

Supplementary written response from the British Metals Recycling Association (BMRA)

BMRA responded to the Local Government and Regeneration Committee's invitation to provide evidence ahead of the committee's scrutiny of the Air Weapons and Licensing (Scotland) Bill. BMRA would like to submit some further evidence that builds on our original submission and on subsequent discussions with members of the committee.

We believe that it could prove very difficult to amend the Bill in its existing form in order to produce a clearly understood, modern piece of legislation. We have attempted to demonstrate this by annexing an amended form of wording to this submission.

Major Issues

Cash trading

We welcome any measures that will deter metal theft by removing opportunities for the anonymous disposal of stolen material for cash. However, this has to be on the basis that the AWLS Bill will minimise the creation of new unfair competitive opportunities for those operating on the margins of the licensing regime at the expense of compliant dealers.

The AWLS Bill seeks to ban cash payments using virtually identical text to the Scrap Metal Dealers Act 2013 (England & Wales), but contains significant weaknesses relating to the licensing regime itself that would provide readily-exploitable loopholes for unscrupulous operators.

See proposed clause 12 in annexe 1.

Date of processing

S33B(4)(b) of the CGSA (as amended) calls for a dealer to record the date on which metal is processed, including its description and weight prior to the processing operation.

Such a requirement will be difficult in a typical metal recycling facility where material is continually received and sorted for processing in economical quantities. Compliance with the requirement would require the batching of all material through processes that are intrinsically continuous. This would require a substantial increase in the land allocated and licensed by SEPA for the purpose of metal recycling and would threaten the economic viability of many Scottish businesses.

See proposed clauses 13 and 14 in annexe 1.

Register of licences

It appears that responsibility to maintain registers of metal dealers remains with each licensing authority (CGSA Schedule 1, para 14 refers), although a mobile collector's licence will remain valid for collections anywhere in Scotland (CGSA S 32(2) refers).

Local registers may be appropriate for the other activities regulated by the CGSA. However, the collection and sale of scrap metal, particularly by a mobile collector,

frequently involves collections and transportation throughout multiple local authority jurisdictions. That means enforcement agencies may have to access and consult registers for distant local authorities in order to establish whether an individual or a business is licensed.

Failure to set up a national register of metal dealers, potentially managed by SEPA who already maintain registers of all these businesses in on one form or other, would constitute a lost opportunity to assist enforcement agencies in the detection and prosecution of metal theft and breaches of the CGSA. A national register also enables citizens to satisfy themselves that they are dealing with a licensed buyer of scrap

See proposed clause 7 in annexe 1.

Production of licences

We can find no requirement for a metal dealer or mobile collector to display a copy of a licence.

CGSA S5(4) allows a person who may be carrying on an activity which requires licensing five days to produce the licence. We consider that placing an obligation on metal dealers to display copies of their licence on their premises, and for mobile collectors to display their license/s on their collection vehicles, would be a useful measure to assist enforcement agencies in identifying illegal dealers.

See proposed clause 10 in annexe 1.

Verification of identity

CGSA (as amended) S33B(5)(c) says that a dealer must “keep a copy of any document produced by a person to verify that person’s name and address”. However, we cannot find any requirement placed on a dealer to verify the identity of a person supplying or receiving metal for recycling (‡ see below under “Methods of payment”). If such a requirement is introduced it is essential that the person whose identity is to be verified, and the form of acceptable documents, is set out clearly and unambiguously.

See proposed clause 11 in annexe 1.

Methods of payment

Electronic transfer definitions and associated record-keeping requirements are very poorly defined in the AWLS Bill. Examples include:

- no exclusion for barter transactions (payment in kind). This omission offers up the opportunity for those wishing to circumvent the proposed prohibition on buying scrap metal for cash by exchanging scrap metal for another commodity on which such a prohibition does not exist. “Payment in kind” is not an uncommon industry practice and this could be significant loophole.
- no definition of the type of permissible electronic transfer enabling the use of cash cards without any “know your customer” checks

See proposed clause 12 in annexe 1.

Metal dealer definition

The Bill's definitions of a metal dealer and an itinerant metal dealer in the CGSA S37 are not changed by the AWLS Bill and require a person both to buy and to sell metal before they qualify.

One significant implication is that a mobile collector who collects from households without making payment for the items or materials he collects would not require a licence, and would thus remain outside the scope of the AWLS Bill. Furthermore, there is scope for a person collecting general waste and other materials, but actually earning a substantial proportion of his income from separating out and selling scrap metal, to escape the licensing regime. Similarly, skip hire operators and demolition contractors generating a substantial amount of their revenue from sale of scrap metal could escape the definition and need for licensing. Furthermore car breakers are not covered by the definition, a situation exacerbated by the absence of a definition of scrap metal.

We note that CGSA S37(2) excludes manufacturers' buying of scrap for manufacture of other articles from the definition of metal dealer, providing scope for creative interpretation of both "manufacture" and "other articles" to evade licensing. For example, a metal dealer who has a small furnace for the manufacture of aluminium ingot would fall outside the scope of the AWLS Bill. We believe that the AWLS Bill should be amended to capture "all persons carrying out a business consisting of buying or selling scrap metal", with some specific exemptions for manufacturers disposing of their own surplus materials or offcuts. A clear and comprehensive definition of metal dealer, to include vehicle dismantlers and other businesses generating a significant proportion of their income from sale of scrap metal is essential.

See proposed clauses 1 & 17 (4) in annexe 1.

Powers of Search and Seizure

We consider the existing powers vested in police officers under Section 60(1)(c) of the Civic Government (Scotland) Act 1982 to enter and search premises occupied by a metal dealer without warrant to be draconian, particularly in the light of the levelling of playing field for regulation of all metal dealers through the removal of the exemption warrant system. The AWLS Bill provides an opportunity to regularize the situation by removing specific additional powers in respect of metal dealers' premises and vehicles.

General

The definitions relating to metal dealing in CGSA S37 are weak. Crucially they do not define scrap metal, and many measures that apply to a mobile collectors and site operators are listed separately, thus complicating the structure of the document and providing scope for confusion.

We have not dealt here with the repeal of certain provisions of the CGSA that would be needed if some or all of these proposals were adopted.

BMRA proposed revisions to the scrap metal dealers section of the Air Weapons and Licensing (Scotland) Bill

BMRA has given serious consideration as to how the existing Metal Dealers clauses of the Bill could be amended to provide effective legislation to control those aspects of the trade in metal for recycling that are of concern to legislators, the police, the legitimate industry and the victims of metal theft. We have concluded that the current Bill Part 3 Clauses 63 to 66 along with the proposed amendments to the Civic Government Act 33B to 33D could not be successfully improved and that a redraft of the appropriate clauses of the Weapons and Licensing (Scotland) Bill would be an appropriate solution.

The following text leans heavily on the Scrap Metal Dealers' Act 2013, but seeks to reduce some confusion arising from the framing of that Act, and also to extract definitions into a single section.

We have generally not tried to insert or amend cross-references to other legislation that may apply in Scotland, however references are made that may not apply in Scotland. Where these are recognised they are marked [.....?] .

Proposed Text

The Licence

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 17(4) for the meaning of “carry on business as a scrap metal dealer”.
 - (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
2. Form and effect of licence
 - (1) A scrap metal licence is to be issued by a local authority [Sect 17(10) refers] .
 - (2) A licence must be one of the following types—
 - (a) a site licence, or
 - (b) an mobile collector’s licence.
 - (3) A site licence authorises the licensee to carry on business at any site in the authority’s area which is identified in the licence, including collection and delivery of scrap metal in connection with business at the licensed site.
 - (4) A site licence must—
 - (a) name the licensee,
 - (b) name the authority,
 - (c) Include a unique serial number for scrap metal licences issued by that authority,
 - (d) identify all the sites in the authority’s area at which the licensee is authorised to carry on business,
 - (e) state the date on which the licence is due to expire.
 - (5) A mobile collector’s licence authorises the licensee to carry on business as a mobile collector in the authority’s area.
 - (6) A mobile collector’s licence authorises scrap metal collection activities by one natural person only (“the licensee”).

- (7) A mobile collector's licence must—
 - (a) name the licensee (sub section (6) refers),
 - (b) include a photographic image of the licensee's face (sub section (6) refers).
 - (c) name the authority,
 - (d) Include a unique serial number for scrap metal licences issued by that authority, and
 - (e) state the date on which the licence is due to expire.
 - (8) A licence is to be in a form which—
 - (a) complies with subsection (4) or (7), and
 - (b) enables the licensee to comply with section 10 (display of licence).
 - (9) Ministers may by order prescribe further requirements as to the form and content of licences.
 - (10) 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.
 - (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 has been convicted of any relevant offence;
 - (b) whether the applicant 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 revocation of a scrap metal licence (and the reasons for the revocation);
 - (3) 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).
 - (4) 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.
 - (5) The authority may consult other persons regarding the suitability of an applicant, including in particular—
 - (a) any other local authority;
 - (b) the Scottish Environment Protection Agency;
 - (c) an officer of a police force.
4. Revocation of licence
- (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.
 - (2) 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.
 - (3) A revocation under this section 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.

- (4) In this section “the authority” means the local authority which issued the licence.
5. Further provision about licences
- 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.
- (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 Scottish Environment Protection Agency;
- (c) an officer of a police force.
- (3) This section does not limit any other power the authority has to supply that information.
7. Register of licences
- (1) The Scottish Environment Protection Agency must maintain a register of scrap metal licences issued by authorities in Scotland.
- (2) Each entry in the register must record—
- (a) the name of the authority which issued the licence,
- (b) the unique serial number for scrap metal licences issued by that authority,
- (c) the name of the licensee,
- (d) any trading name of the licensee,
- (e) the address of any site identified in the licence,
- (f) the type of licence, and
- (g) the date on which the licence is due to expire.
- (3) The registers are to be open for inspection to the public.
- (4) The Scottish Environment Protection Agency may combine its register with any other register maintained by it.
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 under a trading name, the licensee must notify the authority which issued the licence of any change to that name.
- (5) Notification under subsection (4) must be given within 28 days of the change occurring.
- (6) An authority must notify the Scottish Environment Protection Agency of—
- (a) any notification given to the authority under subsection (2) or (4),
- (b) any variation made by the authority under paragraph 3 of Schedule 1 (variation of type of licence or matters set out in licence), and
- (c) any revocation by the authority of a licence.
- (7) Notification under subsection (6) must be given within 28 days of the notification, variation or revocation in question.

- (8) Where an authority notifies the Scottish Environment Protection Agency under subsection (6), the Scottish Environment Protection Agency must amend the register under section 7 accordingly.
- (9) 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**
- (10) It is a defence for a person charged with an offence under this section to prove that the person took all reasonable steps to avoid committing the offence.

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.

10. Display of licence

- (1) A scrap metal dealer who holds a site licence must display a copy of the licence at each site identified in the licence.
 - (a) The copy must be displayed in a prominent place in an area accessible to the public.
- (2) A scrap metal dealer who holds a mobile collector's licence must display a copy of the licence on any vehicle that is being used in the course of the dealer's business.
 - (a) The copy must be displayed in a manner which enables it easily to be read by a person outside the vehicle.
- (3) A scrap metal dealer who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding **level**

Conduct of business

11. 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.
- (3) Ministers 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.
- (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) any person who, under arrangements made by a person within paragraph (a) or (b), has responsibility for verifying the name and address.
- (5) It is a defence for a person within subsection (4)(a) or (4)(b) who is charged with an offence under subsection (4) to prove that the person—
 - (a) made arrangements to ensure that the metal was not received in breach of subsection (1), and
 - (b) took all reasonable steps to ensure that those arrangements were complied with.
- (6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding **level**
- (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**

12. 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 [Scotland?] is not transferable, or
 - (b) by an electronic transfer of funds (authorised by credit or debit card or otherwise).
- (2) Ministers may by order amend subsection (1) to permit other methods of payment.
- (3) Payment in kind (with goods or services) is not permitted.
- (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) any person who makes the payment acting for the dealer.
 - (d) any person who receives the cash payment from the scrap metal dealer.
- (5) It is a defence for a person within subsection (4)(a) or (4)(b) who is charged with an offence under this section to prove that the person—
 - (a) made arrangements to ensure that the payment was not made in breach of subsection (1), and
 - (b) took all reasonable steps to ensure that those arrangements were complied with.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level

13. Records: receipt of metal

- (1) This section applies if a scrap metal dealer receives any scrap metal in the course of the dealer's business.
- (2) The dealer must record the following information—
 - (a) the description of the metal, including its type, form 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 [Scotland?]) of the vehicle;
 - (d) the full name and address of the person from whom the metal is received
- (3) The dealer must keep a copy of any documents used to verify the name and address of the person from whom the metal is received, and must cross-refer the record of the transaction to the relevant copy.
- (4) If the dealer pays for the metal by cheque, the dealer must keep a copy of the cheque.
- (5) If the dealer pays for the metal by electronic transfer—
 - (a) the dealer must keep the receipt identifying the transfer, or
 - (b) if no receipt identifying the transfer was obtained, the dealer must record particulars identifying the transfer.

14. Records: disposal of metal

- (1) This section applies if a scrap metal dealer disposes of any scrap metal in the course of the dealer's business.
- (2) For these purposes metal is disposed of—
 - (a) whether or not it is in the same form in which it was received;
 - (b) whether or not the disposal is to another person;
- (3) Where the disposal is in the course of business under a site licence or an mobile collectors licence, the dealer must record the following information—

- (a) the description of the metal, including its type (or types if mixed), form and weight;
- (b) the date and time of its disposal;
- (c) if the disposal is to another person, the full name and address of that person;
- (d) if the dealer receives payment for the metal (whether by way of sale or exchange), the price or other consideration received.

15. Records: supplementary

- (1) The dealer must keep the information and other records mentioned in sections 13(2), 13(5) and 14(3) for a period of 3 years beginning with the day on which the metal is received or (as the case may be) disposed of.
- (2) 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) any person who, under arrangements made by the licensee has responsibility for fulfilling the requirement.
- (3) It is a defence for a person within subsection (2)(a) or (2)(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. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding **level**

Supplementary

16. Offences by bodies corporate

- (1) Where an offence under this 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 person,
 the individual as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (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.

Definitions

17. Interpretation and definitions

- (1) “metal” means any metal (including any precious metal) and any alloy of any metals, whether old or new and includes manufactured articles, whether old or new, made wholly or partly of metal, of any of the materials commonly known as hard metal or of cemented or sintered metallic carbides;
- (2) “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.
- (3) The Secretary of State may by order amend the definition of “scrap metal” for the purposes of this Act.

- (4) “scrap metal dealer” means a person who carries on a business, whether or not authorised by a licence,
- (a) which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or
 - (b) as a motor salvage operator (so far as that does not fall within paragraph (a)).
 - (c) “mobile collector” means a scrap metal dealer who—
 - (d) carries on business as a scrap metal dealer otherwise than at a site, and
 - (i) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.
 - (e) For the purposes of subsection (a), a person who manufactures articles is not to be regarded as selling scrap metal if that person sells scrap metal only as a by-product of manufacturing articles or as surplus materials not required for manufacturing them.
- (5) “site manager” means a natural person named in a site licence as a site manager or proposed to be so named in a site licence application.
- (a) For the purposes of subsection (4)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists—
 - (i) 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,
 - (ii) wholly or mainly in buying written-off vehicles and subsequently repairing and reselling them,
 - (iii) 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 sub-paragraphs (i) and (ii), or
- (6) “site” means any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there).
- (7) “licensed site” means a site identified in a scrap metal licence.
- (8) “premises” includes any land or other place (whether enclosed or not).
- (9) “metal store” means a place where metal is received or kept in the course of a metal dealer’s business;
- (10) “local authority” means [needs a proper definition that will cover the designated licensing authorities for the purposes of scrap metal licensing in Scotland].
- (11) “relevant offence” and “relevant enforcement action” mean an offence or enforcement action which is prescribed for the purposes of this legislation in regulations made by Ministers
- (12) “Officer of a police force” includes a constable of the British Transport Police Force.
- (13) “processing”, in relation to metal, includes melting down and any process whereby the composition or form of the metal or of any article which is made of the metal is altered so as to make it substantially less identifiable than before the process, and “process” and “processed” shall be construed accordingly.
- (14) “trading name” means a name, other than that stated in the licence under section 2(4)(a) or 2(7)(a) under which a licensee carries on business as a scrap metal dealer.
- (15) For the purposes of Section 11, the person whose identity is to be verified may be:
- (a) the a natural person making delivery and,
 - (b) in the case of scrap metal received from a business, the corporate entity supplying the scrap metal.
- (16) all references to keeping copies or records of transactions may refer equally to paper or electronic copies.

- (17) For the purposes of sub-sections 13(2)(a) and 14(3)(a) the “description of the metal” should be proportionate, that is to say the level of detailed description expected for items in bulk loads will be less comprehensive than for single items.
- 18. Consequential amendments
 - (1) The following are repealed—
 - (a) [Relevant sections of the CG(S)A + XXX?]

SCHEDULES
SCHEDULE 1
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.
 - (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).

Applications

2.
 - (1) A licence is to be issued or renewed on an application, which must be accompanied by—
 - (a) if the applicant is a natural person, the full name, date of birth and usual place of residence of the applicant,
 - (b) if the applicant is a company, the name and registered number of the applicant and the address of the applicant's registered office,
 - (c) if the applicant is a partnership, the full name, date of birth and usual place of residence of each partner,
 - (d) any proposed trading name,
 - (e) the telephone number and e-mail address (if any) of the applicant,
 - (f) the address of any site in the area of any other local authority at which the applicant carries on business as a scrap metal dealer or proposes to do so,
 - (g) details of any relevant environmental permit or registration in relation to the applicant,
 - (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 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 person 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), (1)(h) and (1)(i) to the applicant are to be read as including any person 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.

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), 2(4)(b), 2(7)(a) or 2(7)(c), or sub-paragraph 2(1) of this schedule, 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—
- (5) is to be made to the authority which issued the licence, and
- (6) must contain particulars of the changes to be made to the licence.
- (7) 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**
- (8) 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.

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.

Offence of making false statement

5. An applicant who in an application or in response to a request under paragraph 4(1)—

- (1) makes a statement knowing it be false in a material particular, or
- (2) 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**

Licence Fees

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 Ministers

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
 - (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.

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.

Appeals

9.

- (1) An applicant may appeal to a magistrates’ court [Scotland?] against the refusal of an application made under paragraph 2 or 3.
- (2) A licensee may appeal to a magistrates’ court [Scotland?] 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, 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[Scotland?].
- (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 court [Scotland?] 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 court [Scotland?] under sub-paragraph (6).
- (8) But the authority need not comply with any such directions—
 - (a) until the time for making an application under..... [Scotland?] (application by way of case stated) has passed, or
 - (b) if such an application is made, until the application is finally determined or withdrawn.

SCHEDULE 2

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
 - (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 [Scotland?] 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 [Scotland?] 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 2(7).
- (7) The procedure on a complaint under this paragraph is to be in accordance with the Magistrates' Courts Act 1980 [Scotland?].

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—
 - (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(4)(a)).
- (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 [Scotland?] 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 [Scotland?] 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 [Scotland?] 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 [Scotland?].

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
 - (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 in England & Wales].
- (7) In this paragraph “an authorised person” is a person authorised for the purposes of this paragraph by the local authority.