

Subsidiary Legislation made under ss. 192W and section 337.

Public Health (Scrap Metal Dealers) Rules 2014

LN.2014/169

Commencement (LN. 2014/177)

30.10.2014

ARRANGEMENT OF RULES

Rule

1. Title and commencement.
2. Scope.
3. Interpretation.
4. Licensed scrap metal dealers.
5. Application and renewal of scrap metal licence.
6. Issuing of scrap metal licences.
7. Duration, revocation and variation of scrap metal licences.
8. Register of scrap metal licences.
9. Conditions applicable to dealing in scrap metal.
10. Display of scrap metal licence.
11. Verification of supplier's identity.
12. Sales, records and disposal of scrap metal.
13. Refusal of scrap metal licence and appeal.
14. Right to enter premises and production of licences.
15. Offences by body corporate.

SCHEDULE 1

NOTICE OF INTENTION TO APPLY FOR A SCRAP METAL LICENCE

SCHEDULE 2

SCRAP METAL LICENCE SIGN

1950-07

Public Health

2014/169

Public Health (Scrap Metal Dealers) Rules 2014

In exercise of the powers conferred upon it by section 192W and section 337 of the Public Health Act, the Government has made the following Rules—

Title and commencement.

1. These Rules may be cited as the Public Health (Scrap Metal Dealers) Rules 2014 and come into operation on the day appointed by the Minister for the Environment by notice in the Gazette and different days may be appointed for different purposes.

Scope.

2. The scope of these Rules is to—

- (a) support individuals and businesses that legitimately trade as scrap metal dealers by implementing a licensing procedure;
- (b) raise trading standards across the scrap metal industry by requiring more detailed and accurate records of transactions to be kept; and
- (c) creating a central public register of all individuals and businesses licensed as scrap metal dealers.

Interpretation.

3. In these Rules—

“collector’s licence” authorises the licensee to carry on business as a mobile collector in Gibraltar;

“Minister” means the minister with responsibility for the environment;

“mobile collector” means a person who—

- (a) carries on business as a scrap metal dealer otherwise than at a site; and
- (b) engages, in the course of that business, in collecting, transporting and handling of scrap metal.

“recovered” means any operation the principal result of which is to remove or replace certain materials or components from the scrap metal in order to give it a useful purpose;

“scrap metal” with the exception of gold, silver and any alloy of which 2 percent or more by weight is attributable to gold or silver, includes—

- (a) any old, broken, worn out, defaced or discarded metal or metallic material; and
- (b) 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 usability.

“scrap metal dealer” means a person who pursuant to subrule 4(1) carries on business as a scrap metal dealer, whether or not authorised by a licence;

“site” means any premises used in the course of carrying on business as a scrap metal dealer, whether or not the scrap metal is kept there;

“site licence” authorises the licensee to carry on business at the premises identified in the scrap metal licence;

“site manager” means the person who exercises day-to-day control and management of activities at the site.

Licensed Scrap Metal Dealers.

4.(1) 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, selling, handling, collecting, transporting or storing scrap metal, whether or not the scrap metal is altered or recovered from the form in which it was acquired; or
- (b) carries on business as a motor-vehicle salvage operator (so far as that does not fall within paragraph (a)).

(2) For the purposes of subrule (1)(a), a person who manufactures articles is not to be regarded as selling scrap metal if that person sells scrap metal only as a by-product of manufacturing articles or as surplus materials not required for manufacturing them.

(3) For the purposes of subrule (1)(b), a person carries on business as a motor-vehicle salvage operator if the person carries on a business which consists—

- (a) wholly or partly in recovering salvageable parts from motor-vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the motor-vehicle for scrap;

- (b) wholly or mainly in buying written-off motor-vehicles and subsequently repairing and reselling them;
 - (c) wholly or mainly in buying or selling motor-vehicles which are to be the subject (whether immediately or on a subsequent re-sale) of any of the activities mentioned in paragraphs (a) and (b); or
 - (d) wholly or mainly in activities falling within paragraphs (b) and (c).
- (4) No person may carry on business as a scrap metal dealer unless authorised by a licence under these Rules (a “scrap metal licence”).
- (5) The Environmental Agency may impose licence conditions on scrap metal licences.
- (6) Pursuant to subrule (5) a scrap metal dealer must comply with all licence conditions imposed by the Environmental Agency.
- (7) A person who carries on business as a scrap metal dealer in breach of subrules (4) and (6) is guilty of an offence and is liable on summary conviction, to imprisonment for 9 months or a fine not exceeding level 4 on the standard scale, or to both.
- (8) A scrap metal licence will authorise the person or business named therein to trade in Gibraltar on the production of proof to the Environmental Agency of premises in Gibraltar which are sufficiently suitable for the carrying on of business in the trade of scrap metal.
- (9) Scrap metal licences are issued by the Environmental Agency and consist of one of the following types—
 - (a) a site licence; or
 - (b) a collector’s licence.
- (10) Pursuant to subrule (9) a scrap metal dealer may apply for more than one type of licence.
- (11) A scrap metal licence must—
 - (a) state the type of licence pursuant to subrule (9);
 - (b) name the licensee;
 - (c) name the premises at which business will be carried on at;
 - (d) state the date on which the scrap metal licence is due to expire; and

- (e) if the scrap metal dealer is a mobile collector provide the license plate number of all motor-vehicles that will be used during the course of business.

(12) Nothing in these Rules will affect the application of Part IIB (transfrontier shipment of waste) of the Public Health Act.

Application and renewal of scrap metal licence.

5.(1) To the extent that these Rules require that a person hold a scrap metal licence, a licence issued under Part VA of the Public Health Act will not exempt that person from the requirement to be licensed pursuant to these Rules.

(2) A person that is permitted to undertake activity under these Rules shall be deemed to have a valid licence for 2 years and would then need to apply for renewal.

(3) Any person or business that intends to apply for a scrap metal licence, unless the application is for the renewal of a scrap metal licence currently in force, must give notice of such intention in accordance with subrule (4).

(4) A notice of intention must be substantially in the form set out in Schedule 1 and must be published in the Gazette at least 14 days before the application is made.

(5) A scrap metal licence application or renewal must be accompanied by–

- (a) a copy of the applicant's waste licence and registration under Part VA of the Public Health Act;
- (b) if the applicant is an individual, the full name, date of birth and usual place of residence of the applicant;
- (c) if the applicant is a company, the name and registered number of the applicant and the address of the applicant's registered office;
- (d) if the applicant is a partnership, the full name, date of birth and usual place of residence of each partner;
- (e) the full name, date of birth and usual place of residence of each individual proposed to be named in the scrap metal licence as a site manager (other than the applicant);
- (f) any proposed trading name;

- (g) the contact telephone number and e-mail address of the applicant;
 - (h) the address of the proposed site at which the applicant intends to carry on business as a scrap metal dealer;
 - (i) details of any conviction of the applicant or site manager for a relevant offence, or any relevant enforcement action taken against the applicant; and
 - (j) payment of the fee charged by the Environmental Agency for the issuing of the scrap metal licence.
- (6) If an application to renew a scrap metal licence is received before the scrap metal licence expires, the scrap metal licence continues in effect and—
- (a) if the application is withdrawn, the scrap metal licence expires at the end of the day on which the application is withdrawn;
 - (b) if the application is refused, the scrap metal licence expires when no appeal is possible in relation to the refusal or any such appeal is finally determined or withdrawn; or
 - (c) if the scrap metal licence is renewed, it expires at the end of the period of 2 years beginning with the day on which it is renewed.
- (7) Pursuant to this rule an applicant who knowingly or recklessly makes a statement which is false in any material particular is guilty of an offence and is liable on summary conviction, to imprisonment for 6 months or a fine not exceeding level 3 on the standard scale, or to both.

Issuing of scrap metal licences.

6.(1) The Environmental Agency will not issue or renew a scrap metal licence unless it is satisfied that the applicant is a suitable person or business to carry on trade as a scrap metal dealer.

- (2) The suitability of an applicant is determined by considering—
- (a) whether the applicant or any site manager has been convicted of any relevant offence;
 - (b) whether the applicant or any site manager has been the subject of any relevant enforcement action;

- (c) any previous refusal or revocation of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal);
 - (d) any previous refusal of an application for a relevant environmental reason (and the reasons for the refusal); and
 - (e) whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of these Rules are complied with.
- (3) In determining whether a company is a suitable person to carry on business as a scrap metal dealer, the Environmental Agency will have regard, in particular, to whether any of the following is a suitable person-
- (a) any director of the company;
 - (b) any secretary of the company;
 - (c) any shadow director of the company (that is to say, any person in accordance with whose directions or instructions the directors of the company are accustomed to act).
- (4) The Environmental Agency may consult other persons or departments regarding the suitability of an applicant, in particular—
- (a) the Department of the Environment;
 - (b) the Trade Licensing Authority;
 - (c) the Gibraltar Courts Service; and
 - (d) the Royal Gibraltar Police.
- (5) An individual may be named in a licence as site manager at more than one site, but no site may have more than one site manager.

Duration, revocation and variation of scrap metal licence.

7.(1) Unless revoked, a scrap metal licence remains in force for 2 years beginning on the day when it is issued or renewed by the Environmental Agency.

- (2) The Environmental Agency may revoke a scrap metal licence if it is satisfied that—
- (a) the licensee does not carry on business as a scrap metal dealer;

- (b) the licensee does not carry on business at any of the sites identified in the licence;
 - (c) a site manager named in the licence does not act as site manager at the site identified in the licence;
 - (d) the licensee is no longer a suitable person to carry on business as a scrap metal dealer; or
 - (e) the licensee has breached any of the provisions of these Rules.
- (3) If the licensee or any site manager has been convicted of an offence, the Environmental Agency may vary the scrap metal licence to include one or both of the following conditions–
- (a) that the scrap metal dealer must not receive, collect or handle scrap metal except between the hours of 9am and 5pm on any day; and
 - (b) that all scrap metal received, collected or handled must be kept in the form in which it is obtained for a period of 72 hours, beginning with the time when it is received.

Register of scrap metal licences.

- 8.(1) The Environmental Agency must maintain a register of all scrap metal licences issued.
- (2) The register must be open for inspection to the general public.
- (3) Each register entry must record–
- (a) the name of the licensee;
 - (b) any trading name of the licensee;
 - (c) the address of any site identified in the licence;
 - (d) the type of licence pursuant to rule 4(9); and
 - (e) the date on which the scrap metal licence is due to expire.

Conditions applicable to dealing in scrap metal.

- 9.(1) Scrap metal dealers must notify the Environmental Agency as soon as reasonably possible of any changes which materially affect the accuracy of the information provided in connection with the issued scrap metal licence or application.

(2) If a licensee carries on business under a trading name, the licensee must notify the Environmental Agency of any change to that name at least 28 days prior to the change occurring.

(3) A person who fails to comply with this rule is guilty of an offence and is liable on summary conviction, to imprisonment for 6 months or a fine not exceeding level 3 on the standard scale, or to both.

Display of scrap metal licence.

10.(1) A licensed scrap metal dealer must display—

- (a) in a conspicuous place at each licensed site, in an area accessible to the general public, a copy of the relevant scrap metal licence;
- (b) in a conspicuous place at the entrance to the site, in an area accessible to the general public, a sign, substantially in the form set out in Schedule 2; and
- (c) if the scrap metal dealer is a mobile collector or motor-vehicle salvage operator, a copy of the scrap metal licence on any motor-vehicle that is being used in the course of the scrap metal dealer's business and which must be displayed in a manner in which it can reasonably be seen and read by a person outside the motor-vehicle.

(2) A scrap metal dealer who fails to comply with this rule is guilty of an offence and is liable on summary conviction, to imprisonment for 6 months or a fine not exceeding level 3 on the standard scale, or to both.

Verification of supplier's identity.

11.(1) A scrap metal dealer must not receive scrap metal from a person without verifying the person's full name and address.

(2) Any verification must be by reference to documents, data or other information obtained from a reliable and independent source.

(3) If a scrap metal dealer receives scrap metal in breach of subrules (1) and (2), each of the following is guilty of an offence—

- (a) the scrap metal dealer;
- (b) if the metal is received at a site, the site manager; and

- (c) any person who, under arrangements made by a person within paragraphs (a) or (b), has responsibility for verifying the name and address of the supplier.

(4) A person who contravenes subrules (1) and (2) is liable on summary conviction, to imprisonment for 6 months or a fine not exceeding level 3 on the standard scale, or to both.

(5) It is a defence for a person charged with an offence under subrule (4) to prove that reasonable steps had been taken to ensure that the scrap metal was not received in breach of this rule.

(6) A person who supplies scrap metal to a scrap metal dealer and knowingly gives false information is guilty of an offence and is liable on summary conviction, to imprisonment for 6 months or a fine not exceeding level 3 on the standard scale, or to both.

Sales, records and disposal of scrap metal.

12.(1) Whenever a scrap metal dealer receives scrap metal they must issue a receipt and record the following information—

- (a) the description of the metal, including its type (or types if mixed), form, condition, weight and any marks identifying previous owners or other distinguishing features;
- (b) the date and time of its receipt;
- (c) if the metal is delivered in or on a motor-vehicle, the licence plate of the motor-vehicle;
- (d) if the metal is received from a person, the full name and either the address of that person or a passport photo identifying that person;
- (e) if the scrap metal dealer pays for the scrap metal, the full name of the person who makes the payment acting for the scrap metal dealer.

(2) The scrap metal dealer must keep in a legible format and readily available for inspection, for a minimum period of 3 years, a copy of—

- (a) the recorded information in subrule (1);
- (b) any document which is used to verify the name or address of any person who supplied the scrap metal; and
- (c) any cheque or receipt used or issued after paying for the scrap metal,

(3) A scrap metal dealer who knowingly or recklessly buys or sells stolen scrap metal is guilty of an offence and is liable on summary conviction, to imprisonment for 12 months or a fine not exceeding level 5 on the standard scale, or to both.

(4) If a scrap metal dealer alters or disposes of any scrap metal, the scrap metal dealer must record the following information—

- (a) the description of the scrap metal, including its type (or types if mixed), form and weight;
- (b) the date and time of its alteration or disposal;
- (c) if the disposal is to another person, the full name and address of that person;
- (d) if the scrap metal dealer receives payment for the scrap metal (whether by way of sale or exchange), the price or other consideration received.

(5) Pursuant to subrule (4)(c) a scrap metal dealer who disposes of scrap metal by giving it to someone else must ensure that the person receiving the scrap metal is also licensed under these Rules.

(6) For the purposes of these Rules, scrap metal is disposed of—

- (a) whether or not it is in the same form in which it was received;
- (b) whether or not the disposal is to another person; and
- (c) whether or not the metal is despatched from a site.

(7) If a scrap metal dealer disposing of the scrap metal is acting under the authority of a collector's licence, the scrap metal dealer must record the following information—

- (a) the date and time of the disposal; and
- (b) if the disposal is to another person, the full name and address of that person.

(8) If a scrap metal dealer fails to fulfil any requirement under this rule, each of the following is guilty of an offence—

- (a) the scrap metal dealer;

- (b) if the scrap metal is received at or (as the case may be) despatched from a site, the site manager; and
- (c) any person who, under arrangements made by a person within paragraphs (a) or (b), has responsibility for fulfilling the requirement.

(9) It is a defence for a person who is charged with an offence under this rule to prove that the person—

- (a) made arrangements to ensure that the requirement was fulfilled; and
- (b) took all reasonable steps to ensure that those arrangements were complied with.

(10) With the exception of subrule (3), a person that is guilty of an offence under this rule is liable on summary conviction, to imprisonment for 9 months or a fine not exceeding level 4 on the standard scale, or to both.

Refusal of scrap metal licence and appeal.

13.(1) Where the Environmental Agency refuses to grant or renew a scrap metal licence or revokes or varies the scrap metal licence—

- (a) it must inform the applicant in writing of its decision; and
- (b) set out the reasons for the decision.

(2) An applicant may appeal in writing to the Magistrate's Court within 30 days after receiving notice under subrule (1).

(3) On an appeal under this rule, the Magistrate's Court may—

- (a) confirm, vary or reverse the decision of the Environmental Agency; and
- (b) give such directions as it considers appropriate having regard to the provisions of these Rules.

Right to enter premises and production of licences.

14.(1) Any member of the Environmental Agency, Department of the Environment, or any person authorised in writing by the Minister, may on production of evidence of his identity and authority (henceforth known as "scrap metal officer") enter and inspect any premises which there are reasonable grounds to believe is being used in the course of business dealing in scrap metal.

(2) A scrap metal officer may request a scrap metal dealer to produce a valid scrap metal licence during the inspection.

(3) If a scrap metal dealer fails to produce a valid scrap metal licence upon being lawfully required to do so under subrule (2) or hinders or obstructs the procedure set out in subrules (1) or (2) the scrap metal dealer is guilty of an offence and is liable on summary conviction, to imprisonment for 9 months or a fine not exceeding level 4 on the standard scale, or to both.

(4) If the Environmental Agency is satisfied that a specific premises—

- (a) are being used by a scrap metal dealer in the course of business, and
- (b) that the premises are not a licensed site,

they may issue a closure notice.

(5) A closure notice must—

- (a) state that the Environmental Agency is satisfied pursuant to subrule (4);
- (b) state the reasons for their satisfaction;
- (c) state that the Environmental Agency may apply to the court for a closure order pursuant to subrule (7); and
- (d) specify the steps which may be taken to ensure that the alleged use of the premises ceases.

(6) The Environmental Agency may cancel a closure notice at any point if they are provided with evidence to prove that the premises are licenced.

(7) Where a closure notice has been issued, the Environmental Agency may apply to the Magistrates Court for a closure order.

(8) Pursuant to subrule (7) the Magistrates Court may make a closure order as it considers appropriate, and may in particular require—

- (a) that the premises be closed immediately to the general public and remain closed;
- (b) that the use of the premises by a scrap metal dealer in the course of business be discontinued immediately; and

- (c) that any defendant pays into court such sum as the court determines and that the sum will not be released by the court to that person until the other requirements of the order are met.

(9) A scrap metal dealer may appeal to the Supreme Court against a closure order within the period of 21 days beginning with the day on which the decision of the Magistrates Court is given.

(10) A person is guilty of an offence if the person, without reasonable excuse—

- (a) permits premises to be open in contravention of a closure order; or
- (b) otherwise fails to comply with, or does an act in contravention of a closure order.

Offences by body corporate.

15. Where any offence under these Rules is committed by a body corporate and is proved—

- (a) to have been committed with the consent or connivance of a director, manager, secretary or other similar officer; or
- (b) to be attributable to any neglect on the part of any such individual,

the individual as well as the body corporate is guilty of the offence and is liable on summary conviction, to imprisonment for 12 months or a fine not exceeding level 5 on the standard scale, or to both.

SCHEDULE 1

NOTICE OF INTENTION TO APPLY FOR A SCRAP METAL LICENCE

I/We _____ intend to file an application with the Environmental Agency for the provision of a scrap metal licence pursuant to the Public Health (Scrap Metal Dealers) Rules 2014.

I/We confirm that all material facts provided in the application package are true to the best of my/our knowledge and confirm that I/We fully understand that any incorrect material fact may be cause for the imposition of penalties or refusal of the scrap metal licence.

I/We further confirm that I/We already hold a waste licence pursuant to Part VA of the Public Health Act.

Name of applicant: _____

Address of applicant: _____

Signature of applicant: _____

Date:

1950-07

Public Health

2014/169

Public Health (Scrap Metal Dealers) Rules 2014

SCHEDULE 2

SCRAP METAL LICENCE SIGN

The size of the sign that needs to be displayed at the entrance to a scrap metal site must be no less than 20 centimetres in height and 15 centimetres in width.

The sign must contain the words “licensed dealer in scrap metal” which must be in English and with characters that can be easily read by persons entering the site.