

SCHEDULES

SCHEDULE 2

Section 9

CLOSURE OF UNLICENSED SITES

Interpretation

- 1 (1) For the purposes of this Schedule, a person has an interest in premises if the person is the owner, leaseholder or occupier of the premises.
- (2) In the case of a local authority, the powers conferred by this Schedule are exercisable only in relation to premises in the authority's area; and "the local authority", in relation any premises, is to read accordingly.

Closure notice

- 2 (1) This paragraph applies if a constable or the local authority is satisfied—
 - (a) that premises are being used by a scrap metal dealer in the course of business, and
 - (b) that the premises are not a licensed site.
- (2) But this paragraph does not apply if the premises are residential premises.
- (3) The constable or authority may issue a notice (a "closure notice") which—
 - (a) states that the constable or authority is satisfied as mentioned in sub-paragraph (1),
 - (b) gives the reasons for that,
 - (c) states that the constable or authority may apply to the court for a closure order (see paragraphs 4 and 5), and
 - (d) specifies the steps which may be taken to ensure that the alleged use of the premises ceases.
- (4) The constable or authority must give the closure notice to—
 - (a) the person who appears to the constable or authority to be the site manager of the premises, and
 - (b) any person (other than the person in paragraph (a)) who appears to the constable or authority to be a director, manager or other officer of the business in question.
- (5) The constable or authority may also give the notice to any person who has an interest in the premises.
- (6) Sub-paragraph (7) applies where—
 - (a) a person occupies another part of any building or structure of which the premises form part, and

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- (b) the constable or authority reasonably believes, at the time of giving the notice under sub-paragraph (4), that the person's access to that other part would be impeded if a closure order were made in respect of the premises.

(7) The constable or authority must give the notice to that person.

Cancellation of closure notice

- 3
- (1) A closure notice may be cancelled by a notice (a "cancellation notice") issued by a constable or the local authority.
 - (2) A cancellation notice takes effect when it is given to any one of the persons to whom the closure notice was given.
 - (3) The cancellation notice must also be given to any other person to whom the closure notice was given.

Application for closure order

- 4
- (1) Where a closure notice has been given under paragraph 2(4), a constable or the local authority may make a complaint to a justice of the peace for a closure order (see paragraph 5).
 - (2) A complaint under this paragraph may not be made—
 - (a) less than 7 days after the date on which the closure notice was given, or
 - (b) more than 6 months after that date.
 - (3) A complaint under this paragraph may not be made if the constable or authority is satisfied that—
 - (a) the premises are not (or are no longer) being used by a scrap metal dealer in the course of business, and
 - (b) there is no reasonable likelihood that the premises will be so used in the future.
 - (4) Where a complaint has been made under this paragraph, the justice may issue a summons to answer to the complaint.
 - (5) The summons must be directed to any person to whom the closure notice was given under paragraph 2(4).
 - (6) If a summons is issued under sub-paragraph (4), notice of the date, time and place at which the complaint will be heard must be given to all the persons to whom the closure notice was given under paragraph 2(5) and (7).
 - (7) The procedure on a complaint under this paragraph is to be in accordance with the Magistrates' Courts Act 1980.

Closure order

- 5
- (1) This paragraph applies if, on hearing a complaint under paragraph 4, the court is satisfied that the closure notice was given under paragraph 2(4) and that—
 - (a) the premises continue to be used by a scrap metal dealer in the course of business, or
 - (b) there is a reasonable likelihood that the premises will be so used in the future.

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- (2) The court may make such order as it considers appropriate for the closure of the premises (a “closure order”).
- (3) A closure order may, in particular, require—
 - (a) that the premises be closed immediately to the public and remain closed until a constable or the local authority makes a certificate under paragraph 6;
 - (b) that the use of the premises by a scrap metal dealer in the course of business be discontinued immediately;
 - (c) 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.
- (4) A closure order including a requirement mentioned in sub-paragraph (3)(a) may, in particular, include such conditions as the court considers appropriate relating to—
 - (a) the admission of persons onto the premises;
 - (b) the access by persons to another part of any building or other structure of which the premises form part.
- (5) 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 under paragraph 6.
- (6) As soon as practicable after a 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.
- (7) A sum which has been 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 of constable or authority

- 6 (1) This paragraph applies where—
 - (a) a closure order has been made, but
 - (b) a constable or the local authority is satisfied that the need for the order has ceased.
- (2) The constable or authority may make a certificate to that effect.
- (3) The closure order ceases to have effect when the certificate is made.
- (4) If the closure order includes a requirement under paragraph 5(3)(c), any sum paid into court under the order is to be released by the court to the defendant (whether or not the court has made provision to that effect under paragraph 5(5)).
- (5) As soon as practicable after making a certificate, the constable or authority must—
 - (a) give a copy of it to any person against whom the closure order was made,
 - (b) give a copy of it to the designated officer for the court which made the order, and
 - (c) fix a copy of it in a conspicuous position on the premises in respect of which the order was made.
- (6) The constable or authority must give a copy of the certificate to any person who requests one.

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Discharge of closure order by court

- 7 (1) Any of the following persons may make a complaint to a justice of the peace for an order that a closure order be discharged (a “discharge order”)—
- (a) any person to whom the relevant closure notice was given under paragraph 2;
 - (b) any person who has an interest in the premises but to whom the closure notice was not given.
- (2) The court may not make a discharge order unless it is satisfied that there is no longer a need for the closure order.
- (3) Where a complaint has been made under this paragraph, the justice may issue a summons directed to—
- (a) such constable as the justice considers appropriate, or
 - (b) the local authority,
- requiring that person to appear before the magistrates’ court to answer to the complaint.
- (4) If a summons is issued under sub-paragraph (3), notice of the date, time and place at which the complaint will be heard must be given to all the persons to whom the closure notice was given under paragraph 2 (other than the complainant).
- (5) The procedure on a complaint under this paragraph is to be in accordance with the Magistrates’ Courts Act 1980.

Appeals

- 8 (1) An 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.
- (2) Any appeal under this paragraph must be made before the end of the period of 21 days beginning with the day on which the order or the decision in question was made.
- (3) An appeal under this paragraph against a closure order or a decision not to make a discharge order may be made by—
- (a) any person to whom the relevant closure notice was given under paragraph 2;
 - (b) any person who has an interest in the premises but to whom the closure notice was not given.
- (4) An appeal under this paragraph against a decision not to make a closure order or against a discharge order may be made by a constable or (as the case may be) the local authority.
- (5) On an appeal under this paragraph the Crown Court may make such order as it considers appropriate.

Enforcement of closure order

- 9 (1) A person is guilty of an offence if the person, without reasonable excuse,—
- (a) permits premises to be open in contravention of a closure order, or

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- (b) otherwise fails to comply with, or does an act in contravention of, a closure order.
- (2) If a closure order has been made in respect of any premises, a constable or an authorised person may (if necessary using reasonable force)—
- (a) enter the premises at any reasonable time, and
 - (b) having entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order.
- (3) Sub-paragraph (4) applies if a constable or an authorised person (“the officer”) seeks to exercise powers under this paragraph in relation to any premises.
- (4) 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.
- (5) A person who intentionally obstructs a constable or an authorised person in the exercise of powers under this paragraph is guilty of an offence.
- (6) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) In this paragraph “an authorised person” is a person authorised for the purposes of this paragraph by the local authority.