

# Oadby & Wigston Borough Council

## Licensing of Scrap Metal Dealers 2014 - 2019

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This Policy will be kept under review by the Corporate Resources (Licensing Team). Minor amendments to the Policy may be made by the Corporate Resources (Licensing Team) from time to time where those changes are simply for purposes of the readability of the document.

Substantive alterations arising out of changes in legislation or the interpretation of that legislation by the Courts, or for the purposes of amplifying or updating an intent already expressed in this Policy may be made by the Licensing and Regulatory Committee.

Any other Policy changes will be made by the Licensing and Regulatory Committee following appropriate consultation.

## PART 1: Introduction

The Scrap Metal Dealers Act 2013 (“the Act”) came into effect on 1 October 2013 replacing the system of registration under the Scrap Metal Dealers Act 1964 with a full licensing regime.

The Act requires Oadby and Wigston Borough Council (“the Council”) to only licence those who it considers suitable to carry out the business of a scrap metal dealer.

The ability to regulate the suitability of scrap metal dealers is designed to improve operating standards across England and Wales, reduce the levels of crime associated with metal theft and to encourage those dealers who do not operate to the high standards of the majority of reputable dealers to take the appropriate steps to do so or risk being unlicensed and unable to operate legally.

## PART 2: Definition of a scrap metal dealer

The Act states that a person is classed as carrying on the business of 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.

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.

But does not include:

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

Motor salvage operation is defined in the Act as a business that consists of:

- (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 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 of (whether immediately or on a subsequent re-sale) of any of the activities mentioned in (a) or (b), or
- (d) wholly or mainly in activities falling within paragraphs (b) and (c).

## PART 3: Definition of carrying on the business of a Scrap Metal Dealer

The definition of “carrying on the business” of a scrap metal dealer, stated in Part 2 of this Policy, is not further defined by the Act and ultimately would be a question for the Courts.

Whether someone is carrying on a business of a scrap metal dealer is a question that will in the first instance be determined by the Council based upon the facts and merits of the individual circumstances having regard to the Act and any Government guidance.

The Act exempts the selling of scrap metal where it is an “ancillary sale”. An ancillary sale is the sale of any metal produced as a by-product of manufacturing articles or a surplus of materials not required for manufacturing articles.

The Act does not however create an exemption for “ancillary purchases” of scrap metal.

## PART 4: Licences granted by the Council

There are two types of licence specified in the Act that may be applied for and subsequently granted by the Council. A scrap metal dealer can only hold one of the two types of licence. In most instances the type of licence needed will be obvious to the applicant but applicants are advised to take their own legal advice should they be unsure of which type they need.

The two types of licence available are:

### 1. Site licence

This licence will be required for any premises from which a person carries on the business of a scrap metal dealer.

A site licence permits the person carrying on the business at that site to transport scrap metal to and from that site, even if the starting or ending destination is outside of the local authority area in which that site is licensed.

A site licence is required to have an individual named on that licence as a site manager.

### 2. Collector’s licence

This licence is required for any person that carries on the business of a scrap metal dealer other than from a site and regularly engages, in the course of a business, in collecting waste materials, old, broken, worn out or defaced articles by means of visits from door to door.

A collectors licence only authorises the collector to collect in the local authority area in which their licence is granted. A separate licence must be obtained from each relevant council for the areas the collector wishes to collect in.

A person may hold more than one collectors licence issued by different local authorities, but may not hold more than one licence issued by any one authority.

## PART 5: Applying for a Licence

The relevant application form is available from the Council Offices or can be downloaded from the Council website. A fee, published each year in the Councils scale of charges, will be required to be paid at the time of application. The application form requires the following information:

- a) if the applicant is an individual, the full name, date of birth and usual place of residence of the applicant
- b) if the applicant is a company, the name and registered number of the applicant and the address of the applicant's registered office
- c) if the applicant is a partnership, the full name, date of birth and usual place of residence of each partner
- d) any proposed trading name
- e) the telephone number and e-mail address (if any) of the applicant
- f) the address of any site in the area of any other local authority at which the applicant carries on business as a scrap metal dealer or proposes to do so
- g) details of any relevant environmental permit or registration in relation to the applicant or site manager
- h) details of any other scrap metal licence issued (whether or not by the local authority) to the applicant within the period of 3 years ending with the date of the application or site manager
- i) details of the bank account which is proposed to be used in order to comply with section 12 of the Act (scrap metal not to be bought for cash etc), and
- j) details of any conviction of the applicant for a relevant offence, or any relevant enforcement action taken against the applicant or site manager.

If the application relates to a site licence, it must also be accompanied by:

- a) the address of each site proposed to be identified in the licence (or, in the case of an application to renew, of each site identified in the licence whose renewal is sought), and
- b) the full name, date of birth and usual place of residence of each individual proposed to be named on the licence as a site manager (other than the applicant).

These requirements may be amended by the relevant Secretary of State from time to time and where such amendments are made by regulation those amendments shall take precedence over this policy.

Applicants should note that it is an offence under paragraph 5 of Schedule 1 of the Act to give false information to the Council in relation to an application.

The above is required to be given as it either relates to information that the Act requires to be included on any licence granted, the details are required by the Act to be provided to the Environment Agency for inclusion on the national register of scrap metal dealers or it assists the Council in its assessment of an applicant's suitability to hold a licence.

## PART 6: Further information required and criminal record checks

Schedule 1, paragraph 4(1) of the Act entitles the Council to request any further information that it regards as relevant to considering an application. The Council will therefore require applicants to provide evidence of their criminal record upon application.

An agreement has been reached between the Home Office and Disclosure Scotland allowing applicants for a scrap metal dealers licence to apply for a basic disclosure to Disclosure Scotland as part of the application process.

The basic disclosure certificate should be provided to the Council with the application and be no more than three calendar months old on the date the application is made.

If the applicant is a company, the Council will require the name, address and a basic disclosure certificate for each director and company secretary and for each shadow director and company secretary.

The Council may, at its discretion, permit an applicant to make an application without the basic disclosure certificate where satisfied that exceptional circumstances justify the departure from this policy. However no determination will be made of any application until a basic disclosure certificate has been provided. The decision to exempt an applicant from this requirement will be made by the Head of Corporate Resources.

The Council will also require each application to include a written statement as to the security arrangements that exist or will exist to prevent the unlawful purchase, sale or theft of scrap metal and the details of the arrangements to be used to record sales, storage and the purchase of scrap metal.

Mobile collectors will additionally be required to provide the details of the vehicles to be used and where those vehicles and any metal collected will be stored. Applicants for site licences will be required to supply a scale plan of the site they wish to be licensed.

## PART 7: Assessing the suitability of an applicant

Section 3 of the Act prevents the Council from granting a licence unless it is satisfied that the applicant is a suitable person to carry on the business of a scrap metal dealer. This is known in this policy as the 'suitability test'.

In the case of a partnership this means assessing the suitability of each of the partners in the partnership and in the case of a company it means assessing the suitability of the directors, company secretary and any shadow directors and shadow company secretaries.

All references to "applicant" in this part should be read as referring either to an individual applicant, a partner of a partnership, a director or secretary of a company or a shadow director or shadow secretary of a company.

In assessing the suitability of an applicant the Council may have regard to any information it considers relevant. However, in assessing suitability the Act requires the Council to have particular regard as to whether:

- a) the applicant or site manager has been convicted of a relevant offence
- b) the applicant or site manager has been subject to any relevant enforcement action
- c) the applicant has previously been refused a scrap metal dealers licence or the renewal of such a licence and the reasons for such a refusal
- d) the applicant has previously been refused a relevant environmental permit or registration and the reasons for such a refusal
- e) the applicant has previously held a scrap metal dealers licence that has been revoked and the reasons for that revocation.
- f) the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with.

By receiving a basic disclosure the Council will be able to assess in the most efficient way whether the applicant has been convicted of any of the prescribed relevant offences.

The list of relevant offences are set out in regulations which may be amended from time to time by the relevant Secretary of State,

The basic disclosure certificate will only reveal unspent convictions on the Police National Computer database and not necessarily details of convictions for relevant offences secured by, or relevant enforcement action carried out by, the Environment Agency/Natural Resources Wales or other local authorities.

As such, the Council is permitted under Section 3(7) of the Act to consult any other person regarding the suitability of an applicant and in particular the following:

- a) any other local authority
- b) the environment agency
- c) the natural resources body for Wales
- d) any officer of a police force.

Where a basic disclosure certificate reveals an unspent relevant conviction the Council may seek additional information from the police to enable them to better assess the applicant's suitability. If no unspent convictions are revealed on the basic disclosure the Council will not necessarily need to consult the police unless it is aware of other information which suggests such consultation is necessary.

Where an application for a licence has been made by the applicant to another local authority under the Act and it has been refused or where a licence held by the applicant under the Act has been revoked by another local authority the Council will consult that authority. If there is no information disclosed by the applicant relating to any other application or licence held the Council may choose not to consult any other local authority.

The Council will consult the appropriate registers held by the Environment Agency (EA) in relation to all applications. Where the applicant has an application for a permit refused by the EA, had a permit revoked by the EA or been subject to enforcement action by the EA the Council will consult with that agency for further details.

Where there is no evidence of a refusal, revocation or enforcement action taken by the EA in respect of the applicant the Council may decide not to consult any further with the EA.

The Council may choose to consult with any other person it deems necessary to enable it to assess the suitability of an applicant. Other persons consulted will be based on the relevant merits of each application.

## PART 8: The Suitability Test

The suitability test is a continuing one and applies to applicants for licences and to those granted a licence under the Act by the Council. In this part, references to the "applicant" should be read as referring to individual applicants, a partner of a partnership, a director or secretary of a company or a shadow director or shadow secretary of a company. References to a licence holder should be read as referring to individual licence holders, a partner of a partnership who holds a licence, a director or secretary of a company who holds a licence or a shadow director or shadow secretary of a company who hold a licence.

The determination of whether an applicant or licence holder is or is not suitable to hold a licence will be made considering the relevant facts and individual merits of each case.

The basic disclosure and consultation with the bodies named in the preceding part of this policy will, in most instances, reveal if a conviction has been received by, or relevant enforcement action has been taken against, the applicant or licence holder.

The Council will also take into consideration any other action that may have been taken against the applicant or a licence holder under any other legislation enforced by the Council or a regulatory regime enforced by a national or local body. This includes, but is not limited to licensing, planning, building control, environmental legislation and the Information Commissioners Office. The Council will also consider the applicant or licence holders level of compliance with such regulatory regimes.

Where an applicant or licence holder has been convicted of a relevant offence, subject to relevant enforcement action or had a licence under the Act refused or revoked the Council will consider that the applicant or licence holder is not suitable to hold a licence.

The applicant or licence holder will remain unsuitable in the eyes of the Council until a period of at least 5 years has elapsed since that relevant conviction, relevant enforcement action, revocation or refusal with no further transgressions of a similar nature.

Where a conviction has been received by the applicant or a licence holder that is not a relevant offence but calls into question the suitability of the applicant or licence holder the Council will again consider that the applicant or licence holder is unsuitable to hold a licence until 5 years has elapsed without any further transgressions of a similar nature.

Convictions that would call into question the suitability of an applicant or licence holder include those that involve an element of dishonesty, fraud, violence or sexual offence.

Minor issues of non-compliance with regulatory regimes or convictions for non relevant offences where a custodial sentence has not been received may be exempt from the

Council's requirement that 5 years must have elapsed where the Head of Corporate Resources is of the opinion that the issue of non-compliance or the offence does not significantly call into question the applicants suitability.

The Council will also consider the cumulative effect of any relevant offence, relevant enforcement action, issues of non-compliance with other regulatory regimes or convictions for non-relevant offences when assessing the suitability of an applicant or licence holder.

The consideration of the cumulative effect will be based upon the number of offences, the nature of the offences and the frequency of offences.

Nothing in this part of the policy will however prevent the Council from considering an application on its merits and an applicant will be afforded the opportunity to make representation to satisfy the Council of their suitability before any final determination of a refusal or revocation is made.

## PART 9: Determining Applications

The Head of Corporate Resources will determine all applications under the Scrap Metal Dealers Act 2013 in the first instance. The Head of Corporate Resources will make this decision upon the report of the member of Corporate Resources (Licensing Team) dealing with the application.

The Head of Corporate Resources will determine applications to grant or renew or vary a scrap metal dealers licence where satisfied that the applicant is suitable to hold a licence.

Where a report is given to the Head of Corporate Resources that indicates that the applicant is not suitable to hold a licence or that an existing licence holder is not suitable to hold a licence the procedure identified in Part 10 of this policy will apply.

## PART 10: Refusals and revocations

The Head of Corporate Resources will, in the first instance, make a determination as to whether the applicant or licence holder is suitable. Where the Head of Corporate Resources considers the applicant or licence holder not to be suitable the applicant or licence holder will be given a written notice informing them that their application is to be refused or their licence revoked and the reason(s) for that decision.

In addition to revoking a licence where the Head of Corporate Resources is satisfied that the licence holder is unsuitable the Head of Corporate Resources may also revoke a licence where satisfied that the licensee does not carry on the business of a scrap metal dealer at any of the sites identified in the licence or that a site manager named on the licence does not act as a site manager at any of the sites identified in the licence.

Before refusing an application or revoking a licence the Head of Corporate Resources will notify in writing the applicant or licence holder and allow them 14 days from the date of that notice to notify the Head of Corporate Resources as to whether they wish to make representations to the Council against its decision to refuse or revoke.

If the applicant or licence holder wishes to make representations they must inform the Head of Corporate Resources as to whether or not they wish to make written representations or oral representations. Upon the receipt of their request to make written representations they will be given 20 working days to do so.

Where an applicant or licence holder requests to make oral representation in response to a notice of refusal or revocation a hearing will be held before a sub-committee formed of 3 members of the Licensing and Regulatory Committee. The sub-committee will determine whether the applicant or licence holder is suitable to hold a licence.

Any hearing held will, as far as permissible, be in accordance with the Oadby and Wigston Borough Councils Code of Practice for Hearings under the Licensing Act 2003. The date of the hearing will be arranged as close to the day after the 20<sup>th</sup> working day following the date upon which the applicant or licence holder confirmed that they wished to make oral representations.

Where an applicant wishes to make written representations these will be considered by the Head of Corporate Resources.

Where an applicant or licence holder does not notify the Head of Corporate Resources that they wish to make representations the Council's decision to refuse or revoke will take effect at the end of the 14 days initially given in the Head of Corporate Resources' notice of refusal.

## PART 11: Imposition of Conditions

Where an applicant, licence holder or any site manager has been convicted of a relevant offence the Council may still grant a licence or vary a licence by adding one or both of the following conditions:

1. that the dealer must not receive scrap metal except between 9 a.m. and 5 p.m. on any day
2. 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.

The imposition of such conditions may be as an alternative to a refusal or revocation but the Council are not obliged to consider the imposition of the above conditions and may choose not to do so where satisfied that the applicant or licence holder is not suitable to hold a licence.

A revocation or variation comes into effect when no appeal under the Act is possible in relation to the revocation or variation (i.e. when the time allotted by the Act for an appeal to be made has expired) or when any appeal made is determined or withdrawn.

However, if the Council considers that the licence should not continue in force without the above 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 above or

- b) that a variation under this paragraph comes into effect immediately.

## PART 12: Variation of Licences

The Act provides for a licence to be varied in a limited number of circumstances.

A licence may be varied from one type of licence to the other as often as a licence holder wishes, subject to the suitability test. A licence holder is also required to vary their licence if any of the following occur;

- a) the name of the licensee changes
- b) a site (or sites) identified in the licence change, whether or not this is a decrease or increase in the number of sites licensed by the licence or substitution of one site named in the licence for one that is not.
- c) site manager changes

A variation can amend the name of the licensee but cannot transfer the licence to another person.

## PART 13: Notices of Decision and Appeals

### Notice of Decision

If an application is refused, or a licence is revoked or varied, a notice shall be given to the applicant or licence holder setting out the decision and the reasons for it and the date on which that decision takes effect. The notice shall also state that an appeal against the decision may be made by the applicant or licence holder within 21 days beginning with the day on which notice of the decision was given.

### Appeals

An applicant may appeal to a magistrates court against the refusal of an application or a variation of a licence and a licence holder may appeal to a magistrates court against the revocation or variation of a licence or the inclusion in a licence of a condition specified in part 11 of this policy.

Any applicant or licence holder wishing to appeal against a decision of the Council should take their own legal advice or contact the magistrates court. The Council is unable to assist applicants in making an appeal against its decision.

## PART 14: Renewals

A licence will last for a period of three years and will need to be renewed in good time for that licence to continue. The Council are not obliged to remind licence holders of the date their licence expires or of the need for it to be renewed. The expiry date will be clearly displayed on the licence which the licence holder is required to display. Application forms will be available from the Council Offices and/or its website.

Should a renewal application not be made a licence will expire on its expiry date. If a renewal application is made but later withdrawn the licence expires at the end of the day on which the application is withdrawn.

If a renewal application is refused the licence will expire either at the end of the time period permitted under the Act for appealing the Council's decision or where the decision is appealed when the result of that appeal is confirmation of refusal.

## PART 15: Grant of a Licence

Once granted a licence will last for a duration of three years beginning on the day in which it is granted.

A site licence will;

- a) name the licensee
- b) name the Qadby and Wigston Borough Council as the issuing authority
- c) identify all the sites within the Borough at which the licensee is authorised to carry on business
- d) name the site manager of each site, and
- e) state the date on which the licence is due to expire.

A collector's licence will;

- a) name the licensee
- b) name the authority, and
- c) state the date on which the licence is due to expire.

The licence holder is responsible for ensuring that the licence is displayed in the manner required by the Act.

A copy of a site licence must be displayed in a prominent place, accessible to and viewable by, members of the public, at each of the sites identified in the licence.

A copy of a collector's licence must be displayed on any vehicle used in the course of the dealer's business and be displayed in a manner which enables the licence to be easily read by a person from outside the vehicle.

Failure to display a copy of a licence correctly is an offence punishable on summary conviction to a fine not exceeding level 3 on the standard scale. It is however permitted for a licence holder to display a copy of their licence rather than the original.

The Council recommends that licence holders keep their original licence in a safe place and ensure that copies of it are displayed at all sites or on all vehicles used in reliance of that licence.

## PART 16: Record keeping

The Act imposes strict requirements on licence holders which are outlined below. The responsibility for complying with the terms of the Act falls upon the licence holder and they should refer to the Act itself or seek their own legal advice about these matters.

### **Verification of supplier's identity**

Scrap metal dealers must not receive scrap metal from any person before they have verified the full name and address of that person by reference to documents, data or other information obtained from a reliable and independent source.

The Council advise that this should be limited to passports, driving licences or other similar official documents which display a photograph of that person and an address.

If the full name and address are not verified the scrap metal dealer, the site manager (if receipt was at a site) and any person who, under arrangements made by the scrap metal dealer or site manager was responsible for verifying the full name and address are guilty of an offence.

### **Payment for scrap metal**

A scrap metal dealer must only pay for scrap metal by either a cheque (which is not transferable under Section 81A Bills of Exchange Act 1882) or the electronic transfer of funds (authorised by a credit, debit card or otherwise).

Purchases of scrap metal by cash or any other payment ( which includes paying in kind – with goods or services) is a criminal offence.

### **Recording the receipt of scrap metal**

Scrap metal dealers must record all metal received in the course of the dealers business by recording, as a minimum, the following;

- (a) description of the metal, including its type (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 the scrap metal was delivered by
- (d) the full name and address of the person delivering it
- (e) the full name of the person making payment on behalf of the dealer

The dealer must keep a copy of any documents used to verify the name and address of the person delivering the metal. If payment is made by cheque the dealer must retain a copy of that cheque.

If payment is made by electronic transfer, the dealer must keep a receipt identifying the transfer, or (if there is no receipt identifying the transfer) record the particulars identifying the transfer.

### **Recording the disposal of scrap metal**

Scrap metal dealers must also record the disposal of any scrap metal that is disposed of in the course of a business.

The Act regards metal to be 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.

Where the disposal is 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.

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 records**

Records must be kept for a period of 3 years beginning with the day on which the metal is received or (as may be the case) disposed of. The information should be recorded in a manner which allows the scrap metal to which it relates, when received and when disposed of, to be readily identified by reference to each other.

If a scrap metal dealer fails to fulfil its requirements to keep accurate and correct records the scrap metal dealer, the site manager (if the records relate to a site) and any person who, under arrangements made by the scrap metal dealer or site manager was to keep and make the records are guilty of an offence under section 15 of the Act.

## PART 17: Notifications

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

A licence holder who ceases to carry on the business of a scrap metal dealer within the Borough must notify the Council within 28 days.

A licence holder must also notify the Council if there is any change to their business or trading name within 28 days of such a change occurring.

The applicant commits a criminal offence under the Act if he does not notify the Council upon any of the above occurrences and the failure to do so may also call into question the suitability of the licence holder.

Where an applicant has notified the Council that they are not carrying on the business of a scrap metal dealer or that they have changed their business or trading name the Council will notify the EA within 28 days.

The Council is also required to notify the EA of any licence granted, any variation granted or of any revocation of a licence within 28 days of such decision being made.

## PART 18: Enforcement

Enforcement and prosecutions carried out by the Council in relation to scrap metal dealers will be done in accordance with the Act, this policy and any other policy that the Council may adopt governing enforcement and prosecutions carried out corporately by the Council.

An Officer of the Council may enter and inspect a licensed site at any reasonable time upon notice to the site manager or at anytime without 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 the Act are being complied with or investigating offences under it and (in either case) the giving of the notice would defeat that purpose.

Whilst inspecting a licensed site a Council Officer may;

- (a) require the production of, and inspect, any scrap metal kept at the premises
- (b) require production of, and inspect, any records kept in accordance with the Act
- (c) require production of any other records relating to payment for scrap metal
- (d) take copies of or extracts from any such records.

An Officer of the Council is not permitted to use force to enter premises but where entry is unable to be achieved an Officer may apply to the Magistrates Court for a warrant authorising entry. Reasonable force may be used in the exercise of powers under a warrant issued under the Act.

The powers detailed above may also be exercised by a police constable.

## PART 19: Closure notices and closure orders

### Closure Notice

Where an Officer of the Council is satisfied that premises are being used by a scrap metal dealer in the course of business and those premises are not a licensed site a closure notice may be given.

A closure notice will be given to the person who appears to be the site manager of the premises used for the illegal activity 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 such as the owner, leaseholder or occupier of the premises or to any person who occupies another part of the building or structure, of which the premises forms part of, whose access to that part would be impeded if a closure order was made.

The closure notice will state that the Council is satisfied that the premises are being used by a scrap metal dealer in the course of a business without a licence, that the Council may apply to the magistrates court for a closure order unless the use of the premises ceases and the steps which may be taken to ensure that the alleged use of the premises ceases.

### Cancellation of Closure Notice

The Council may cancel a closure notice by giving a "cancellation notice" to all the persons to whom a copy of the closure notice was given. The notice will however take effect once given to one of those persons.

### Application for Closure Order

Following the giving of a closure notice the Council will make an application to the magistrates court for a closure order to be granted. An application will be made between 7 days and 6 months from the date the closure notice was given.

These timescales offer the opportunity for any person to whom the closure notice was given to cease committing the illegal activity, work with the Council to take appropriate steps to prevent the illegal activity occurring or inform the Council that the illegal activity is not being committed.

If the Council is satisfied 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 the application for a closure order will not be made or if it has been made it may be withdrawn.

If granted by the magistrates court a closure order requires the premises to be closed to the public and the use of the premises by the scrap metal dealer in the course of business must be discontinued immediately. Any defendant to the application must pay into court such sum as the court determines and that the sum will not be released by the court to that person until any other requirements of the order are met.

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 and any other provision the court considers appropriate for dealing with the consequences if the order ceases to have effect.

### Termination of Closure Order by Certificate

Once the Council is satisfied that the need for the order has ceased a certificate may be issued to cease the effect of the order and any sum paid into a court is to be released back to the defendant.

As soon as practicable after making a certificate the Council will give a copy to any person to whom the closure order was made, give a copy to 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.

#### **Discharge of Closure Order by Court**

A closure order may be discharged by the magistrates court upon the application of any person to whom the closure notice was given or any person who has an interest in the premises, such as the owner, leaseholder or occupier of the premises or to any person who occupies another part of the building or structure, of which the premises forms part of, whose access to that part would be impeded if a closure order was made, but to whom the closure notice was not given.

The court will discharge the order if satisfied that there is no longer a need for the closure order.

#### **Appeal in relation to Closure Orders**

An appeal may be made to the Crown Court in respect of any decision made by the magistrates court to grant, not to grant, discharge or not to discharge a closure order within 21 days of the Magistrates Court decision.

#### **Enforcement of Closure Order**

Once a closure order has been made an Officer of the Council may enter the premises specified in the order at any reasonable time, and having entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order. Reasonable force may be used to enter the premises.

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.