

Hi Sarah,

I have attached a copy of the document with my comments. As I said I'm looking at this from my position as the NICRP and BTP subject matter expert on the SMDA 2013 and metal crime.

I completely understand why you are looking at introducing a code of conduct. I think the challenge is what you can achieve within the boundaries of the SMDA 2013 in its current format. I'm working on the Act with the Home Office, Environment agency and LGA, but as it stands any changes that would result in the introduction of a code of conduct that would be enforceable (which set requirements outside the scope of the act) require a change to primary legislation and that's not really an option currently.

If you would like to discuss my comments in more detail, please feel for to contact me.

Kind Regards

*Rob Edwards*

Robin Edwards BA (Hons)  
Director  
Onis

### **Code of Practice**

- 1.1 In relation to all considerations of possible revocation or variation and all applications for grant or renewal of a licence the authority shall consider the suitability of the applicant or licence holder with regard to adherence or otherwise by the licence holder or any other person identified in the licence to the Code of Practice annexed to this policy at Annex B or the applicant's willingness to adhere to the Code of Practice or to any other relevant body or licensing authority's Code of Practice in the case of a first application. Failure to adhere to the Code of Practice shall be considered particularly relevant to the suitability of the applicant or licence holder to hold a licence. **I don't see how you can do this, there is no mention of this within the SMDA 2013 or the supplementary guidance, so it outside the scope of the legislation and would not be legally binding..**

Without prejudice to the above, where an officer of the Council has reason to believe that a licence is not being operated in accordance with the Code of Practice but it is in that officer's opinion reasonable to deal

with the cause of complaint by way of a written warning or further written warning then the matter may be dealt with by written warning to the licence holder. **You can give a warning, but I'm afraid there again is no mention in the SMDA 2013 about codes of conduct. It will have no impact on the license and the SMD could chose to ignore it and there is nothing legally you could do about it.**

Where a licence holder has received a second written warning from an officer of the Council then the licence holder shall be asked to meet with the appropriate officer of the Council to discuss the reasons for the issue of the previous written warnings and the officer shall warn the licence holder that the licence shall be subject to revocation should there be any repetition of the matter of complaint, on the basis that the licence holder is no longer considered to be suitable to hold a licence. **There is no legal requirement for any SMD to comply with a code of conduct as they are voluntary in nature and are based on consent. If the SMD decides not to comply with a code of conduct, there is no power to revoke the license contained within the SMDA and this would require a change to the primary legislation.**

Where an officer of the Council has reason to believe that there are grounds for issuing a third written warning then the relevant licence holder shall be presumed by the Council to be an unsuitable person to hold a licence, subject to any representation from the licence holder that there may be exceptional circumstances to justify the circumstances of the failure to remedy the cause of complaint. **I refer to the above comments. There is no legal requirement for any SMD to comply with a code of conduct as they are voluntary in nature and are based on consent. If an SMD decides not to comply with a code of conduct, there is no power to revoke the license contained within the SMDA and this would require a change to the primary legislation. This could end up in a costly litigation case if one was brought by an SMD that had their license revoked.**

***Addition - Unacceptable methods of payment***

**Payment instruments which do not come within the methods above (non-transferable cheque or electronic transfer), or near cash alternatives are not acceptable. This includes the use of postal orders, foreign currency, electronic vouchers, virtual currencies, mobile phone airtime credits, retailer or supermarket gift cards and vouchers. Single, non-reloadable pre-paid debit cards and reloadable debit cards which are anonymous in nature and require only simplified due diligence under the Money Laundering Regulations are unacceptable.**

## 6. RECORDS: RECEIPT OF METAL

6.1 Records must be kept for three years. (Worth adding it here as well?)

### **Annex B Code of Practice for Scrap Metal Dealers.**

All scrap metal dealers and merchants signing up to this Code agree to abide by the following requirements:

- a) All reasonable steps will be taken to ensure stolen metals are not bought. This is a criminal offence, and the requirements of the SMDA require everyone who sells metal to comply with the Act. An offence of knowingly buying stolen metal could see the individual prosecuted for handling stolen goods... I don't see the point of this.
- b) Metals will only be accepted from those whose ID has been/can be verified as required by the Scrap Metal Dealers Act 2013 This is a legal requirement and is not necessary. A failure to comply with the ID requirements is an offence that could result in prosecution, fine and potential revocation of their license.
- c) No payment shall be made to any person other than the person as identified on the scrap metal collector's licence displayed on the vehicle where metals are produced by a licensed scrap metal collector. You can't ask this as its not covered by the act. There is no legal requirement for an SMD to check if the seller has a license or a permit to sell the material. This would require amendments to primary legislation so you can't specify this as a condition, unless it is voluntary, but a failure to comply would not allow any action to be taken in relation to the license.
- d) Staff must be trained in administrative processes and all paperwork should be relevant and kept up-to-date. There are minimum requirements set out in the SMDA, so I don't see the point of including this. Each SMD will use a different system, with some being paper and others being computerized. A failure to comply with the requirements of the SMDA could result in prosecution, and a fine.
- e) Dealers will co-operate with police and local authorities by allowing access and inspection when requested. The SMDA (section 16) Right to enter and inspect covers this. Any addition to this would require a change to primary legislation, without it you can't specify this in a code of conduct, it would be illegal and could result in civil litigation.
- f) No blackened copper wire that has obviously had its insulation removed should be bought. Although this is a good point, blackened copper can be and is a product of demolition and other processes where cable is burned. It may be helpful to 'ask' if further information could be sought from the seller in

terms of its provenance. However, there is no legal basis for including this.

- g) Metals will not be accepted from customers on foot. I'm afraid you can't request this as it is somewhat discriminatory, and again not covered by the Act. If the seller and SMD are compliant with the requirements of the SMDA and there are no concerns about the source of the metal (covered in previous comments I have added) then I see no way of preventing this.
- h) Metal will not be accepted from customers arriving in taxis or private hire vehicles. As above.
- i) Dealers will display prominent signage at their premises stating that "We report suspected metal thieves to the Police". You can ask them to do this, but there needs to be an understanding that SMDA's may face repercussions from the seller that could put the individual or site at risk. I would be inclined to reword this to 'We do not buy suspected stolen metal or support crime, and work closely with the local police to reduce crime'.
- j) In order to comply with the Act's requirements concerning record keeping and identification no metals shall be received without at a minimum taking and retaining a digital photograph(s) of the scrap metal load as presented, cross-referenced with the appropriate waste transfer note. This isn't going to be possible, particularly with the larger sites and isn't a requirement of the SMDA. This would require a change to primary legislation to make it enforceable.
- k) Dealers shall have available and actively use UV torches for detecting forensically marked metals. You can only ask them to check and if they don't, there isn't a great deal you can do, you certainly couldn't use it to revoke a license.
- l) Suspicious persons will be reported to the local police force for the area concerned. As per my comments above. You can ask them to do this, but there needs to be an understanding that the SMDA may face repercussions from the seller that could put the individual, or site at risk. I would be inclined to reword this to 'We do not buy crime, and work closely with the local police to reduce crime'.
- m) Suspicious transactions will be reported to the local police force for the area concerned. What is a suspicious transaction? This is too ambiguous and serves no purpose.
- n) Dealers will work towards adopting into an electronic 'alert' notification scheme for early notification of stolen metals. This isn't something that can be introduced by SMD's and needs to be centrally led by potentially the British Metals Recycling association (which they already do). However, they only represent less than half of all SMD's so I don't see how this could be progressed.
- o) All scrap metal dealers agree to work towards installing police approved CCTV systems upon commencement of trading and automatic number plate

recognition cameras within 12 months from the commencement of trading at site entrances and/or weighbridges. (Where such systems have been installed posters advertising the fact will clearly be displayed on the premises). Again, this could only be voluntary, and are you suggesting they could only use the police Secured by Design approved CCTV. This could cause a number of issues in terms of who can or cannot supply CCTV systems and there may be some very unhappy companies who could act for being excluded from providing equipment.

- p) Scrap metal collectors will not cause nuisance or unreasonable disturbance to residents in the locality. Not sure exactly what you are trying to achieve here... There are several other pieces of legislation that would cover this.

In conclusion, I fully appreciate the benefits of a code of conduct, however, they can only ever be voluntary so you cannot make them a condition of licensing unless the Act is changed and specifies this. Having set up and rolled out a code of conduct (Operation Tornado) I fully appreciate the benefits it can have. However, it would be unrealistic for each local authority to introduce its own code of conduct as it would make trading extremely difficult, particularly for those who operate across multiple areas. In addition, a code of conduct cannot require an SMD to do anything that is not covered in the legislation and to demand that as a licensing requirement could result in unnecessary litigation against the Local authority.

My advice would be to look at reinforcing the requirements of the SMDA 2013 and potentially offering training (the NICRP can help you with that) to scrap metal dealers and conducting regular and detailed inspections. The SMDA 2013 isn't perfect, and we are looking at ways to improve it (I recently led a group that made changes to the Supplementary Guidance that was published in January this year). I would avoid going beyond the requirements of the legislation by trying to impose requirements that are not covered by the act as SMD's will just ignore them and there will be very little if anything you can do about it.

I'm happy to discuss my comments in more detail if required.

Robin Edwards

NICRP/BTP

Good afternoon,

As requested here are the comments we wish to make on the proposed Scrap Metal Policy

During review of the document there are discrepancies such as the contents page not holding the correct page numbers for relevant information but also some more concerning statements.

## **Annex B      Code of Practice for Scrap Metal Dealers.**

- a) (f) No blackened copper wire that has obviously had its insulation removed should be bought. **Customers clearly have the opportunity to strip wire to improve their revenue payment.**
- b) (g) Metals will not be accepted from customers on foot. **Local residents may take this option for ease and to reduce their carbon footprint.**
- c) (h) Metal will not be accepted from customers arriving in taxis or private hire vehicles. **This would be unusual as some hire companies would not want to load dirty items such as scrap, but not all people have access to their own vehicle and would this also implicate rented vans or even a friend giving a lift?**
- d) (i) Dealers will display prominent signage at their premises stating that "We report suspected metal thieves to the Police". **We have not found evidence of any other authority requiring this and as licensed site would report concerns to Police as good practice anyway.**
- e) (k) Dealers shall have available and actively use UV torches for detecting forensically marked metals. **Unachievable on a working site.**
- f) (n) Dealers will work towards adopting into an electronic 'alert' notification scheme for early notification of stolen metals. **Surely this relates to good practice of informing appropriate authorities.**
- (g) (o) All scrap metal dealers agree to work towards installing police approved CCTV systems upon commencement of trading and automatic number plate recognition cameras within 12 months from the commencement of trading at site entrances and/or weighbridges. (Where such systems have been installed posters advertising the fact will clearly be displayed on the premises). **CCTV is clearly necessary in most businesses for insurance purposes and requires ICO regulations for use to be followed, number plate recognition is unachievable and who would monitor this and be responsible for it not working or breaking down?**

These are the statements that we find unachievable and against the legislation it is supposed to be supporting.

We have been in correspondence with British Metal Recycling Association who agree with our findings and have reportedly already been in touch with yourselves.

I have checked the live consultation again today and find it currently remains unchanged.

We look forward to hearing from you in due course in connection with this matter.

Kind Regards

*Fiona*

**Compliance Manager**



*Offering - ZERO Waste to Landfill !*

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**From:** Varley, Phil <[phil.varley@environment-agency.gov.uk](mailto:phil.varley@environment-agency.gov.uk)>  
**Sent:** Friday, August 4, 2023 12:28 PM  
**To:** Public Protection <[Public-Protection@tamworth.gov.uk](mailto:Public-Protection@tamworth.gov.uk)>  
**Subject:** Scrap metal Policy consultation

Hello,

I would like to contribute to the consultation on the Scrap Metal Policy from an Environment Agency perspective. (Please can you advise how formal this response should be, if it is for a public consultation I may need to review the content more formally.)

Please can you include the point that anyone who is applying for a Collectors licence is required to be registered as an 'Upper Tier' Waste Carrier. This reference number will look like CBDUXXXXX and costs £154 for 3 years, rather than CBDL which is free to register.

The CBDU registration should be in the same legal entity name as the SMDA licence, and should be a prerequisite of granting of the collectors licence.

With regard to the Site licence, again, the proof of authorisation of the ability to handle waste metal should be a prerequisite of granting of the site licence. (eg, an environmental permit or relevant exemption.)

I note that your application form alludes to the other authorisations, but I'm not sure this is conclusively picked up in your policy wording.

Please give me a call if you need to discuss further.

Kind regards,

**Phil Varley**  
**Waste Regulatory Specialist**  
**(East Team) West Midlands Area**  
**Contact | Phone: 02030 252837**

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