

SCRAP METAL LICENSING POLICY

2024-2029



www.babergh.com

www.midsuffolk.com

Appendix A

Contents

1.	Introduction	3
2.	Background	4
3.	Types of Licence.....	5
	Site Licence.....	5
	Collector's Licence	7
4	Suitability of Applicant.....	8
5	Supply of Information by the Authority.....	9
6	Register of Licences.....	9
7	Display of Licence	9
8	Verification of Supplier's Identity.....	10
9	Payment for Scrap Metal.....	10
10	Records	10
10(a)	Receipt of Metal	11
10(b)	Disposal of Metal	11
10(c)	Supplementary	12
11	Right of Entry & Inspection	12
12	Application Procedure.....	13
13	Appeals	16
14	Revocation and Imposing Conditions	16
15	Closure of Unlicensed Sites	17
16.	Delegation of Functions	19
17	Enforcement	20
18.	Offences & Penalties	21

Appendix A

1. Introduction

1.1 Metal theft over the last few years has had a significant impact upon our communities, businesses, and local authorities. Such thefts have seen communications and the train networks disrupted, as well as significant costs to local authorities in relation to stolen drainage gully covers and stolen road signs.

The Scrap Metal Dealers Act 2013 (SMDA) has been introduced to address these issues, ensuring that the sale, collection, storage, and disposal of scrap metal, is carried out lawfully.

1.2 This policy outlines the requirements of the SMDA. It also provides guidance to new applicants, existing licence holders and members of the public as to how the council will undertake its role in the administration and enforcement of the act.

1.3 Babergh and Mid Suffolk District Councils (the licensing authority) may depart from its own policy if individual circumstances warrant such a deviation.

1.4 The council has consulted widely in the formulation of this policy, including the following:

- Suffolk Constabulary
- Environment Agency
- Babergh and Mid Suffolk District Councils' Environmental Protection
- All current licence holders
- British Metals Recycling Association
- British Vehicle Salvage Federation
- Vehicles Recyclers Association
- Suffolk Fire and Rescue Service
- Babergh and Mid Suffolk District Councils' Legal Services
- Babergh and Mid Suffolk District Councils' Health & Safety Officer
- Babergh and Mid Suffolk District Councils' Planning Service
- Local residents and businesses

Appendix A

1.5 To ensure the policy remains fit for purpose, it will be reviewed as legislative changes occur and updated accordingly, with a formal review being carried out at least every 5 years. We may make minor amendments to this policy, with the agreement of the Chairperson of the Licensing & Regulatory Committee, Cabinet Member for Licensing and the Corporate Manager for Licensing.

2. Background

2.1 The SMDA received Royal Assent on 28th February 2013 and came into force on 1 October 2013, with its enforcement powers subsequently coming into force on 1 December 2013. It repeals previous legislation and creates a new regulatory regime for scrap metal recycling and vehicle dismantling.

2.2 The SMDA aims to raise standards across the scrap metal industry by:

- Requiring dealers to keep detailed and accurate records of transactions.
- Requiring dealers to verify the identity of those selling metal to them.
- Prohibition of cash payments for scrap metal.

2.3 A person carries on business as a scrap metal dealer if the person:

- (a) carries on a business which consists wholly or partly in buying 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))

2.4 This does not include manufacturing operations that sell metal as a by-product of the operation or because it has a surplus of materials. However, it does include the business of collecting scrap metal, i.e., door to door collectors.

2.5 The SMDA identifies local authorities as the principal regulator and gives them powers to regulate, refuse and revoke licences.

2.6 The SMDA states that “scrap metal” includes:

Appendix A

- (a) Any old, waste, or discarded metal or metallic material, and
- (b) Any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.

2.7 The following is not considered to be “scrap metal”:

- Gold
- Silver, and
- Any alloy of which two per cent or more by weight is attributable to gold or silver.

3. Types of Licence

3.1 For anyone to carry on a business as a scrap metal dealer, or collector they must have a licence. A licence is valid for three years from the date of issue. Trading without a licence is a criminal offence.

3.2 There are two types of licences specified in the Act:

Site Licence

A site is defined as any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there). This means a dealer will require a licence for an office, even if they do not operate a metal store or yard from those premises.

This includes motor salvage operations which carries on a business which consists:

- (a) Wholly or partly in recovering salvageable parts from motor vehicles for re-use or sale and subsequently selling or otherwise disposing of the rest of the 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 mentioned in paragraphs (a) or (b), or

Appendix A

(d) Wholly or mainly in activities falling within paragraphs (b) or (c).

Skip hire companies may require a site licence depending on the circumstances. A company engaging in the buying or selling of scrap metal is likely to require a licence from the council unless the activity is considered a minimal or minor part of the business.

It is important to note that any person, agent, broker, or trader that buys or sells metal on paper/online without operating a physical scrap metal site is carrying on business as a scrap metal dealer and will require a licence.

Depending on the location of the site, Babergh or Mid Suffolk District Council is responsible for granting licences to any site located within the council's boundaries. All of the sites within the council's area from which the licence holder carries on the business as a scrap metal dealer must be identified. A site manager must be named for each site. A site licence holder can transport scrap metal from third party businesses by arrangement from any other local council area provided it is in the course of business from that site but cannot engage in the regular door to door collections of a licensed collector.

The site licence shall include the following:

- Name of the licensee
- Trading name
- Name of the authority (Babergh or Mid Suffolk District Council)
- All the sites in the authority's area at which the licensee is authorised to carry on business,
- Name of the site manager of each site,
- The date on which the licence is due to expire.

Appendix A

Collector's Licence

A collector is defined as a person who carries on a business as a scrap metal dealer otherwise than at a site, and regularly engages in the course of that business in collecting waste metal including old, broken, worn out or defaced articles by means of door-to-door collections. Scavenging for metal can be classed as making door to door collections.

The licence allows the holder to collect scrap metal within the area of the issuing local authority, (Babergh or Mid Suffolk District Council). The licence does not permit the holder to operate a scrap metal site, nor does it allow collection outside of the area of the issuing authority. If a person collects scrap from numerous local authority areas, a collector's licence will be required from each local authority they collect scrap within.

A mobile collector cannot store scrap metal at a premises. However, in the course of a collection, it is common practice for collectors to wait for their vehicle to be at capacity before unloading it at a scrap metal dealer's site. Babergh and Mid Suffolk Councils do not consider the storage of scrap metal on the collector's vehicle to render the premises the vehicle is stored at as a site, provided the vehicle is not unloaded at that location.

Those transporting metal to a scrap metal site for profit are required to be registered as a 'waste carrier'. Waste carriers must ensure that the waste goes to a properly licensed or exempt site; they must complete a waste transfer note which must include a description of the waste and be signed by the carrier and the person to whom the waste is given or sold. Details of licensed sites can be checked on the Environment Agency public register.

- 3.3 A dealer can only hold ONE type of licence in any one local authority area. They cannot hold both a site and mobile collectors' licence with one authority.

Appendix A

4 Suitability of Applicant

- 4.1 The SMDA is clear that the council has to be satisfied that an applicant is a suitable person to carry on the business as a scrap metal dealer.
- 4.2 The council may have regard to any information which it considers to be relevant, this may include:
- (a) Whether the applicant or site manager has been convicted of any relevant offence; or
 - (b) Whether the applicant or site manager has been the subject of any relevant enforcement action; or
 - (c) Whether there has been any refusal of an application of the issue or renewal of a scrap metal licence, and the reasons for the refusal; or
 - (d) Whether there has been any refusal of an application for a relevant environmental permit or registration, and the reasons for the refusal; or
 - (e) If there has been any previous revocation of a scrap metal licence, and the reasons for the revocation; or
 - (f) Whether the applicant has demonstrated there will be adequate procedures in place to ensure compliance with the Act.
- 4.3 When establishing the applicant's suitability, the council may consult with the appropriate agencies.
- 4.4 Relevant offences or relevant enforcement action are those listed under the Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013. [The Scrap Metal Dealers Act 2013 \(Prescribed Relevant Offences and Relevant Enforcement Action\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2013/1000/contents/made)
- 4.5 Each application will be considered and determined on its own merits and on a case-by-case basis, having taken into consideration this policy and any statutory requirements and other relevant information.

Appendix A

- 4.6 In accordance with the council's scheme of delegations, decisions relating to scrap metal licensing are made by authorised officers.

5 Supply of Information by the Authority

- 5.1 The council has a duty to pass on information in relation to an application for, or relating to a scrap metal licence when requested by;
- (a) Any other local authority;
 - (b) The Environment Agency; or
 - (c) An officer of a police force.

This does not limit any other power the authority has to supply that information.

6 Register of Licences

- 6.1 The Environment Agency will maintain a register of scrap metal licences issued by all local authorities in England. The register will include the following information:
- (a) name of the authority which issued the licence;
 - (b) the name of the licensee;
 - (c) any trading name of the licensee;
 - (d) the address of the site identified on the licence;
 - (e) the type of licence, and
 - (f) the date of expiry on the licence.

The register will be open for inspection by members of the public.

7 Display of Licence

- 7.1 Once granted, a copy of the licence must be displayed at each site identified on the licence, in a prominent place accessible to members of the public.
- 7.2 A copy of a collector's licence must be displayed on any vehicle that is being used during a dealer's business. It must be affixed to the rear of the vehicle. If a collector has multiple vehicles there will be an additional charge for each extra plate.

Appendix A

- 7.3 A mobile collector and site manager must also have with them the prescribed form of identity available for inspection at all times that they are carrying out activities under the SMDA.

8 Verification of Supplier's Identity

- 8.1 Before receiving scrap metal, the dealer must verify a person's full name and address, by reference to documents or data from a reliable and independent source e.g. driver's licence, utility bill, council tax bill or bank statement.
- 8.2 In the course of collecting door to door, it may not be possible for a mobile collector to verify the name and address of the supplier if the waste materials are old, broken, worn out or defaced articles have been left on the roadside.
- 8.3 A mobile collector shall record 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 and the date and time of its receipt.
- 8.4 If suitable verification is not obtained the scrap metal dealer, or site manager, or person who has been delegated responsibility shall be guilty of an offence.

9 Payment for Scrap Metal

- 9.1 From 1 October 2013, cash cannot be used by any scrap metal dealer to buy scrap metal. It is an offence to buy scrap metal for cash under section 12 of the Act and there are no exceptions. Only payment by a non-transferable cheque or an electronic transfer of funds will be acceptable. This will mean that the payment will be linked to a readily identifiable account, for both the payee and the payer.

10 Records

- 10.1 The scrap metal dealer must keep three types of records:
- (a) Receipt of Metal
 - (b) Dispose of Metal
 - (c) Supplementary

Appendix A

10(a) Receipt of Metal

10.2 If metal is received in the course of the dealer's business, the following must be recorded:

- (a) Description of the metal, including its types (types if mixed), form, condition, weight and any marks identifying previous owners or other distinguishing features;
- (b) Date and time of receipt
- (c) The registration mark of the vehicle it was delivered by;
- (d) Full name and address of the person delivering it, and
- (e) Full name of the person making payment on behalf of the dealer.

10.3 The dealer must keep a copy of the documents used to verify the delivery person's name and address.

10.4 If payment is by cheque a copy of the cheque must be retained.

10.5 If payment is by electronic transfer a receipt identifying the transfer must be retained, or the details of the transfer.

10(b) Disposal of Metal

10.6 Disposal under the Act covers metal:

- (a) Whether or not it is in the same form when it was purchased;
- (b) Whether or not it is to another person; or
- (c) Whether or not it is dispatched from a site

10.7 Disposal records must be recorded, including:

- (a) Description of the metal, including its type (types if mixed), form, weight
- (b) Date and time of disposal;
- (c) If to another person, their full name and address, and
- (d) If payment is received for the metal (sale or exchange) the price or other consideration received.

Appendix A

10.8 If disposal is in the course of business conducted under a collector's licence, the dealer must record:

- (a) Date and time of disposal, and,
- (b) If to another person, their full name and address.

10 (c) Supplementary

10.9 The information collected during receipt and disposal must be recorded in such a manner that allows the information and the metal to which it relates to be easily identified.

10.10 The records of receipt must be marked to identify the metal to which they relate.

10.11 Records must be kept for a period of 3 years beginning on the day of receipt, or disposal (as may be).

10.12 If suitable records for the receipt or disposal of scrap metal are not kept, then the scrap metal dealer, or site manager, or person who has been delegated responsibility by the dealer or site manager for keeping records, shall be committing an offence.

10.13 A dealer or site manager may have a defence if they can prove arrangements had been made to ensure the requirement to keep records was fulfilled, or that they took all reasonable steps to ensure those arrangements were complied with.

11 Right of Entry & Inspection

11.1 An authorised officer of the council may enter and inspect a licensed site at any reasonable time, otherwise than on notice to the site manager if:

- (a) Reasonable attempts to give notice had been given or
- (b) Entry to the site is reasonably required for the purpose of ascertaining whether the provisions of the Act are being complied with or investigating offences under it, and, in either case, the giving of the notice would defeat that purpose.

Appendix A

11.2 An authorised officer of the council is not entitled to use force to enter a premises, but may ask a justice of the peace to issue a warrant authorising entry, if they are satisfied there are reasonable grounds for entry to the premises is reasonably required for the purpose of:

- (a) Securing compliance with the provisions of the Act, or
- (b) Ascertaining whether those provisions are being complied with.

11.3 'Premises' under this section include:

- (a) Licensed site, or
- (b) Premises that are not licensed, but there are reasonable grounds for believing the premises are being used as scrap metal dealing business.

11.4 An authorised officer of the council may use reasonable force in the exercise of the powers under a warrant issued by the justice of peace, refer to point 11.2 of this policy.

11.5 An authorised officer of the council may require:

- (a) Production of, and inspect, any scrap metal kept at any licensed premises, and
- (b) Require production of, and inspect, any records kept in respect of receipt and disposal of metal, and
- (c) To take copies of or extracts from any such record.

11.6 An authorised officer of the council must produce evidence of their identity, and evidence of their authority to exercise these powers, if requested by the owner, occupier, or other person in charge of the premises.

12 Application Procedure

12.1 An application form, available from the relevant council's website or from the licensing team must be completed, together with the correct fee and a current Basic Disclosure of Criminal Convictions. A Basic Disclosure will be valid for 3 months from the date of issue.

Appendix A

12.2 A licence once granted is valid for 3 years.

12.3 A renewal application must be received before the expiry of the current licence.

12.4 If a licence renewal application is refused, the licence expires when no appeal is possible, or no appeal is determined or withdrawn.

12.5 A licence may be varied from one type to another, i.e., site licence to collector's licence.

A variation application must be made to reflect changes to:

- (a) Name of licensee, site manager, or sites on a site licence, or
- (b) Name of licensee on a collector's licence.

A variation cannot be used to transfer the licence to another person, only to amend the name of a licensee. Application to vary must be made to the issuing authority.

12.6 When a renewal application is received prior to the expiry date of the licence, the licence continues in effect unless the application is subsequently withdrawn, and then the licence will expire on the day in which the application was withdrawn.

12.7 The council may request additional information is provided for the consideration of the application. Failure to provide such information may result in the application being refused.

12.8 The fee is set by the council under the guidance issued by the Home Office with the approval of the Licensing & Regulatory Committee.

12.9 Fees are set after considering the cost of processing, administering and compliance costs associated with the licence. The council is committed to reviewing fees on a regular basis.

12.10 If the council proposes to refuse an application, or to revoke, or to vary a licence by imposing conditions, a notice must be issued to the licence holder setting out the

Appendix A

council's proposals and the reasons for their decision. The notice will indicate the time in which the applicant or licensee can either:

- (a) make representation about the proposal, or
- (b) Inform the council that the applicant or licensee wishes to do so.

The council will stipulate a period of 21 days for representations or intentions to be received.

- 12.11 If the applicant or licensee does not make representation or notify the council that they wish to do so, the council may refuse, revoke, or vary the licence.
- 12.12 If a notification is received that the applicant or licensee wishes to make representation, the council must allow a reasonable period for them to make their representation. The council will allow 21-days for written representations to be received from the date the application becomes contested, or the council receives notification of the applicant having a relevant offence. The applicant or licensee may wish to make an oral representation; if this is the case the person must notify the council within the 21-day period.
- 12.13 If this period lapses, without a written representation, or a request for an oral representation being received, the council may refuse, revoke or vary the licence.
- 12.14 Where there is a representation, a hearing will be arranged within 28 days, and the case will be presented before a panel of the Licensing and Regulatory Committee. The applicant or licensee will be invited to attend. The council will give at least 10 working days' notice of the date and time of the hearing to the applicant or licensee.
- 12.15 In the event of a refusal of an application, revocation or variation of a licence, notice outlining the council's decision and the reasons for it will be given to the applicant/licensee. The notice will include the appeal procedure.

Appendix A

13 Revocation and Imposing Conditions

- 13.1 The council may revoke a scrap metal licence if it is satisfied the licence holder does not carry on a scrap metal business at any of the sites named on the licence.
- 13.2 The council may revoke a scrap metal licence if it is satisfied the site manager named on the licence does not act as a site manager at any of the named sites on the licence.
- 13.3 The council may revoke a scrap metal licence if it is no longer satisfied the licence holder is a suitable person to carry on the business.
- 13.4 If the licence holder, or site manager named on a licence is convicted of a relevant offence, the authority may impose one or both of the following conditions:
- (a) The dealer must not receive scrap metal except between 9am and 5pm on any day.
 - (b) All scrap metal received must be kept in the form in which it was received for a specified period, not exceeding 72 hours, beginning with the time when it was received.
- 13.5 A revocation or variation only comes into effect when no appeal under the Act is possible, or when such appeal has been determined or withdrawn.
- 13.6 If the authority considers the licence should not continue without the addition of one or more of the conditions in section 14.4 of this policy, the licence holder will be given notice:
- (a) that, until a revocation comes into effect, the licence is subject to one or both conditions, or
 - (b) that a variation comes into immediate effect.

14 Appeals

- 14.1 An applicant may appeal to the Magistrates' Court against a refusal of an application or variation.

Appendix A

- 14.2 The licensee may appeal to the Magistrates' Court against the inclusion on the licence of a condition under Section 3(8) of the Act, or a revocation or variation of a licence under Section 4 of the Act.
- 14.3 The appeal procedure will be in accordance with the Magistrates' Courts Act 1980 and must be lodged within 21 days of receipt of the decision notice.
- 14.4 On appeal the Magistrates' Court may confirm, vary or reverse the council's decision, and give such directions as it considers appropriate having regards to the provisions of the Act.

15 Closure of Unlicensed Sites

- 15.1 If an authorised officer of the council is satisfied premises are being used by a scrap metal dealer in the course of their business and the premises are unlicensed, they may issue a closure notice.
- 15.2 A copy of the notice must be given to:
- (a) a person who appears to be the site manager, and
 - (b) any person who appears to be a director, manager, or other officer of the business.
- 15.3 A copy may also be given to any person who has an interest in the business, a person who occupies part of the premises, or where the closure may impede a person's access to that other part of the premises.
- 15.4 After a period of 7 days, the authorised officer may apply to a justice of the peace for a closure order. The court must be satisfied the premises will continue to be used by a scrap metal dealer, or there is a reasonable likelihood that the premises will be.
- 15.5 A closure order may close the premises immediately, and the premises may remain closed to the public until the council makes a termination of closure order by certificate. The scrap metal dealer may be required to cease business

Appendix A

immediately. It may require the defendant to pay a sum into the court, which shall not be released until the person has complied with the requirements of the order.

- 15.6 Such an order may have a condition relating to the admission of people into the premises or may include a provision the court considers appropriate.
- 15.7 A copy of the order must be placed on the premises in a prominent position by the council.
- 15.8 Once the requirements of the order have been complied with and the council is satisfied the need for the order has ceased, a certificate may be made. This ceases the order and the sum of money paid into the court is released.
- 15.9 A copy of the certificate must be given to any person the closure order was made against, give a copy to the court, and place a copy on the premises.
- 15.10 A copy must be given to anyone who requests one.
- 15.11 Anyone issued with a closure order may make representation to a justice of the peace. The court may discharge the order, if it is satisfied there is no longer a need for a closure order.
- 15.12 The licensing authority may be required by the court to attend and answer the representation made.
- 15.13 Notice of the hearing must be given to all people issued with the closure order.
- 15.14 Appeal may be made to the Crown Court against:
- (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.

Appendix A

- 15.15 Any appeal must be lodged within 21 days beginning on the day on which the order or decision was made.
- 15.16 Appeal a) and b) may be made by any person who was issued with an order.
- 15.17 Appeal c) and d) may be made by the Licensing Authority.
- 15.18 A person is guilty of an offence, if they allow the premises to be open in contravention of a closure order, without reasonable excuse, or fails to comply with, or contravenes a closure order.
- 15.19 An authorised officer of the authority may enter the premises at any reasonable time to ensure compliance with the order. They may use reasonable force if necessary.
- 15.20 An authorised officer must produce evidence of their identity or evidence of their authority to exercise the powers under the Act, if requested to do so.

16. Delegation of Functions

- 16.1 Where there are uncontested applications, or where there are no questions about the suitability of the applicant the determination should be dealt with by the council's licensing officers.
- 16.2 Contested applications where there is relevant information from any of the consultees, or queries regarding an applicant's suitability, revocation of a licence or the imposition of conditions will be presented to the Licensing and Regulatory Committee.
- 16.3 Table 1 below outlines the Delegation of Functions.

Table 1. Delegation of Functions			
----------------------------------	--	--	--

Appendix A

Matter to be dealt with	Licensing and Regulatory Committee	Corporate Manager or Team Leader	Officers
Determination of policies and strategies		All cases	Officers
New or renewal application	All cases where there are unspent relevant convictions or contested cases following receipt of information from other statutory bodies		All cases where there are no unspent relevant convictions or where cases are uncontested
Variation of licence by imposition of conditions following licence holder or site manager being convicted of a relevant offence			All cases
Revocation of licence	All cases	Some cases if urgent decision required	
Variation of licence under schedule 1/section 3			All cases

17 Enforcement

17.1 In order to ensure compliance with the legislation and any conditions imposed, premises will be inspected using a risk-based approach.

Appendix A

17.2 The council will work with partner agencies to ensure that the provisions of the Act are complied with. Non-compliance may result in enforcement action being taken.

17.3 Appropriate enforcement action will be taken in accordance with the legislation, any guidance issued under that legislation and the council's enforcement policy.

18. Offences & Penalties

18.1 The following paragraphs are indicative of the general offences and penalties.

Independent legal advice should be sought for individual cases.

18.2 Offence relating to scrap metal dealing are described below under the relevant legislation.

18.3 Table of Offences -Scrap Metal Dealers Act 2013

Section	Offence	Maximum Penalty
1	Carrying on the business as a scrap metal dealer without a licence	Level 5
8	Failure to notify the authority of any changes to details given within the application	Level 3
10	Failure to display site licence or collectors' licence	Level 3
11 (6)	Receiving scrap metal without verifying persons full name and address	Level 3
11 (7)	Delivering scrap metal to a dealer and giving false details	Level 3
12 (6)	Buying scrap metal for cash	Level 5
13	Failing to keep records regarding receipt of metal	Level 5

Appendix A

14	Failing to keep records regarding disposal of metal	Level 5
15 (1)	Failure to keep records which allow the information and the scrap metal to be identified by reference to one another	Level 5
15 (2)	Failure to keep copy document used to verify name and address of person bringing metal, or failure to keep a copy of cheque issued	Level 5
15 (3)	Failure to keep information and records for 3 years	Level 5
16	Obstruction to right of entry and failure to produce records	Level 3

18.4 Where an offence under the Act is committed by a corporate body and is proved

- (a) To have been committed with the consent or connivance of a director, manager, secretary or similar officer, or
- (b) To be attributable to any neglect on the part of any such individual, the individual as well as the body corporate is guilty of the offence and liable to prosecution and receive the appropriate penalty.

18.5 Where the affairs of the body corporate are managed by its members, any acts or omissions committed by that member will be treated as though that member were a director of the body corporate.