

Scrap Metal Dealers Act 2013 Enforcement Guide

This guide sets out the new enforcement powers and tools that will be available to councils, and in some instances the police, under the new Scrap Metal Dealers Act¹ 2013. It forms part of a set of guides to help councils understand their responsibilities under the new Act, and it is important to remember that the Act is not the only way in which you can take action to support responsible businesses and prevent crime.

The other guides² are:

- Applications guide: An explanatory note on how the new applications process will work and be managed
- Fees guide: A toolkit that assists with the setting of licence fees that comply with the requirements of the EU Services Directive and the Provision of Services Regulations 2009
- Getting in on the Act: A short outline of the new Act and how it differs from the 1964 Act
- Councillor handbook: A guide to help councillors to understand their role and responsibilities in tackling instances of metal theft
- Tackling metal theft toolkit: A toolkit that outlines additional strategies and tools that go beyond the limitations of the 2013 Act and can be used more broadly to tackle instances of metal theft.

Should you have any questions please contact either Mark Norris (mark.norris@local.gov.uk) or Ian Leete (ian.leete@local.gov.uk) at the LGA.

Principles of enforcement

One person's regulation or red tape is another's protection and councils will need to strike a balance in their approach. The LGA's "Vision for local regulation"³ and the Regulators Code⁴ set out the standards that all good regulators are expected to meet.

Theft of scrap metal has been consistently recognised as an issue of national importance and there is strong support for a rigorous enforcement regime to discourage opportunistic thieves, organised crime and illegal practices.

¹ See <http://www.legislation.gov.uk/ukpga/2013/10/contents> for the Act itself

² All guides are available on <http://www.local.gov.uk/publications>

³ <http://www.local.gov.uk/web/guest/regulatory-services-and-licensing>

⁴ <http://www.bis.gov.uk/brdo/>

In doing so, regulators must recognise that legitimate and responsible dealers make a significant contribution to the UK economy – over £11 billion in 2011. The scrap metal industry is itself often a victim of crime and, through membership associations such as the British Metals Recycling Association (BMRA), expressed strong support for the new Act and a tough enforcement regime. The industry itself may therefore be an important source of intelligence about illegal or improper activities.

Where dealers are found to not comply with the Act and it is unlikely that it is a deliberate attempt to circumvent the law, regulators should aim to provide advice and guidance to help them comply in the first instance.

Planning enforcement activity

The new Act provides increased scope for joint enforcement operations between councils, the police, the Environment Agency, Natural Resource Wales, and even making use of the utility companies' own liaison work with metal dealers. Effective enforcement will rely on effective networks and sharing of both intelligence and resources.

Councils may also wish to conduct awareness campaigns with householders and local businesses to make them aware that any dealer offering to pay with cash is acting illegally. This should be placed in the context of reducing incidences of metal theft. It is important to remember that the cost of this activity cannot be recovered through fees.

Any inspections should be intelligence-led and risk based. It may be appropriate to conduct a greater number of inspections or visits in the first year of a licence to ensure that the newly licensed business understands its obligations and is delivering on them. However, the necessity of this should decrease over the 3 year period of the licence and consideration should be given to reducing the frequency of inspections, or achieving the objective through other means. Any fees set for the licence should reflect this.

As a matter of course it will be worth checking the Environment Agency/Natural Resources Wales public registers to see if they have taken any relevant enforcement action. Searching through the Environment Agency website provides an easy means of doing this.

This will not however show any on-going enforcement action, and the only way to check that is through directly contacting Environment Agency/Natural Resources Wales officers. Both agencies have made available dedicated e-mail addresses for councils to contact them with any enforcement enquiries or to share local intelligence. English authorities can contact the Environment Agency through national.intelligence@environment-agency.gov.uk and Welsh authorities can contact NRW through NRWIntel@wales.gsi.gov.uk.

The British Transport Police continue to lead on tackling metal theft across the country, but most forces now operate either Operation Tornado or a local equivalent and council officers will wish to develop close links with their frontline officers.

Responsibilities

As with any licensing or regulatory system, it is first and foremost the responsibility of the business to ensure that they comply with the legislation; and the role of the enforcement agencies is to ensure that they are doing so, either through the provision of advice and improvement support or ultimately through fines and legal action.

Scrap metal dealer responsibilities:

Displaying the licence – s10

For sites, the licence holder must:

- display a copy of the licence at each site covered by the licence
- display the licence or copy of the licence in a prominent place that is accessible by the public

For mobile collectors, the licence holder must:

- display a copy of the licence on any vehicle that is being used in the course of the dealer's business
- display the licence or copy of the licence in a way that enables it to be easily read from outside of the vehicle

Failure to comply with any of these conditions is an offence and will be fined an amount not exceeding level 3 of the standard scale⁵.

It is important to note that the legislation specifically allows for display of a *copy* of a licence and does not require the original to be available. The LGA has developed template licences which are available at the end of this guide. Councils may also choose to develop their own form of licence that meets the requirements of the Act.

Duty on licence holder to verify supplier's identity – s11

Verification of the identity of the person selling the metal is a fundamental part of the Scrap Metal Dealers Act. It is this that provides the major deterrent against opportunistic metal theft and it is therefore crucial that elements relating to this and recording the metal received are rigorously and robustly enforced. If you do not have existing enforcement notices, then the Forest of Dean have shared their enforcement

⁵ £1000 in July 2013 <http://www.legislation.gov.uk/ukpga/1982/48/part/III/crossheading/introduction-of-standard-scale-of-fines>

notices with councils⁶ and these can be used where the recording standards are found to be insufficient to ensure traceability.

The Home Office will publish guidance on the types of identification that are acceptable to prove identity. It is expected that there will be different levels of proof required for individual sellers, regular suppliers, delivery drivers, and companies.

To verify the identity of a **company**, it is likely that a scrap metal dealer will need to check some or all of the following information:

- The company's bank account details on letter head or other company documentation
- Company registration number if it is a limited company and this must be checked with Companies House (all limited companies in England, Wales, Scotland and Northern Ireland are registered at Companies House)
- Company VAT number and this must be checked for validity (this can be checked by entering the VAT number on-line via the European Commission website http://ec.europa.eu/taxation_customs/vies/)

For a company that is made up of a **sole trader** or a **partnership** and cannot provide a company registration number or VAT number, a scrap metal dealer will verify the identification by using the same documents as for the individual seller.

In the case of deferred payment account terms it will be appropriate for those full checks to be carried out once and kept on record, with a check of the driver's photocard driving licence being sufficient on subsequent deliveries.

It is an offence for a dealer not to obtain and verify the seller's identity, and also an offence for the seller to give a false name or address.

Ban on cash transactions – s12

There will be no circumstances where cash may be paid for metal following the commencement of the Scrap Metal Dealers Act 2013. There was an exemption for s3(1) registered itinerant traders, now referred to as 'mobile collectors', under the Legal Aid, Sentencing and Punishment of Offenders Act but this ends with the commencement of the Scrap Metal Dealers Act 2013.

The LGA and Home Office are aware of instances where scrap metal dealers have registered as a Money Service Business and then cash the cheques they have just issued. The requirements to run a cheque cashing business are quite stringent and this provides the level of traceability of the transactions that are needed to make it easier for the police to track down criminals.

If the dealer is in breach of the requirements around cheque cashing then they could be prosecuted for money laundering by HMRC. These prosecutions are highly costly

⁶ See LGA Tackling Metal Theft Toolkit http://www.local.gov.uk/web/guest/publications/-/journal_content/56/10171/3376193/PUBLICATION-TEMPLATE

and should be a deterrent to most businesses. Councils should call the customs hotline on **0800 595 000** to report misuse of these facilities.

Paying cash for second-hand cars

The second hand market for cars is a thriving one and it is one based primarily on cash. The new Act does not intend to stifle or restrict this market, but it is clear that there is potential for confusion where a car is sold for scrap, but is subsequently found to be repairable and sold as second hand.

The British Vehicle Salvage Federation have worked with the Home Office to provide the following guidance for when cash can or cannot be paid for a vehicle.

1. If a certificate of destruction (COD) is issued then cash cannot be paid.
2. If a Vehicle has a valid MOT and is drivable and a COD is not issued then cash can be paid.
3. If the vehicle has no MOT, no COD is issued and the vehicle has a genuine potential for repair and resale then cash may be paid but the purchasing member is advised to keep physical evidence of the potential to repair, however if it was later decided to scrap the vehicle this would not be illegal.
4. A member who is also an authorised treatment facility (ATF) must not simply pay cash for everything on the basis that it may repair if they have no facilities to carry out the repair and no history of selling vehicles.
5. A member who is not also an ATF is not affected by the code and can continue paying cash for all vehicles.

Record of metal received and disposed of – s13 + s14

The 1964 Act required a log book to be kept of all transactions, but the poor level of description often made it impossible to identify or track the item. The requirements have accordingly been clarified in the new Act and it is important that enforcing agencies pay careful attention to inspecting records and ensuring they are up to standard. Where this is not the case, advice should be given to assist the dealer to comply with the law.

✓ A clear description = Brass pump with 'Anchor Ltd' stamp, and approx 10m blue copper cable.

✗ A poor description = Heavy brass and cable.

It must be remembered that this requirement is intended to be proportionate and that it may not be possible to go into the same level of detail for large deliveries. In such instances, the officer must use their judgement on what constitutes a reasonable level of detail, bearing in mind that this may be challenged.

The dealer must record the following information on receipt of the metal:

- 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

- the date and time of its receipt
- if the metal is delivered in or on a vehicle, the registration mark (within the meaning of section 23 of the Vehicle Excise and Registration Act 1994) of the vehicle
- if the metal is received from a person, the full name and address of that person
- if the dealer pays for the metal, the full name of the person who makes the payment acting for the dealer.

If the dealer receives the metal from a person rather than a company, the dealer must keep a copy of any document which the dealer uses to verify the name or address of that person. If dealers wish to sell any of this information on to third parties or use it to conduct credit checks, they must be registered with the Information Commissioner's Office under the Data Protection Act. If they are not registered then this could be considered as part of the council's 'suitable person' deliberations when issuing or renewing a licence.

If the dealer pays for the metal by cheque, the dealer must keep a copy of the cheque.

If the dealer pays for the metal by electronic transfer, the dealer must:

- keep the receipt identifying the transfer, or
- the particulars identifying the transfer, if no receipt was obtained.

All records must be marked to connect them with the piece of metal to which they relate, and must be retained for a minimum of three years, beginning with the day on which the metal is received or (as the case may be) disposed of. Failure to do so is an offence and may receive a fine not exceeding level 5 on the standard scale.

Council Powers:

The 2013 Act reforms the confused powers of entry that previously existed, which allowed councils to only inspect unlicensed premises and the police only licensed sites. Council and police officers may now both inspect all types of site - both licensed and those believed to be unlicensed.

Mobile collectors

The enforcement powers in the Act focus on activity against sites, licensed or otherwise. Councils are therefore limited to checking that licences are correctly displayed in vehicles when it comes to mobile collectors. A number of organisations have raised this as a gap in the legislation and it is possible that an amendment to rectify this omission will be proposed when a suitable bill passes through Parliament.

In the meantime, police officers have considerably more scope to stop, search and inspect the vehicles of mobile collectors. In doing so, they are able to not only have

regard to the Scrap Metal Dealers Act 2013, but also wider considerations in relation to vehicle roadworthiness, possession of insurance, and correct tax status.

If the poor standard of vehicles is a local issue, then the council can consider asking for additional details on their licence form. The absence of any insurance certificate, MOT or tax disc could then inform decisions about the suitability of the applicant. The LGA recommends that this is only done where there is a widespread concern in the area.

Rights to enter and inspect – s16

Councils have a right to enter licensed premises to check that the provisions of the Act are being complied with. Councils should provide advance notice to the site manager wherever possible and seek to obtain access at a reasonable time ie during business hours.

The Act does make provision for access without notice where reasonable attempts to give notice have failed or where notification would defeat the aim of the visit or undermine the ability to protect consumers (16(2)). However, if these criteria are not met and access is required outside of 'reasonable hours', then a warrant should be secured first (16(5)).

The powers of entry cannot be used for residential premises or unlicensed sites unless a magistrate's warrant has been secured (16(3)). A magistrate's warrant will only be granted where there are reasonable grounds for believing that the premises are being used by a scrap metal dealer in the course of business.

Reasonable force would be permissible under a magistrate's warrant, but is not available under the normal power of entry (16(4)).

When attempting to gain access to sites, officers must ensure they have:

- evidence of their identity, or
- evidence of their authority to exercise those powers

These must be produced on request, and it is good practice to voluntarily show them.

Once entry to the site has been gained, officers may require the:

- production of, and inspect, any scrap metal kept at any premises
- production of, and inspect, any records kept in accordance with the receipt or disposal of metal, and any other records relating to payment for scrap metal

Officers may take copies of or extracts from any such records. A receipt should be given to the site manager for any copies or extracts that are taken under Code B of the Police and Criminal Evidence Act 1984, particularly if there is suspicion that an offence has been committed. If there is no suspicion of an offence then there should

not be a need to take copies or extracts of the records, just a note that the records have been inspected.

Officers may wish to consider taking photographic or video evidence of any scrap metal that has been inspected where there is suspicion of an offence having been committed, and to ensure that proper chains of custody are applied to that evidence as to any other.

Test purchasing

There is no formal power under the Act to conduct test purchasing activities, but these are an accepted tool in the enforcement officer's toolkit. Councils could make use of their powers under the rights to enter and inspect to conduct test purchases that ensure that the ID verification requirements are being complied with. It is good practice to notify all dealers in the area that you will be undertaking this activity over a set period of time.

In doing so, officers should have regard to guidance issued by the Surveillance Commissioner's office on covert surveillance and the Regulation of Investigatory Powers Act (RIPA). Enforcement activities should be reasonable and proportionate given the circumstances and that the actions are undertaken in order to secure compliance with the legislation.

Officers responsible for the management of test purchasing exercises should consider – in association with the local authority's policy – the provisions of section 26(2) RIPA (in particular, whether the activity is likely to result in the obtaining of private information about any person) and section 26(8) RIPA (in particular, whether the test purchaser establishes or maintains a personal or other relationship with the seller).

Clearly, in test purchasing operations, where it is the view of the manager and authorising officer that it is not likely to result in the obtaining of private information and no relationship will be established then RIPA authorisation is not required.

Case study: Intelligence suggests that a local shopkeeper is openly selling alcohol to underage customers, without any questions being asked. A trained employee or person engaged by a public authority is deployed to act as a juvenile in order to make a purchase of alcohol. In these circumstances any relationship, if established at all, is likely to be so limited in regards to the requirements of the Act, that a public authority may conclude that a CHIS or a directed surveillance authorisation is unnecessary.

However, if the test purchaser is wearing recording equipment but is not authorised as a CHIS, consideration should be given to granting a directed surveillance authorisation*.

**Covert Surveillance and Property Interference Code of Practice 2010,
Office of Surveillance Commissioners**
<http://tinyurl.com/ripatest>

*[The Protection of Freedoms Act 2012 means that directed surveillance can now only be used for crimes carrying a sentence of 6 months or more. This covers underage alcohol sales, but not offences relating to the Scrap Metal Dealers Act.]

Where a closer relationship is expected to develop, then test purchasing will need authorising as a covert human intelligence source (CHIS)⁷, including securing the approval of a magistrate. However, other enforcement agencies have greater freedom on this and a joint operation may be appropriate.

Where an enforcing authority conducts a test purchase attempt, whether or not in response to a complaint or other intelligence, the business should be notified in writing of the outcome of the test purchase attempt. Written notifications of test purchases should include the following:

- The fact that a test took place, and an indication of the time period within which the test took place. This does not require disclosure of the exact time or date though the enforcing authority may feel that it is helpful to provide this detail)
- Any reason for the test eg. as part of a survey, or in response to complaints about sales by businesses in the area or the particular business
- The premises address
- The outcome of the test
- The name of the seller, where known.

Revocations and variations of the licence – s4 + Schedule 1

Councils have the power to revoke licences where the licensee no longer trades from the site, the site manager has moved on, or, significantly, if they are no longer satisfied that the licensee is a suitable person.

Where the council is giving consideration to revoking the license, the licensee has the same rights to make representations as they do when applying for a licence. Schedule 1 of the Act sets out how the opportunity to make representations must be given, including specifying a 14 day window for the licensee to respond. Representations must be heard by a representative of the authority and the LGA recommends that this is the duly authorised licensing committee or sub-committee.

If the licensee remains unhappy with the decision then s/he can apply to a magistrates' court to consider the decision.

⁷ P6, Protection of Freedoms Act 2012 – changes to provisions under the Regulation of Investigatory Powers Act 2000 (RIPA), October 2012.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118173/local-authority-england-wales.pdf

If the licensee or any site manager named in a licence is convicted of a relevant offence (See Annex for relevant offences), the authority may vary the licence by adding one or both of the following conditions:

- that the dealer must not receive scrap metal except between 9 a.m. and 5 p.m. on any day;
- that all scrap metal received must be kept in the form in which it is received for a specified period, not exceeding 72 hours, beginning with the time when it is received.

A revocation or variation under this section comes into effect when no appeal (under paragraph 9 of Schedule 1) is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn.

No other conditions may be imposed on a licence under any circumstances. However, councils can work with dealers to agree local codes of conduct or to voluntarily undertake precautions such as the placement of CCTV⁸. The BMRA has a code of conduct that all its members sign up to, and various councils have their own codes of practice.⁹

Any revocations or variations of licences should be notified to the Environment Agency or Natural Resource Wales, as applicable, within 28 days to enable the National Register to be updated. This can be done using the standard notification method for new licences.

Closure of unlicensed sites – Schedule 2

A council officer or police officer may issue a closure notice if:

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

Again, these powers do not apply to residential premises.

The closure notice must state the reasons for closure, namely that the site is being used to carry on the business of a scrap metal dealer without a licence, and that the officer will now apply to the court for a closure order. It must also include advice on steps to take ensure that the alleged use of the premises ceases.

The notice should be given to the site manager, and/or the person who the officer believes is in charge of the site, such as a director or manager. A notice may also be given to anyone who has an interest in the premise, such as someone who shares the premises space or will be impeded by the closure of the site.

⁸ Councils should have regard to the Surveillance Camera Code of Practice when discussing CCTV with dealers.

⁹ Some examples are included in the LGA Tackling metal theft toolkit.

If the closure notice is cancelled, for any reason, then anyone given a closure notice as above must be given a copy of the cancellation notice.

Closure notices can be cancelled by a police or council officer and take effect from the moment they are issued to any one of the persons to whom the closure notice was given. Technically, either organisation can cancel a closure notice issued by the other one, but it is best practice for the authority that issued the notice to also cancel it.

Effect of closure orders

A council or police officer will need to apply to a justice of the peace for a closure order, once they have issued a closure notice.

The application cannot be made:

- less than 7 days after the date on which the closure notice was given, or
- more than 6 months after that date.

An application will not be considered valid if the officer is satisfied that the premises are not, or no longer, being used for carrying out the business of a scrap metal dealer, and/or there is no reasonable prospect of them being used as such in the future. In other words, if activity has already permanently ceased then it is unlikely that a closure order will be granted.

Officers may need to be aware of the need to explain to the justice of the peace the evidence and reasons for the closure, the powers available under the Act, and the powers available if the order is granted.

A closure order comes into effect immediately and must be prominently displayed by the complainant (the police or council) on this site.

Closure orders can be cancelled by a police or council officer, who must make out a certificate to that effect. They take effect immediately, and copies must be:

- given to any person against whom the closure order was made
- given to the designated officer for the court which made the order, and
- fixed in a conspicuous position on the premises in respect of which the order was made
- given to any person who requests one.

The magistrate's court may also cancel the closure order by issuing a discharge order, on application by any person with an interest in the premises. Council or police officers may be summoned to give information at a hearing to consider the appeal.

Appeals

An appeal may be made to the Crown Court against.

- a closure order
- a decision not to make a closure order
- a discharge order
- a decision not to make a discharge order.

Any appeal must be made before the end of the period of 21 days beginning with the day on which the order or the decision in question was made.

Enforcement of closure orders

Officers may (if necessary using reasonable force):

- enter the premises at any reasonable time, and
- having entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order.

Officers must provide evidence of their identity or authority, if requested, when carrying out these actions.

Anyone who fails, without reasonable excuse, to close their premises or intentionally obstructs officers in the exercise of these powers is guilty of an offence and liable to summary conviction and a fine not exceeding level 5 on the standard scale.

Recovering costs

Councils may charge for enforcement costs against licensed premises as part of their locally-set fee charged to dealers. They are unable to charge for enforcement costs incurred when taking action against unlicensed dealers.

However, in either case councils may wish to make use of the Proceeds of Crime Acts 1995 and 2002 to recover the costs of enforcement, as well as remove any financial benefits received by the offender as a result of their illegal activity.

Councils should also consider instigating civil recovery proceedings where it is found that the metal has been obtained through unlawful conduct. The civil law allows a business, council, or individual to seek to recover not only the value of the metal which has been stolen, but any other consequential losses.

For metal thefts, this includes the cost of associated repairs, the cost of any down time in the business or service, the cost of diversion of staff's time and all of the administrative costs. The consequential losses can in some instances, far outweigh the value of the metal stolen, and they are not elements which will usually be ordered as compensation in criminal proceedings.

It is not a question of either/or in prosecutions and there can be a criminal action and a civil action. Nor is one dependent upon the other. It is also possible for a council to pass this information on to the victim of the crime, to allow them to take action.

This approach is common practice among retailers seeking redress from shoplifting. It has proven to be particularly effective at deterring repeat offenders as they dislike

paying back the cost of what was stolen, but dislike even more paying back the consequential costs as well.

It is good practice for any money recovered in this way to be reinvested in enforcement activity against unlicensed premises, as well as campaigns raising awareness about the laws on dealing in scrap metal.

In Gwent, police officers take immediate action under s19 of PACE and the Police Property Act to confiscate the metal from unlicensed dealers and, rather than incur storage costs, immediately sell it on to legitimate and licensed dealers. This has a salutary effect on illegal dealers, as well as giving them a relevant offence that makes it difficult for them to obtain a new dealers licence.

The money from the sale is retained in a ring-fenced bank account in case of any errors, in which case the money could be returned on appeal and proof that the metal was being transported and sold legitimately. However, only one such appeal has been received to date. Any unclaimed money is then used to fund additional enforcement activity.

Councils do not have the power to confiscate metal in this way, but could establish joint enforcement protocols with their local police force. It is recommended that elected members engage in discussions with their local police and crime commissioner on this matter.

List of relevant offences

These are to be confirmed in Home Office Regulations. The LGA anticipates, based on the explanatory notes to the Scrap metal Dealers Act 2013, that these will reflect other environmental permitting schemes.

Councils may wish to consider enforcement action against any of these pieces of legislation, where appropriate, or notifying other enforcement agencies where they have responsibility for the offence.

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Template Licences

These templates set out the information that the LGA believes should appear on any licence. Most councils have systems that produce their own licences, often designed to look similar across licensing systems as a help to enforcing officers, and councils are free to use their own licences for scrap metal as well.

Mobile Collector's Licence

Please note that it is not a requirement that a photograph is included on the licence, and it will not be appropriate where the licence is issued to a company. However, for individual collectors, a number of authorities and the police have expressed their strong support for a photographic element to be included. This builds on the success of the Welsh model, where photo id has been in use for several years.

Front:

Scrap Metal Dealer Licence Council logo

Collector's Licence

Name
[Light blue input box]

Licence Number
[Light blue input box]

Licence Commencement Date
[Light blue input box]

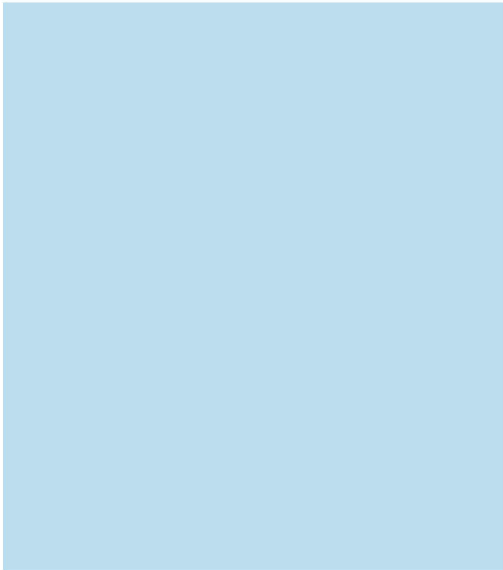
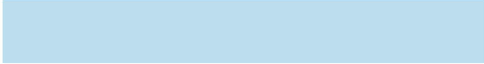


Licence Expiry Date
[Light blue input box]

Issuing Authority
[Light blue input box]

Passport photo

It is an offence to display this licence without proper authorisation.

Back:

<hr/>	
Address of council	Signed
	
	Printed name
	
	Position
	

If found please return to the council address above.