11. Variation of licence: applications by licence-holder	19
12. Revocation or variation of the licence: initiative of the council	20
13. Appeals	21
14. Register of licences	21
15. Notification requirements	21
16. Display of licences	21
17. Verification of identity	22
18. Payment for scrap metal	23
19. Record making and keeping requirements	24
20. Compliance checks	25
21. Offences and enforcement	26
22. Delegation of functions	26
23. Comments, compliments and complaints	26
A Relevant offences	28
B Offences under the act	29

Glossary of terms and abbreviations

		Policy ref
A1P1	Article 1 of the First Protocol, ECHR	1.22
Act, the	the Scrap Metal Dealers Act 2013	1.3
appeal	statutory rights of appeal	0
application	an application for the grant, renewal or variation of a scrap metal licence	1.74-1.86
carries on business as a motor salvage operator	one manner of carrying on business as a scrap metal dealer, defined in s.21(4) of the Act	1.39
carries on business as a scrap metal dealer	the licensable activity defined in s.21(2) of the Act	1.34
collector's licence	a type of scrap metal licence, that authorises the licence-holder to carry on in business as a mobile area	1.50
council, the	Luton Council	
curfew condition	a condition prescribed by s.3(8) of the Act, restricting the times for the receipt of scrap metal to between 9 am and 5 pm	1.63
DBS	Disclosure and Barring Service	1.75
ECHR	European Convention on Human Rights	1.22
Enforcement Policy	the council's written enforcement policy	1.138.a)
EIA	Equality impact assessment	1.25
GDPR	General Data Protection Regulation (EU) 2016/679	1.131
Home Office guidance	non-statutory supplementary guidance on the Act published by the Home Office	1.36
licensing objectives	the objectives the council carries out the licensing functions with a view to promoting	1.16
licensing functions	the council's functions under the A	1.16
licensing approach	the approach the council takes to carrying out the licensing functions	1.17
mobile collector	defined by s.22(4) of the Act	1.50
offence	a criminal offence under the Act - see Appendix B	
quarantine condition	a condition prescribed by s.3(8) of the Act, requiring scrap metal to be kept separate for a specified period of up to 72 upon receipt	1.63
register	the national register of scrap metal licences maintained by the Environment Agency	1.104
Regulator's Code	a framework for how regulators should engage with those they regulate, produced by the Department for Business Innovation & Skills	1.29
relevant enforcement action	specified proceedings or action relating to a relevant offence	1.57
relevant offence	a list of prescribed offences - see Appendix A	1.57
scrap metal	defined by s.21(6) of the Act	1.40
scrap metal dealer	defined by s.21(5) of the Act as a person who is for the time being carrying on business as a scrap metal dealer, whether or not authorised by a licence	1.34
scrap metal licence	the licence required to carry on in business as a scrap metal dealer	1.45
site	defined by s.22(9) of the Act as any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there)	1.48
site licence	a type of scrap metal licence, that authorises the holder to carry on a business at the site or sites in	1.48

	the council's area identified on the licence	
site manager	an individual name on a site licence as a site manager	1.48
undertaking	a promise to the council	1.82

Introduction

- 1.1. Businesses that undertake recycling and vehicle dismantling services provide a valuable service to the community, reusing and recycling materials in an environmentally friendly manner, reducing landfill and the burden on other waste disposal methods, whilst generating growth and creating employment.
- 1.2. However, in recent years, rising commodity prices led to a nationwide growth in metal theft. This caused serious harm to the economy. It offset the benefits of the industry. The impact of metal theft was widespread - affecting transport infrastructure, electricity and telecommunication links; street furniture; heritage buildings; memorials; and commercial and residential buildings.

The impact was not confined to property damage and economic loss: metal theft can impact upon public safety, cause serious nuisance, and may give rise to serious distress.
- 1.3. Parliament recognised that the previous overlapping registration schemes had failed to prevent the scrap metal industry from becoming the central market for stolen metal.
- 1.4. Accordingly, a revised unitary licensing regime was introduced by the Scrap Metal Dealers Act 2013 (**'the act'**).
- 1.5. The Act came into force on 1 October 2013, with full enforcement powers taking effect on 1 December 2013.
- 1.6. Under the revised regime, all persons carrying on in business as **'scrap metal dealers'** must obtain a **'scrap metal licence'** from each local authority in whose area they carry on business. There are two types of licence: a **'site licence'** (which relates to specified premises) and a **'collector's licence'** (which authorises mobile collection). Carrying on in business as a scrap metal dealer without a licence is a criminal **offence**.
- 1.7. Luton Council (**'the council'**) is responsible for the administration of the licensing scheme relating to those involved in the recycling and vehicle dismantling industries in its area.
- 1.8. The council may only grant scrap metal licences (whether site licences or collector's licences) to those whom it is satisfied are suitable to carry on in business as scrap metal dealers. The council has power to revoke a licence if it is no longer satisfied as to holder's suitability.
- 1.9. Whether or not someone is suitable to carry on in business as a scrap metal dealer is a question of judgment, to be exercised on the facts of the particular case under consideration, with regard to a number of factors: some specified in the Act, some found in other legislation and case-law, with further assistance being provided in statutory guidance.
- 1.10. Having regard to these matters, and the need to carry out its regulatory functions in a way which is transparent, accountable, proportionate and consistent, the council has resolved to adopt and publish this policy in order to set out its approach to the regulation and licensing of scrap metal dealers who wish to carry on business in its area.
- 1.11. The policy is designed to promote acceptable standards and to protect the public, without imposing an unnecessary and disproportionate burden on the industry.
- 1.12. The council may depart from its own policy if the individual circumstances of a case under consideration warrant such a deviation; in such cases, the council will give full reasons for doing so.

1.13. The council will review this policy at regular intervals.

1.14. The council engaged in a public consultation exercise before resolving to adopt this policy. A draft policy was placed on the council's website. The following bodies were consulted:

- all current scrap metal licence holders
- elected members of Luton Council
- Environmental Protection Service
- community safety officer
- Trading Standards Service
- local members of parliament
- Home Office
- Bedfordshire Police
- British Transport Police
- National Crime Agency
- Bedfordshire Fire and Rescue Service
- other local authorities
- Local Government Association
- Alliance for Combatting Metal Theft
- British Metals Recycling Association
- Cast Metals Association
- British Vehicle Salvage Federation
- Vehicle Recyclers' Association (formerly Motor Vehicle Dismantlers Association)

1.15. The consultation period took place between 13 August 2019 and 30 September 2019.

The licensing objectives

1.16. The council will carry out its functions under the Act (**'the licensing functions'**) with a view to promotion of the following objectives (**'the licensing objectives'**):

- a) the prevention of metal theft and other crime and disorder (including behaviour adversely affecting the environment);
- b) public health and safety;
- c) the prevention of public nuisance;
- d) the prevention of environmental harm.

The licensing approach

1.17. The council will approach the performance of its licensing functions in a way that supports those required to be regulated under the Act to comply with its requirements and to grow their businesses in a manner that promotes the licensing objectives (**'the licensing approach'**).

1.18. In designing this policy, the council has considered how it should follow the licensing approach, and in particular how it might support and enable economic growth for compliant businesses. This includes how it might best:

- a) understand and minimise any negative economic impacts of its regulatory activities;
- b) minimise the costs of compliance for those they regulate;
- c) improve confidence in compliance for those it regulates, by providing greater certainty; and
- d) encourage and promote compliance.

1.19. The policy aims to assist in ensuring that the council's officers have the necessary knowledge and skills to support those they regulate, and as to how the council aims to deliver its activities in accordance with principles of good regulation.

Integration with other statutes

1.20. In addition to the council's specific obligations under the Act, there are a number of statutory provisions which apply to every action the council takes as a public body. They include:

- a) the Human Rights Act 1998
- b) the Crime and Disorder Act 1998
- c) the Equality Act 2010

1.21. In addition, when carrying out the **licensing functions**, there are further statutory provisions which apply. They are:

- a) the Legislative and Regulatory Reform Act 2006
- b) the Provision of Services Regulations 2009

Human rights Act 1998

1.22. The Human Rights Act 1998 makes it unlawful for the Council to Act in a way which is incompatible with a right under the European Convention on Human Rights ('**ECHR**'). The Council will have particular regard to the following relevant provisions of the Convention:

- a) Article 1 of the first protocol ('**A1P1**): everyone is entitled to the peaceful enjoyment of his or her possessions. This includes the goodwill attached to a business or business premises. The council's interpretation of the caselaw is that a licence is not a possession for the purposes of this right.
- b) Article 6: in relation to the determination of 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.

Crime and Disorder Act 1998

1.23. By virtue of the Crime and Disorder Act 1998, the council must exercise its functions with due regard to the likely effect of the exercise of their functions on, and the need to do all that it reasonably can to prevent crime and disorder (including behaviour adversely affecting the environment in their area). The council has had due regard to those matters in designing this policy.

Equality Act 2010

- 1.24. The Equality Act 2010 imposes the Public Sector Equality Duty on the council, which means that it must thoroughly consider, in adoption of this policy and in the discharge of the **licensing functions**, the need to:
- a) promote equality of opportunity;
 - b) eliminate unlawful discrimination, harassment and victimisation;
 - c) promote good relations.
- 1.25. A detailed Equality Impact Assessment ('EIA') has been undertaken and kept under review throughout the drafting of this policy and then finalised on publication of the policy. Further EIAs will be conducted where necessary.
- 1.26. It is considered unlikely that the equalities obligations are at risk as there is no perceivable risk of unequal access to the services between different equality groups.
- 1.27. Officers exercising delegated functions have undertaken equality and diversity training, review their training on a regular basis to ensure their knowledge and understanding of all matters concerning equality and diversity are at a high standard.

Legislative and Regulatory Reform Act 2006

- 1.28. The Legislative and Regulatory Reform Act 2006 has the effect that, in exercising the **licensing functions**, subject to any other legislative requirements, the council must have regard to the principles that:
- a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
 - b) regulatory activities should be targeted only at cases in which action is needed.
- 1.29. The 2006 Act also required the council in determining this policy, subject to any other legislative requirement, to have regard to the **Regulator's Code**¹.

Provision of Services Regulations 2009

- 1.30. The Provision of Services Regulations 2009 require that applications are processed as quickly as possible and, in any event, within a reasonable period. The Regulations also specify that in the event of failure to process the application within the period or as extended in accordance with their provisions, the authorisation is deemed to be granted ('tacit consent') by the council, unless different arrangements are in place.
- 1.31. In accordance with the Home Office guidance (paragraph 3.7), the council considers that it would not be in the public interest, for the promotion of the licensing objectives, for tacit consent to apply with regards to applications for scrap metal licences.

¹ <https://www.gov.uk/government/publications/regulators-code>

1.32. The 2009 Regulations and caselaw govern the scope of the fee that can be charged by council for applications. The council is also obliged by the act to have regard to guidance issued by the Secretary of State with the approval of the Treasury when setting fees².

Requirement for a scrap metal licence

1.33. No person may carry on a business as a **scrap metal dealer** unless authorised by a licence under the act.

1.34. Section 21(2) of the act provides:

A person carries on business as a **scrap metal dealer** if the person:

- (a) carries on a business which 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
- (b) **carries on business as a motor salvage operator** (so far as that does not fall within paragraph (a)).

1.35. This is a wide definition which can encompass businesses that might not ordinarily be considered to be scrap metal dealers.

1.36. Non-statutory **Home Office guidance**³ provides (paragraph 2.3) that it will be a question of fact whether, under all the circumstances, the buying or selling of scrap metal forms the whole or part of a person's business, or alternatively, whether the buying or selling of scrap metal forms such a minimal part of their overall business dealings that the definition of carrying on in business scrap metal dealer is not made out.

It is suggested in that guidance that there are many factors a court may consider in reaching its judgment, such as the proportion of the business related to scrap metal in terms of value or volume.

1.37. The council agrees with this analysis. It will be a question of fact, in each case, whether a business falls within the statutory definition. Some businesses will obviously satisfy the definition's requirements. Others may be more borderline.

1.38. The act provides a specific exemption in s.21(3) for manufacturers who sell scrap only as a by-product of manufacturing articles or as surplus to requirements.

1.39. The act defines '**carries on in business as a motor salvage operator**' in s.21(4). The definition (to which reference should be had in the case of doubt) includes those who carry on a business which consists wholly or

² <https://www.gov.uk/government/publications/scrap-metal-dealer-act-2013-licence-fee-charges>

³ <https://www.gov.uk/government/publications/scrap-metal-dealers-act-2013-supplementary-guidance>

partly in 'breaking' vehicles, recommissioning written-off vehicles, and dealing in those types of vehicles.

1.40. '**Scrap metal**' is defined in s.21(6) of the act as including 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.

Scrap metal does not include gold, silver or alloys of which more than 2% by weight is attributable to gold or silver.

1.41. Whether a vehicle constitutes scrap metal is a question of fact. The Home Office guidance (paragraphs 9.7-9.8) provides suggestions as to how this might be determined in cases where the recipient of the vehicle does not issue a Certificate of Destruction⁴.

1.42. The Home Office guidance makes specific provision for:

- **producers of ferrous and non-ferrous metals** who only purchase scrap metal (who it suggests will generally not be considered to be scrap metal dealers);
- **agents, brokers and traders who deal** without storing or handling scrap metal (who will need a licence);
- **skip hire companies** (who may be considered to be scrap metal dealers dependent upon the value or volume of recovered scrap metal they sell);
- **tradespersons such as plumbers or electricians** (who it suggests will not require a licence if buying or selling scrap metal is an incidental function of their business);
- **civic amenity sites** (who will not require a licence);
- **vehicle collection companies** (who it suggests in some circumstances may not require a licence).

1.43. In the event of any controversy as to whether or not a person falls within the statutory definition, the council will have regard to the Home Office guidance when forming its own view, although the council bears in mind that the guidance represents the Home Office's interpretation of the act, and that the council is entitled to reach its own independent conclusions on how the statutory provisions should be construed.

1.44. In accordance with the **licensing approach**, the council is committed to providing advice and guidance that is focused on assisting those who are and who potentially are subject to regulation under the aact. It welcomes enquiries from persons who are concerned that they might require a licence.

It seeks to create an environment in which those persons have confidence in the advice they receive and feel able to see advice without fear of

⁴ <https://www.gov.uk/scrapped-and-written-off-vehicles/where-vehicles-can-be-scrapped>

triggering enforcement action. The council will apply its enforcement policy (see part 0 below) with this aim in mind. The council's will seek to provide timely and accurate advice necessary to support compliance with the legislative scheme.

Types of scrap metal licence

- 1.45. A **scrap metal licence** is required in order to carry on in business as scrap metal dealer. Licences have a duration of three years, although if an application to renew a licence is made the licence continues in force until the application to renew is determined (or withdrawn).
- 1.46. A licence can be issued to an individual, a company or a partnership.
- 1.47. There are two types of scrap metal licence: (1) a **site licence** and (2) a **collector's licence**.
- 1.48. A **site licence** authorises the licence holder to carry on a business at the site or sites in the council's area which is/are identified in the licence (whether or not metal is kept at those sites). It must name the site manager of each site.
- 1.49. In the council's view, the carrying on in business at a site can include the transporting of material to and from that site by the licence-holder.
- 1.50. A **collector's licence** authorises the licence-holder to carry on in business as a '**mobile collector**' in the authority's area. A mobile collector is defined in s.22(4) as a person who (1) carries on in business as a scrap metal dealer otherwise than at a site **and** who (2) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.
- 1.51. The Home Office guidance suggests (paragraph 5.2) that a site licence holder cannot regularly engage in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door 'as this would constitute carrying on in business as a mobile collector'.

The council respectfully disagrees with the guidance this point. By definition, a mobile collector is not someone who carries on business from a site.

This will exclude from that definition those who conduct businesses from a site, including those who, from a site, regularly engage in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.

The council does not consider that the purpose of the Act was to confine door to door collection to those without sites.

1.52. S.2(9) of the act confirms that a person may hold more than one licence issued by different local authorities, but may not hold more than one licence issued by any local authority. So:

- where a business has a site in the council's area, it may hold a site licence but not a collector's licence
- where a business has multiple sites in the council's area, they will be named on a single site licence
- a collector's licence issued by the council will relate to the entirety of the council's area (and so there is no need for multiple licences)
- where a business has sites in the council's area and in other areas, it will need site licences from each local authority area in which the sites are situated
- where a mobile collector operates in several local authority areas, it will need collector's licences from each area operated in

1.53. As is the case with many licences, the council's view is that a scrap metal licence will authorise the licence-holder and those who derive authority from that licence-holder.

So, for example, in the case of a licence-holder that is a limited company, the agents of that company, such as its directors and employees, derive authority from the licence held by their principal, the licence-holder. Authority is typically (although not exclusively) derived where there is a relationship of principal and agent between the licence-holder and those on whose behalf it acts.

A useful test is whether the licence-holder **directs and controls** those who are said to derive authority. If a licence-holder does not direct and control those persons, then it will probably be necessary for them to be separately licensed. An example might be where independent mobile collectors service a business conducted from a site.

1.54. The Home Office guidance distinguishes between agents who are employed and those who are self-employed (see paragraphs 5.3 and 5.5) as a test for whether or not a licence is required.

Whilst an agent's employment status is a relevant factor in determining whether a separate licence is required, the council does not consider that it is the only factor. The council will pay particular regard to the degree of direction and control the licence-holder has over those who claim to derive authority from the licence held.

Policy for determining the suitability of applicants

1.55. The council cannot issue or renew a **scrap metal licence** unless it is satisfied that the applicant is a suitable person to carry on in business as a **scrap metal dealer**.

1.56. In forming the view as to whether it is satisfied, the council will exercise its judgment on the facts before it. The council is entitled to consider any information it considers relevant. In the council's view, relevant information consists of anything which a reasonable and fair decision-maker, acting in good faith and with proper regard to the interests both of the public and the applicant, could properly think it right to rely on in forming its judgment.

1.57. The act gives examples of relevant information as follows:

- whether the applicant or any site manager has been convicted of any 'relevant offence'⁵
- whether the applicant or any site manager has been the subject of any 'relevant enforcement action'⁶
- any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal)
- any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal)
- any previous revocation of a scrap metal licence (and the reasons for the revocation)
- whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this act are complied with

1.58. Where the applicant is a limited company, the council will have regard, in particular, to whether the company's directors, secretary or shadow directors (if any) are suitable persons. The council may also have regard to the identity and suitability of the company's shareholders and/or beneficial owners of shares.

1.59. Where the applicant is a partnership, the council will have regard, in particular, to whether each of the partners is a suitable person, and will bear in mind that the law of partnership⁷ provides that every partner in a firm is the agent of the partnership and his other partners for the purposes of the business of the partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm bind the firm and his partners.

⁵ Prescribed in the Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations and set out in Appendix A.

⁶ Engaged if an applicant has been charged with a relevant offence and criminal proceedings in respect of that offence have not been concluded, or 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.

⁷ S.5(1) of the Partnership Act 1890.

Where the applicant is a partnership, the council's policy is to have at least one partner named on the licence.

1.60. The council may consult with other persons regarding the suitability of an applicant, including (but not limited to):

- any other local authority
- the Environment Agency
- the Natural Resources Body for Wales
- an officer of a police force (including a constable of the British Transport Police Force)

1.61. The council will have regard to any guidance on determining suitability which is issued from time to time by the Secretary of State (at the date hereof, not issued), to the Home Office guidance, and to this policy.

1.62. The council considers it is worthy of note that 'relevant offences' (as defined in the act) have been narrowly drawn by the Secretary of State. So, for example, an offence of fraud is a relevant offence 'where the specific offence concerned relates to scrap metal, or is an environment related offence': thus excluding as 'relevant offences' all offences of fraud outside those categories.

1.63. The council also has regard to s.3(8) of the Act, which specifies two conditions that may be included on the licence if the applicant or any site manager has been or is convicted of a relevant offence.

Those conditions are to restrict to curfew the times for receipt of scrap metal between 9am and 5pm ('the **curfew condition**'), and to require scrap received to be quarantined upon receipt for a specified period of up to 72 hours ('the **quarantine condition**'). The act makes no other express provision for conditions to be imposed on a licence.

1.64. The council concludes that parliament contemplated circumstances where those with convictions for offences other than 'relevant offences' (including offences of dishonesty or serious crime), or even those with convictions for 'relevant offences' to nonetheless be considered suitable to hold scrap metal licences.

1.65. The council reminds itself that suitability **has to be seen in context**. An applicant who might be quite unsuitable to, say, drive a taxi, might nonetheless be suitable to hold a scrap metal licence.

1.66. The council further reminds itself that supervision of an individual within a licensing regime may be more conducive to the promotion of the **licensing objectives** than excluding the person from the regime completely, if such exclusion might result in that individual conducting illegal activities free of supervision.

1.67. In assessing suitability, so as to promote the licensing objectives, the council is of the view that individuals have to be suitable to carry on the business of a scrap metal dealer **within the law**.

1.68. Accordingly, in assessing the suitability of applicants and, where appropriate, licence-holders the council will ask itself whether, in the exercise of its judgment on the facts before it, that the person is a suitable person to conduct the business within the law, paying particular regard to:

- the likelihood that the person will comply with the legislative requirements:
 - a) to verify suppliers' identities
 - b) to only purchase scrap metal by bank transfer or non-transferable cash
 - c) to create and maintain the requisite records for receipt and disposal of metal
 - d) to notify the council of convictions of relevant offences
 - e) to display copies of licences on site or on vehicles as appropriate
- whether the licensing of the person (or the refusal of a licence in respect of that person) is likely to promote or harm the licensing objectives.

1.69. In administering the licensing scheme so as to effectively promote the licensing objectives, the council expects that its licensing officers and other staff will be treated with courtesy and respect by applicants, licence-holders and their staff.

The council has a zero-tolerance policy in respect of assaults or other abuse of its staff or threats against them. Therefore, in conducting its assessment of the suitability of applicants and licence holders as described above, the council will specifically consider whether the holding of a licence by the person in question poses any unacceptable risk to its officers and staff.

1.70. Where any public-facing services are proposed to be provided by the business in question, the council will specifically consider whether the holding of a licence by the person in question poses any unacceptable risk to the public.

1.71. Although, as stated, the relevant offences are narrowly drawn, the council is entitled to have regard to any information it considers relevant. Matters that the council consider are relevant in addition to those set out in paragraph 5.3 above includes:

- a) past misconduct on the part of the person of a similar nature to, but not amounting to, the matters set out in paragraph 5.3
- b) arrests, charges and prosecutions for relevant offences that were not proceeded with, discontinued, or resulted in acquittals

- c) cautions or warnings issued by the council or any other regulatory or prosecuting body
- d) any history of dishonesty on the part of the person, and in particular dishonesty in dealings with the council or other regulators, including the accuracy of information provided to the council in connection with the obtaining or retention of a licence
- e) any history of violence (including sexual violence), abuse or harassment on the part of the person, and in particular in their dealings with the council's officers, staff or that of other regulators or responsible authorities
- f) the council's Safety from Violence at Work guidelines
- g) any history of serious alcohol or drug misuse on the part of the person that may affect ability to comply with legislative requirements and/or to engage with the council and (if relevant) the public in an appropriate fashion
- h) breaches of any previous undertakings given by the person to the council

1.72. For the avoidance of any doubt, the council considers that it is entitled, where relevant to its considerations, to have regard to proceedings (including but not limited to convictions) for other offences, not being 'relevant offences' within the meaning of the act, that it is aware of (whether by inclusion on applicant's DBS certificate or otherwise).

Supply of information and data sharing by the council

1.73. Where the council is in possession of information which has been supplied to it that relates to a **scrap metal licence** or to an **application** for or relating to a licence, it must supply that information to any of the following persons who request it for purposes relating to the act:

- a) any other local authority
- b) the Environment Agency
- c) the Natural Resources Body for Wales
- d) an officer of a police force (including a constable of British Transport Police)

1.74. Aside from this statutory obligation, the council has duty sharing duties under the Crime and Disorder Act 1998.

Application procedure for grant or renewal

1.75. The **application** form for the grant or renewal of a licence, together with guidance notes on completing the same, can be obtained from the council's website or in person from its Licensing Section. Forms must be submitted together with:

- a) the appropriate application fee
- b) basic **DBS** Disclosure certificate(s) (no older than one month old)
- c) proof of address (no older than three months old)
- d) signed photograph of applicant (where an individual) and of any site manager(s);

- e) in the case of an application for a site licence, for each site where scrap metal is to be stored on site, a plan of that site to a scale of 1:100 (or such other scale as shall be agreed with the council) showing the location(s) where this will occur;
 - f) copy of waste carriers registration (optional)
 - g) copy of environmental permits / registrations (optional)
- 1.76. Forms and supporting documentation may be submitted online or in person. There is the facility to pay the application fee and subsequent fees online by debit or credit card, and the council will not process any application until that fee is paid. A table of fees is available on the council's website or in person from its Licensing Section.
- 1.77. Either at the time of the making of the application or at any later stage before determining it, the council may ask the applicant to provide such further information as it considers relevant for the purpose of considering the application. Failure to provide requested information may result in the council declining to proceed with the application.
- 1.78. Applicants are asked to note that the act makes it a criminal offence for an applicant to knowingly or recklessly make a false statement in an application or in response to a request for further information about an application.
- 1.79. Where any changes occur which materially affect the accuracy of information provided by an applicant to the council, the applicant must notify the council of those changes. Failure to notify the council of material changes is an offence.
- 1.80. If the council proposes to refuse to grant an application, the act requires it to give the applicant a notice that proposal and the reasons for it.
- a) The notice will provide a period in which the applicant may either make representations about the proposal or inform the council that the applicant wishes to do so.
 - b) If the applicant either informs the authority that no representations are to be made, or makes no representations during the period set out in the notice, the council may refuse to grant the application.
 - c) If the applicant informs the authority that representations are to be made, the council must allow a further period to make representations, and if the applicant wishes those representations to be made orally, the council will give the applicant the opportunity of appearing before, and being heard by, a person or persons appointed by it.
 - d) The council will consider representations made in accordance with this procedure before making its decision.
- 1.81. Where the council proposes to grant the licence subject to one or both of the **curfew** and **quarantine conditions** (see paragraph 1.63 above), in circumstances other than upon a renewal of a licence with the same conditions in place, it will give the applicant an opportunity to make

representations about that proposal in accordance with the same procedure applying to proposals to refusal to grant.

- 1.82. The council notes that its express powers under the Act to impose conditions on a licence are limited to the **curfew** and **quarantine conditions**.

The council is cognisant that the goodwill associated with an existing business is considered to be a possession for the purposes of **A1P1**, and accordingly businesses are entitled to peaceful enjoyment of the same, subject to the control of its use in accordance with the general interest.

Therefore, if a measure which deprives a person of the quiet enjoyment of its possessions is to be **A1P1** compliant, it needs to comply with the concept of proportionality.

Although the council does not consider that it has any implied power to impose further conditions on a licence as a means of satisfying itself as to the licence-holder's suitability (for instance a condition prohibiting a named associate of the licence-holder from having any involvement in the business), if the council proposes that it might satisfy itself of suitability by a less intrusive means than refusing a licence (for example by receiving an **undertaking** from an applicant that a named associate will not have any involvement in the business) it will identify that possibility in its notice of proposed refusal.

The council will further have regard to the **licensing objectives** and the **licensing approach** set out in this policy when considering the question of whether to ask for and/or accept undertakings.

Determination of applications for grant or renewal

- 1.83. Where the council is satisfied that an applicant is or remains a suitable person to carry on business as a **scrap metal dealer**, it will issue the **scrap metal licence**.
- 1.84. Where an applicant or any **site manager** has been convicted of a relevant offence, but the council can be satisfied that the applicant is or remains a suitable person carry on business as a scrap metal dealer the **curfew** and/or the **quarantine conditions** (see paragraph 1.63 above) are included on the licence, it will include those conditions.
- 1.85. Where, but for a specified **undertaking** given by the applicant to the council, the council would not be satisfied that an applicant is or remains a suitable person to carry on business as a scrap metal dealer, it will refuse to grant or vary the licence unless that undertaking is given by the applicant.

Undertakings must be given in signed writing, with an acknowledgment that any breach of undertaking may cause the council to reassess the signatory's suitability.

- 1.86. Where the council is not satisfied that an applicant is or remains a suitable person to carry on business as a scrap metal dealer, it will refuse to grant or renew the licence.

Variation of licence: applications by licence-holder

- 1.87. The following changes to a licence-holder's business require the licence-holder to apply to the council to vary the licence:

- a) change in name of licence holder or of any site manager named on the licence;
- b) removal or redeployment of any site manager named on the licence;
- c) appointment of any new site manager;
- d) removal or addition or material change to the extent of any site within the council's area.

- 1.88. The council encourages licence-holders to make applications in advance of the anticipated changes of this nature

Where this is not possible, applications should be made as soon as practicable and the council reminds licence-holders that it is a criminal **offence** to make the changes specified above to a business without applying to vary the licence, and further that a failure to apply for a timely variation is a matter that may go to the licence-holder's continuing suitability to hold a licence.

- 1.89. A variation application may not be made to carry out a transfer of a business from one entity to another. If there is a transfer of business, then the transferee must apply for a new licence.

- 1.90. Where a licence-holder wishes to change its business from one that requires a collector's licence to one that requires a site licence, or vice versa, it may apply to the council for variation of the licence.

- 1.91. Either at the time of the making of the application to vary or at any later stage before determining it, the council may ask the applicant to provide such further information as it considers relevant for the purpose of considering the application.

Failure to provide requested information may result in the council declining to proceed with the application, and could trigger the council considering revocation or variation of the existing licence of its own initiative.

- 1.92. Applicants are asked to note that the act makes it a criminal offence for an applicant to knowingly or recklessly make a false statement in an application or in response to a request for further information about an application.

- 1.93. Where any changes which materially affect the accuracy of information provided by an applicant to the council occur, the applicant must notify the

council of those changes. Failure to notify the council of material changes is an offence.

1.94. A variation application will be granted unless:

- a) the council considers that it is, in reality, an application to transfer the licence, in which case the council will invite the transferee to make a new application
- b) the variation sought, or the manner in which it has been sought, gives rise to matters that might trigger a revocation or variation at the council's initiative (including the continuing suitability of the licence-holder to carry on business as a scrap metal dealer) in which case, the council will consider whether to revoke or vary the licence of its own initiative before determining the application

Revocation or variation of the licence: initiative of the council

1.95. The council may revoke a scrap metal licence if it is satisfied of any of the following matters:

- a) that the licence-holder does not carry on business at any of the sites identified at the licence
- b) that a site manager named in the licence does not act as site manager at any of the sites named in the licence
- c) that the licence-holder is no longer a suitable person to carry on business as a scrap metal dealer

1.96. The council will apply the same considerations to determining the licence-holder's continuing suitability as it does when considering the suitability of an applicant for the grant or renewal of a licence.

1.97. If a licence-holder or any site manager is convicted of a relevant offence, without prejudice to its powers to revoke, the council may, by way of variation, impose a curfew and/or quarantine condition on the licence.

1.98. A revocation or variation on the council's initiative takes effect when the period for appealing expires, or, if an appeal is brought, when any such appeal is finally determined or withdrawn. However, in appropriate cases:

- a) the council may provide that the imposition of conditions by way of variation has immediate effect
- b) the council may provide that pending revocation taking effect, curfew and/or quarantine conditions will be imposed with immediate effect

1.99. Where the council proposes to revoke or vary a licence of its own initiative, it is obliged to give the licence-holder written notice of those proposals, and to afford the licence-holder the same opportunity to make representations as it affords to applicants for the grant or renewal of licences (see paragraph 1.80 above).

1.100. The council's policy is to consider the question of undertakings as an alternative to revocation or variation in the same manner as it does as an

alternative to refusing applications for grant or renewal (see paragraph 1.82 above).

Appeals

- 1.101. Where an application for the grant or renewal of a licence has been refused, or granted, the applicant has a right of **appeal** to the magistrates' court.
- 1.102. Where the council has imposed a curfew and/or quarantine condition, or revoked a licence, the licence-holder has the right of appeal to the magistrates' court.
- 1.103. An appeal must be commenced within 21 days on which notice of the council's decision was given. This time limit cannot be extended. The council strongly recommends that persons wishing to appeal seek legal advice at the earliest opportunity. The council is not able to provide to advice about the conduct of appeals against its own decisions.

Register of licences

- 1.104. The council is required to notify the Environment Agency of all licences it issues in order that a national register can be maintained of licences in England. The register can be inspected on the Environment Agency's website:

<https://environment.data.gov.uk/public-register/view/search-scrap-metal-dealers>

Notification requirements

- 1.105. A **scrap metal licence** holder must notify the council of the fact of any of the following changes within 28 days of them occurring:
 - a) cessation of the carrying on business as a scrap metal dealer by the licence-holder in the council's area
 - b) any change to trading name
- 1.106. It is an **offence** to fail to notify the council of these changes within the timescales.

Display of licences

- 1.107. A **scrap metal dealer** who holds a **site licence** must display a copy of the licence at each site identified in the licence. Each copy must be displayed in a prominent place in an area accessible to the public.
- 1.108. A **scrap metal dealer** who holds a **collector's licence** must display a copy of the licence on any vehicle that is being used in the course of the dealer's business. The copy must be displayed in a manner which enables it to be easily read by a person outside the vehicle.

1.109. Failure to comply with these requirements is an offence.

1.110. The council recommends that holders of **site licences** who undertake collections carry a copy of their licence on vehicles that are being used in the course of undertaking those collections. That way, they will not be mistaken for unlicensed collectors.

Verification of identity

1.111. A **scrap metal dealer** must not receive **scrap metal** from a person without verifying the person's full name and address.

1.112. That verification must be by reference to documents, data or other information obtained from a reliable and independent source.

1.113. Regulations⁸ have prescribed documents which are sufficient for these purposes as follows:

- either:
 - a) a document which bears the person's full name, photograph and *residential address* and which is:
 - a) a valid UK / EEA passport
 - b) a valid Great Britain or Northern Ireland photo-card driving licence
 - c) a valid UK biometric immigration document
- or, both:
 - a) a document which bears the person's full name, photograph and date of birth and which is:
 - i. a valid UK / EEA passport
 - ii. a valid Great Britain or Northern Ireland photo-card driving licence
 - iii. a valid UK biometric immigration document
 - b) and a supporting document which bears the person's full name and residential address, which is dated not more than three months before the date when the scrap metal is received by the scrap metal dealer and which is a:
 - i. bank or building society statement
 - ii. credit or debit card statement
 - iii. council tax demand letter or statement
 - iv. utility bill (but not a mobile telephone bill)

⁸ the Scrap Metal Dealers Act (Prescribed documents and information for verification of name and address) Regulations 2013.

- 1.114. If a scrap metal dealer receives scrap metal without verifying the person's full name and address, the dealer, the site manager of the site where the scrap is received and any person who the dealer and/or the scrap manager has made arrangements with to undertake verification commits an offence, subject to a defence of due diligence.
- 1.115. A scrap metal dealer must keep a copy of any document used to verify the name and address of the supplier. It must be marked with so as to identify the scrap metal to which it relates.
- 1.116. Home Office guidance suggests (paragraph 12.1) that a scrap metal dealer can verify the name and address of repeat suppliers by referring to a copy of the document(s) retained in their records.

The council agrees, subject to the caveat that it would expect a scrap metal dealer to periodically repeat verification checks for repeat suppliers to ensure that the details it have on file remain correct.

Payment for scrap metal

- 1.117. A scrap metal dealer (regardless of whether or not authorised by a licence) must not pay for scrap metal except by:
- a) a non-transferable cheque
 - b) an electronic transfer of funds (authorised by credit or debit card or otherwise)
 - c) any other method of payment permitted by order the Secretary of State (as the date hereof, no order made)
- 1.118. A non-transferable cheque means a crossed cheque which is made payable to a named person (whether an individual, firm or company) and not to cash.
- 1.119. The council considers that an electronic transfer of funds requires an identifiable transfer from the payer (the scrap metal dealer) to the payee (the vendor of the scrap metal).

Where an electronic payment method is used which does not show a transfer of funds from the payer to the payee, then the council does not consider that this is within the statute. In coming to this view, the council has had regard to paragraphs 9.3-9.6 of the Home Office guidance.

- 1.120. For the avoidance of any doubt, **paying cash for scrap metal is against the law.**
- 1.121. If a scrap metal dealer pays for scrap metal by an unacceptable method, the dealer, the site manager (if the payment is made on a site) and any agent who made the payment on the dealer's behalf commit an offence.

It is a defence for a person charged with an offence to show that they made

arrangements to ensure that the payment was not made in breach of the subsection and they took all reasonable steps to ensure those arrangements were complied with.

- 1.122. Where a scrap metal dealer proposes to use a novel form of electronic payment, it is suggested that the council's advice is sought prior to using the same.
- 1.123. Scrap metal dealers who purchase vehicle for cash should be aware that they may have to justify that the vehicles they purchase are not scrap: see paragraph 1.40 above.

Record making and keeping requirements

Receipt of metal

- 1.124. A scrap metal dealer who receives any scrap metal in the course of business (whether paid for or not) must record the following information:
- a) the description of the metal, including its type (or types if mixed), form, condition, weight and any marks identifying the previous owners or other distinguishing features
 - b) the date and time of its receipt
 - c) if the metal is delivered on or in a vehicle, the vehicle's registration number
 - d) if the metal is received from a person, the full name and address of that person
 - e) if the payment is made for the metal, the full name of the person who makes the payment acting for the dealer
- 1.125. If the dealer receives the metal from a person, the dealer must keep a copy of any document which the dealer uses to verify the name and address of that person (see part 1.110 of this policy above).
- 1.126. If the dealer pays for them metal by cheque, the dealer must keep a copy of that cheque. It must be marked so as to identify the scrap metal to which it relates.
- 1.127. If the dealer pays for the metal by electronic transfer, the dealer must keep the receipt identifying that transfer or, if no receipt was obtained, the dealer must record particulars identifying that transfer.

Disposal of metal

- 1.128. If a scrap metal dealer disposes of any scrap metal in the course of his business (regardless of whether the scrap metal is in the same form as it was received, whether it was disposed to another person, or whether or not it was dispose from a site), the dealer must (s.14) record the following information:
- a) (if from a site) the description of the metal, including its type (or types if mixed), form and weight

- b) (in all cases) the date and time of disposal
- c) (in all cases) if the disposal is to another person, the full name and address of that person
- d) (if from a site) if the dealer receives payment for the metal (whether by way of sale or exchange), the price or other consideration received

Record keeping in general

- 1.129. In addition to marking copy cheques (see paragraph 1.126 above) and copy documents of identity (see paragraph 1.115 above) so as to identify the metal to which they relate, all other required information must be recorded in a manner which allows the information and the scrap metal to which it relates to be readily identified by reference to each other (s.15(1)).
- 1.130. All records must be kept for a period of three years beginning on the day of receipt or disposal.
- 1.131. Scrap metal dealers are reminded of their responsibilities to comply with the Data Protection Act 1998 and GDPR.

Offences

- 1.132. If a scrap metal dealer fails to fulfil the record keeping requirements, the dealer, the site manager (if the metal was received at or despatched from) a site, and any agent with responsibility for fulfilling record making and keeping requirements commits an offence (s.15(4)).

If a person charged with an offence made arrangements to ensure that the requirement was fulfilled, it is a defence to prove that all reasonable steps were taken to ensure that those arrangements were complied with.

Compliance

- 1.133. Once a licence is issued, the council seeks to ensure, through its compliance work, that the licensee remains suitable to hold the licence and that they conduct themselves in a way which is consistent with the licensing objectives, the requirements of the act, and any conditions of their licences and/or undertakings given.
- 1.134. The frequency and focus of compliance work, including site inspections, is based on the risk assessment of the licensee, which takes into account a variety of factors including the likelihood and potential impact of non-compliance by the licensee.
- 1.135. As with all of the licensing functions, the council will undertake compliance with a view to promotion of the licensing objectives and in accordance with the licensing approach. It will:
- a) act reasonably in undertaking compliance work
 - b) undertake compliance work fairly, responsibly, and with due respect for other parties involved

- c) explain what information is required, and why, to ensure requests are appropriate, proportionate and minimise disruption to the business, and enable the relevant person to comply fully with the request
- d) seek the cooperation of others wherever possible and only use its statutory powers where necessary

1.136. As part of its compliance activities, the council will:

- a) assess and evaluate compliance consistently and in accordance with the council's risk assessment methodology
- b) consider the ongoing suitability of the licensee by looking at the following factors, plus other matters, where appropriate (the list is not exhaustive):
 - record-keeping
 - integrity
 - competence
 - criminality
 - compliance with the requirements of the act, any licence conditions and/or any undertakings given to the council

1.137. In carrying out its risk assessment of the licensee, the council will use the following framework:

- **low risk:** scheduled inspection every 24 months
- **medium risk:** Scheduled inspection every 12 months
- **high risk:** scheduled inspection every six months

Unannounced inspections will take place outside this programme, being either intelligence-led or random but weighted in favour of higher assessed risk.

Offences and enforcement

1.138. Offences under the act are listed at appendix B.

- a) The council has a published enforcement policy which explains how it responds to non-compliance. It is available from the council's website at <https://www.luton.gov.uk>.

Delegation of functions

1.139. The council's interpretation of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 is that the licensing function is a non-executive function.

Comments, compliments and complaints

1.140. The council welcome views on our services and take it seriously if someone is unhappy. It will investigate any complaint it receives.

- 1.141. It aims to learn from comments and complaints we receive and will make changes to our processes where there is a valid concern, and this is practicable.
- 1.142. Comments, compliments and complaints can be made:
- a) using the [council's online form here](#)
 - b) by email to: feedback@luton.gov.uk
 - c) by post to: Luton Council, Town Hall, George Street, Luton, LU1 2BQ
 - d) by telephone calling: 01582 546398
- 1.143. Further details of the council's complaints procedure, including the council's complaints policy can be found at the above website address or upon application by email, post or telephone.
- 1.144. The council's complaints procedure does not affect any statutory rights of **appeal**, and those subject to adverse decisions of the council are reminded that there is a strict time limit for bringing appeals.

Appendix A - Relevant offences

The Scrap Metal Dealers Act (prescribed relevant offences and relevant enforcement action) regulations 2013/2258 provide that for the purposes of the Act, 'relevant offence' means any offence specified below, and includes an offence of (a) attempting or conspiring to commit any specified offence; (b) inciting or adding, abetting, counselling or procuring the commission of any specified offence; and (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) committed in relation to any specified offence.

Specified offences

PART 1

Primary legislation

- (a) An offence under section 1, 5, or 7 of the Control of Pollution (amendment) Act 1989
- (b) An offence under section 170 or 170B of the Customs and Excise Management Act 1979, where the specific offence concerned relates to scrap metal
- (c) An offence under section 110 of the Environment Act 1995
- (d) An offence under sections 33, 34 or 34B of the Environmental Protection Act 1990
- (e) An offence under section 9 of the Food and Environment Protection Act 1985
- (f) An offence under section 1 of the Fraud Act 2006, 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
- (h) An offence under sections 327, 328 or 330 to 332 of the Proceeds of Crime Act 2002
- (i) Any offence under the Scrap Metal Dealers Act 1964
- (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, 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
- (m) An offence under sections 85, 202, or 206 of the Water Resources Act 1991

PART 2

Secondary Legislation

- (a) An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007

- (b) An offence under regulation 38 of the environmental permitting (England and Wales) regulations 2010
- (c) Any offence under the hazardous waste (England and Wales) regulations 2005
- (d) Any offence under the hazardous waste (Wales) regulations 2005
- (e) An offence under regulation 17(1) of the landfill (England and Wales) regulations 2002
- (f) Any offence under the pollution prevention and control (England and Wales) regulations 2000
- (g) Any offence under the producer responsibility (packaging waste) regulations 2007
- (h) Any offence under the transfrontier shipment of waste regulations 1994
- (i) Any offence under the transfrontier shipment of waste regulations 2007
- (j) Any offence under the waste (electrical and electronic equipment) regulations 2006
- (k) An offence under regulation 42 of the waste (England and Wales) regulations 2011

Appendix B - Offences under the act

The following is given as a guide only of the general offences and penalties provided for by the Act. Independent legal advice should be sought for individual cases.

	Offence	Max Penalty
s.1	Carrying on the business as a scrap metal dealer without a licence	Level 5
s.8	Failure to notify the authority of any changes to details given with the application	Level 3
s.10	Failure to display site licence or collector's licence	Level 3
s.11(6)	Receiving scrap metal without verifying person's full name and address	Level 3
s.11(7)	Delivering scrap metal to dealer and giving false details	Level 3
s.12(6)	Buying scrap metal for cash	Level 5
s.13	Failure to keep records regarding receipt of metal	Level 5
s.14	Failure to keep records regarding disposal of metal	Level 5
s.15 (1)	Failure to keep records which allow the information and the scrap metal to be identified by reference to one another	Level 5
s.15 (2)	Failure to keep copy document used to verify name and address of person bringing scrap metal, or failure to keep a copy of the cheque issued	Level 5
s.15 (3)	Failure to keep information and records for three years	Level 5
s.16	Obstruction to right of entry and failure to produce records	Level 3
Schedule 1, para 3	Failure to apply to vary the licence upon a change of matters	Level 3

Schedule 1, para 5	Making false statement in an application or in response to a request for information	Level 3
Schedule 1, para 9	Opening a premises in contravention of a closure order or failing to comply with a closure order	Level 5

All offences are triable summarily. A fine must not exceed the statutory limit. Where this is expressed in terms of a 'level' the current maxima are:

Level 1	£200
Level 2	£500
Level 3	£1,000
Level 4	£2,500
Level 5	Unlimited (for offences committed after 13 March 2015)