

SCRAP METAL DEALERS ACT 2013 - DRAFT RELEVANT OFFENCES

1. The list of relevant offences for a scrap metal dealer's licence will mirror the list that the EA consider when granting an environmental permit [as far as possible] – the environmental related offences are listed below. It is proposed not to reduce the list of offences as this goes against the original intention and it could lead to a situation whereby a scrap metal dealer may be considered suitable for an environmental permit but not a scrap metal dealer licence or vice versa.

- Control of Major Accident and Hazards Regulations 1999 (1999 No 743)
- Control of Pollution (Amendment) Act 1989: Section 1, 5 or 7(3) (1989 C14)
- Environment Act 1995: Sections 110(1), (2) and (3)
- Environmental Permitting Regulations 2007: Regulation 38
- Environmental Permitting Regulations 2010: Regulation 38
- Environmental Protection Act 1990: Section 33 and 34 and 34B
- Food and Environment Protection Act 1985: Section 9(1) and (2)
- Hazardous Waste (England and Wales) Regulations 2005
- Landfill (England and Wales) Regulations 2002: Regulation 17(1)
- Pollution Prevention and Control (England and Wales) Regulations 2000
- Producer Responsibility Obligations (Packaging Waste) Regulations 2007
- Transfrontier Shipment of Waste Regulations 1994
- Transfrontier Shipment of Waste Regulations 2007
- Waste Electrical and Electronic Equipment Regulations 2006
- Waste (England and Wales) Regulations 2011: Regulation 42
- Water Resources Act 1991: Section 85, 202 or 206

The following will also be included as a relevant offence:

- Attempting or conspiring to commit any of the offences listed above or below
- Inciting or aiding, abetting, counselling or procuring the commission of any offence listed above or below
- An offence under Part 2 of the Serious Crime Act 2007(a) (encouraging or assisting crime) committed in relation to any of the offences listed above or below

2. Also to be included are the following list of non-environmental offences which also mirrors [as far as possible] the environmental permitting regime. The permitting regime only considers convictions after 2 July 2012 for these offences as relevant as that is the date they were added to the operational instruction, however we are not going to have this time restriction. Offences under these Acts are limited to environmental and metal theft related offences only which is the same as the environmental permitting regime.

- Customs and Excise Management Act 1979: Section 170 and section 170B (to include metal related offences only)

- Fraud Act 2006: Section 1
- Proceeds of Crime Act 2002: Sections 329, 330, 331 & 332 [we are also now including sections 327 and 328 but are not including section 329. We are not limiting the offence to metal/environment related only for offences under this Act].
- Theft Act 1968: Sections 1, 8, 9, 10, 11, 17, 18, 22 & 25

2a. Environment related offences are defined as the following which is based on the definition of environmental pollution in section 1 of the Pollution Prevention and Control Act 1999 to cover carriers, duty of care, TFS and hazardous waste movements which states that:

An offence is environment related -

"if it relates to:

(1) the transportation, shipment or transfer of waste; or
(2) the prevention, minimisation or control of pollution of the air, water or land which may give rise to any harm; and for the purposes of this definition (but without prejudice to its generality)—

(a) "pollution" includes pollution caused by noise, heat or vibrations or any other kind of release of energy;

(b) "air" includes air within buildings and air within other natural or man-made structures above or below ground.

For the purpose of the definition of "environment related offence" "harm" means— (a) harm to the health of human beings or other living organisms; (b) harm to the quality of the environment, including— (i) harm to the quality of the environment taken as a whole, (ii) harm to the quality of the air, water or land, and (iii) other impairment of, or interference with, the ecological systems of which any living organisms form part; (c) offence to the senses of human beings; (d) damage to property; or (e) impairment of, or interference with, amenities or other legitimate uses of the environment."]

3.
 - Scrap Metal Dealers Act 1964 (the permitting regime currently only consider environment and metal theft related offences)
 - Scrap Metal Dealers Act 2013
 - Section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012
 - Vehicles (Crime) Act 2001: Sections 1, 10, 12, 35 and 39
5. Although local authorities may have regard to a relevant offence (or relevant enforcement action) this does not determine the outcome of whether a scrap metal dealer licence is granted, continued or renewed. If a person has been convicted of a relevant offence or had enforcement action taken against them, the local authority, if it thinks it right to do so, may decide to grant a licence or grant a licence with conditions. The local authority may consider the relevant

offences and enforcement action; the seriousness of the offence or enforcement action; when the offence was committed or the enforcement action was taken, along with any other relevant information as set out in Section 3 (2) of the Scrap Metal Dealers Act 2013.

Relevant enforcement action information

6. The police have advised that they wish local authorities to have regard to only very high level relevant enforcement action when considering an application for a scrap metal dealer's licence. This is intended to be where a person has a pending prosecution for any relevant offence under the Scrap Metal Dealers Act 2013 as listed above. The police definition of a pending prosecution is where a person has been charged with a relevant offence but not convicted.
7. The police intend to suggest in guidance for their officers and Environment Agency that they advise local authorities when they are prosecuting a scrap metal dealer for a relevant offence so a local authority may have regard to this information when considering applications for a scrap metal dealer's licence.
8. They also intend that relevant enforcement action means where the Environment Agency has suspended an environmental permit. This is important as they believe that if persons are not suitable for an environmental permit then they should not be suitable for a scrap metal dealer's licence. Local authorities should routinely check the EA register to find out this