

# Scrap Metal Dealers Bill

[AS INTRODUCED]

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*Scrap Metal Dealers*

A

**B I L L**

TO

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

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

*Licensing of scrap metal dealers*

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

1.—(1) No person may carry on business as a scrap metal dealer unless authorised by a scrap metal licence.

5 (2) 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.

**Form and effect of licence**

2.—(1) A scrap metal licence is to be issued by the Department.

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 at any site which is identified in the licence.

15 (4) A site licence must—

(a) name the licensee;

(b) identify all the sites at which the licensee is authorised to carry on business;

(c) name the site manager of each site; and

20 (d) state the date on which the licence is due to expire.

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(5) A collector's licence authorises the licensee to carry on business as a mobile collector.

(6) A collector's licence must—

- (a) name the licensee; and
- 5 (b) state the date on which the licence is due to expire.

(7) A licence is to be in a form which—

- (a) complies with subsection (4) or (6); and
- (b) enables the licensee to comply with section 8 (display of licence).

10 (8) The Department may in regulations prescribe further requirements as to the form and content of licences.

### **Issue of licence**

**3.**—(1) The Department will 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 Department 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);
- (d) any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal);
- 25 (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 this section—

- (a) “relevant offence” means an offence which is prescribed for the purposes of this section in regulations made by the Department; and
- (b) “relevant enforcement action” means enforcement action which is so prescribed.

35 (4) In determining whether a company is a suitable person to carry on business as a scrap metal dealer, the Department will 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; and
- 40 (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).

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(5) In determining whether a partnership is a suitable person to carry on business as a scrap metal dealer, the Department will have regard, in particular, to whether each of the partners is a suitable person.

5 (6) If the applicant or any site manager has been convicted of a relevant offence, the Department may include in the licence one or both of the following conditions—

(a) that the dealer must not receive scrap metal except between 9 am and 5 pm on any day;

10 (b) that all scrap metal received must be kept in the form in which it is received for a period specified in the condition but which may not exceed 72 hours beginning with the time when it is received.

### **Revocation of licence and imposition of conditions**

4.—(1) The Department may revoke a site licence if it is satisfied that the licensee does not carry on business at any of the sites identified in the licence.

15 (2) The Department may revoke a site 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 Department may revoke a scrap metal licence if it is no longer satisfied that the licensee is a suitable person to carry on business as a scrap metal dealer.

20 (4) Subsections 3(2) to (5) applies for the purposes of determining whether a person remains a suitable person pursuant to subsection (3).

(5) If the licensee or any site manager named in a licence is convicted of a relevant offence, the Department may vary the licence by adding one or both of the conditions set out in section 3(6).

25 (6) A revocation or variation 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.

(7) But if the Department considers that the licence should not continue in force without conditions, it may by notice provide—

30 (a) that, until a revocation under this section comes into effect, the licence is subject to one or both of the conditions set out in section 3(6); or

(b) that a variation under this section comes into effect immediately.

### **Further provision about licences**

5. Schedule 1 (which makes further provision about licences) has effect.

### **Notification requirements**

35 6.—(1) An applicant for a scrap metal licence, or for the renewal or variation of a scrap metal licence, must notify the Department of any changes which materially affect the accuracy of the information which the applicant has previously provided in connection with the application.

40 (2) A licensee who is no longer carrying on business as a scrap metal dealer must notify the Department of that fact.

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(3) Notification under subsection (2) must be given within 28 days of the beginning of the period in which the licensee has ceased to carry on business.

(4) If a licensee carries on business under a trading name, the licensee must notify the Department of any change to that name.

5 (5) Notification under subsection (4) must be given within 28 days of the change occurring.

(6) 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.

10 (7) 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.

### **Closure of unlicensed sites**

7. 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.

## 15 *Conduct of business*

### **Display of licence**

8.—(1) A scrap metal dealer who holds a site licence must display a copy of the licence at each site identified in the licence.

20 (2) The copy licence referred to in section 8(1) must be displayed in a prominent place in an area accessible to the public.

(3) A scrap metal dealer who holds a 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.

(4) The copy licence referred to in section 8(3) must be displayed in a manner which enables it easily to be read by a person outside the vehicle.

25 (5) 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 3 on the standard scale.

### **Verification of supplier's identity**

30 9.—(1) A scrap metal dealer must not receive scrap metal from a person without verifying the person's full name and address.

(2) The verification referred to in subsection (1) must be by reference to documents, data or other information from a reliable and independent source which in each case bear a photograph of the person concerned and are prescribed as being sufficient for that purpose.

35 (3) The following documents are prescribed as being sufficient for the purpose of verifying a person's full name and address pursuant to subsection (1)—

(a) a valid United Kingdom passport, within the meaning of section 33(1) of the Immigration Act 1971;

(b) a valid passport issued by an EEA state;

40 (c) a valid Great Britain or Northern Ireland photo-card driving licence;

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- (d) a valid driving licence issued by the Government of an EEA state if the licence bears the photograph and address of the person to whom it is issued;
- (e) a current electoral identity card issued under section 13C of the Representation of the People Act 1983;
- (f) a Senior, Blind Person's or War Disabled SmartPass issued under the Northern Ireland Concessionary Fares Scheme for use from 1st May 2002;
- (g) a valid UK biometric immigration document issued in accordance with regulations made under section 5 of the UK Borders Act 2007.
- (4) The Department may prescribe in regulations—
- (a) other documents, data or other information which are sufficient for the purpose referred to in subsection (2); and
- (b) documents, data or other information which are not sufficient for that purpose.
- (5) 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; and
- (c) any person who, under arrangements made by a person within paragraph (a) or (b), has responsibility for verifying the name and address of a person as required by subsection (1).
- (6) It is a defence for a person within subsection (5)(a) or (b) who is charged with an offence under subsection (5) 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.
- (7) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) 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.

### **Offence of buying scrap metal for cash etc.**

- 10.**—(1) Subject to subsection (2) 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
- (b) by an electronic transfer of funds (authorised by credit or debit card or otherwise).
- (2) A scrap metal dealer may pay for scrap metal otherwise than in accordance with subsection (1) provided that—
- (a) the total payment for the scrap metal concerned is no more than £100; and

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(b) the scrap metal dealer concerned may only enter into one such transaction with the same seller of scrap metal during any calendar month.

(3) If a scrap metal dealer pays for scrap metal in breach of subsection (1), each of the following is guilty of an offence—

- 5 (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.

(4) It is a defence for a person within subsection (3)(a) or (b) who is charged with an offence under this section to prove that the person—

- 10 (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.

15 (5) 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.

(6) In this section paying includes paying in kind (with goods or services).

(7) The Department may by order—

- (a) amend subsection (1) to permit other methods of payment;  
20 (b) amend, remove or set a time limit for the removal of the exemption in subsection (2) from the requirement to comply with subsection (1).

### **Receipt of metal**

**11.**—(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—

- 25 (a) the description of the metal, including its type (or types if mixed), form, condition, weight and any marks identifying previous owners or other distinguishing features;  
(b) the date and time of its receipt;  
(c) if the metal is delivered in or on a vehicle, the registration mark (within the  
30 meaning of section 23 of the Vehicle Excise and Registration Act 1994) of that vehicle;  
(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  
35 payment acting for the dealer.

(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.

40 (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



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- (b) if no receipt identifying the transfer was obtained, the dealer must record particulars identifying the transfer.
- (6) If the dealer pays for the metal by cash or in kind the dealer must record particulars identifying the transaction.
- 5 (7) If the dealer receives any suspicious scrap metal the dealer must—
- (a) as soon as reasonably practicable notify a constable of the information referred to in paragraph (2)(a) to (e);
  - (b) retain the suspicious scrap metal in the form in which it was received and separately from any other scrap metal for a period of no less than one week  
10 beginning with the day on which the suspicious scrap metal was received; and
  - (c) during this period make it available to a constable for inspection at any reasonable time on notice to the site manager (in the case of a dealer operating under a site licence) or the licensee (in the case of a dealer  
15 operating under a collector’s licence).
- (8) In this section “suspicious scrap metal” means scrap metal—
- (a) which wholly or predominantly consists of—
    - (i) copper;
    - (ii) aluminium;
    - 20 (iii) any other prescribed metal, and
  - (b) which has been, burnt, defaced or otherwise marked in such a way as to give rise to a reasonable suspicion that the scrap metal concerned may have been stolen.
- (9) In this section “prescribed metal” means a metal or alloy which is prescribed  
25 for the purposes of this section in regulations made by the Department.

### **Disposal of metal**

- 12.**—(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—
- 30 (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;
- (c) whether or not the metal is despatched from a site.
- (3) Where the disposal is of metal which in total weighs in excess of 50 kilograms and is made in the course of business under a site licence, the dealer  
35 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  
40 person;
  - (d) if the dealer receives payment for the metal (whether by way of sale or exchange), the price or other consideration received.

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(4) Where the disposal is in the course of business under a collector's licence, the dealer must record the following information—

- (a) the date and time of the disposal;
- (b) if the disposal is to another person, the full name and address of that person.

### **Records: supplementary**

**13.**—(1) The information mentioned in sections 11(2), (5) and (6) and 12(3) and (4) must be recorded—

- (a) in a manner which allows the information and the scrap metal to which it relates to be readily identified by reference to each other;
- (b) in books with serially numbered pages, or by means of a device for storing and processing information.

(2) The records mentioned in section 12(3) and (4) must be marked so as to identify the scrap metal to which they relate.

(3) The dealer must keep the information and other records mentioned in sections 11(2) to (6) and 12(3) and (4) for a period of 1 year beginning with the day on which the metal is received or (as the case may be) disposed of.

(4) If a scrap metal dealer fails to fulfil a requirement under section 11 or 12 or this section, each of the following is guilty of an offence—

- (a) the scrap metal dealer;
- (b) if the metal is received at or (as the case may be) despatched from a site, the site manager;
- (c) any person who, under arrangements made by a person within paragraph (a) or (b), has responsibility for fulfilling the requirement.

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

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

(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.

### **Right to enter and inspect**

**14.**—(1) A constable may enter and inspect a licensed site at any reasonable time on notice to the site manager.

(2) A constable may enter and inspect a licensed site at any reasonable time, otherwise than on notice to the site manager, if—

- (a) reasonable attempts to give 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.

(3) Subsections (1) and (2) do not apply to residential premises.

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(4) A constable is not entitled to use force to enter premises in the exercise of the powers under subsections (1) and (2).

(5) A lay magistrate may issue a warrant authorising entry (in accordance with subsection (7)) to any premises within subsection (6) if the magistrate is satisfied  
5 by information on oath that there are reasonable grounds for believing that entry to the premises is reasonably required for the purpose of—

- (a) securing compliance with the provisions of this Act, or
- (b) ascertaining whether those provisions are being complied with.

(6) Premises are within this subsection if—

- 10 (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) A warrant issued under subsection (5) must be a warrant signed by the  
15 magistrate which—

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

(8) A constable may, if necessary, use reasonable force in the exercise of the  
20 powers under a warrant under subsection (5).

(9) A constable may—

- (a) require production of, and inspect, any scrap metal kept at any premises mentioned in subsection (1) or (2) or in a warrant under subsection (5);
- 25 (b) require production of, and inspect, any records kept in accordance with section 11 or 12 and any other records relating to payment for scrap metal;
- (c) take copies of or extracts from any such records.

(10) Subsection (11) applies if a constable 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  
30 constable to produce—

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

the constable must produce that evidence.

(12) A person who—

- 35 (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,

is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Offences by bodies corporate**

40 **15.**—(1) Where an offence under this Act is committed by a body corporate and is proved—

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- (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.

(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.

### 10 **“Carrying on business as a scrap metal dealer” and “scrap metal”**

**16.—**(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 or 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)).

(3) For the purposes of subsection (2)(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.

(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,
- (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
- (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—

- (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 being of insufficient utility or value to retain or as having reached the end of its useful life.

(7) The following are not scrap metal—

- (a) gold;
- (b) silver; and

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(c) any alloy of which 2 per cent or more by weight is attributable to gold or silver.

(8) The Department may by order amend the definition of “scrap metal” for the purposes of this Act (whether by amending subsection (6) or (7) or otherwise).

### 5 **Orders and regulations**

17.—(1) Except where subsection (2) provides otherwise, any order or regulations made under this Act are subject to negative resolution.

(2) The following orders are not to be made unless a draft has been laid before, and approved by a resolution of, the Assembly—

- 10 (a) an order under section 10(8)(a) (amendment of lawful methods of payment for scrap);
- (b) an order under section 10(8)(b) (amendment or removal of low value cash payments exemption);
- (c) an order under section 19(1)(a) (commencement).

### 15 **Interpretation**

18.—(1) The following provisions apply for the purposes of this Act.

(2) “Department” means the Department of the Environment.

(3) “Licensed site” means a site identified in a scrap metal licence.

(4) “Licensee” means the holder of a scrap metal licence.

20 (5) “Mobile collector” means a person who—

- (a) carries on business as a scrap metal dealer otherwise than at a site, and
- (b) 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.

25 (6) “Premises” includes any land or other place (whether enclosed or not).

(7) “Site” means any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there).

30 (8) “Site manager”, 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.

(9) 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.

35 (10) “Trading name” means a name, other than that stated in the licence under section 2(4)(a) or 2(6)(a), under which a licensee carries on business as a scrap metal dealer.

### **Commencement**

19.—(1) The provisions of this Act, except sections 17, 20, 21 and this section, come into operation on—

- (a) such day as the Department may by order appoint;

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(b) the expiration of 2 years from the day on which this Act receives Royal Assent if not in operation by that date.

(2) Different days may be appointed for different purposes under subsection (1) (a).

5 (3) This section and sections 17, 20 and 21 come into operation on the day after this Act receives Royal Assent.

### **Review of implementation of this Act**

**20.**—(1) The Department must—

(a) not later than 6 months after this Act receives Royal Assent, and

10 (b) at least once in every period of 6 months thereafter until all provisions of this Act are in force,

prepare and lay before the Assembly a report on the implementation of this Act.

### **Short title**

15 **21.** This Act may be cited as the Scrap Metal Dealers Act (Northern Ireland) 20[ ]].

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SCHEDULES

SCHEDULE 1

Section 5.

FURTHER PROVISION ABOUT LICENCES

5 *Terms of licence*

1.—(1) A licence expires at the end of the period of 3 years or such period, not being less than 1 year, as the Department may specify in the licence beginning with the day on which it is issued.

10 (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 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;

15 (b) if the licence is renewed, it expires at the end of the period of 3 years or such period, not being less than 1 year, as the Department may specify in the renewed licence beginning with the day on which it is renewed.

(3) Sub-paragraphs (1) and (2) are subject to section 4 (revocation of licence).

*Applications*

20 2.—(1) A licence is to be issued or renewed on an application, which must be accompanied by—

(a) if the applicant is an individual, the full name, date of birth and usual place of residence of the applicant,

(b) if the applicant is a company, the name and registered number of the applicant and the address of the applicant's registered office,

25 (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 e-mail address (if any) and the telephone number of the applicant,

30 (f) the address of any site 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 to—

(i) the applicant;

35 (ii) any partnership in which the applicant is or was a partner; and

(iii) any company of which the applicant is or was a director; 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 10 (offence of buying scrap metal for cash etc.),
- (j) details of any conviction of the applicant for a relevant offence, or any relevant enforcement action taken against the applicant, and
- 5 (k) any other information or documentation the Department may specify in guidance.
- (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
- 10 renewal is sought), and
- (b) the full name, date of birth and usual place of residence of each individual proposed to be named in the licence as a site manager (other than the applicant).
- (3) If the application relates to a site licence, the references in sub-paragraph (1)
- 15 (g), (h) and (j) to the applicant are to be read as including any individual proposed to be named in the licence as a site manager.

#### *Variation of licence*

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

#### *Further information*

- 4.—(1) The Department may request (either when the application is made or later) that the applicant provide such further information as the Department
- 35 considers relevant for the purpose of considering the application.
- (2) If an applicant fails to provide information requested under sub-paragraph (1), the Department 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
- 40 paragraph 4(1)—
- (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.—(1) An application must be accompanied by a fee set by the Department.

5 (2) In setting a fee under this paragraph, the Department must have regard to any guidance issued from time to time by the Department for Finance and Personnel.

*Right to make representations*

7.—(1) If the Department proposes—

- 10 (a) to refuse an application made under paragraph 2 or 3, or  
(b) to revoke or vary a licence under section 4,

the Department must give the applicant or licensee a notice which sets out what the Department proposes to do and the reasons for it.

15 (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 Department that A wishes to do so.

20 (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 Department may refuse the application, or revoke or vary the licence under section 4, if—

- 25 (a) within the period specified in the notice, A informs the Department 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 Department that A wishes to do so.

(6) If, within the period specified in the notice, A informs the Department that A wishes to make representations, the Department—

- 30 (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.

35 (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 Department must consider the representations.

(8) If A informs the Department that A wishes to make oral representations, the Department must give A the opportunity of appearing before, and being heard by, a person appointed by the Department.

*Notice of decision*

8.—(1) If the Department 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.

- 5 (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.

10 *Appeals*

9.—(1) An applicant may appeal to a magistrates' court against the refusal of an application made under paragraph 2 or 3.

- (2) A licensee may appeal to a magistrates' court against—
- (a) the inclusion in a licence of a condition under section 3(6), or
  - 15 (b) 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.

20 (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 (Northern Ireland) Order 1981.

(5) For the purposes of the time limit for making an appeal under this paragraph, the making of the complaint is to be treated as the making of the appeal.

- (6) On an appeal under this paragraph, the magistrates' court may—
- 25 (a) confirm, vary or reverse the Department's decision, and
  - (b) give such directions as it considers appropriate having regard to the provisions of this Act.

(7) The Department must comply with any directions given by the magistrates' court under sub-paragraph (6).

- 30 (8) But the Department need not comply with any such directions—
- (a) until the time for making an application under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (application by way of case stated) has passed, or
  - 35 (b) if such an application is made, until the application is finally determined or withdrawn.

*Scrap Metal Dealers*

SCHEDULE 2

Section 7.

CLOSURE OF UNLICENSED SITES

*Interpretation*

5 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.

*Closure notice*

2.—(1) This paragraph applies if a constable or the Department is satisfied—

10 (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 to any part of such premises that is used solely as residential premises.

15 (3) The constable or the Department may issue a notice (a “closure notice”) which—

(a) states that the constable or the Department is satisfied as mentioned in sub-paragraph (1),

(b) gives the reasons for that,

20 (c) states that the constable or the Department may apply to the court for a closure order, and

(d) specifies the steps which may be taken to ensure that the alleged use of the premises ceases.

(4) The constable or the Department must give the closure notice to—

25 (a) the person who appears to the constable or the Department to be the site manager of the premises, and

(b) such person (other than the person in head (a)), if any, who appears to the constable or Department to be a director, manager or other officer of the business in question.

30 (5) The constable or the Department 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

35 (b) the constable or the Department 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 the Department must give the notice to that person.

*Cancellation of closure notice*

40 3.—(1) A closure notice may be cancelled by a notice (a “cancellation notice”) issued by a constable or the Department.

(2) A cancellation notice takes effect when it is given to any of the persons to whom the closure notice was given under paragraph 2(4).

(3) The cancellation notice must also be given to any other person to whom the closure notice was given.

5 *Application for closure order*

4.—(1) Where a closure notice has been given under paragraph 2(4), a constable or the Department may make a complaint to a lay magistrate for a closure order.

(2) A complaint under this paragraph may not be made—

- 10 (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 the Department is satisfied that—

- 15 (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 lay magistrate may issue a summons to answer to the complaint.

20 (5) The summons must be directed to any person to whom the closure notice was given under paragraph 2(4).

(6) If a summons is issued under sub-paragraph (4), notice of the date, time and place at which the complaint will be heard must be given to all the persons to whom the closure notice was given under paragraph 2(5) and (7).

25 (7) The procedure on a complaint under this paragraph is to be in accordance with the Magistrates' Courts (Northern Ireland) Order 1981.

*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—

- 30 (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").

35 (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 Department 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;  
40 (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;
- 5 (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.

- 10 (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.

15 *Termination of closure order by certificate of constable or the Department*

6.—(1) This paragraph applies where—

- (a) a closure order has been made, but
- (b) a constable or the Department is satisfied that the need for the order has ceased.

- 20 (2) The constable or the Department 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)).

- 25 (5) As soon as practicable after making a certificate, the constable or the Department 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
- 30 (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 the Department must give a copy of the certificate to any person who requests one.

*Discharge of closure order by court*

- 35 7.—(1) Any of the following persons may make a complaint to a lay magistrate 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.
- 40

(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 lay magistrate may issue a summons directed to—

- (a) such constable as the lay magistrate considers appropriate, or
- (b) the Department,

5 requiring that person to appear before the magistrates' court to answer to the complaint.

(4) If a summons is issued under sub-paragraph (3), notice of the date, time and place at which the complaint will be heard must be given to all the persons to whom the closure notice was given under paragraph 2 (other than the complainant).

(5) The procedure on a complaint under this paragraph is to be in accordance with the Magistrates' Courts (Northern Ireland) Order 1981.

*Appeals*

8.—(1) An appeal may be made to the Crown Court against—

- 15 (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 14 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—

- 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.

(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 Department.

(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—

- 35 (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 may (if necessary using reasonable force)—

- 40 (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 seeks to exercise powers under this paragraph in relation to any premises.

5 (4) If the owner, occupier or other person in charge of the premises requires the constable to produce—

(a) evidence of the constable's identity, or

(b) evidence of the constable's authority to exercise those powers,  
the constable must produce that evidence.

10 (5) A person who intentionally obstructs a constable 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.