

SPECIAL ISSUE

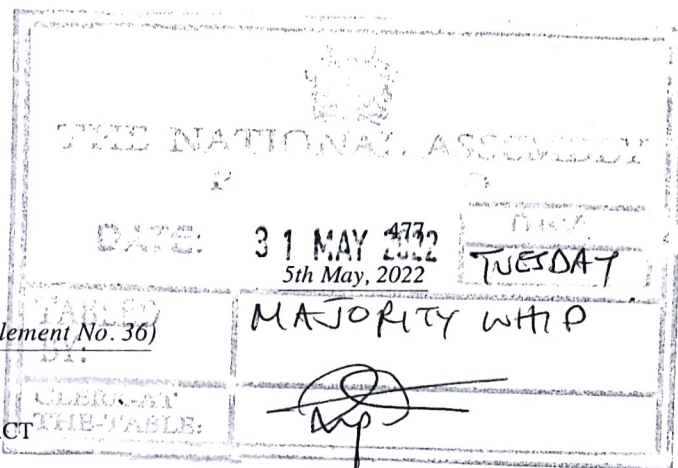
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LEGAL NOTICE NO. 84

THE SCRAP METAL ACT

(No. 1 of 2015)



IN EXERCISE of the powers conferred by section 32(1) of the Scrap Metal Act, 2015, the Cabinet Secretary for Industrialization, Trade and Enterprise Development makes the following Rules —

THE SCRAP METAL DEALERS RULES, 2022

PART I - PRELIMINARY

1. These Rules may be cited as the Scrap Metal Dealers Rules, 2022. Citation.
2. In these Rules, unless the context otherwise requires — Interpretation.
 - "Act" means the Scrap Metal Act; No. 5 of 2015
 - "agent" has the meaning assigned to it under the Act;
 - "Cabinet Secretary" means the Cabinet Secretary responsible for matters relating to industrialization;
 - "collector" means a person appointed by a licence to operate as a mobile collector in a designated area to gather, collect and buy scrap metal in order to sell to a licensed agent or dealer in quantities that do not exceed three thousand kilograms per transaction;
 - "Council" means the Scrap Metal Council established under section 3 of the Act;
 - "director" has the meaning assigned to it under the Companies Act, 2015; No. 17 of 2015
 - "dealing" has the meaning assigned to it under the Act;
 - "electrical rewinder" means a person who deals in the repair or rewinding of electric motors;
 - "inspector" has the meaning assigned to it under the Act;
 - "licence" has the meaning assigned to it under the Act;
 - "licensed dealer" has the meaning assigned to it under the Act;
 - "miller" has the meaning assigned to it under the Act;
 - "smelter" means an installation or factory for smelting a metal from its ore or a person engaged in the business of smelting"
 - "steel fabricators" means an installation or factory for the production of metal structures using a range of processes such as

cutting, bending and assembling which for the purposes of the act generates scrap metal in their processes.

“mobile collector” means a person who—

- (a) carries on business as a scrap metal dealer otherwise than at a site, and
- (b) 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.

“platinoid group” means metals that possess a silvery white colour except osmium, and includes ruthenium, rhodium, palladium, osmium, iridium, and platinum;

“rewinding” means removal or stripping of the coils of a motor and replacing them with new coils made from wire of the same type and gauge;

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

“site manager” in relation to a site at which a scrap metal dealer carries on business, means the person who exercises day-to-day control and management of activities at the site; and

“transporter” means a person appointed by an agent, dealer, or collector using a registered vehicle to transport scrap metal.

3. The objects of these Rules is to govern matters relating to dealings in scrap metal.

Objects of the Rules.

4. These Rules shall, unless otherwise provided for in the Act, apply to collectors, agents, dealers, millers, smelters, transporters, steel fabricators, stockists of second hand metal parts, motor vehicle salvage operators, electrical rewinders and local welding machine fabricators.

Application of the Rules.

PART II – SCRAP METAL COUNCIL

5. (1) When nominating members to be appointed to the Council under section 4(1) of the Act, each organization shall submit to the Cabinet Secretary the curriculum vitae of the member being nominated.

Nomination of Council members.

(2) When appointing members to the Council, the Cabinet Secretary shall ensure that no more than two-thirds of the members are of the same gender and the membership reflects regional and ethnic diversity.

6. (1) A person shall not be appointed as a chairperson of the Council unless that person —

Qualifications of Council members.

- (a) possesses a university degree in metallurgy or other relevant field from a university recognized in Kenya;
- (b) has knowledge and relevant experience of not less than ten years in a management position in the public service;
- (c) has knowledge and experience of not less than ten years in any of the following fields —

- (i) procurement and supply chain management;
 - (ii) finance;
 - (iii) law;
 - (iv) accounting; or
 - (v) economics; and
- (d) meets the requirements of Chapter Six of the Constitution.
- (2) A person shall be eligible for appointment as a member of the Council if that person —
- (a) holds a university degree from a recognized university in Kenya;
 - (b) has knowledge and relevant experience of not less than five years in a management position; and
 - (c) meets the requirements of Chapter Six of the Constitution.

PART III - ADMINISTRATION

7. (1) A person carries on business as a scrap metal dealer if the person —
- Scrap metal business.
- (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).
- (2) For the purposes of sub rule (1) (a), a manufacturer does not sell scrap metal if he or she sells scrap metal only as a by-product of the manufacturing process or where surplus material not required for manufacturing is disposed.
- (3) For the purposes of sub-rule (1) (b), a person carries on business as a motor salvage operator if the business 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 vehicle for scrap;
 - (b) wholly or mainly, in buying written-off 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 set out in paragraphs (a) or (b); or
 - (d) wholly or mainly, of any activities falling within paragraphs (a) or (b).
8. (1) Persons dealing in scrap metal shall include collectors, agents, millers, smelters, transporters, steel fabricators, stockists of second hand metal parts, motor vehicle salvage operators, electrical rewinders and local welding machine fabricators.
- Scrap metal dealers.

(2) The respective persons under sub rule (1) shall pay to the Council the fees set out in the Schedule.

(3) The Council shall publish a list of all persons licensed to deal in scrap metal on it's website.

9. ~~(1) Where a person applies for a licence under section 10 of the Act, before the Council makes a decision, the inspectors appointed under rule 30 shall inspect the proposed business premises and vet the applicants to establish suitability for purposes of licensing.~~

Application of
licence.

(2) The licence shall be in respect to the person and premises for carrying on scrap metal dealings.

(3) The application for a licence shall specify and be accompanied by the following —

- (a) in the case of an individual, the full name, date of birth, postal address, telephone or mobile number, place of residence, copy of the national identification card, Kenya Revenue Authority personal identification number, tax compliance certificate, certificate of good conduct of not more than six months and physical location and physical address of the business;
- (b) in the case of a partnership —
 - (i) the name, physical location, postal address, telephone or mobile number of the business and partnership deed; and
 - (ii) for each of the partners, the full name, date of birth, copy of the national identification card, Kenya Revenue Authority personal identification number, tax compliance certificate, certificate of good conduct of not more than six months, postal address, telephone or mobile number and place of residence;
- (c) in the case of a company, the name and registration certificate, Kenya Revenue Authority personal identification number, tax compliance certificate, company directorship details (Form CR12), company address and contact details including email, mobile and telephone number;
- (d) the physical address (Land Registry Number and the road) at which the applicant carries on the business of collecting, buying, selling or smelting scrap metal;
- (e) the details of relevant environmental permit or registration indicating any applicable environmental impact assessment of the business premises and waste management certificate or a summary project report as provided under the Environmental (Impact Assessment and Audit) Regulations, 2003; and
- (f) the applicant's membership certificate to a scrap metal dealers association.

L.N. 101/2003

(4) The application for licensing shall be accompanied by proof of payment of the prescribed fees.

(5) The application shall be submitted to the Council through the Council's website.

10. (1) Every person who deals with copper, aluminum or their alloys shall be vetted separately.

Provision relating to copper, aluminum or their alloys.

(2) A separate register for copper, aluminum or their alloys shall be maintained by licensed dealers in copper, aluminum or their alloys.

(3) Any premises where dealings in copper, aluminum or their alloys are undertaken shall have strict enhanced features including closed circuit television cameras.

11. (1) The Council may at any time request that the applicant to provide such further information as the Council considers relevant for the purpose of considering the application for a licence.

Further information.

(2) If an applicant fails to provide information requested under sub-rule (1), the Council may decline to proceed with the application.

12. An applicant who in an application or in response to a request under made under rule 11 —

Making false statement.

(a) makes a statement knowing it be false in a material particular, or

(b) recklessly makes a statement which is false in a material particular,

commits an offence and is liable on conviction to the penalty provided in section 31 of the Act.

13. (1) A licence issued by the Council under section 11 of the Act shall specify —

Form of licence.

(a) the name of the licensee;

(b) the business premises authorized for undertaking scrap metal dealings and in particular specify the land registration number and road on which the premises is located; and

(c) the date of expiry of the licence.

(2) A licence issued under the Act authorizes the licensee to carry on business on any premises authorized by the Council.

(3) The Council shall issue only one licence with respect to an applicant.

14. (1) The Council shall not issue or renew a licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer.

Issue of licence.

(2) In determining whether the applicant is a suitable person, the Council shall take into account the conditions specified under section 10(4) of the Act.

(3) Notwithstanding the generality of sub rule (2), the Council shall consider the following information —

(a) whether the applicant has been the subject of any relevant enforcement action;

- (b) any previous refusal of an application for the issue or renewal of a scrap metal licence and the reasons for the refusal;
- (c) any previous refusal of an application for a relevant environmental permit or registration and the reasons for the refusal;
- (d) any previous revocation of a scrap metal licence and the reasons for the revocation; or
- (e) whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of the Act are complied with.

(4) In determining whether a company is a suitable person as provided in sub-rules (2) and (3), the Council shall consider whether any of the following officers is a suitable person —

- (a) a director of the company; and
- (b) the company secretary of the company.

(5) In determining whether a partnership is a suitable person as provided in subrules (2) and (3), the Council shall consider whether each of the partners is a suitable person.

(6) The Council shall take into account any guidance issued by the Cabinet Secretary for purposes of determining suitability under these Rules.

(7) The Council may consult other entities or persons regarding the suitability of an applicant, including in particular—

- (a) any devolved unit;
- (b) the National Environment Management Authority;
- (c) the National Police Service;
- (d) a national government administrative officer;
- (e) an industrial development officer; and
- (f) an inspector gazetted by the Cabinet Secretary pursuant to the Act.

(8) Where the applicant has been convicted of a relevant offence, the Council may include in the licence one or both of the following conditions—

- (a) that the dealer shall not receive scrap metal except between 9 a.m. and 5 p.m. on any day;
- (b) that all scrap metal received shall be kept in the form in which it is received for a specified period, minimum of seven days, commencing on the date when it is received.

15. (1) If the Council proposes —

- (a) to refuse an application made for the issuance or renewal of a licence; or

Right to make representations.

(b) to revoke or vary a licence issued under the Act,

the Council shall give the applicant or licensee a notice which sets out what the Council proposes to do and the reasons for it.

(2) A notice under sub-rule (1) shall state that, within the period specified in the notice, the applicant or licensee may either —

- (a) make representations about the proposal, or
- (b) inform the Council that the applicant or licensee wishes to make representations.

(3) The period specified in the notice shall be not less than fourteen days from the date on which the notice is given to the applicant.

(4) The Council may decline the application for a licence, or revoke or vary the licence, if —

- (a) within the period specified in the notice, the applicant or licensee informs the Council that he or she does not wish to make representations, or
- (b) the period specified in the notice expires and the applicant or licensee has not made representations or informed the Council that he or she intends to make the representations.

(5) Where, within the period specified in the notice, the applicant or licensee informs the Council that he or she wishes to make representations, the Council —

- (a) shall allow the applicant or licensee a further reasonable period to make representations, or
- (b) may refuse the application, revoke or vary the licence, if the applicant or licensee fails to make representations within that period.

(6) If the applicant or licensee makes representations within the period specified in the notice or within the further period under sub rule (5), the Council shall consider the representations.

(7) If the applicant or licensee informs the authority that he or she wishes to make oral representations, the Council shall give the applicant or licensee the opportunity of appearing before and being heard by the Council.

16. (1) Where the Council declines to issue a licence under section 10(3) and (4) of the Act, the Council shall notify the applicant of the refusal and reasons for the refusal within thirty days from the date of the submission of the application.

(2) The notification under sub-rule (1) shall give the applicant fourteen days from the date of the notice to lodge an appeal to the Cabinet Secretary.

(3) A notice under this rule shall state —

- (a) that the applicant or licensee may appeal against the decision of the Council;

Notice of decision of Council.

- (b) in the case of a revocation or variation, the date on which the revocation or variation is to take effect.

17. (1) Pursuant to section 10(4) and 14 of the Act, an applicant may appeal to the Cabinet Secretary where the Council —

Appeal to the
Cabinet Secretary.

- (a) refuses to grant or renew a licence; or

- (b) imposes a condition on the licence.

(2) A licensee may appeal to the Cabinet Secretary against—

- (a) the inclusion of a condition in a licence; or

- (b) the revocation or variation of a licence.

(3) An appeal under this rule shall be made within twenty one days of receipt of the notice of the decision of the Council by the applicant.

(4) The Cabinet Secretary may —

- (a) confirm, vary or reverse the Council's decision; and

- (b) give such directions as he or she considers appropriate.

(5) The Council shall comply with any directions given by the Cabinet Secretary under sub-rule (4).

18. (1) Pursuant to section 11 (b) of the Act, a licence expires at the end of the period of one year beginning with the day on which it is issued or renewed.

Term of licence.

(2) Where an application to renew a licence is received before the licence expires, the licence continues in effect and —

- (a) if the application is withdrawn, the licence expires at the end of the day on which the application is withdrawn;

- (b) if the application is denied, the licence expires when an appeal under section 15 of the Act is finally determined or withdrawn; or

- (c) if the licence is renewed, it expires at the end of the period of one year beginning on the date it is renewed.

19. (1) The Council may on application vary a licence if there is a change in licensed business premises as provided in sections 11(d) and 13(2) of the Act.

Variation of licence.

(2) The application shall contain particulars of the changes to be made to the licence.

(3) The applicant shall pay the prescribed fees set out in the Sixth Schedule to the Act.

(4) A licensee who fails to comply with this rule commits an offence and is liable on conviction to the penalty set out section 20(4) of the Act.

(5) It is a defence for a person charged with an offence under this rule to prove that he or she took all reasonable steps to avoid committing the offence.

20. The Council may revoke a licence issued under this Act where—

Revocation of licence.

- (a) the licensee is an undischarged bankrupt or is a company in liquidation;
- (b) the business premises are not suitable for carrying out scrap metal business and the applicant has not demonstrated that there will be adequate procedures in place to ensure that the provisions of the Act shall be complied with;
- (c) the licensee makes a statement knowing it is false in the application for licensing; or
- (d) the licensee prevents inspectors from accessing the business premises.

21. (1) An applicant for a licence, renewal or variation of a licence, shall notify the Council of any changes which materially affect the accuracy of the information which he or she has provided relating to the application.

Notification requirements.

(2) A licensee who is no longer carrying on business as a scrap metal dealer in the premises authorized by the Council shall notify the Council of that fact.

(3) A notification under sub rule (2) shall be given within twenty eight days of the change of premises.

(4) Where a licensee carries on business under a new name, the licensee shall notify the Council of any change to the name.

(5) A notification under sub rule (4) shall be given within twenty eight days of the change of name.

(6) An applicant or licensee who fails to comply with this rule commits an offence and is liable on conviction to the penalty provided in section 20(4) of the Act.

(7) It is a defence for a person charged with an offence under this rule to prove that he or she took all reasonable steps to avoid committing the offence.

22. (1) A licensed dealer shall conspicuously display a copy of the licence at each site specified in the licence.

Display of licence.

(2) A licensed dealer who fails to comply with sub-rule (1) commits an offence and is liable on conviction to the penalty provided in section 31 of the Act.

23. (1) Pursuant to section 16 of the Act, every licensee shall conspicuously display a signboard within his or her premises which shall —

Display of signboard.

- (a) display the full business name of the licensee;
- (b) display the licence number;
- (c) bear the words "LICENSED SCRAP METAL DEALER" in capital letters;
- (d) be a minimum of 6ft in width and 4ft in height; and
- (e) display the logo of the Council.

(2) This rule shall not apply to a person who internally generates scrap metal as a result of their internal processes.

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

Verification of suppliers identity.

(2) The verification under sub rule (1) shall be by reference to documents, data or other information obtained from a reliable and independent source.

(3) Where a licensed dealer receives scrap metal in breach of sub rule (1), each of the following commits an offence—

- (a) the licensed dealer;
- (b) if the metal is received at a site, the site manager; and
- (c) any person who, pursuant to administrative arrangements made by the person set out in paragraphs (a) or (b), has the responsibility of verifying the name and address required under sub-rule (1).

(4) It is a defence for a person who is charged with an offence pursuant to sub-rule (3) to prove that he or she —

- (a) made arrangements to ensure that the metal was not received in breach of sub-rule(1), and
- (b) took all reasonable steps to ensure that those arrangements were complied with.

(5) Any person who fails to comply with this rule commits an offence and is liable on conviction to the penalty provided in section 18(3) of the Act.

(6) A person who, on delivering scrap metal to a licensed dealer, gives a false name or false address, commits an offence and is liable on conviction to the penalty provided in section 18(3) of the Act.

25. Every entry required to be prepared or kept under rules 26 and 27 shall be deemed, unless the contrary is shown, to have been made with the authority of the respective licensee.

Presumption as to records.

26. (1) This rule applies if a licensed dealer receives any scrap metal in the course of the dealer's business.

Record of receipt of scrap metal by licensee.

(2) All licensed dealers shall keep records of all receipts of any scrap metal acquired in the course of the business.

(3) The licensed dealer shall 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 vehicle, the registration details of the vehicle, personal identification details and mobile phone contacts of the driver;
 - (d) if the metal is received from a person, the full name, identification card copy, mobile contacts and address of that person;
 - (e) if the dealer pays for the metal, the full name of the person who makes the payment acting for the dealer;
 - (f) the previous use of the scrap metal; and
 - (g) the consideration of the transaction.
- (4) Every entry shall be made at the time of the transaction.
- (5) The record shall be —
- (a) signed by the licensee and person delivering the scrap metal; and
 - (b) availed for inspection by an authorized person whenever required.
- (6) The licensee shall make quarterly returns to the Council at least ten days after the end of each quarter.
- (7) No licensee shall allow scrap metal whose origin is unknown into his or her licensed premises or otherwise.
- (8) The licensee shall keep the record under this rule for a minimum of seven years.
- (9) Any licensee who fails to comply with this rule commits an offence and is liable on conviction to the fine provided in section 23(2) of Act.
- (10) The licensed dealers shall automate their record keeping systems for real time monitoring and submission of returns to the Council within one year from the date of publication of these Rules.
- (11) Where a licensed dealer pays for the scrap metal by —
- (a) cheque, the licensed dealer shall keep a copy of the cheque; or
 - (b) electronic transfer, the licensed dealer shall keep the receipt identifying the transfer, or if no receipt identifying the transfer was obtained, the licensed dealer shall record particulars identifying the transfer.
- (12) All transactions of scrap metal shall be cashless.
27. (1). All licensed dealers shall keep records of all disposals of any scrap metal in the course of business.

Records for the disposal of metal.

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- (2) All disposals of scrap metal shall be made to licensed dealers.
- (3) The licensed dealers shall record the following information—
- (a) the licence number of the person or business the scrap metal is disposed to;
 - (b) the description of the scrap metal, including its type or types if mixed, form, condition, weight and any marks identifying previous owners;
 - (c) the date and time of disposal;
 - (d) where the scrap metal is ferried in or on a vehicle, the registration details of the vehicle, name, national identification card number and mobile phone contacts of driver; and
 - (e) the consideration for the transaction.
- (4) Every entry required to be made shall be made at the time of the transaction.
- (5) The records specified under this rule shall be signed by the licensee and person or business purchasing the scrap metal.
- (6) The records specified under this rule shall be availed for inspection by an authorized person whenever required.
- (7) The licensee shall make quarterly returns to the Council, at least ten days after end of each quarter.
- (8) The licensee shall keep the record specified under this rule for a maximum of seven years.
- (9) Any licensee who fails to comply with this rule commits an offence and is liable on conviction to the penalty provided in section 18(3) Act.
- (10) The licensed dealers shall automate their record keeping systems for real time monitoring and submission of returns to the Council within one year from the date of publication of these Rules.
28. (1) The information referred to in rules 26 and 27 shall be recorded in a manner that allows the information and the scrap metal to which it relates to be readily identified by reference to each other.
- (2) The records in sub rule (1) shall be marked so as to identify the scrap metal to which they relate.
- (3) The dealer shall keep the information and other records referred to in this rule for a period of three years from the day in which the metal is received or as the case may be, disposed of.
- (4) If a licensed dealer fails to comply with this rule, each of the following commits an offence —
- (a) the scrap metal dealer;
 - (b) if the metal is received at or dispatched from a site, the site manager;

Records
identification.

(c) any person who pursuant to administrative arrangements made by the person set out in paragraphs (a) or (b) has responsibility for fulfilling the requirement.

(5) It is a defence for a person who is charged with an offence pursuant to sub rule (4) to prove that he or she —

(a) made arrangements to ensure that the requirement was fulfilled, and

(b) took all reasonable steps to ensure that the arrangements were complied with.

(6) A person who fails to comply with this rule commits an offence and is liable on conviction to the penalty set out in section 18(3) of the Act.

29. (1) Any licensed dealers found dealing with scrap metal from infrastructure designed for roads, bridges, railways, pipelines, telecommunications, electricity, water and sewerage, utilities or stolen private property, shall have their licence cancelled or revoked and prosecuted.

Infrastructure.

(2) In the event that a licensed dealer comes into possession, control, is offered, or is shown any property fitting the description of vandalized infrastructure, utilities or stolen private property, the licensee shall immediately report such incident to the nearest police station or inspector and supply the name; identity card number; mobile number and address of the person or business that acquired or saw such property or infrastructure.

(3) Any person or licensed dealer who contravenes this rule commits an offence and is liable on conviction to the penalty provided in section 24(2) of the Act.

30. Pursuant to section 29(3) and (5) of the Act, the Cabinet Secretary may by notice in the Gazette appoint public officers from the following entities to be inspectors for purposes of the Act —

Appointment of inspectors.

- (a) the National Police Service;
- (b) the Kenya Railways Corporation;
- (c) the Kenya Electricity Transmission Company Limited;
- (d) the Kenya National Highways Authority;
- (e) the Kenya Urban Roads Authority;
- (f) the Communications Authority of Kenya;
- (g) the Kenya Revenue Authority;
- (h) the National Government Administrative Office;
- (i) the Office of the Director of Public Prosecutions;
- (j) the National Environment Management Authority; and
- (k) the Kenya Power and Lighting Company.

31. Where the affairs of a body corporate are managed by members, the provisions of section 28 of the Act shall apply.

Offences by bodies corporate.

32. (1) An inspector may issue a closure notice where he or she is satisfied that the business premises where scrap metal business is **being undertaken is not licensed.**

Closure notice.

(2) The notice issued under sub rule (1) shall —

- (a) specify the reasons for issuing the notice; and
- (b) indicate that the inspector may apply to the court for a closure order.

(3) The inspector shall issue the closure order to —

- (a) the person who appears to the inspector to be the site manager of the premises, or
- (b) any person who appears to the inspector to be a director, manager or other senior officer of the business,

and upload the notice in the official website of the Council.

(4) Notwithstanding sub rule (3), the inspector may give the notice to any person who has an interest in the premises.

33. (1) The Council may cancel a closure notice issued by an inspector.

Cancellation of closure notice.

(2) A cancellation notice takes effect when it is given to any of the persons to whom the closure notice was given.

(3) The cancellation notice shall be issued to any other person to whom the closure notice was given and uploaded on the official website of the Council.

34. (1) Where a closure notice has been given under these Rules, an inspector may make an application to the court for a closure order.

Application for closure order.

(2) An application under this rule shall not be made —

- (a) less than seven days after the date on which the closure notice was given, or
- (b) more than six months after that date.

(3) An application under this rule shall not be made if the inspector or Council is satisfied that —

- (a) the premises are no longer being used by a licensed dealer to undertake scrap metal business; and
- (b) there is no reasonable likelihood that the premises will be used undertake scrap metal business in the future.

35. (1) The court may grant a closure order pursuant to the application under rule 34 where it is satisfied that —

Closure order.

- (a) the premises continue to be used by a scrap metal dealer in the course of business; or

(b) there is a reasonable likelihood that the premises will be used to undertake scrap metal business in the future.

(2) A closure order may require—

- (a) that the premises be closed immediately to the public;
- (b) that the use of the premises for scrap metal business be discontinued immediately; and
- (c) that the defendant pays into court such sum as the court determines and that the sum shall not be released by the court until the other requirements of the order are met.

(3) A closure order may include such other conditions as the court considers appropriate relating to —

- (a) the admission of persons onto the premises;
- (b) the access by persons to another part of any building or other structure of which the premises form part.

(4) As soon as practicable after a closure order is made, the complainant shall fix a copy of the order in a conspicuous position in the premises.

36. (1) Any of the following persons may by apply to the court for an order that a closure order be discharged —

Discharge of closure notice by court.

- (a) any person to whom the closure notice was given under these Rules; and
- (b) any person who has an interest in the premises but to whom the closure notice was not given.

(2) The court shall not make a discharge order unless it is satisfied that there is no longer a need for the closure order.

37. (1) An appeal may be made to the court against—

Appeal of closure order.

- (a) a closure order;
- (b) a decision not to make a closure order;
- (c) a discharge order; or
- (d) a decision not to make a discharge order.

(2) Any appeal under this rule shall be made within twenty one days from the date on the order or the date the decision was made.

(3) An appeal under this rule against a closure order or a decision not to make a discharge order may be made by —

- (a) any person to whom the relevant closure notice was given under rule 32; or
- (b) any person who has an interest in the premises but to whom the closure notice was not given.

38. (1) A person commits an offence if the person, without reasonable excuse —

Enforcement of closure order.

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

(2) ~~If a closure order has been made in respect of any premises,~~
an inspector may —

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

(3) Sub-rule (4) applies if an inspector seeks to exercise powers under this rule in relation to any premises.

(4) If the owner, occupier or other person in charge of the premises requires the inspector to produce —

- (a) evidence of the inspector's identity; or
- (b) evidence of the inspector's authority to exercise those powers,

the inspector shall produce that evidence.

(5) A person who intentionally obstructs an inspector in the exercise of powers under this rule, commits an offence and liable on conviction to the penalty provided in section 30(6) of the Act.

39. (1) Every licensed dealer shall carry a certified copy of the licence of the dealer and the recipient of the scrap metal on any vehicle that is being used to transport any scrap metal.

Transportation of
scrap metal.

(2) Copies of the certified licences shall be provided when requested by an inspector.

(3) Every vehicle transporting scrap metal shall have an authorization letter from the licensee indicating the —

- (a) source of the scrap metal and destination;
- (b) type and quantity of scrap metal; and
- (c) name, identification card number and contact details of the driver.

(4) The details in sub-rule (3) shall be submitted online on the Council's portal.

(5) Every licensed dealer shall comply with the prescribed hours of operation between half-past six o'clock in the morning and half-past six o'clock in the evening for the purposes of transporting scrap metal.

(6) A scrap metal dealer who does not comply with this rule commits an offence and is liable on conviction to the penalty provided in section 31 of the Act.

PART IV - MISCELLANEOUS

40. (1) Every licensed dealer shall be a member of a scrap metal dealers association.

Scrap metal dealers association.

(2) Each scrap metal dealers' association shall submit to the Council the membership list, database and returns annually.

(2) Each scrap metal dealers' association shall establish self-regulating mechanisms to prevent and regulate trade in scrap metal from vandalized public infrastructure, utilities and stolen private property.

(3) Each scrap metal dealers' association shall create awareness to all its members on the relevant laws on dealings in scrap metal.

41. The Council shall pursuant to section 6(1)(ii) and (v) of the Act, conduct public awareness campaigns —

Creation of awareness.

- (a) for all stakeholders including scrap metal dealers on matters of licensing, transportation, record keeping and prevention of vandalism and theft; and
- (b) government departments and the general public on the handling, reporting and prevention of vandalism and theft of public infrastructure utilities and private property.

SCHEDULE

(r. 8(1))

FEES PAYABLE BY SCRAP METAL DEALERS

S/NO	TYPE OF USER	AMOUNT OF SCRAP METAL IN KGS	AMOUNT OF FEES IN KSHS
1	(a) LICENSED DEALER, (b) MILLER (c) SMELTER	OVER 5,000	250,000
2	AGENT	5,000	150,000
3	(a) COLLECTOR, (b) JUA KALI,	3,000	50,000
4	(a) STEEL FABRICATOR, (b) MOTOR VEHICLE SALVAGE OPERATORS (c) STOCKISTS OF SECOND HAND METAL PARTS, ELECTRICAL REWINDERS, LOCAL WELDING MACHINE FABRICATORS	ANY AMOUNT	50,000

Made on the 22nd April, 2022.

BETTY C. MAINA,
Cabinet Secretary for Industrialization,
Trade and Enterprise development.

SPECIAL ISSUE

Kenya Gazette Supplement No. 78

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5th May, 2022

(Legislative Supplement No. 36)

LEGAL NOTICE NO. 84

THE SCRAP METAL ACT

(No. 1 of 2015)

IN EXERCISE of the powers conferred by section 32(1) of the Scrap Metal Act, 2015, the Cabinet Secretary for Industrialization, Trade and Enterprise Development makes the following Rules —

THE SCRAP METAL DEALERS RULES, 2022

PART I - PRELIMINARY

1. These Rules may be cited as the Scrap Metal Dealers Rules, 2022.

Citation.

2. In these Rules, unless the context otherwise requires —

Interpretation.

“Act” means the Scrap Metal Act;

No. 5 of 2015

“agent” has the meaning assigned to it under the Act;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to industrialization;

“collector” means a person appointed by a licence to operate as a mobile collector in a designated area to gather, collect and buy scrap metal in order to sell to a licensed agent or dealer in quantities that do not exceed three thousand kilograms per transaction;

“Council” means the Scrap Metal Council established under section 3 of the Act;

“director” has the meaning assigned to it under the Companies Act, 2015;

No. 17 of 2015

“dealing” has the meaning assigned to it under the Act;

“electrical rewinder” means a person who deals in the repair or rewinding of electric motors;

“inspector” has the meaning assigned to it under the Act;

“licence” has the meaning assigned to it under the Act;

“licensed dealer” has the meaning assigned to it under the Act;

“miller” has the meaning assigned to it under the Act;

“smelter” means an installation or factory for smelting a metal from its ore or a person engaged in the business of smelting”

“steel fabricators” means an installation or factory for the production of metal structures using a range of processes such as

cutting, bending and assembling which for the purposes of the act generates scrap metal in their processes.

“mobile collector” means a person who—

- (a) carries on business as a scrap metal dealer otherwise than at a site, and
- (b) 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.

“platinoid group” means metals that possess a silvery white colour except osmium, and includes ruthenium, rhodium, palladium, osmium, iridium, and platinum;

“rewinding” means removal or stripping of the coils of a motor and replacing them with new coils made from wire of the same type and gauge;

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

“site manager” in relation to a site at which a scrap metal dealer carries on business, means the person who exercises day-to-day control and management of activities at the site; and

“transporter” means a person appointed by an agent, dealer, or collector using a registered vehicle to transport scrap metal.

3. The objects of these Rules is to govern matters relating to dealings in scrap metal.

4. These Rules shall, unless otherwise provided for in the Act, apply to collectors, agents, dealers, millers, smelters, transporters, steel fabricators, stockists of second hand metal parts, motor vehicle salvage operators, electrical rewinders and local welding machine fabricators.

PART II – SCRAP METAL COUNCIL

5. (1) When nominating members to be appointed to the Council under section 4(1) of the Act, each organization shall submit to the Cabinet Secretary the curriculum vitae of the member being nominated.

(2) When appointing members to the Council, the Cabinet Secretary shall ensure that no more than two-thirds of the members are of the same gender and the membership reflects regional and ethnic diversity.

6. (1) A person shall not be appointed as a chairperson of the Council unless that person —

- (a) possesses a university degree in metallurgy or other relevant field from a university recognized in Kenya;
- (b) has knowledge and relevant experience of not less than ten years in a management position in the public service;
- (c) has knowledge and experience of not less than ten years in any of the following fields —

Objects of the Rules.

Application of the Rules.

Nomination of Council members.

Qualifications of Council members.

- (i) procurement and supply chain management;
- (ii) finance;
- (iii) law;
- (iv) accounting; or
- (v) economics; and

(d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be eligible for appointment as a member of the Council if that person —

- (a) holds a university degree from a recognized university in Kenya;
- (b) has knowledge and relevant experience of not less than five years in a management position; and
- (c) meets the requirements of Chapter Six of the Constitution.

PART III - ADMINISTRATION

7. (1) A person carries on business as a scrap metal dealer if the person —

Scrap metal business.

- (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).

(2) For the purposes of sub rule (1) (a), a manufacturer does not sell scrap metal if he or she sells scrap metal only as a by-product of the manufacturing process or where surplus material not required for manufacturing is disposed.

(3) For the purposes of sub-rule (1) (b), a person carries on business as a motor salvage operator if the business 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 vehicle for scrap;
- (b) wholly or mainly, in buying written-off 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 set out in paragraphs (a) or (b); or
- (d) wholly or mainly, of any activities falling within paragraphs (a) or (b).

8. (1) Persons dealing in scrap metal shall include collectors, agents, millers, smelters, transporters, steel fabricators, stockists of second hand metal parts, motor vehicle salvage operators, electrical rewinders and local welding machine fabricators.

Scrap metal dealers.

(2) The respective persons under sub rule (1) shall pay to the Council the fees set out in the Schedule.

(3) The Council shall publish a list of all persons licensed to deal in scrap metal on its website.

9. (1) Where a person applies for a licence under section 10 of the Act, before the Council makes a decision, the inspectors appointed under rule 30 shall inspect the proposed business premises and vet the applicants to establish suitability for purposes of licensing.

Application of
licence.

(2) The licence shall be in respect to the person and premises for carrying on scrap metal dealings.

(3) The application for a licence shall specify and be accompanied by the following —

- (a) in the case of an individual, the full name, date of birth, postal address, telephone or mobile number, place of residence, copy of the national identification card, Kenya Revenue Authority personal identification number, tax compliance certificate, certificate of good conduct of not more than six months and physical location and physical address of the business;
- (b) in the case of a partnership —
 - (i) the name, physical location, postal address, telephone or mobile number of the business and partnership deed; and
 - (ii) for each of the partners, the full name, date of birth, copy of the national identification card, Kenya Revenue Authority personal identification number, tax compliance certificate, certificate of good conduct of not more than six months, postal address, telephone or mobile number and place of residence;
- (c) in the case of a company, the name and registration certificate, Kenya Revenue Authority personal identification number, tax compliance certificate, company directorship details (Form CR12), company address and contact details including email, mobile and telephone number;
- (d) the physical address (Land Registry Number and the road) at which the applicant carries on the business of collecting, buying, selling or smelting scrap metal;
- (e) the details of relevant environmental permit or registration indicating any applicable environmental impact assessment of the business premises and waste management certificate or a summary project report as provided under the Environmental (Impact Assessment and Audit) Regulations, 2003; and
- (f) the applicant's membership certificate to a scrap metal dealers association.

L.N. 101/2003

(4) The application for licensing shall be accompanied by proof of payment of the prescribed fees.

(5) The application shall be submitted to the Council through the Council's website.

10. (1) Every person who deals with copper, aluminum or their alloys shall be vetted separately.

Provision relating to copper, aluminum or their alloys.

(2) A separate register for copper, aluminum or their alloys shall be maintained by licensed dealers in copper, aluminum or their alloys.

(3) Any premises where dealings in copper, aluminum or their alloys are undertaken shall have strict enhanced features including closed circuit television cameras.

11. (1) The Council may at any time request that the applicant to provide such further information as the Council considers relevant for the purpose of considering the application for a licence.

Further information.

(2) If an applicant fails to provide information requested under sub-rule (1), the Council may decline to proceed with the application.

12. An applicant who in an application or in response to a request under made under rule 11 —

Making false statement.

(a) makes a statement knowing it be false in a material particular, or

(b) recklessly makes a statement which is false in a material particular,

commits an offence and is liable on conviction to the penalty provided in section 31 of the Act.

13. (1) A licence issued by the Council under section 11 of the Act shall specify —

Form of licence.

(a) the name of the licensee;

(b) the business premises authorized for undertaking scrap metal dealings and in particular specify the land registration number and road on which the premises is located; and

(c) the date of expiry of the licence.

(2) A licence issued under the Act authorizes the licensee to carry on business on any premises authorized by the Council.

(3) The Council shall issue only one licence with respect to an applicant.

14. (1) The Council shall not issue or renew a licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer.

Issue of licence.

(2) In determining whether the applicant is a suitable person, the Council shall take into account the conditions specified under section 10(4) of the Act.

(3) Notwithstanding the generality of sub rule (2), the Council shall consider the following information —

(a) whether the applicant has been the subject of any relevant enforcement action;

- (b) any previous refusal of an application for the issue or renewal of a scrap metal licence and the reasons for the refusal;
- (c) any previous refusal of an application for a relevant environmental permit or registration and the reasons for the refusal;
- (d) any previous revocation of a scrap metal licence and the reasons for the revocation; or
- (e) whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of the Act are complied with.

(4) In determining whether a company is a suitable person as provided in sub-rules (2) and (3), the Council shall consider whether any of the following officers is a suitable person —

- (a) a director of the company; and
- (b) the company secretary of the company.

(5) In determining whether a partnership is a suitable person as provided in subrules (2) and (3), the Council shall consider whether each of the partners is a suitable person.

(6) The Council shall take into account any guidance issued by the Cabinet Secretary for purposes of determining suitability under these Rules.

(7) The Council may consult other entities or persons regarding the suitability of an applicant, including in particular—

- (a) any devolved unit;
- (b) the National Environment Management Authority;
- (c) the National Police Service;
- (d) a national government administrative officer;
- (e) an industrial development officer; and
- (f) an inspector gazetted by the Cabinet Secretary pursuant to the Act.

(8) Where the applicant has been convicted of a relevant offence, the Council may include in the licence one or both of the following conditions—

- (a) that the dealer shall not receive scrap metal except between 9 a.m. and 5 p.m. on any day;
- (b) that all scrap metal received shall be kept in the form in which it is received for a specified period, minimum of seven days, commencing on the date when it is received.

15. (1) If the Council proposes —

- (a) to refuse an application made for the issuance or renewal of a licence; or

Right to make representations.

(b) to revoke or vary a licence issued under the Act,

the Council shall give the applicant or licensee a notice which sets out what the Council proposes to do and the reasons for it.

(2) A notice under sub-rule (1) shall state that, within the period specified in the notice, the applicant or licensee may either —

- (a) make representations about the proposal, or
- (b) inform the Council that the applicant or licensee wishes to make representations.

(3) The period specified in the notice shall be not less than fourteen days from the date on which the notice is given to the applicant.

(4) The Council may decline the application for a licence, or revoke or vary the licence, if —

- (a) within the period specified in the notice, the applicant or licensee informs the Council that he or she does not wish to make representations, or
- (b) the period specified in the notice expires and the applicant or licensee has not made representations or informed the Council that he or she intends to make the representations.

(5) Where, within the period specified in the notice, the applicant or licensee informs the Council that he or she wishes to make representations, the Council —

- (a) shall allow the applicant or licensee a further reasonable period to make representations, or
- (b) may refuse the application, revoke or vary the licence, if the applicant or licensee fails to make representations within that period.

(6) If the applicant or licensee makes representations within the period specified in the notice or within the further period under sub rule (5), the Council shall consider the representations.

(7) If the applicant or licensee informs the authority that he or she wishes to make oral representations, the Council shall give the applicant or licensee the opportunity of appearing before and being heard by the Council.

16. (1) Where the Council declines to issue a licence under section 10(3) and (4) of the Act, the Council shall notify the applicant of the refusal and reasons for the refusal within thirty days from the date of the submission of the application.

Notice of decision of Council.

(2) The notification under sub-rule (1) shall give the applicant fourteen days from the date of the notice to lodge an appeal to the Cabinet Secretary.

(3) A notice under this rule shall state —

- (a) that the applicant or licensee may appeal against the decision of the Council;

- (b) in the case of a revocation or variation, the date on which the revocation or variation is to take effect.

17. (1) Pursuant to section 10(4) and 14 of the Act, an applicant may appeal to the Cabinet Secretary where the Council —

Appeal to the
Cabinet Secretary.

- (a) refuses to grant or renew a licence; or

- (b) imposes a condition on the licence.

(2) A licensee may appeal to the Cabinet Secretary against—

- (a) the inclusion of a condition in a licence; or

- (b) the revocation or variation of a licence.

(3) An appeal under this rule shall be made within twenty one days of receipt of the notice of the decision of the Council by the applicant.

(4) The Cabinet Secretary may —

- (a) confirm, vary or reverse the Council's decision; and

- (b) give such directions as he or she considers appropriate.

(5) The Council shall comply with any directions given by the Cabinet Secretary under sub-rule (4).

18. (1) Pursuant to section 11 (b) of the Act, a licence expires at the end of the period of one year beginning with the day on which it is issued or renewed.

(2) Where an application to renew a licence is received before the licence expires, the licence continues in effect and —

- (a) if the application is withdrawn, the licence expires at the end of the day on which the application is withdrawn;

- (b) if the application is denied, the licence expires when an appeal under section 15 of the Act is finally determined or withdrawn; or

- (c) if the licence is renewed, it expires at the end of the period of one year beginning on the date it is renewed.

19. (1) The Council may on application vary a licence if there is a change in licensed business premises as provided in sections 11(d) and 13(2) of the Act.

Variation of licence.

(2) The application shall contain particulars of the changes to be made to the licence.

(3) The applicant shall pay the prescribed fees set out in the Sixth Schedule to the Act.

(4) A licensee who fails to comply with this rule commits an offence and is liable on conviction to the penalty set out section 20(4) of the Act.

(5) It is a defence for a person charged with an offence under this rule to prove that he or she took all reasonable steps to avoid committing the offence.

20. The Council may revoke a licence issued under this Act where—

Revocation of licence.

- (a) the licensee is an undischarged bankrupt or is a company in liquidation;
- (b) the business premises are not suitable for carrying out scrap metal business and the applicant has not demonstrated that there will be adequate procedures in place to ensure that the provisions of the Act shall be complied with;
- (c) the licensee makes a statement knowing it is false in the application for licensing; or
- (d) the licensee prevents inspectors from accessing the business premises.

21. (1) An applicant for a licence, renewal or variation of a licence, shall notify the Council of any changes which materially affect the accuracy of the information which he or she has provided relating to the application.

Notification requirements.

(2) A licensee who is no longer carrying on business as a scrap metal dealer in the premises authorized by the Council shall notify the Council of that fact.

(3) A notification under sub rule (2) shall be given within twenty eight days of the change of premises.

(4) Where a licensee carries on business under a new name, the licensee shall notify the Council of any change to the name.

(5) A notification under sub rule (4) shall be given within twenty eight days of the change of name.

(6) An applicant or licensee who fails to comply with this rule commits an offence and is liable on conviction to the penalty provided in section 20(4) of the Act.

(7) It is a defence for a person charged with an offence under this rule to prove that he or she took all reasonable steps to avoid committing the offence.

22. (1) A licensed dealer shall conspicuously display a copy of the licence at each site specified in the licence.

Display of licence.

(2) A licensed dealer who fails to comply with sub-rule (1) commits an offence and is liable on conviction to the penalty provided in section 31 of the Act.

23. (1) Pursuant to section 16 of the Act, every licensee shall conspicuously display a signboard within his or her premises which shall —

Display of signboard.

- (a) display the full business name of the licensee;
- (b) display the licence number;
- (c) bear the words "LICENSED SCRAP METAL DEALER" in capital letters;
- (d) be a minimum of 6ft in width and 4ft in height; and
- (e) display the logo of the Council.

(2) This rule shall not apply to a person who internally generates scrap metal as a result of their internal processes.

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

Verification of suppliers identity.

(2) The verification under sub rule (1) shall be by reference to documents, data or other information obtained from a reliable and independent source.

(3) Where a licensed dealer receives scrap metal in breach of sub rule (1), each of the following commits an offence —

- (a) the licensed dealer;
- (b) if the metal is received at a site, the site manager; and
- (c) any person who, pursuant to administrative arrangements made by the person set out in paragraphs (a) or (b), has the responsibility of verifying the name and address required under sub-rule (1).

(4) It is a defence for a person who is charged with an offence pursuant to sub-rule (3) to prove that he or she —

- (a) made arrangements to ensure that the metal was not received in breach of sub-rule(1), and
- (b) took all reasonable steps to ensure that those arrangements were complied with.

(5) Any person who fails to comply with this rule commits an offence and is liable on conviction to the penalty provided in section 18(3) of the Act.

(6) A person who, on delivering scrap metal to a licensed dealer, gives a false name or false address, commits an offence and is liable on conviction to the penalty provided in section 18(3) of the Act.

25. Every entry required to be prepared or kept under rules 26 and 27 shall be deemed, unless the contrary is shown, to have been made with the authority of the respective licensee.

Presumption as to records.

26. (1) This rule applies if a licensed dealer receives any scrap metal in the course of the dealer's business.

Record of receipt of scrap metal by licensee.

(2) All licensed dealers shall keep records of all receipts of any scrap metal acquired in the course of the business.

(3) The licensed dealer shall 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 vehicle, the registration details of the vehicle, personal identification details and mobile phone contacts of the driver;
- (d) if the metal is received from a person, the full name, identification card copy, mobile contacts and address of that person;
- (e) if the dealer pays for the metal, the full name of the person who makes the payment acting for the dealer;
- (f) the previous use of the scrap metal; and
- (g) the consideration of the transaction.

(4) Every entry shall be made at the time of the transaction.

(5) The record shall be —

- (a) signed by the licensee and person delivering the scrap metal; and
- (b) availed for inspection by an authorized person whenever required.

(6) The licensee shall make quarterly returns to the Council at least ten days after the end of each quarter.

(7) No licensee shall allow scrap metal whose origin is unknown into his or her licensed premises or otherwise.

(8) The licensee shall keep the record under this rule for a minimum of seven years.

(9) Any licensee who fails to comply with this rule commits an offence and is liable on conviction to the fine provided in section 23(2) of Act.

(10) The licensed dealers shall automate their record keeping systems for real time monitoring and submission of returns to the Council within one year from the date of publication of these Rules.

(11) Where a licensed dealer pays for the scrap metal by —

- (a) cheque, the licensed dealer shall keep a copy of the cheque; or
- (b) electronic transfer, the licensed dealer shall keep the receipt identifying the transfer, or if no receipt identifying the transfer was obtained, the licensed dealer shall record particulars identifying the transfer.

(12) All transactions of scrap metal shall be cashless.

27. (1). All licensed dealers shall keep records of all disposals of any scrap metal in the course of business.

Records for the disposal of metal.

- (2) All disposals of scrap metal shall be made to licensed dealers.
- (3) The licensed dealers shall record the following information—
 - (a) the licence number of the person or business the scrap metal is disposed to;
 - (b) the description of the scrap metal, including its type or types if mixed, form, condition, weight and any marks identifying previous owners;
 - (c) the date and time of disposal;
 - (d) where the scrap metal is ferried in or on a vehicle, the registration details of the vehicle, name, national identification card number and mobile phone contacts of driver; and
 - (e) the consideration for the transaction.
- (4) Every entry required to be made shall be made at the time of the transaction.
- (5) The records specified under this rule shall be signed by the licensee and person or business purchasing the scrap metal.
- (6) The records specified under this rule shall be availed for inspection by an authorized person whenever required.
- (7) The licensee shall make quarterly returns to the Council, at least ten days after end of each quarter.
- (8) The licensee shall keep the record specified under this rule for a maximum of seven years.
- (9) Any licensee who fails to comply with this rule commits an offence and is liable on conviction to the penalty provided in section 18(3) Act.
- (10) The licensed dealers shall automate their record keeping systems for real time monitoring and submission of returns to the Council within one year from the date of publication of these Rules.

28. (1) The information referred to in rules 26 and 27 shall be recorded in a manner that allows the information and the scrap metal to which it relates to be readily identified by reference to each other.

Records
identification.

(2) The records in sub rule (1) shall be marked so as to identify the scrap metal to which they relate.

(3) The dealer shall keep the information and other records referred to in this rule for a period of three years from the day in which the metal is received or as the case may be, disposed of.

(4) If a licensed dealer fails to comply with this rule, each of the following commits an offence —

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

(c) any person who pursuant to administrative arrangements made by the person set out in paragraphs (a) or (b) has responsibility for fulfilling the requirement.

(5) It is a defence for a person who is charged with an offence pursuant to sub rule (4) to prove that he or she —

(a) made arrangements to ensure that the requirement was fulfilled, and

(b) took all reasonable steps to ensure that the arrangements were complied with.

(6) A person who fails to comply with this rule commits an offence and is liable on conviction to the penalty set out in section 18(3) of the Act.

29. (1) Any licensed dealers found dealing with scrap metal from infrastructure designed for roads, bridges, railways, pipelines, telecommunications, electricity, water and sewerage, utilities or stolen private property, shall have their licence cancelled or revoked and prosecuted.

Infrastructure.

(2) In the event that a licensed dealer comes into possession, control, is offered, or is shown any property fitting the description of vandalized infrastructure, utilities or stolen private property, the licensee shall immediately report such incident to the nearest police station or inspector and supply the name; identity card number; mobile number and address of the person or business that acquired or saw such property or infrastructure.

(3) Any person or licensed dealer who contravenes this rule commits an offence and is liable on conviction to the penalty provided in section 24(2) of the Act.

30. Pursuant to section 29(3) and (5) of the Act, the Cabinet Secretary may by notice in the Gazette appoint public officers from the following entities to be inspectors for purposes of the Act —

Appointment of inspectors.

- (a) the National Police Service;
- (b) the Kenya Railways Corporation;
- (c) the Kenya Electricity Transmission Company Limited;
- (d) the Kenya National Highways Authority;
- (e) the Kenya Urban Roads Authority;
- (f) the Communications Authority of Kenya;
- (g) the Kenya Revenue Authority;
- (h) the National Government Administrative Office;
- (i) the Office of the Director of Public Prosecutions;
- (j) the National Environment Management Authority; and
- (k) the Kenya Power and Lighting Company.

31. Where the affairs of a body corporate are managed by members, the provisions of section 28 of the Act shall apply.

Offences by bodies corporate.

32. (1) An inspector may issue a closure notice where he or she is satisfied that the business premises where scrap metal business is being undertaken is not licensed.

Closure notice.

(2) The notice issued under sub rule (1) shall —

- (a) specify the reasons for issuing the notice; and
- (b) indicate that the inspector may apply to the court for a closure order.

(3) The inspector shall issue the closure order to —

- (a) the person who appears to the inspector to be the site manager of the premises, or
- (b) any person who appears to the inspector to be a director, manager or other senior officer of the business,

and upload the notice in the official website of the Council.

(4) Notwithstanding sub rule (3), the inspector may give the notice to any person who has an interest in the premises.

33. (1) The Council may cancel a closure notice issued by an inspector.

Cancellation of closure notice.

(2) A cancellation notice takes effect when it is given to any of the persons to whom the closure notice was given.

(3) The cancellation notice shall be issued to any other person to whom the closure notice was given and uploaded on the official website of the Council.

34. (1) Where a closure notice has been given under these Rules, an inspector may make an application to the court for a closure order.

Application for closure order.

(2) An application under this rule shall not be made —

- (a) less than seven days after the date on which the closure notice was given, or
- (b) more than six months after that date.

(3) An application under this rule shall not be made if the inspector or Council is satisfied that —

- (a) the premises are no longer being used by a licensed dealer to undertake scrap metal business; and
- (b) there is no reasonable likelihood that the premises will be used undertake scrap metal business in the future.

35. (1) The court may grant a closure order pursuant to the application under rule 34 where it is satisfied that —

Closure order.

- (a) the premises continue to be used by a scrap metal dealer in the course of business; or

- (b) there is a reasonable likelihood that the premises will be used to undertake scrap metal business in the future.
- (2) A closure order may require—
- (a) that the premises be closed immediately to the public;
- (b) that the use of the premises for scrap metal business be discontinued immediately; and
- (c) that the defendant pays into court such sum as the court determines and that the sum shall not be released by the court until the other requirements of the order are met.
- (3) A closure order may include such other conditions as the court considers appropriate relating to —
- (a) the admission of persons onto the premises;
- (b) the access by persons to another part of any building or other structure of which the premises form part.
- (4) As soon as practicable after a closure order is made, the complainant shall fix a copy of the order in a conspicuous position in the premises.
36. (1) Any of the following persons may apply to the court for an order that a closure order be discharged —
- Discharge of closure notice by court.
- (a) any person to whom the closure notice was given under these Rules; and
- (b) any person who has an interest in the premises but to whom the closure notice was not given.
- (2) The court shall not make a discharge order unless it is satisfied that there is no longer a need for the closure order.
37. (1) An appeal may be made to the court against—
- Appeal of closure order.
- (a) a closure order;
- (b) a decision not to make a closure order;
- (c) a discharge order; or
- (d) a decision not to make a discharge order.
- (2) Any appeal under this rule shall be made within twenty one days from the date on the order or the date the decision was made.
- (3) An appeal under this rule against a closure order or a decision not to make a discharge order may be made by —
- (a) any person to whom the relevant closure notice was given under rule 32; or
- (b) any person who has an interest in the premises but to whom the closure notice was not given.
38. (1) A person commits an offence if the person, without reasonable excuse —
- Enforcement of closure order.

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

~~(2) If a closure order has been made in respect of any premises,~~
an inspector may —

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

(3) Sub-rule (4) applies if an inspector seeks to exercise powers under this rule in relation to any premises.

(4) If the owner, occupier or other person in charge of the premises requires the inspector to produce—

- (a) evidence of the inspector's identity; or
- (b) evidence of the inspector's authority to exercise those powers,

the inspector shall produce that evidence.

(5) A person who intentionally obstructs an inspector in the exercise of powers under this rule, commits an offence and liable on conviction to the penalty provided in section 30(6) of the Act.

39. (1) Every licensed dealer shall carry a certified copy of the licence of the dealer and the recipient of the scrap metal on any vehicle that is being used to transport any scrap metal.

Transportation of
scrap metal.

(2) Copies of the certified licences shall be provided when requested by an inspector.

(3) Every vehicle transporting scrap metal shall have an authorization letter from the licensee indicating the —

- (a) source of the scrap metal and destination;
- (b) type and quantity of scrap metal; and
- (c) name, identification card number and contact details of the driver.

(4) The details in sub-rule (3) shall be submitted online on the Council's portal.

(5) Every licensed dealer shall comply with the prescribed hours of operation between half-past six o'clock in the morning and half-past six o'clock in the evening for the purposes of transporting scrap metal.

(6) A scrap metal dealer who does not comply with this rule commits an offence and is liable on conviction to the penalty provided in section 31 of the Act.

PART IV - MISCELLANEOUS

40. (1) Every licensed dealer shall be a member of a scrap metal dealers association.

Scrap metal dealers association.

(2) Each scrap metal dealers' association shall submit to the Council the membership list, database and returns annually.

(2) Each scrap metal dealers' association shall establish self-regulating mechanisms to prevent and regulate trade in scrap metal from vandalized public infrastructure, utilities and stolen private property.

(3) Each scrap metal dealers' association shall create awareness to all its members on the relevant laws on dealings in scrap metal.

41. The Council shall pursuant to section 6(1)(ii) and (v) of the Act, conduct public awareness campaigns —

Creation of awareness.

- (a) for all stakeholders including scrap metal dealers on matters of licensing, transportation, record keeping and prevention of vandalism and theft; and
- (b) government departments and the general public on the handling, reporting and prevention of vandalism and theft of public infrastructure utilities and private property.

SCHEDULE

(r. 8(1))

FEES PAYABLE BY SCRAP METAL DEALERS

S/NO	TYPE OF USER	AMOUNT OF SCRAP METAL IN KGS	AMOUNT OF FEES IN KSHS
1	(a) LICENSED DEALER, (b) MILLER (c) SMELTER	OVER 5,000	250,000
2	AGENT	5,000	150,000
3	(a) COLLECTOR, (b) JUA KALI,	3,000	50,000
4	(a) STEEL FABRICATOR, (b) MOTOR VEHICLE SALVAGE OPERATORS (c) STOCKISTS OF SECOND HAND METAL PARTS, ELECTRICAL REWINDERS, LOCAL WELDING MACHINE FABRICATORS	ANY AMOUNT	50,000

Made on the 22nd April, 2022.

BETTY C. MAINA,
Cabinet Secretary for Industrialization,
Trade and Enterprise development.

DLPS

Please deal

Soni 27/05/22

EXPLANATORY MEMORANDUM FOR THE SCRAP METAL RULES, 2022

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I. The Purpose of Scrap Metal Rules, 2022.

1. The objects and purpose of these Rules is to govern matters relating to dealings in scrap metal.
2. These Regulations shall, unless otherwise provided for in the Act, apply to collectors, agents, dealers, millers, smelters, transporters, steel fabricators, stockists of second hand metal parts, motor vehicle salvage operators, electrical re-winders, local welding machines fabricators.

II. The Legislative Context:

1. Article 201 of the Constitution provides for principles of public finance, key among them openness and accountability, including public participation in financial matters; and that the public finance system shall promote an equitable society, and in particular public money shall be used in a prudent and responsible way; and financial management shall be responsible, and fiscal reporting shall be clear.

2. The Scrap Metal Council is established by an Act of Parliament; Scrap Metal Act No.1 of 2015 and the Council was inaugurated in 2020. The Act makes provision for the regulation of dealings in scrap metal, to provide for the establishment of a Scrap Metal Council and for connected purpose

3. "scrap metal" includes -

- (a) any old metal, second-hand metal, broken metal, defaced or old metal goods (including machinery and plant), whether wholly or partly manufactured, and any metal which is the property of the Government, or is privately owned, whether ferrous, non-ferrous or ferro-alloyed, but does not include gold, silver or any metals of the platinoid group; and
- (b) used automobile batteries;

4. The Scrap Metal Rules, 2022 was developed in order to operationalize the Scrap Metal Act 2022, as a result of widespread vandalism mainly on power and transmission lines across the country, the need to close gaps in enforcement and regulations, and self-regulation in the sector.

5. According to the Statutory Instruments Act, 2013 a *statutory instrument*" among others means, regulation, form, tariff of costs or fees, by-law, guideline or other *statutory instrument issued, made or established in the execution of a power conferred by or*

THE NATIONAL ASSEMBLY

DATE: 31 MAY 2022

TUCSPAC

MAJORITY WHIP

NATIONAL ASSEMBLY RECEIVED

26 MAY 2022

DEPUTY CLERK

P.O. Box 41642 - 00100, NAIROBI

TABLED BY: [Signature]

CLERK AT THE TABLE: [Signature]

Op.

under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.

6. In this regard, these Rules have been subjected to extensive public consultations to meet the threshold set out in the Statutory Instruments Act, 2013.

7. IN EXERCISE of the powers conferred by section 32(1) of the Scrap Metal Act, 2015, the Cabinet Secretary for Industrialization, Trade and Enterprise Development makes the following Rules—~~THE SCRAP METAL DEALERS RULES, 2022~~

1. The Cabinet Secretary for Industrialization, Trade and Enterprise Development has therefore fully complied with the provisions of the Constitution, Scrap Metal Act No.1 of 2015 and the Statutory Instruments Act, 2013 on the requirement for public consultations while preparing these Rules.

III. Policy Context

1. Since the enactment of Scrap Metal Act No.1 of 2015 the Council was operationalized in 2020 hence the sector has operated under with minimal regulations for a long time and given the sensitive nature of the trade there is need to continuously review the instruments in the sector to support the trade and ensure also that the National Critical infrastructure is protected.

IV. Public Consultations

1. A Multi-Agency Team comprising representatives of State Department of Industrialization, Scrap Metal Council, State Department of Trade, National Police Service, Kenya Urban Roads Authority, Kenya National Highways Authority, Kenya Railways Corporation, Kenya Revenue Authority, Directorate of Criminal Investigation, Kenya Iron And Scrap Metal Association, Kenya Power, Kenya Association of Manufacturers, Numerical Machining Complex, Metal Cottage Industries, Kenya Scrap And Waste Recyclers and Kenya consumer Protection Advisory Committee were involved in developing the Scrap Metal Rules, 2022

1.

2.

3. Consultations were structures initially in terms of the relevant Government Ministries, Agencies and Government Departments. The next level of consultation was done for all Associations involved thereafter a meeting of all stakeholders was held to validate the process and map the way forward. The Scrap Metal Council portal was also being used to provide access to additional information.

4. All the key stakeholders were consulted through physical and the Scrap Metal Council web portal. In addition, written memoranda were received from various stakeholders.

V. Policy Guidance

The Ministry of Industrialization, Trade and Enterprise Development namely State Department of Industrialization and the Scrap Metal Council will sensitize key stakeholders including Parliament, Government Agencies, Smelters, Millers, Agents, Scrap Metal Dealers, Collectors, Steel Fabricators and Motor Vehicle Salvage Operators on the Scrap Metal Rules 2022

VI. Performance Monitoring and Evaluation of the Scrap Metal Rules, 2022

1. The State Department of Industrialization and the Scrap Metal Council shall monitor the application, adherence and enforcement the Scrap Metal Rules including provisions of the respective Schedules thereof.

2. This will be done through periodic reviews to establish, among others, compliance with the prescribed code of ethics and professional standards and reports on governance.

VII. Contact Persons

The contact person at the Ministry of Industrialization, Trade and Enterprise Development is the Cabinet Secretary, Betty C. Maina, EGH or the Principal Secretary, Amb Kirimi, P. Kabaeria, CBS; and the contact person of the Scrap Metal Council shall be the Chairperson, Hon. Gakuru Monyo or the Head of Secretariat, Mr. George Makateto.



HON. GAKURE MONYO

CHAIRMAN SCRAP METAL COUNCIL

Date..... *23rd May*, 2022



