

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO LICENSING COMMITTEE

Agenda Item No. 9

meeting date: 16 September 2014
title: Scrap Metal Dealers Policy
submitted by: Chief Executive
principal author: Mair Hill

1 PURPOSE

- 1.1 To seek Committee's approval of the draft Scrap Metal Dealers Policy and to authorise the Head of Legal and Democratic Services to consult upon it.
- 1.2 Relevance to the Council's ambitions and priorities
 - Community Objectives – Consideration of these issues will promote the Council's aim to be a well-managed Council.
 - Corporate Priorities - Consideration of these issues will promote the Council's priority of enhancing the existing environmental quality of our area.
 - Other Considerations - None

2 BACKGROUND

- 2.1 The Scrap Metal Dealers Act 2013 came into force on 1 October 2013. On 17 September 2013, in preparation for this Committee approved, the fees, application form and delegation scheme for the regime and also authorised the Council's solicitor to draft a policy once the regime had been in place for 3 months

3 ISSUES

- 3.1 A draft policy has now been produced and is appended to this report as **Appendix 1**.
- 3.2 The purpose of the policy is to provide guidance on the way in which the Council will administer and enforce the requirements of the Act. It is therefore important to consult upon its contents before it is implemented, and to have arrangements in place for the policy to be kept up to date. Whilst there is no requirement for the policy to be reviewed

under the Act, the Council proposes to review it at least every five years or sooner to reflect any legislative changes.

- 3.3 Committee is therefore asked to consider the contents of the draft policy, and should it be approved to authorise the Head of Legal and Democratic Services to consult upon it with those parties listed within the draft policy. The results of any consultation would be brought back to Committee to consider before finally considering the draft policy.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications

- Resources – Resources will be required to carry out the consultation.
- Technical, Environmental and Legal – None
- Political - None
- Reputation –The approval of a policy will enhance the Council's reputation.
- Equality & Diversity – None

5 RECOMMENDED THAT COMMITTEE

5.1. Approve the draft Scrap Metal Dealers' policy; and

5.2 Authorise the Head of Legal and Democratic Services to consult upon the draft policy.

Marshal Scott

MARSHAL SCOTT
CHIEF EXECUTIVE

Mair Hill

MAIR HILL
SOLICITOR

BACKGROUND PAPERS

- Report of Chief Executive dated 18 June 2013
- Report of Chief Executive dated 17 September 2013

REF: MJH/Licensing Committee/16 September 2014

For further information please ask for Mair Hill, extension 3216

APPENDIX 1

**DRAFT
SCRAP METAL
DEALERS POLICY**



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

September 2014

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1. Introduction

The Policy

- 1.1 This document states Ribble Valley Borough Council's ('Council') policy on the regulation of Scrap Metal Dealers in its capacity as the relevant local authority for the purposes of the Scrap Metal Dealers Act 2013 ("Act").

The policy outlines the requirements of the Act. It gives guidance to new applicants, existing licence holders, consultees and members of the public as to how the Council will administer and enforce the requirements of the Act. The council may depart from its policy if the individual circumstances of any case warrant such a deviation. In such cases the Council must give full reasons for doing so.

This policy will be reviewed at least every five years. In preparation for the publication of this policy, the following will be consulted.

- a) Lancashire Constabulary
- b) Lancashire Fire & Rescue Services
- c) The Environment Agency
- d) The Council's Environmental Health department
- e) Existing licence holders
- f) Relevant trade associates

The Law

- 1.2 The Act received Royal Assent on 28 February 2013 and came into force on 1 October 2013, with its enforcement powers subsequently coming into force on 1 December 2013. The Act repeals the Scrap Metal Dealers Act 1964 (and linked legislation) and Part 1 of Vehicles (Crime) Act 2001 creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries.
- 1.3 The Act maintains local authorities as the principal regulator, but replaces the old registration system with a full licensing regime. It grants power to refuse a licence to "unsuitable" applicants and a power to revoke licences if the licence holder becomes "unsuitable".
- 1.4 The Act requires a scrap metal dealer to obtain a licence in order to carry on business as a scrap metal dealer.

2. Definitions under Scrap Metal Dealers Act 2013

- 2.1 A person carries on business as a scrap metal dealer if:
- (a) they wholly or partly buy or sell scrap metal (whether or not sold in the form it was bought); or
 - (b) they carry on business as a motor salvage operator (see 2.1.3).
- 2.2 The selling of scrap metal merely as surplus materials or as a by-product of manufacturing articles is NOT to be regarded as 'carrying on a business' as a scrap metal dealer.
- 2.3 Motor salvage operation is defined in the Act as a business that consists wholly or mainly of:

- (a) recovering salvageable parts from motor vehicles for re-use or sale and selling the remainder of the vehicle for scrap;
- (b) buying written-off vehicles, repairing and reselling them;
- (c) buying or selling motor vehicles which are to be the subject of any of the activities mentioned in (a) or (b);
- (d) wholly or mainly in activities falling within paragraphs (b) and (c);

2.4 Scrap metal includes:

- (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.

2.5 Scrap metal does not include:

- (a) Gold;
- (b) Silver;
- (c) any alloy of which 2% or more by weight is attributable to gold or silver.

"Licensed site" means a site identified in a scrap metal licence.

"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.

"Police officer" includes a constable of the British Transport Police Force.

"Premises" includes any land or other place (whether enclosed or not).

"Relevant environmental permit or registration" means—

- (a) any environmental permit under regulation 13 of the Environmental (Permitting) Regulations 2010 authorising any operation by the applicant in the local authority's area;
- (b) any registration of the applicant under Schedule 2 to those Regulations in relation to an exempt waste operation (within the meaning of regulation 5 of those Regulations) carried on in that area;
- (c) any registration of the applicant under Part 8 of the Waste (England and Wales) Regulations 2011 (carriers, brokers and dealers of controlled waste).

"Relevant offence" and "relevant enforcement action" have the meaning given by section 3(3) of the Scrap Metal Dealers Act 2013 and prescribed in the regulations made by the Secretary of State.

"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 individual who exercises day-to-day control and management of activities at the site. (An individual may be named in a licence as site manager at more than one site; but no site may have more than one site manager named in relation to it).

"Trading name" means a name, other than that stated in the licence under which a licensee carries on business as a scrap metal dealer.

3. Types of Licence

- 3.1 Anyone wishing to operate a business as a scrap metal dealer will require either:
- (a) a site licence; or
 - (b) a collector's licence;
- 3.2 The licence is valid for three years and permits the licence holder to operate within the boundaries of Ribble Valley.
- 3.3 A person may hold more than one licence issued by different local authorities but may not hold more than one licence issued by any one authority.

Site Licence

- 3.4 The site licence authorises the licence holder to carry on business at the site(s) identified in the licence.
- 3.5 The site licence must include:
- (a) the name of the licensee;
 - (b) the name of the authority;
 - (c) identify all the sites in the authority's area at which the licensee is authorised to carry on business;
 - (d) the name of the site manager of each site;
 - (e) the date of expiry.
- 3.6 The site licence also permits the licence holder to act as a collector.

Collector's Licence

- 3.1 The collector's licence authorises the licensee to carry on business as a mobile collector within the boundaries of Ribble Valley.
- 3.2 The collector's licence must include:
- (a) the name of the licensee;
 - (b) the name of the authority;
 - (c) the date of expiry;

4. Applicant Suitability

General

- 4.1 The Council must determine whether the applicant is a suitable person to carry on a business as a scrap metal dealer; and may not issue a licence unless satisfied the applicant is suitable.
- 4.2 In determining a person's suitability the Council will have regard to:-
- (a) Statutory guidance on determining suitability which is issued from time to time by the Secretary of State; and
 - (b) Its Policy.

- 4.3 Notwithstanding the existence of this policy, the Council, when determining a person's suitability for the purposes of the Act, will treat each case on its own individual merits.

Determining Suitability

- 4.4 As well as its policy and statutory guidance, the Council, when determining a person's suitability, may have regard to any other information it considers relevant, in particular, but not limited to:
- (a) whether the applicant or site manager has been convicted of any relevant offence;
 - (b) whether the applicant or site manager has been the subject of any relevant enforcement action;
 - (c) whether there has been any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal);
 - (d) whether there has been any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal);
 - (e) whether there has been any previous revocation of a scrap metal licence (and the reasons for the revocation);
 - (f) whether the applicant has demonstrated there will be adequate procedures in place to ensure compliance with the Act.
- 4.5 In determining suitability the Council will require the applicant to produce a Criminal Records Certificate.
- 4.6 In determining whether a company is suitable to carry on business as a scrap metal dealer, the Council will have particular regard as to whether any of the following are a suitable person:
- (a) any director of the company;
 - (b) any secretary of the company;
 - (c) any shadow director of the company (that is to say, any person in accordance with those directions or instructions the directors of the company are accustomed to act).
- 4.7 In determining whether a partnership is suitable to carry on business as a scrap metal dealer, the Council will have particular regard as to whether each of the partners are a suitable person.
- 4.8 The Council may consult other persons regarding the suitability of an applicant, including, but not limited to:
- (a) any other local authority;
 - (b) the Environment Agency;
 - (c) the Natural Resource Body for Wales;
 - (d) an officer of a police force;
- 4.9 If the applicant or any site manager 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 must not receive scrap metal except between 9am and 5pm on any day;
 - (b) that all scrap metal received must be kept in the form in which it is received

for a specified period, not exceeding 72 hours, beginning with the time when it is received.

4.10 Having regard to the objectives of the Act the Council have determined there will be a presumption to refuse an application where the applicant or any other person required to be named or identified in the application has been convicted of any of the relevant offences laid down in the Act.

4.11 The Act deems the following as relevant offences for the purpose of ascertaining an applicants suitability:-

- An offence under section 1, 5, or 7 of the Control of Pollution (Amendment) Act 1989;
- An offence under section 170 or 170B of the Customs and Excise Management Act 1979(5), where the specific offence concerned relates to scrap metal;
- An offence under section 110 of the Environment Act 1995;
- An offence under sections 33, 34 or 34B of the Environmental Protection Act 1990;
- An offence under section 9 of the Food and Environment Protection Act 1985;
- An offence under section 1 of the Fraud Act 2006, where the specific offence concerned relates to scrap metal, or is an environment- related offence;
- An offence under section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;
- An offence under sections 327, 328 or 330 to 332 of the Proceeds of Crime Act 2002;
- Any offence under the Scrap Metal Dealers Act 1964;
- Any offence under the Scrap Metal Dealers Act 2013;
- An offence under sections 1, 8,9,10, 11, 17, 18, 22 or 25 of the Theft Act 1968(13), where the specific offence concerned relates to scrap metal, or is an environment-related offence;
- Any offence under Part 1 of the Vehicles (Crime) Act 2001;
- An offence under sections 85, 202, or 206 of the Water Resources Act 1991;
- An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007;
- An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010;
- Any offence under the Hazardous Waste (England and Wales) Regulations 2005;
- Any offence under the Hazardous Waste (Wales) Regulations 2005;
- An offence under regulation 17(1) of the Landfill (England and Wales) Regulations 2002;

- Any offence under the Pollution Prevention and Control (England and Wales) Regulations 2000;
 - Any offence under the Producer Responsibility (Packaging Waste) Regulations 2007;
 - Any offence under the Transfrontier Shipment of Waste Regulations 1994;
 - Any offence under the Transfrontier Shipment of Waste Regulations 2007;
 - Any offence under the Waste (Electrical and Electronic Equipment) Regulations 2006;
 - An offence under regulation 42 of the Waste (England and Wales) Regulations 2011;
- 4.12 While the Act states the Council must have regard to the above-mentioned relevant offences, the Council is not limited to taking into account only those offences. As such the Council may consider other offences that, in the Council's opinion, may be relevant in determining an applicant's suitability.
- 4.13 Having regard to the objectives of the Act the Council have determined there will be a presumption to refuse an application where the applicant or any other person required to be named or identified in the application has been the subject of any of the following forms of enforcement action within the period of three years prior to the application:
- (a) closure notice pursuant to the Act;
 - (b) closure order pursuant to the Act;
 - (c) action for recovery of possession of out of date or discontinued licences.
- 4.14 Having regard to the objectives of the Act, the Council has determined it will consider the following offences, or enforcement actions relating to any person relevant to the licence, as being of particular relevance to the suitability of the licence holder:
- (a) Written warning relating to scrap metal licence compliance;
 - (b) Waste regulations 2011 - enforcement, compliance and stop notices;
 - (c) Permitting regulations notices;
 - (d) Planning Breach of Condition / Enforcement Notices;
 - (e) Statutory nuisance abatement notice;
 - (f) Breach of statutory nuisance abatement notice;
- 4.15 The authority is aware of its duty not to fetter its discretion and, notwithstanding the matters that the Council may take into account when determining a person's suitability, each case shall be treated on its own individual merits.

5. Revocation of Licence / Imposition of Conditions

- 5.1 The Council may revoke a scrap metal licence if it is satisfied that the licensee does not carry on the business of scrap metal dealing at any of the sites identified in the licence.
- 5.2 The Council may revoke a licence if it is satisfied that a site manager named in the licence does not act as site manager at any of the sites identified in the licence.
- 5.3 The Council may revoke a licence if it is no longer satisfied that the licensee is a

suitable person to carry on business as a scrap metal dealer and the Council shall have particular regard to any "relevant offences" and "relevant enforcement action" and to those matters contained in section 4 of this policy.

- 5.4 If the licensee or any site manager named in a licence is convicted of a relevant offence, the Council may vary the licence by adding one or both of the conditions set out in paragraph 4.9
- 5.5 A revocation or variation comes into effect when no appeal is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn.
- 5.6 If the Council considers that the licence should not continue in force without conditions, it may by notice provide:
- (a) that, until a revocation comes into effect, the licence is subject to one or both of the conditions set out in paragraph 4.9, or
 - (b) that a variation under this paragraph comes into effect immediately.
- 5.7 All licences issued by the Council pursuant to the Act remain the physical property of the Council and must be returned to the Council as required on expiry or revocation of the relevant licence.
- 5.8 Action may be taken for the recovery of any licence not returned as required by the Council and any such action may be taken into account in relation to any future application for a licence.

6. Supply of Information

- 6.1 This section applies to information which has been supplied, to the Council, under the Act relating to a scrap metal licence or to an application for, or relating to, such licence.
- 6.2 The Council must supply any such information to any of the following persons who request it for purposes relating to this Act:
- (a) any other local authority;
 - (b) the Environment Agency;
 - (c) the Natural Resources Body for Wales;
 - (d) an officer of a police force.
- 6.3 This section does not limit any other power the Council may have to supply that information.

7. Register of Licences

- 7.1 The Environment Agency maintains a register of scrap metal licences issued by authorities in England and each entry will record:
- (a) the 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 in the licence;
 - (e) the type of licence; and
 - (f) the date on which the licence is due to expire;

7.2 The registers are to open to the public for inspection.

8. Notification Requirements

8.1 An applicant for a scrap metal licence, or for the renewal, or for a variation to a licence, must notify the Council of any changes which materially affect the accuracy of the information which the applicant has provided in connection with the application.

8.2 A licensee who is not carrying on business as a scrap metal dealer in the Ribble Valley area must notify the Council within 28 days from the date on which the licence holder ceased to be carrying on their business.

8.3 If a licence is issued to a business under a trading name the licensee must notify the Council of any change to that name within 28 days of the change occurring.

8.4 The Council must notify the Environment Agency, of -

- (a) any notification given to the Council under paragraph 8.1 or 8.1
- (b) any variation made by the Council under paragraph 15 (variation of type of licence or matters set out in licence), and
- (c) any revocation by the Council of a licence

9. Display of Licence

9.1 A copy of a site licence must be displayed at each site identified in the licence. The copy must be displayed in a prominent place, in an area accessible to the public.

9.2 A copy of a collector's licence must be displayed on any vehicle that is being used in the course of the dealer's business. This must be displayed in a manner which enables it easily to be read by a person outside the vehicle.

10. Verification of Suppliers Identity

10.1 A scrap metal dealer must verify the name and address of any person they receive scrap metal from.

10.2 When verifying the person's name and address, the scrap metal dealer must do so by way of documents, data or other information obtained from a reliable and independent source.

10.3 Should verification not be gained then each of the following may be guilty of an offence:

- (a) the scrap metal dealer;
- (b) if metal is received at the site, the site manager;
- (c) any person who, under arrangements made by a person within sub-paragraph (a) or (b), has responsibility for verifying the name and address.

11. Payment for Scrap Metal

11.1 A scrap metal dealer must only pay for scrap metal by either:

- (a) a cheque (which is not transferrable under Section 81A Bills of Exchange Act 1882); or
- (b) electronic transfer of funds (authorised by a credit, debit card or otherwise).

11.2 Payment includes payment in kind, for example goods or services.

12. Record Keeping

12.1 A scrap metal dealer must keep three types of records:

12.1.1 Receipt of Metal

12.1.2 Disposal of Metal

12.1.3 Supplementary

Receipt of Metal

12.2 If any metal is received in the course of the dealer's business the dealer must record the following information:

- (a) 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) date and time of receipt;
- (c) the registration mark of the vehicle delivered by;
- (d) full name and address of person delivering it;
- (e) full name of the person making payment on behalf of the dealer;

12.3 The dealer must keep a copy of any documents used to verify the name and address of the person delivering the metal.

12.4 If payment is made by cheque, the dealer must retain a copy of the cheque.

12.5 If payment is made via electronic transfer, the dealer must keep a receipt identifying the transfer or, if there is no receipt identifying the transfer, a record of particulars identifying the transfer.

Disposal of Metal

12.6 The Act regards metal as being disposed of:

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

12.7 Where a scrap metal dealer disposes of metal in the course of business under a site licence, the following must be recorded:

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

12.8 If disposal is in the course of business under a collector's licence, the dealer must record the following information:

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

Supplementary

- 12.9 The information collected during receipt and disposal must be recorded in a manner which allows the information and the scrap metal to which it relates to be readily identified by reference to each other.
- 12.10 The records of receipt must be marked so as to identify the scrap metal to which they relate.
- 12.11 Records must be kept for a period of 3 years beginning with the day on which the metal is received or disposed of as may be the case.
- 12.12 If a scrap metal dealer fails to fulfil a requirement under paragraph 12 or this paragraph each of the following may be guilty of an offence:
- (a) the scrap metal dealer;
 - (b) if the metal is received at or (as the case may be) despatched from a site, the site manager;
 - (c) any person who, under arrangements made by a person within paragraph(a)or (b) has responsibility for fulfilling the requirement.
- 12.13 A scrap metal dealer or site manager may have a defence to any offence if they can prove arrangements have been made to ensure the requirement to keep records was justified, or that they took all reasonable steps to ensure those arrangements were complied with.

13. Rights of Entry & Inspection

- 13.1 A constable or an officer of the Council may enter and inspect a licensed site at any reasonable time on notice to the site manager.
- 13.2 A constable or an 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 have been made and failed; or
 - (b) entry to the site is reasonably required for the purpose of ascertaining whether the provisions of this Act are being complied with or investigating offences under it, and in either case, the giving of the notice would defeat that purpose.
- 13.3 Paragraphs 13.1.1 and 13.1.2 do not apply to residential premises.
- 13.4 A constable or an officer of the Council may:
- (a) require production of, and inspect, any scrap metal kept at any licensed premises;
 - (b) require production of, and inspect, any records that are required to be kept in accordance with the Act;
 - (c) take copies of or extracts from any such records.
- 13.5 Officers of the Council will undertake where reasonable and practicable to give a notice of their powers and your rights on entry to any site licensed pursuant to the Act.

14. Application Procedure

Term of Licence/Renewal

- 14.1 A licence is valid for three years beginning from the date it is issued.

- 14.2 If a renewal is received before the expiry of the existing licence the existing licence will continue to have effect, and:
- (a) If withdrawn the licence expires at the end of the day of withdrawal.
 - (b) If refused, and there is no appeal possible the existing licence will expire or, where there is a right of appeal the licence will not expire until any such appeal is finally determined or withdrawn.

- 14.3 If a licence is renewed, the licence expires at the end of the three year period from the date of the renewal.

Application

- 14.4 The application form is available from the Licensing Department, or from the Council's website. Guidance notes on how to complete the application form are also available
- 14.5 Please note the collectors licence allows a business or individual to operate only within the Ribble Valley area, therefore individuals wishing to collect across borders will be required to obtain a collectors licence from the relevant local authority where they wish to collect and sell.
- 14.6 All applicants are required to provide a basic disclosure of criminal convictions with the application. Information on convictions held by those having lived outside the United Kingdom will also be required.

15. Variation of Licence

- 15.1 A licence may be varied from one type to the other. A variation application must be made to reflect changes to:
- (a) Site licence - the name of licensee, the sites, site manager
 - (b) Collector's licence - name of licensee
- 15.2 The variation can amend the name of the licensee but cannot transfer the licence to another person.
- 15.3 The application to vary a licence must be made to the issuing authority and contain particulars of the changes to be made to the licence.

16. Further Information

- 16.1 The Council may request (at the time of application or later) any additional information it considers relevant for the purpose of considering an application.
- 16.2 Failure to provide such information may result in an application being declined.

17. Fee

- 17.1 An application must be accompanied by the fee, set by the Council.
- 17.2 Any fee set will take into account guidance from the Secretary of State. Details of the current fees can be found on the Council's website.

18. Right to Make Representations

Notice Period

- 18.1 If the Council proposes to refuse an application or to revoke/vary a licence, a notice shall be issued to the applicant/licensee setting out what the Council proposes to do

and the reasons for this. The notice shall also state that, within the period specified, the applicant/licensee can either:

- (a) make representations about the proposal; or
- (b) inform the authority that the applicant/licensee wishes to do so.

- 18.2 The period specified in the notice shall be not less than 14 days beginning with the date on which the notice is given to the applicant/licensee.
- 18.3 Within the period specified in the notice the applicant/licensee must notify the Council whether the applicant / licensee wishes to make representations.
- 18.4 Should this period expire and the applicant/licensee has not made representations, or informed the Council of their wish to do so, the Council may refuse the application, or revoke or vary the licence.
- 18.5 If, within the period specified in the notice, the applicant/licensee informs the Council that they wish to make representations, the Council will allow a reasonable period to make representations and may refuse the application or revoke or vary the licence if they fail to make representations within that period.
- 18.6 If the applicant/licensee notifies the Council that they wish to make oral representations, the Council will give them the opportunity of appearing before, and being heard by a sub-Committee of the Licensing Committee.

Notice of Decision

- 18.7 If the application is refused, or the licence is revoked or varied, notice shall be given to the applicant/licensee setting out the decision and the reasons for it. The notice shall also state that the applicant/licensee may appeal against the decision, the time within which the appeal may be brought (21 days beginning with the day on which notice of the decision was given) and, if revoked or varied, the date on which the revocation of variation is to take effect.

Appeals

- 18.8 An applicant may appeal to a magistrates' court against the refusal of an application or a variation. The licensee may appeal to a magistrates' court against the inclusion in a licence of a condition under Section 3(8) of the Act or the revocation or variation of a licence.
- 18.9 An appeal must be made within 21 days beginning on the day the notice to refuse the application, to include the condition or to revoke or vary the licence was given.
- 18.1.3 On appeal, the magistrates' court may confirm, vary or reverse the authority's decision, and give such directions as it considers appropriate having regard to the provisions of the Act.

19. Closure of Unlicensed Sites

Closure Notice

- 19.1 An authorised officer of the Council or, a constable, may issue a closure notice where they are satisfied that the premises are being used by a scrap metal dealer in the course of business and that the premises are not a licensed site.
- 19.2 The closure notice will state the reasons for the closure notice being issued and specify the steps which may be taken to ensure that the alleged use of the premises ceases.
- 19.3 The closure notice will also state the Council may apply to the Courts for a 'closure order', should the notice not be complied with.

- 19.4 The notice shall be given to the person who appears to be the site manager of the premises and any person who appears to be a director, manager or other officer of the business in question. The notice may also be given to any person who has an interest in the premises.
- 19.5 A person with an interest in premises is the owner, leaseholder or occupier of the premises.
- 19.6 The notice shall be given to a person who occupies another part of any building or structure of which the premises form part and the constable or local Council believes at the time of giving the notice, that the person's access to that other part would be impeded if a closure order were made in respect of the premises.

Cancellation of Closure Notice

- 19.7 A constable or the Council may cancel a closure notice. This takes effect when it is given to any one of the persons to whom the closure notice was given. This must also be given to any other person to whom the closure notice was given.

Application for Closure Order

- 19.8 When a closure notice has been given, a constable or the Council shall make a complaint to a justice of the peace for a closure order. This may not be made less than 7 days after the date on which the closure notice was given or more than 6 months after that date.
- 19.9 A complaint under this paragraph may not be made if the constable or the Council are satisfied that the premises are not (or are no longer) being used by a scrap metal dealer in the course of business and there is no reasonable likelihood that the premises will be so used in the future.

Closure Order

- 19.10 A closure order requires that a premises be closed immediately to the public and remain closed until a constable or the Council makes a termination of closure order by certificate, the use of the premises by a scrap metal dealer in the course of business be discontinued immediately and that any defendant pay into court such sum as the court determines and that the sum will not be released by the court to that person until the other requirements of the order are met.
- 19.11 The closure order may include a condition relating to the admission of persons into the premises, the access by persons to another part of any building or other structure of which the premises form part.
- 19.12 A closure order may include such provision as the court considers appropriate for dealing with the consequences if the order should cease to have effect.
- 19.13 As soon as practicable after the closure order is made, the complainant must fix a copy of it in a conspicuous position on the premises in respect of which it was made.
- 19.14 A sum ordered to be paid into court under a closure order is to be paid to the designated officer for the court.

Termination of Closure Order by Certificate

- 19.15 Once a closure order has been made and a constable or the Council satisfied that the need for the order has ceased a certificate may be issued. This ceases the closure order and any sum paid into a court is to be released by the court to the defendant.
- 19.16 As soon as is practicable after making a certificate, a constable or local authority must give a copy to any person against whom the closure order was made, give a copy to the designated officer for the court which made the order and fix a copy of it in a conspicuous position on the premises in respect of which the order was made.

19.17 A copy of the certificate must be given to any person who requests one.

Discharge of Closure Order by Court

19.18 A closure order may be discharged by complaint to a justice of the peace. This can be done by any person to whom the relevant closure notice was given or any person who has an interest in the premises but to whom the closure notice was not given.

19.19 The court will make a discharge order if it is satisfied that there is no longer a need for the closure order. The justice may issue a summons directed to a constable as the justice considers appropriate or the local authority, requiring that person appear before the magistrates' court to answer to the complaint.

19.20 If a summons is issued, notice of the date, time and place at which the complaint will be heard must be given to all persons to whom the closure notice was given (other than the complainant).

Appeal in relation to Closure Orders

19.21 An appeal may be made to the Crown Court against a:

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

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

19.23 An appeal under (a) or (b) above may be made by any person to whom the relevant closure notice was given or any person who has an interest in the premises but to whom the closure notice was not given.

19.24 An appeal under (b) or (c) above may be made by a constable or the Council.

Enforcement of Closure Order

19.25 A person is guilty of an offence, if without reasonable excuse they permit premises to be open in contravention of a closure order, or fail to comply with, or do an act in contravention of a closure order.

19.26 If the closure order has been made, a constable or an authorised officer of the Council may (if necessary using reasonable force) enter the premises at any reasonable time, and having entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order.

19.27 If the owner, occupier or other person in charge of the premises requires the officer to produce evidence of identity or evidence of authority to exercise powers, the officer must produce that evidence.

20 Offences & Penalties

20.1 The following paragraphs are only indicative of the general offences and penalties. Independent legal advice should be sought for individual cases.

20.2 The following are prescribed by the Act as Criminal Offences:

Section	Offence	Level
Section 1	Carrying on business as a scrap metal dealer without licence	5
Section 8	Failure to notify authority of any changes to details given	3

	with application	
Section 10	Failure to display site licence or collectors licence	3
Section 11(6)	Receiving scrap metal without verifying persons full name and address	3
Section 11(7)	Delivering scrap metal to dealer and giving false details	3
Section 12(6)	Buying scrap metal for cash	5
Section 13	Failure to keep records regarding receipt of metal	5
Section 14	Failure to keep records regarding disposal of metal	5
Section 15(1)	Failure to keep records which allow the information and the scrap metal to be identified by reference to one another	5
Section 15(2)	Failure to keep copy of document used to verify name and address of person bringing metal, or failure to keep a copy of a cheque issued	5
Section 15(3)	Failure to keep information and records for three years	5
Section 16	Obstruction to right of entry and failure to produce records	3

20.3 Current levels of Fines:

Level 1 - £200

Level 2 - £500

Level 3 - £1,000

Level 4 - £2,500

Level 5 - £5,000

Offences by Bodies Corporate

20.4 Where an offence under this Act is committed by a body corporate and it is proved—

- (a) to have been committed with the consent or connivance of a director, manager, secretary or other similar officer; or
- (b) to be attributable to any neglect on the part of any such individual, the individual as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly;

where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and omissions of a member in connection with that management as if the member were a director of the body corporate.

21. Delegation of Functions

21.1 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.

21.2 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 a sub-Committee of the Council's Licensing Committee.

