

Scrap Metal Dealers Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office with the consent of Richard Ottaway, the Member in charge of the Bill, are published separately as Bill 9–EN.

Scrap Metal Dealers Bill

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B I L L

TO

Amend the law relating to scrap metal dealers; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Licensing of scrap metal dealers

1 Requirement for licence to carry on business as scrap metal dealer

- (1) No person may carry on business as a scrap metal dealer unless authorised by a licence under this Act (a “scrap metal licence”).
- (2) See section 18 for the meaning of “carry on business as a scrap metal dealer”. 5
- (3) A person who carries on business as a scrap metal dealer in breach of subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

2 Form and effect of licence

- (1) A scrap metal licence is to be issued by a local authority. 10
- (2) A licence must be one of the following types—
 - (a) a site licence, or
 - (b) a collector’s licence.
- (3) A site licence authorises the licensee to carry on business—
 - (a) at any site in the authority’s area which is identified in the licence, and 15
 - (b) as a mobile collector in that area.
- (4) A site licence must—
 - (a) name the licensee,
 - (b) identify all the sites in the authority’s area at which the licensee is authorised to carry on business, 20
 - (c) name the site manager of each site, and

- (d) state the date on which the licence is due to expire.
- (5) A collector's licence –
 - (a) authorises the licensee to carry on business as a mobile collector in the authority's area, but
 - (b) does not authorise the licensee to carry on business at a site. 5
- (6) A collector's licence must –
 - (a) name the licensee, and
 - (b) state the date on which the licence is due to expire.
- (7) A licence is to be in the form prescribed by the Secretary of State in regulations (but this is subject to subsections (4) and (6)). 10
- (8) A person may hold more than one licence issued by different local authorities, but may not hold more than one licence issued by any one authority.

3 Issue of licence

- (1) A local authority must not issue or renew a scrap metal licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer. 15
- (2) In determining whether the applicant is a suitable person, the authority may have regard to any information which it considers to be relevant, including in particular –
 - (a) whether the applicant or any site manager has been convicted of any relevant offence; 20
 - (b) whether the applicant or any 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); 25
 - (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. 30
- (3) In subsection (2) –
 - (a) “relevant offence” means an offence which is prescribed for the purposes of that subsection in regulations made by the Secretary of State, and 35
 - (b) “relevant enforcement action” means enforcement action which is so prescribed.
- (4) In determining whether a company is a suitable person 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 whose directions or instructions the directors of the company are accustomed to act). 45

- (5) In determining whether a partnership is a suitable person 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.
- (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) the Environment Agency;
 - (b) an officer of a police force.
- (8) The authority may include in the licence one or both of the following conditions – 10
- (a) that the dealer must not receive scrap metal between specified hours of the 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. 15
- (9) “Specified” means specified in the condition.
- 4 Revocation of licence and imposition of conditions**
- (1) The authority may revoke a scrap metal licence if it is satisfied that the licensee does not carry on business at any of the sites identified in the licence. 20
- (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.
- (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. 25
- (4) Section 3(2) to (7) apply for the purposes of subsection (3).
- (5) The authority may vary a licence by adding one or both of the conditions set out in section 3(8).
- (6) The revocation of a licence, or a variation under subsection (5), comes into effect when no appeal under paragraph 9 of Schedule 1 is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn. 30
- (7) In this section “the authority” means the local authority which issued the licence.
- 5 Further provision about licences** 35
- Schedule 1 (which makes further provision about licences) has effect.
- 6 Supply of information by authority**
- (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. 40

- (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, and
 - (c) an officer of a police force.
- (3) This section does not limit any other power the authority has to supply that information.

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7 Register of licences

- (1) The Environment Agency must maintain a register of scrap metal licences.
- (2) Each entry in the register must record –
- (a) the name of the authority which issued the licence,
 - (b) the name of the licensee,
 - (c) the name under which the licensee carries on business as a scrap metal dealer (if different from that under paragraph (b)),
 - (d) the address of any site identified in the licence,
 - (e) the type of licence, and
 - (f) the date on which the licence is due to expire.
- (3) The register is to be open for inspection to the public.
- (4) The Environment Agency may combine the register with any other register maintained by it.

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8 Notification requirements

- (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 provided in connection with the application.
- (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 of that fact.
- (3) Notification under subsection (2) must be given within 28 days of the beginning of the period in which the licensee is not carrying on business in that area while licensed.
- (4) If a licensee carries on business as a scrap metal dealer under a name (“a trading name”) other than that stated in the licence under section 2(4)(a) or (6)(a), the licensee must notify the authority which issued the licence of any change to the trading name.
- (5) Notification under subsection (4) must be given within 28 days of the change occurring.
- (6) An authority must notify the Environment Agency of –
- (a) any change notified to the authority under subsection (4), and
 - (b) any variation made by the authority under paragraph 2 of Schedule 1 (variation of type of licence or matters set out in licence).
- (7) Where an authority notifies the Environment Agency of a change or variation, the Agency must amend the register under section 7 accordingly.

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- (8) An applicant or licensee who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) It is a defence for a person charged with an offence under this section to prove that the person took all reasonable steps and exercised all due diligence to avoid committing the offence. 5

9 Closure of unlicensed sites

Schedule 2 (which makes provision for the closure of sites at which a scrap metal business is being carried on without a licence) has effect.

Conduct of business 10

10 Verification of supplier's identity

- (1) A scrap metal dealer must not receive scrap metal from a person without verifying the person's full name and address.
- (2) That verification must be by reference to documents, data or other information obtained from a reliable and independent source. 15
- (3) The Secretary of State may prescribe in regulations –
- (a) documents, data or other information which are sufficient for the purpose of subsection (2);
 - (b) documents, data or other information which are not sufficient for that purpose. 20
- (4) If a scrap metal dealer receives scrap metal in breach of subsection (1), each of the following is guilty of an offence –
- (a) the scrap metal dealer;
 - (b) if the metal is received at a site, the site manager;
 - (c) a manager (other than the person within paragraph (b)) who fails to take reasonable steps to prevent the metal being received in breach of subsection (1). 25
- (5) In subsection (4)(c) “manager” means a person who works in the carrying on of the dealer's business as a scrap metal dealer in a capacity, whether paid or unpaid, which authorises the person to prevent the metal being received in breach of subsection (1). 30
- (6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) A person who, on delivering scrap metal to a scrap metal dealer, gives a false name or false address is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 35

11 Offence of buying scrap metal for cash etc

- (1) A scrap metal dealer must not pay for scrap metal except –
- (a) by a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or 40

- (b) by an electronic transfer of funds (authorised by credit or debit card or otherwise).
- (2) The Secretary of State may by order amend subsection (1) to permit other methods of payment.
- (3) In this section paying includes paying in kind (with goods or services). 5
- (4) If a scrap metal dealer pays for scrap metal in breach of subsection (1), each of the following is guilty of an offence –
 - (a) the scrap metal dealer;
 - (b) if the payment is made at a site, the site manager;
 - (c) a manager (other than the person within paragraph (b)) who fails to take reasonable steps to prevent the payment being made in breach of subsection (1). 10
- (5) In subsection (4)(c) “manager” means a person who works in the carrying on of the dealer’s business as a scrap metal dealer in a capacity, whether paid or unpaid, which authorises the person to prevent the payment being made in breach of subsection (1). 15
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

12 Records of dealings

- (1) This section applies if a scrap metal dealer receives any scrap metal in the course of the dealer’s business. 20
- (2) The dealer must record the following information –
 - (a) the description of the metal (including its type and weight);
 - (b) the date and time of its receipt;
 - (c) if the metal is delivered in or on a vehicle, the registration mark (within the meaning of section 23 of the Vehicle Excise and Registration Act 1994) of the vehicle, 25
 - (d) if the metal is received from a person, the full name and address of that person;
 - (e) if the dealer pays for the metal, the full name of the person who makes the payment acting for the dealer. 30
- (3) If the dealer receives the metal from a person, the dealer must keep a copy of any document which the dealer uses to verify the name or address of that person.
- (4) If the dealer pays for the metal, the dealer must keep – 35
 - (a) if the payment was by cheque, a copy of the cheque, or
 - (b) if the payment was by electronic transfer, the receipt (if any) identifying the transfer.
- (5) If the dealer pays for the metal and –
 - (a) the payment was by electronic transfer, and 40
 - (b) no receipt identifying the transfer was obtained,
 the dealer must record particulars identifying the transfer.

- (6) The information mentioned in subsections (2) and (5) must be recorded in a manner which allows each of the items of information to be readily connected to the scrap metal to which they relate.
- (7) The records mentioned in subsections (3) and (4) must be marked so as to identify the scrap metal to which they relate. 5
- (8) The dealer must keep the information and other records mentioned in subsections (2) to (5) for a period of 2 years beginning with the day on which the metal is received.
- (9) If a scrap metal dealer fails to comply with a requirement under this section, each of the following is guilty of an offence – 10
- (a) the scrap metal dealer;
 - (b) if the metal is received at a site, the site manager;
 - (c) a manager (other than the person within paragraph (b)) who fails to take reasonable steps to ensure that the requirement is complied with.
- (10) In subsection (9)(c) “manager” means a person who works in the carrying on of the dealer’s business as a scrap metal dealer in a capacity, whether paid or unpaid, which authorises the person to ensure that the requirement is complied with. 15
- (11) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale. 20

Supplementary

13 Right to enter and inspect

- (1) A constable or an officer of a local authority may enter and inspect a licensed site at any reasonable time on notice to the site manager.
- (2) A constable or an officer of a local authority may enter and inspect a licensed site at any reasonable time, otherwise than on notice to the site manager, if – 25
- (a) reasonable attempts to give such notice have been made and have 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 notice would defeat that purpose. 30
- (3) Subsections (1) and (2) do not apply to residential premises.
- (4) A constable or an officer of a local authority is not entitled to use force to enter premises in the exercise of the powers under subsections (1) and (2). 35
- (5) A justice of the peace may issue a warrant authorising entry (in accordance with subsection (7)) to any premises within subsection (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 – 40
- (a) securing compliance with the provisions of this Act, or
 - (b) ascertaining whether those provisions are being complied with.
- (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.
- (7) The warrant is a warrant signed by the justice which –
- (a) specifies the premises concerned, and 5
 - (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.
- (8) A constable or an officer of a local authority may, if necessary, use reasonable force in the exercise of the powers under a warrant under subsection (5). 10
- (9) A constable or an officer of a local authority may –
- (a) require production of, and inspect, any scrap metal kept at any premises mentioned subsection (1) or (2) or in a warrant under subsection (5);
 - (b) require production of, and inspect, any records kept in accordance with section 12 and any other records relating to payment for scrap metal; 15
 - (c) take copies of or extracts from any such records.
- (10) Subsection (11) applies if a constable or an officer of a local authority (“the officer”) seeks to exercise powers under this section in relation to any premises.
- (11) If the owner, occupier or other person in charge of the premises requires the officer to produce – 20
- (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.
- (12) In the case of an officer of a local authority, the powers under this section are exercisable only in relation to premises in the area of the authority. 25
- (13) A person who –
- (a) obstructs the exercise of a right of entry or inspection under this section, or
 - (b) fails to produce a record required to be produced under this section, 30
- is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

14 Offences by bodies corporate

- (1) Where an offence under this Act is committed by a body corporate and is proved – 35
- (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. 40
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and omissions of a member in connection with that management as if the member were a director of the body corporate.

15 Review of Act

- (1) Before the end of 5 years beginning with the day on which section 1 comes into force, the Secretary of State must –
 - (a) carry out a review of this Act, and
 - (b) publish a report of the conclusions of the review. 5
- (2) The report must in particular –
 - (a) set out the objectives intended to be achieved by this Act,
 - (b) assess the extent to which those objectives have been achieved, and
 - (c) assess whether it is appropriate to retain or repeal the Act or any of its provisions in order to achieve those objectives. 10

16 Repeals

The following are repealed –

- (a) the Scrap Metal Dealers Act 1964;
- (b) paragraph 6 of Schedule 9 to the Local Government (Wales) Act 1994;
- (c) paragraph 1 of Schedule 3 to the Vehicle Excise and Registration Act 1994; 15
- (d) in the Vehicles (Crime) Act 2001 –
 - (i) Part 1,
 - (ii) section 35, and
 - (iii) paragraphs 1 and 2 of the Schedule; 20
- (e) in paragraph 168 of Schedule 17 to the Communications Act 2003, “16(2)(a),”;
- (f) sections 145 to 147 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

17 Orders and regulations25

- (1) Any power to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) A statutory instrument containing an order or regulations under this Act, other than an order under section 11(2), 18(8) or 20(2), is subject to annulment in pursuance of a resolution of either House of Parliament. 30
- (3) A statutory instrument containing an order under section 11(2) or 18(8) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (4) Any power to make an order or regulations under this Act –
 - (a) may be exercised so as to make different provision for different purposes; 35
 - (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Secretary of State considers appropriate.

18 “Carrying on business as a scrap metal dealer” and “scrap metal”40

- (1) The following provisions apply for the purposes of this Act.
- (2) A person carries on business as a scrap metal dealer if the person –

- (a) carries on a business which consists wholly or partly in buying and selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
- (b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)). 5
- (3) For the purposes of subsection (2)(a), a person who manufactures articles is not to be regarded as buying or selling scrap metal if that person –
- (a) buys scrap metal (if at all) only as materials for manufacturing articles, and
- (b) sells scrap metal (if at all) only as a by-product of manufacturing them or as surplus materials not required for manufacturing them. 10
- (4) For the purposes of subsection (2)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists –
- (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, 15
- (b) wholly or mainly in 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 (whether immediately or on a subsequent re-sale) of any of the activities mentioned in paragraphs (a) and (b), or 20
- (d) wholly or mainly in activities falling within paragraphs (b) and (c).
- (5) “Scrap metal dealer” means a person who is for the time being carrying on business as a scrap metal dealer, whether or not authorised by a licence.
- (6) “Scrap metal” includes – 25
- (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.
- (7) But the following are not scrap metal – 30
- (a) gold,
- (b) silver,
- (c) platinum, iridium, osmium, palladium, rhodium and ruthenium, and
- (d) any alloy of which 2 per cent or more by weight is attributable to gold or silver or to any one or more of the metals mentioned in paragraph (c). 35
- (8) The Secretary of State may by order amend the definition of “scrap metal” for the purposes of this Act (whether by amending subsection (6) or (7) or otherwise).

19 Other definitions

- (1) The following provisions apply for the purposes of this Act. 40
- (2) “Licensed site” means a site identified in a scrap metal licence.
- (3) “Local authority” means –
- (a) in relation to England, the council of a district, the Common Council of the City of London or the council of a London borough;
- (b) in relation to Wales, the council of a county or a county borough. 45

- (4) “Mobile collector” means a person regularly engaged, in the course of carrying on business as a scrap metal dealer, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from house to house.
- (5) “Officer of a police force” includes a constable of the British Transport Police Force. 5
- (6) “Premises” includes any land or other place (whether enclosed or not).
- (7) “Relevant environmental permit or registration”, in relation to an application made to a local authority, means –
- (a) any environmental permit under regulation 13 of the Environmental (Permitting) Regulations 2010 (S.I. 2010/675) authorising any operation by the applicant in the local authority’s area; 10
 - (b) any registration of the applicant under Schedule 2 to those Regulations in relation to an exempt waste operation (within the meaning of regulation 5 of those Regulations) carried on in that area;
 - (c) any registration of the applicant under Part 8 of the Waste (England and Wales) Regulations 2011 (S.I. 2011/988) (carriers, brokers and dealers of controlled waste). 15
- (8) “Relevant offence” and “relevant enforcement action” have the meaning given by section 3(3).
- (9) “Site” means any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there). 20
- (10) “Site manager” –
- (a) in relation to a site at which a scrap metal dealer carries on business, means the individual who exercises day-to-day control and management of activities at the site, and 25
 - (b) where a licence has not yet been issued, includes an individual proposed to be named in the licence as a site manager.
- (11) An individual may be named in a licence as site manager at more than one site; but no site may have more than one site manager named in relation to it.
- 20 Extent, commencement and short title** 30
- (1) This Act extends to England and Wales.
 - (2) The provisions of this Act, except section 17 and this section, come into force on such day as the Secretary of State may appoint by order.
 - (3) Different days may be appointed for different purposes.
 - (4) This Act may be cited as the Scrap Metal Dealers Act 2012. 35

SCHEDULES

SCHEDULE 1

Section 5

FURTHER PROVISION ABOUT LICENCES

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. 5
- (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; 10
- (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. 15
- (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).

Variation of licence

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- 2 (1) The local authority which issued a licence may vary it by –
- (a) changing it from one type to the other, or
- (b) amending any of the matters mentioned in section 2(4)(a) to (c) or (6)(a).
- (2) But the power to amend the name of the licensee does not include the power to transfer the licence from one person to another. 25

Applications

- 3 (1) A licence is to be issued or renewed, or varied under paragraph 2, on an application.
- (2) If the application is for the issue or renewal of a licence, it 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, 30
- (b) if the applicant is a company, the name and registered number of the applicant and the address of the applicant's registered office, 35

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- (c) if the applicant is a partnership, the full name, date of birth and usual place of residence of each partner,
 - (d) the name under which the applicant proposes to carry on business in accordance with the licence (unless it is the name given under paragraph (a), (b) or (c)), 5
 - (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, 10
 - (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 11, and 15
 - (j) details of any conviction of the applicant for a relevant offence, or any relevant enforcement action taken against the applicant.
- (3) 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 20
 - (b) the full name, date of birth and usual place of residence of each site manager (other than the applicant).
- (4) If the application relates to a site licence, the references in sub-paragraph (2)(g), (h) and (j) to the applicant are to be read as including any site manager. 25
- (5) If the application is for a variation under paragraph 2, it must contain particulars of the changes to be made to the licence.
- (6) The Secretary of State may by order amend sub-paragraph (2) or (3) to alter the requirements as to what information must accompany an application. 30

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. 35
- (2) If an applicant fails to provide information requested under sub-paragraph (1), the authority may decline to proceed with the application.

Offence of making false statement

- 5 An applicant who in an application or in response to a request under paragraph 4(1) – 40
- (a) makes a statement knowing it to 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 An application must be accompanied by a fee set by the authority, which must not exceed the amount set out in, or determined by, regulations made by the Secretary of State.

Right to make representations

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- 7 (1) If a local authority proposes –
 (a) to refuse an application made under paragraph 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. 10
- (2) In this paragraph 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
 (b) inform the authority that A wishes to do so. 15
- (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. 20
- (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. 25
- (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. 30
- (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. 35

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 – 40
 (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.

Appeals

- 9 (1) An applicant may appeal to a magistrates' court against the refusal of an application made under paragraph 3. 5
- (2) A licensee may appeal to a magistrates' court against the revocation or variation of a licence under section 4.
- (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, or to revoke or vary the licence under section 4, was given. 10
- (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. 15
- (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. 20
- (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. 25

SCHEDULE 2

Section 9

CLOSURE OF UNLICENSED SITES 30

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. 35

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 – 5
- (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 10
 - (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 15
 - (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. 20
- (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. 25
- (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. 30
- (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. 35

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 – 40
- (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. 5
- (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). 10
- (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. 15

Closure order

- 5 (1) This paragraph applies if, on hearing a complaint under paragraph 4, the court is satisfied that the closure notice was served 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. 20
- (2) The court may make such order as it considers appropriate for the closure of the premises (a “closure order”). 25
- (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; 30
 - (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. 40
- (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. 45

- (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 5
 - (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)). 10
- (5) As soon as practicable after making a certificate, the constable or authority must – 15
- (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. 20
- (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”) – 25
- (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. 30
- (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 – 35
- (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). 40

- (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; 5
 - (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. 10
- (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; 15
 - (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. 20
- (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 25
 - (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 30
 - (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. 35
- (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, 40
- 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.

Scrap Metal Dealers Bill

A

B I L L

To amend the law relating to scrap metal dealers; and for connected purposes.

*Presented by Richard Ottaway,
supported by
Chris Kelly, Sir Tony Baldry,
Graham Jones, Mr Graham Allen,
Simon Hughes and Caroline Lucas.*

*Ordered, by The House of Commons,
to be Printed, 20 June 2012.*

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