



Scrap Metal Dealers Policy 2020 - 2023

Colchester Borough Council

15 October 2019

CONTENTS

Page No.

1. Policy and the Law
2. Definition of a Scrap Metal Dealer
3. Types of Licence
4. Application Process
5. Suitability of Application
6. Revocation of Licence/imposing conditions
7. Supply of information by Authority
8. Register of Licences
9. Notification requirements
10. Display of Licence
11. Verification of Suppliers identity
12. Payment for Scrap Metal
13. Records: Receipt of Metal
14. Records: Disposal of Metal
15. Records: Supplementary
16. Right of Entry and Inspection
17. Offences by Bodies Corporate
18. Application Procedure
19. Closure of unlicensed sites
20. Offences and penalties
21. Enforcement
22. Carriage of Passengers
23. Storage
24. Breaking Down
25. Definitions
26. Lists of Consultees
27. Data Protection
28. Equality

Appendix 1 – Relevant Offences

Map of Colchester Borough

Colchester Borough and Wards



Operator:	Info. Services
Department:	ICT
Date: 17/10/2019	Scale: 1:140000

There is no requirement, in the Act, for a Council to have in place a formal policy for dealing with applications made under the Scrap Metal Dealers Act 2013. However, in line with 'Best Practice' Colchester Borough Council has chosen to adopt a formal policy for this purpose.

The impact of metal theft within communities can be immense, ranging from:

- Disruptions to rail services
- Loss of power to homes/businesses
- Interruptions to telecommunications
- Theft of lead from church roofs
- Theft of bus shelters, lightning conductors, street signs,
- Theft of gully and manhole covers
- Theft of war and grave memorials

All have serious economic and social implications for communities, and can result in the the loss of national infrastructure, loss of heritage and loss of life.

In 2011/2012 metal theft was the fastest growing crime recorded in the UK, driven by a growing global demand for metal. The Scrap Metal Dealers Act 2013 was passed in response to this growing problem. The aim of the legislation was to establish a process to ensure all trading in metal could be controlled and audited. Since the introduction of the Scrap Metal Dealers Act 2013 there has been a considerable reduction locally in reported metal theft.

The purpose of this policy is to highlight the requirements of the Act by providing guidance to new applicants, existing licence holders, consultees and members of the public on how the act is administered and enforced.

1. The Policy and the Law

- 1.1 This document details Colchester Borough Council's policy on the regulation of Scrap Metal Dealers
- 1.2 The Scrap Metal Dealers Act 2013 received Royal Assent on 28 February 2013. The Act repealed 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 and gives them the power to better regulate these industries by allowing them to refuse to grant a licence to “unsuitable” applicants and a power to revoke licences if the dealer becomes “unsuitable”.
- 1.4 The Act requires a scrap metal dealer or collector of scrap metal to obtain a licence in order to carry on business as a scrap metal dealer.
- 1.5 The following regulations were also been made:
 - The Scrap Metal Dealers Act 2013 (Prescribed Documents and Information for Verification of name and Address) Regulations 2013
 - The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013
- 1.6 Colchester Borough Council hereinafter called ‘the Council’ is the Licensing Authority under the Scrap Metal Dealers Act 2013 and is responsible for granting site licence and collector’s licenses in the Borough of Colchester in respect of businesses that deal in scrap metal and vehicle dismantling.
- 1.7 When assessing applications, the Council must be satisfied that the applicant is a ‘suitable’ person to hold a licence. Unsuitability will be based on several factors including any relevant criminal convictions.
- 1.8 The Scrap Metal Dealers Act 2013 makes it a requirement for a scrap metal dealer to have a licence in order to carry on in business as a dealer. It is an offence to carry on a business without first obtaining a licence.
- 1.9 The Following information contained within the Policy is in part lifted from the legislation to allow for a readable format. However, for actual sections when dealing with the process; regard must be had to the actual Scrap Metal Dealers Act.

2. Definition of a Scrap Metal Dealer

- 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 in) or;
 - b) they carry on business as a motor salvage operator (see 1.10).
- 2.2 A person selling scrap metal as surplus materials or as a by-product of manufacturing articles is NOT regarded 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; or
- c) Any alloy of which 2% or more by weight is attributable to gold or silver.

3. Types of Licences

3.1 Anyone wishing to operate a business will require either:

- a) a site licence;
- b) or a collector's licence.

The licence is valid for three years and permits the holder to operate within the boundaries of the issuing authority.

3.2 A person may hold more than one licence issued by different authorities but may **NOT** hold more than one licence issued by the same local authority.

Site Licence

3.3 The site licence authorises the licence holder to carry on business at the site(s) identified on the licence

3.4 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

3.3 The site licence also permits the licence holder to act as a collector

Collectors Licence

3.4 The collector's licence authorises the licensee to carry on business as a mobile collector within the issuing authorities' boundaries.

3.5 The collector's licence must include:

- a) The name of the licensee;
- b) The name of the authority;
- c) The date of expiry

4. Application Process

4.1 When the Council is considering an application, it will have regard to:

- The Scrap Metal Dealers Act 2013;
- Guidance issued by the Home Office, including the Scrap Metal Dealers Act supplementary guidance and determining suitability to hold a scrap metal dealer's licence (Oct 2013);
- Any supporting regulations
- This statement of licensing policy.

4.2 This does not undermine the rights of any person to apply under the 2013 Act for a licence and have the application considered on its individual merits.

4.3 A person carrying on, or proposing to carry on, a business as a scrap metal dealer may apply to the Council to be licensed. The application must be in writing and contain the appropriate mandatory particulars, as set out in **18.0**

4.4 A local authority may request that an applicant provide such other information, as it considers relevant, for the purpose of considering the suitability of an applicant. The additional information that is required is set out in **18.0**

4.5 The application must be accompanied by the appropriate fee.

4.6 If the applicant fails to provide the information requested, including the additional supporting documentation, the Council will decline to accept the application as a valid application.

5. Suitability of Applicant

5.1 A local authority must determine whether the applicant is a suitable person to carry on business as a scrap metal dealer.

5.2 In determining this, the authority may have regard to any information which it considers to be relevant, in particular:

- 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) any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal)
- d) any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal)

- e) any previous revocation of a scrap metal licence (and the reasons for the revocation)
- f) whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with.

5.3 In this section:

- (a) “site manager” means an individual proposed to be named in the licence as a site manager
- (b) “relevant offence” means an offence which is prescribed for the purposes of this section in regulations made by the Secretary of State, and
- (c) “relevant enforcement action” means enforcement action which is so prescribed.

5.4 In determining whether a company is suitable to carry on business as a scrap metal dealer, a local authority is to have regard, in particular, to whether any of the following is 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).

5.5 In determining whether a partnership is suitable to carry on business as a scrap metal dealer, a local authority is to have regard, in particular, to whether each of the partners is a suitable person.

5.6 The authority must also have regard to any guidance on determining suitability which is issued from time to time by the Secretary of State.

5.7 The authority may consult other persons regarding the suitability of an applicant, including in particular:

- (a) any other local authority;
- (b) the Environment Agency;
- (c) an officer of a police force.

5.8 If the applicant or any site manager has been convicted of a relevant offence, the authority 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.

6. Revocation of Licence/Imposition of Conditions

6.1 The authority 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.

6.2 The authority 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.

- 6.3 The authority 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.
- 6.5 If the licensee or any site manager named in a licence is convicted of a relevant offence, the authority may vary the licence by adding one or both of the conditions set out in section 3.8.
- 6.6 A revocation or variation under this section comes into effect when no appeal under section 16.9 is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn.
- 6.7 If the authority considers that the licence should not continue in force without conditions, it may by notice provide:
- (a) that, until a revocation under this section comes into effect, the licence is subject to one or both of the conditions set out in section 3.8, or
 - (b) that a variation under this section comes into effect immediately.

7. Supply of Information to the Authority

- 7.1 This section applies to information which has been supplied to a local authority under this Act and relates to a scrap metal licence or to an application for or relating to a licence.
- 7.2 The local authority must supply any such information to any of the following persons who requests it for purposes relating to this Act:
- (a) any other local authority;
 - (b) the Environment Agency;
 - (c) an officer of a police force.
- 7.3 This section does not limit any other power the authority has to supply that information.

8. Register of Licences

- 8.1 The Environment Agency must maintain a register of scrap metal licences issued by authorities in England.
- 8.2 Each entry must 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.
- 8.3 The registers are to be open for inspection to the public.

9. Notification Requirements

- 9.1 An applicant for a scrap metal licence, or for the renewal or variation of a licence, must notify the authority to which the application was made of any changes which materially affect the accuracy of the information which the applicant has proved in connection with the application.
- 9.2 A licensee who is not carrying on business as a scrap metal dealer in the area of the authority which issued the licence must notify the authority within 28 days.
- 9.3 If a licence is issued to a business under a trading name the licensee must notify the authority which issued the licence of any change to that name within 28 days.
- 9.4 An authority must notify the Environment Agency, of:
- (a) any notification given to the authority under section 9.2 or 9.3
 - (b) any variation made by the authority under section 18.3 (variation of type of licence or matters set out in licence), and
 - (c) any revocation by the authority of a licence.
- 9.5 Notification under subsection 9.4 must be given within 28 days of the notification, variation or revocation in question.
- 9.6 Where the authority notifies the Environment Agency under subsection 9.4, the body must amend the register under section 8 accordingly.

10. Display of Licence

- 10.1 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.
- 10.2 Vehicles operated by a site licensee are authorised to transport metal to and from licensed sites but will not be in possession of a collector's licence. There is no obligation to carry a copy of the site licence in the vehicle. To avoid any unnecessary disruption to business a number of vehicle licence cards will be issued with a site licence for display inside any vehicles being used in the course of the business.
- 10.3 The collector licence for Colchester Borough Council is issued together with a vehicle card. This card must be displayed on the vehicle that is being used in the course of the collector's business. This must be displayed in a manner which enables it to be easily read by a person outside the vehicle.

11. Verification of Supplier's Identity

- 11.1 Prior to receiving scrap metal the scrap metal dealer must verify the person's full name and address by reference to documents, data or other information obtained from a reliable and independent source.

Should verification not be gained then each of the following are 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 paragraph (a) or (b), has responsibility for verifying the name and address.

12. Payment for Scrap Metal

12.1 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).

Payment includes paying in kind – with goods or services.

13. Records: Receipt of Metal

13.1 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 (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.

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

13.3 If payment is made via cheque, the dealer must retain a copy of the cheque.

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

14. Records: Disposal of Metal

14.1 The Act regards the 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.

14.2 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.

14.3 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.

15. Records: Supplementary

15.1 The information in sections 13 and 14 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.

14.2 The records mentioned in section 13 must be marked so as to identify the scrap metal to which they relate.

14.3 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.

14.4 If a scrap metal dealer fails to fulfil a requirement under section 13 or 14 or this section each of the following is 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.

14.5 It is a defence for a person within subsection 4 (a) or (b) who is charged with an offence under this section to prove that the person:

- (a) made arrangements to ensure that the requirement was fulfilled, and
- (b) took all reasonable steps to ensure that those arrangements were complied with.

16. Right of Entry and Inspection

16.1 A constable or an officer of Colchester Borough Council may enter and inspect a licensed site at any reasonable time on notice to the site manager.

16.2 A constable or an officer of Colchester Borough 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.

16.3 16.1 and 16.2 do not apply to residential premises.

16.4 A constable or an officer of Colchester Borough Council is not entitled to use force to enter a premise in the exercise of the powers under subsections 16.1 and 16.2.

16.5 A justice of the peace may issue a warrant authorising entry (in accordance with subsection 16.7) to any premises within subsection 16.6 if the justice is satisfied by information on oath that there are reasonable grounds for believing that 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.

16.6 Premises are within this subsection if:

- (a) the premises are a licensed site, or
- (b) the premises are not a licensed site but there are reasonable grounds for believing that the premises are being used by a scrap metal dealer in the course of business.

16.7 The warrant is a warrant signed by the justice which:

- (a) specifies the premises concerned, and
- (b) authorises a constable or an officer of a local authority to enter and inspect the premises at any time within one month from the date of the warrant.

16.8 A constable or an officer of Colchester Borough Council may, if necessary, use reasonable force in the exercise of the powers under a warrant under subsection 16.5.

16.9 A constable or an officer of Colchester Borough Council may:

- (a) require production of, and inspect, any scrap metal kept at any premises mentioned in subsection 16.1 or 16.2 or in a warrant under subsection 16.5
- (b) require production of, and inspect, any records kept in accordance with section 13 or 14 and any other records relating to payment for scrap metal (c) take copies of or extracts from any such records.

16.10 Subsection 16.11 applies if a constable or an officer of Colchester Borough Council seeks to exercise powers under this section in relation to any premises.

16.11 If the owner, occupier or other person in charge of the premises requires the officer to produce:

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

the officer must produce that evidence.

16.12 In the case of an officer of Colchester Borough Council, the powers under this section are exercisable only in relation to premises in the area of the authority.

17. Offences by Bodies Corporate

17.1 Where an offence under the Act is committed by a body corporate and 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.

17.2 Where the affairs of a body corporate are managed by its members, subsection 17.1 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

18. Application Procedure

Term of Licence

18.1 A licence is valid for three years beginning from the day it is issued.

18.2 A renewal application must be received prior to the licence expiry.

18.3 If withdrawn the licence expires at the end of the day of withdrawal.

18.4 If refused, the licence expires when no appeal is possible in relation to the refusal or any such appeal is finally determined or withdrawn.

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

Application

18.6 The application form, available from the Licensing Department, should be accompanied by:

- a) full name of applicant (if an individual), date of birth and usual place of residence
- b) name and registered number of the applicant (if a company) and registered office
- c) if a partnership – full name of each partner, date of birth and usual place of residence
- d) proposed trading name
- e) telephone number and email address (if any) of applicant
- f) address of any site within any other local authority at which carry on business as a scrap metal dealer or propose to do so
- g) any relevant environmental permit or registration in relation to the applicant
- h) details of any other scrap metal licence issued to the applicant within a period of 3 years ending with the date of the application.
- i) details of the bank account which is proposed to be used in order to comply with section 13
- j) details of any relevant conviction or enforcement action taken against the applicant
- k) passport photo.

For a site licence the applicant must also provide:

- a) address of each site proposed to be identified in the licence (or if renewal,

- each site identified for which renewal is sought)
- b) full name, date of birth and usual place of residence of each individual proposed to be named in the licence as a site manager (other than the applicant)
- c) site manager details to be included for g) h) and j) above.

18.7 Please note the collectors licence allows a business or individual to operate within that authority's area, therefore individuals wishing to collect across borders will be required to obtain a collector's licence from each relevant local authority where they wish to collect and sell.

18.8 You are required to provide a basic disclosure of criminal convictions with your application. This can be obtained direct from <https://www.gov.uk/request-copy-criminal-record>. Please note that the disclosure is valid for three months from the date it was issued.

Variation of Licence

18.9 A licence may be varied from one type to the other. A variation application must be made to reflect changes to:

Site licence – name of licensee, the sites, site manager
Collector's licence – name of licensee.

18.10 The variation can amend the name of the licensee but not transfer the licence to another person.

18.11 Application is to be made to the issuing authority and must contain particulars of the changes to be made to the licence.

Renewal

18.12 When a licence is renewed the three year validity period commences on the day of receipt. Should a renewal application be withdrawn, the licence expires at the end of the day on which the application is withdrawn.

Refusal of application

18.13 A Licence expires when no appeal under Section 9 is made.

Further Information

18.14 Colchester Borough Council may request (at the time of application or later) that additional information is provided, as may be considered relevant for the purpose of considering the application. Failure to provide such information may result in the application being declined.

Fee

18.15 The application must be accompanied by the fee set by Colchester Borough Council, under guidance from the Secretary of State with the approval of the Treasury.

Right to Make Representations

18.16 If Colchester Borough Council propose to refuse an application or to revoke/vary a licence a notice must be issued to the applicant/licensee setting out what the authority propose to do and

the reasons for this. The notice must 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.

18.17 The period specified in the notice must be not less than 14 days beginning with the date on which the notice is given to the applicant/licensee. Within this time the applicant/licensee must notify Colchester Borough Council that they do not wish to make representations. Should this period expire, and the applicant/licensee has not made representations or informed the authority of their wish to do so the authority may refuse the application, or revoke or vary the licence.

18.18 If, within the period specified, the applicant/licensee informs the authority that they wish to make representations, the authority must 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.

18.19 If the applicant/licensee notifies the authority that they wish to make oral representations, the authority must give them the opportunity of appearing before, and being heard by, a person appointed by the authority.

Notice of Decision

18.20 If the application is refused, or the licence is revoked or varied, notice must be given to the applicant/licensee setting out the decision and the reasons for it. The notice must also state that the applicant/licensee may appeal against the decision, the time within which the appeal may be brought and, if revoked or varied, the date on which the revocation of variation is to take effect.

Appeals

18.21 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) or the revocation or variation of a licence under section 4 of the act.

18.22 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 under section 4 was given.

18.23 The procedure on an appeal under this paragraph is to be by way of complaint for an order and in accordance with the Magistrates' Courts Act 1980.

18.24 For the purposes of the time limit for making an appeal, the making of the complaint is to be treated as the making of the appeal.

18.25 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.

18.26 The authority must comply with any directions given by the magistrates' court. Although the authority need not comply with such directions until the time for making an application under section 111 of the Magistrates' Courts Act 1980 has passed or if such an application is made, until the application is finally determined or withdrawn.

19. Closure of Unlicensed Sites

Interpretation

19.1 A person with an interest in a premises is the owner, leaseholder or occupier of the premises. Local authority powers are exercisable only in relation to premises in the authority's area.

Closure Notice

19.2 Not applicable if the premises are residential premises.

19.3 A constable or the local authority must be 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.

19.4 A "closure notice" may be issued by a constable or local authority which states they are satisfied of the above, the reasons for that, that the constable or local authority may apply to the court for a closure order and specifies the steps which may be taken to ensure that the alleged use of the premises ceases.

19.5 The notice must 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.

19.6 The notice must 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 authority 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 "cancellation notice" issued by a constable or local authority 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 local authority may 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 authority is 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.

19.10 The justice may issue a summons to answer to the complaint. This must be directed to anyone whom the closure notice was given and must include the date, time and place at which the complaint will be heard.

Closure Order

19.11 A closure order requires that a premises be closed immediately to the public and remain closed until a constable or the local authority makes a termination of closure order by certificate. The use of the premises by a scrap metal dealer in the course of business must be discontinued immediately and any defendant 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 the other requirements of the order are met.

19.12 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.

19.13 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.

19.14 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.

19.15 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

19.16 Once a closure order has been made and a constable or local authority is satisfied that the need for the order has ceased a certificate may be made. This ceases the closure order and any sum paid into a court is to be released by the court to the defendant.

19.17 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.

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

Discharge of Closure Order by Court

19.19 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.

19.20 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 to appear before the magistrates' court to answer to the complaint.

19.21 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

19.22 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
- d) a decision not to make a discharge order.

19.23 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.

19.24 An appeal under a) and b) 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.

19.25 An appeal under b) and c) may be made by a constable or the local authority.

Enforcement of Closure Order

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

19.27 If the closure order has been made, a constable or a person authorised by the local authority 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.

19.28 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 and Penalties

20.1 Offences relating to scrap metal dealing and motor salvage are described below under the relevant statute.

20.2 In relation to the maximum penalties specified, the levels of fine are currently as follows:

Level 1 -	£200
Level 2 -	£500
Level 3 -	£1,000
Level 4 -	£2,500
Level 5 -	£5,000

20.3 Where an offence under the Act is committed by a body corporate 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 as well as the body corporate is guilty of the offence and liable to be prosecuted and punished accordingly.

20.4 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.

20.5 Scrap Metal Dealers Act 2013 - guide to offences and penalties

Section	Offence	Max Penalty
1	Carrying on business as a scrap metal dealer without licence	Level 5
3 (5)	Failure to notify changes to a licence	Level 3
5	Makes or recklessly makes a false statement in a response to a request for further information	Level 3
8	Failure to notify authority of any changes to details given with 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 dealer and giving false details	Level 3
12 (6)	Buying scrap metal for cash	Level 5
13	Failure to keep records regarding receipt of metal	Level 5
14	Failure 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 of document used to verify name and address of person bringing metal, or failure to keep a copy of a cheque issued	Level 5
15 (3)	Failure to keep information and records for three years	Level 5
16	Obstruction to right of entry and failure to produce records	Level 3

21. Enforcement

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

21.2 This will allow resources to be effectively targeted on high-risk or problematic licence holders and prevent over burdensome enforcement on compliant and well managed businesses.

21.3 Appropriate enforcement action will be taken in accordance with legislation and any guidance issued under that legislation.

22. Carriage of Passengers

22.1 The carriage of passengers whilst scrap metal collection is taking place is permitted provided each passenger holds a valid collector licence issued by the relevant local authority.

22.2 The exception to this is where a passenger is employed by the collector in the course of the scrap metal collection business. The collector/employee may be required to provide proof of employment (ie payslips, HMRC documents).

23. Storage

23.1 The storage of metal in the course of a scrap metal business would require a site licence. Collectors are not permitted to store scrap metal.

24. Breaking Down

24.1 Sorting scrap metal and breaking prior to sale is a common occurrence. On occasion this has been done at the roadside causing inconvenience and often nuisance to others within the vicinity.

24.2 The Council has powers under the Environmental Protection Act 1990 to prosecute for the unlawful deposit of controlled waste.

25. Definitions

Licensed site	site identified in a scrap metal licence
Mobile collector	person who collects waste material and old, broken, worn out or defaced articles by means of door to door
Premises	any land or other place (whether enclosed or not)
Site manager	individual who exercises day-to-day control and management of activities at a site
Trading name	name other than that stated in the licence as carrying on business as a scrap metal dealer

26. List of Consultees

- 1) Essex Police
- 2) Essex Fire and rescue
- 3) Trading Standards Essex County Council
- 4) Health and Safety Officer CBC
- 5) Licensing, Food and Safety Manager CBC
- 6) Senior Licensing Officer CBC
- 7) Licensing Officer(s) CBC
- 8) Legal Services CBC
- 9) Environment Agency
- 10) Individuals and companies currently holding a Scrap Metal Dealers licence issued by Colchester Borough Council

27. Data Protection

27.1 The Council may need to share an applicant's personal data with internal departments and/or with external organisations for the purposes of assessing whether the applicant is a suitable person or company under the Act. The Council will obtain an applicant's explicit consent to share their personal data for this purpose when an application is submitted.

28. Equality

28.1 Colchester Borough Council are committed to supporting businesses to thrive and making our towns and communities great places to live.

28.2 Our vision puts equality of opportunity at the heart of our approach to policy making, service delivery and employment. We are committed to identifying, understanding and eliminating all barriers that prevent access to services, information and employment.

28.3 The Equality Framework for Local Government provides a framework which we will follow to make sure we are providing relevant requirements for the community where reasonably appropriate.

APPENDIX 1 – Relevant Offences

The Government requires that local authorities make sure that they only issue scrap metal dealers licences to those considered to be 'suitable persons'. The Scrap Metal Dealers Act 2013 (Prescribed Relevant Offences and Relevant Enforcement Action) Regulations 2013 provides a list of the offences which local authorities are obliged to take into account when considering if an applicant is a suitable person. The local authority will consider convictions for offences and relevant enforcement action.

The Schedule of offences is:

PART 1 Primary Legislation

- (a) An offence under section 1, 5, or 7 of the Control of Pollution (Amendment) Act 1989 (b) An offence under section 170 or 170B of the Customs and Excise Management Act 1979, where the specific offence concerned relates to scrap metal
- (c) An offence under section 110 of the Environment Act 1995
- (d) An offence under sections 33, 34 or 34B of the Environmental Protection Act 1990
- (e) An offence under section 9 of the Food and Environment Protection Act 1985
- (f) 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
- (g) An offence under section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012
- (h) An offence under sections 327, 328 or 330 to 332 of the Proceeds of Crime Act 2002
- (i) Any offence under the Scrap Metal Dealers Act 1964
- (j) Any offence under the Scrap Metal Dealers Act 2013
- (k) An offence under sections 1, 8,9,10, 11, 17, 18, 22 or 25 of the Theft Act 1968, where the specific offence concerned relates to scrap metal, or is an environment related offence
- (l) Any offence under Part 1 of the Vehicles (Crime) Act 2001
- (m) An offence under sections 85, 202, or 206 of the Water Resources Act 1991.

PART 2 Secondary Legislation

- (a) An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2007
- (b) An offence under regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010
- (c) Any offence under the Hazardous Waste (England and Wales) Regulations 2005
- (d) Any offence under the Hazardous Waste (Wales) Regulations 2005
- (e) An offence under regulation 17(1) of the Landfill (England and Wales) Regulations 2002
- (f) Any offence under the Pollution Prevention and Control (England and Wales) Regulations 2000
- (g) Any offence under the Producer Responsibility (Packaging Waste) Regulations 2007
- (h) Any offence under the Transfrontier Shipment of Waste Regulations 1994
- (i) Any offence under the Transfrontier Shipment of Waste Regulations 2007
- (j) Any offence under the Waste (Electrical and Electronic Equipment) Regulations 2006 (k) An offence under regulation 42 of the Waste (England and Wales) Regulations 2011.

Relevant offences under this regulation are defined as:

- attempting or conspiring to commit any offence falling within the schedule
- inciting or adding, abetting, counselling or procuring the commission of any offence falling within the schedule, and
- an offence under part 2 or the Serious Crime Act 2007 (encouraging and assisting crime) committed in relation to any offence falling within the schedule.

If you have a relevant offence which is not spent as defined by the Rehabilitation of Offenders Act 1974, or you are subject to relevant enforcement action, it does not necessarily mean that you cannot hold a scrap metal dealers licence but it is likely that you will need to attend a Licensing Sub-Committee in order that you can explain more about the circumstances around the conviction or enforcement action. The Sub Committee will then make a decision about whether or not they think you will be a suitable person to hold a licence.