

*Status: Point in time view as at 01/09/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Scrap Metal Dealers Act 2013. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Section 5

#### FURTHER PROVISION ABOUT LICENCES

VALID FROM 10/06/2021

##### *Term of licence*

- 1
- (1) A licence expires at the end of the period of 3 years beginning with the day on which it is issued.
  - (2) But if an application to renew a licence is received before the licence expires, the licence continues in effect and—
    - (a) if the application is withdrawn, the licence expires at the end of the day on which the application is withdrawn;
    - (b) if the application is refused, the licence expires when no appeal under paragraph 9 is possible in relation to the refusal or any such appeal is finally determined or withdrawn;
    - (c) if the licence is renewed, it expires at the end of the period of 3 years beginning with the day on which it is renewed or (if renewed more than once) the day on which it is last renewed.
  - (3) Sub-paragraphs (1) and (2) are subject to section 4 (revocation of licence).
  - (4) The Secretary of State may by order substitute different periods for the periods specified in sub-paragraphs (1) and (2)(c).

PROSPECTIVE

##### *Applications*

- 2
- (1) A licence is to be issued or renewed on an application, which must be accompanied by—
    - (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,

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- (g) details of any relevant environmental permit or registration in relation to the applicant,
  - (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,
  - (i) details of the bank account which is proposed to be used in order to comply with section 12 (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.
- (2) 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 in the licence as a site manager (other than the applicant).
- (3) If the application relates to a site licence, the references in sub-paragraph (1)(g), (h) and (j) to the applicant are to be read as including any individual proposed to be named in the licence as a site manager.
- (4) The Secretary of State may by order amend sub-paragraph (1) or (2) to alter the requirements as to what information must accompany an application.

PROSPECTIVE

### *Variation of licence*

- 3
- (1) A local authority may, on an application, vary a licence by changing it from one type to the other.
  - (2) If there is a change in any of the matters mentioned in section 2(4)(a), (c) or (d) or (6)(a), the licensee must make an application to vary the licence accordingly.
  - (3) But the power to amend the name of the licensee does not include the power to transfer the licence from one person to another.
  - (4) An application under this paragraph—
    - (a) is to be made to the authority which issued the licence, and
    - (b) must contain particulars of the changes to be made to the licence.
  - (5) A licensee who fails to comply with sub-paragraph (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
  - (6) It is a defence for a person charged with an offence under this paragraph to prove that the person took all reasonable steps to avoid committing the offence.

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PROSPECTIVE

*Further information*

- 4 (1) The local authority may request (either when the application is made or later) that the applicant provide such further information as the authority considers relevant for the purpose of considering the application.
- (2) If an applicant fails to provide information requested under sub-paragraph (1), the authority may decline to proceed with the application.

PROSPECTIVE

*Offence of making false statement*

- 5 An applicant who in an application or in response to a request under paragraph 4(1)—
- (a) makes a statement knowing it be false in a material particular, or
  - (b) recklessly makes a statement which is false in a material particular,
- is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Fee*

- 6 (1) An application must be accompanied by a fee set by the authority.
- (2) In setting a fee under this paragraph, the authority must have regard to any guidance issued from time to time by the Secretary of State with the approval of the Treasury.

**Commencement Information**

**II** Sch. 1 para. 6 in force at 1.9.2013 by S.I. 2013/1966, art. 2(b)

PROSPECTIVE

*Right to make representations*

- 7 (1) If a local authority proposes—
- (a) to refuse an application made under paragraph 2 or 3, or
  - (b) to revoke or vary a licence under section 4,
- the authority must give the applicant or licensee a notice which sets out what the authority proposes to do and the reasons for it.
- (2) In this paragraph and paragraph 8 the applicant or licensee is referred to as “A”.
- (3) A notice under sub-paragraph (1) must also state that, within the period specified in the notice, A may either—
- (a) make representations about the proposal, or

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- (b) inform the authority that A wishes to do so.
- (4) The period specified in the notice must be not less than 14 days beginning with the date on which the notice is given to A.
- (5) The authority may refuse the application, or revoke or vary the licence under section 4, if—
  - (a) within the period specified in the notice, A informs the authority that A does not wish to make representations, or
  - (b) the period specified in the notice expires and A has neither made representations nor informed the authority that A wishes to do so.
- (6) If, within the period specified in the notice, A informs the authority that A wishes to make representations, the authority—
  - (a) must allow A a further reasonable period to make representations, and
  - (b) may refuse the application, or revoke or vary the licence under section 4, if A fails to make representations within that period.
- (7) If A makes representations (either within the period specified in the notice under sub-paragraph (1) or within the further period under sub-paragraph (6)), the authority must consider the representations.
- (8) If A informs the authority that A wishes to make oral representations, the authority must give A the opportunity of appearing before, and being heard by, a person appointed by the authority.

PROSPECTIVE

#### *Notice of decision*

- 8
- (1) If the authority refuses the application, or revokes or varies the licence under section 4, it must give A a notice setting out the decision and the reasons for it.
  - (2) A notice under this paragraph must also state—
    - (a) that A may appeal under paragraph 9 against the decision,
    - (b) the time within which such an appeal may be brought, and
    - (c) in the case of a revocation or variation under section 4, the date on which the revocation or variation is to take effect.

PROSPECTIVE

#### *Appeals*

- 9
- (1) An applicant may appeal to a magistrates' court against the refusal of an application made under paragraph 2 or 3.
  - (2) A licensee may appeal to a magistrates' court against—
    - (a) the inclusion in a licence of a condition under section 3(8), or
    - (b) the revocation or variation of a licence under section 4.

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- (3) An appeal under this paragraph is to be made within the period of 21 days beginning with the day on which notice of the decision to refuse the application, to include the condition, or to revoke or vary the licence under section 4, was given.
- (4) 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.
- (5) For the purposes of the time limit for making an appeal under this paragraph, the making of the complaint is to be treated as the making of the appeal.
- (6) On an appeal under this paragraph, the magistrates' court may—
  - (a) confirm, vary or reverse the authority's decision, and
  - (b) give such directions as it considers appropriate having regard to the provisions of this Act.
- (7) The authority must comply with any directions given by the magistrates' court under sub-paragraph (6).
- (8) But the authority need not comply with any such directions—
  - (a) until the time for making an application under section 111 of the Magistrates' Courts Act 1980 (application by way of case stated) has passed, or
  - (b) if such an application is made, until the application is finally determined or withdrawn.

PROSPECTIVE

## 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—

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- (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
  - (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

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- (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.
  - (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—

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- (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.

#### *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;

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- (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
    - (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.

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