

SCRAP METAL DEALERS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Scrap Metal Dealers Bill as brought from the House of Commons on 12th November 2012. They have been prepared by the Home Office, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. A summary of the Bill is set out below. The Bill has 23 clauses and 2 schedules.
4. This Bill repeals the Scrap Metal Dealers Act 1964 (and linked legislation) and Part 1 of Vehicles (Crime) Act 2001, creating a revised regulatory regime for the scrap metal recycling and vehicle dismantling industries. The Bill maintains local authorities as the principal regulator but gives them the power to better regulate these industries by allowing them to refuse to grant a licence to ‘unsuitable’ applicants and a power to revoke licences if the dealer becomes ‘unsuitable’. Unsuitability will be based on a number of factors as outlined in Clause 3 of the Bill including any unspent relevant criminal convictions. The Bill will also provide local authorities and police officers with appropriate powers of entry and inspection.
5. The Bill provides that an application for a licence must be accompanied by a fee. The fee will be set locally by each local authority on a cost recovery basis, but local authorities will have a duty to have regard to guidance issued by the Secretary of State which will outline the issues that should be considered by local authorities when setting the fee and what activity the fee can cover. This fee will be an essential component of the new regime as it will provide local authorities with the funding they need to administer the regime and ensure compliance with it.
6. The Bill intends to raise trading standards across the scrap metal industry by requiring more detailed and accurate records of transactions to be kept. Scrap metal dealers will also be required to verify the identity of those selling metal to them.

7. The Bill incorporates the separate registration scheme for motor salvage operators under the Vehicle (Crime) Act 2001 into this new regime. This is to replace the current overlapping regimes for the vehicle salvage and scrap metal industries with a single regulatory regime. The Bill also revises the definition of ‘scrap metal dealer’ and ‘scrap metal’ to ensure they reflect the twenty-first century scrap metal industry.
8. The Bill also repeals and re-enacts the amendment to the Scrap Metal Dealers Act 1964 in section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which created the offence of buying scrap metal for cash. It is intended that section 146 will come into force on 3rd December 2012.

BACKGROUND

9. The recent growth of metal theft offences, driven by increased commodity costs, has highlighted the ineffectiveness of the existing regulatory regime in the Scrap Metal Dealers Act 1964 which has not prevented the scrap metal industry being the central market for stolen metal.
10. In 2010/11, the Home Office estimated that there were 80,000-100,000 reported metal theft offences a year which cost the economy at least £220-£260m (Deloitte, 2011) and up to £777m per year (the Association of Chief Police Officers, 2010). The impact of metal theft was felt across the United Kingdom by a range of sectors – including national transport infrastructure, electricity and telecommunication links; street furniture; heritage buildings; and memorials; commercial and residential buildings.
11. Initial legislative steps to: prohibit cash payments for scrap metal; amend police powers of entry into unregistered scrap metal sites; and increase the existing financial penalties for offences in the Scrap Metal Dealers Act 1964 were contained in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which amended the Scrap Metal Dealers Act 1964.

TERRITORIAL EXTENT AND APPLICATION

12. Clause 23 sets out the territorial extent of the Bill.
13. The Bill’s provisions will extend to England and Wales only.

Provisions in the Bill that apply in Wales

14. The provisions in the Bill relate to non-devolved matters in Wales. The Bill does not affect the powers of Welsh Ministers and does not make different provision in relation to England and Wales (except to reflect the division of environmental responsibilities between the Environment Agency and the new Natural Resources Body for Wales). If amendments are

made to the Bill that trigger a requirement for a legislative consent motion, the consent of the National Assembly for Wales will be sought.

THE BILL – COMMENTARY ON CLAUSES

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

15. Clause 1 requires a scrap metal dealer to obtain a licence in order to carry on business as a scrap metal dealer. It is an offence to carry on a business as a scrap metal dealer in breach of the requirement to hold a licence. This offence is punishable on summary conviction with a fine not exceeding level 5 on the standard scale.

Clause 2: Form and effect of licence

16. Clause 2 provides further detail in respect of the licence, including that it creates two separate licences, one for a site and the other for a mobile collector (carrying on business otherwise than at a site). The licence authorises the licensee to carry on business as a scrap metal dealer at the sites listed in it (in the case of a site licence) or within the local authority area (in the case of a mobile collector's licence). A power is provided for the Secretary of State to prescribe the form and content of the licence in Regulations.
17. A licence will be issued by the local authority in whose area a scrap metal site is situated, or (in respect of a mobile collector) in the area that the collector operates. A site licence will require a site manager to be named and all of the sites at which the licensee carries on the business as a scrap metal dealer within the local authority area to be identified. In doing so, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area.
18. A collector's licence authorises the licensee to operate as a mobile collector in the area of the issuing local authority, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal. The licence does not permit the collector to collect from any other local authority area; a separate licence should be obtained from each local authority the individual wishes to collect in. A licence also does not authorise the licensee to carry on a business at a site within any area - should a collector wish to use a fixed site, they will need to obtain a site licence from the relevant local authority. There is no restriction as to the location where the collector can transport and sell their metals.
19. The form in which a licence is issued must enable it to be displayed in accordance with clause 10 (see below).

Clause 3: Issue of licence

20. Clause 3 requires the licensing authority to be satisfied that an applicant is a suitable person to carry on business as a scrap metal dealer. In considering suitability, the local authority may have regard to any relevant information, including whether any relevant enforcement action has been taken against the applicant or whether the applicant has been convicted of a relevant offence. The Secretary of State has a power to prescribe in regulations the meaning of relevant offence and relevant enforcement action, but it will be in line with the criteria used by the Environment Agency when issuing environmental permits from the Environmental Protection Act 1990. The authority must also have regard to any guidance determining suitability which is issued from time to time by the Secretary of State, and the authority may consult other organisations to assist in determining suitability.
21. This Clause also allows local authorities, when issuing a licence, to include conditions in it if the licensee or site manager has been convicted of a relevant offence. Subsection (8) specifies the two conditions that can be imposed by local authorities on a licence, namely a restriction on opening hours and imposing quarantine periods.

Clause 4: Revocation and variation of licence

22. Clause 4 provides the licensing authority with the discretion to revoke a licence on particular grounds, including where the local authority is no longer satisfied that the licensee is a suitable person to carry on the business as a scrap metal dealer. The revocation of a licence can only be carried out by local authorities as the licensing authority. The clause also allows the licensing authority to vary a licence, imposing the conditions stipulated in clause 3, if the licensee or a site manager is convicted of a relevant offence. This includes where a licensee is appealing a decision to revoke a licence pending an appeal.

23. Clause 5: Further provision about licenses

24. Clause 5 provides that the Schedule 1 has effect. Schedule 1 sets out procedural issues relating to the licence.
25. A licence will be issued for a period of three years from the date of issue. The Secretary of State will have the power under paragraph 1(4) to alter the duration of the licence.
26. The local authority can also vary the licence where there is a change of circumstance relating to particular details contained in the licence. This means that there will not be a need to issue a new licence for a further 3 year period, with a further fee being paid, each time certain details change e.g. the name of the licensee. The ability to vary a licence includes the ability to change it from a site licence to a collector's licence or vice versa.

*These notes refer to the Scrap Metal Dealers Bill
as brought from the House of Commons on 12th November 2012 [HL Bill 54]*

27. The application process for a licence is set out in paragraph 2, including a requirement to provide information relating to relevant enforcement action and convictions for relevant offences. The Secretary of State has a power by order to alter the requirements as to what information must accompany the application.
28. Paragraph 6 permits local authorities to charge a licence fee at cost recovery. This fee will be set locally. The Secretary of State will issue statutory guidelines, which local authorities will have a duty to have regard to, which will outline the activity that can be funded by this licence fee.
29. The Schedule also sets out how the applicant or licensee can make representations where the licensing authority proposes either to refuse to issue/renew an application or to revoke a licence. There will be a requirement for the licensing authority to provide the applicant with a notice to outline the decision that they propose to make about issuing/revoking a licence. The procedure for making representations will be outlined in the notice, giving at least a 14 day time limit, or further time as is reasonable for representations to be made. The applicant will also have the right to appeal to the magistrates' court against any decision made by the licensing authority to refuse to issue or renew a licence. A licensee can also appeal a decision by the local authority to revoke a licence.

Clause 6: Supply of information

30. Clause 6 places a duty on the local authority to supply any such information as requested relating to a scrap metal licence to any other local authority in England and Wales, the Environment Agency, the Natural Resources Body for Wales and the police.

Clause 7: Register of licences

31. Clause 7 requires that a register of licences issued under this Bill should be held by the Environment Agency in England and the Natural Resources Body for Wales in Wales. Local authorities will provide the appropriate body with information on all licences issued in their geographic areas in order that this register can be updated regularly. The register should be made openly accessible to the public and will include: the name of the authority which issued the licence; the name of the licensee; the trading name; the type of licence; the site(s) covered by the licence and the expiry date of the licence.

Clause 8: Notification requirements

32. Clause 8 imposes an obligation on an applicant to notify the relevant environmental body of any changes which materially affect the accuracy of any information which the applicant has provided in connection with the application. It also imposes an obligation on a licensee to notify the licensing authority if the name under which the licensee carries on the business as a scrap metal dealer changes (if they trade under a different name to the name of the licensee).

If there is a variation in other matters that are entered in the register, i.e. those in clause 7(3)(b) and (d), these will be subject to an application to vary the licence under paragraph 2 of Schedule 1. The licensing authority has a duty to inform the relevant environmental body of any changes to the licence that affect the entry in the register in respect of that licence, including any licences that have been revoked, within 28 days of the change taking effect. The Environment Agency or the Natural Resources Body for Wales must then amend the register accordingly.

Clause 9: Closure of unlicensed sites

33. Clause 9 provides that Schedule 2 has effect. Schedule 2 makes provision for the closure of sites at which a scrap metal business is carried on without a licence. The power is similar to the existing closure powers for unlicensed alcohol vendors under the Criminal Justice and Police Act 2001.
34. This closure power does not affect the ability of the police to bring charges for the offence in clause 1.
35. The Schedule sets out that a police constable or an officer of the local authority can issue a closure notice specifying the reasons for such action and the steps that may be taken to ensure that the alleged use of the premises ceases. Once a closure notice issue has been issued, the local authority officer or constable can then make an application to the justice of the peace for a closure order to close that site. Applications cannot be made where the premises are no longer being used by a scrap metal dealer in the course of business and there is no reasonable likelihood that the premises will be used in this way in the future. If the court is satisfied, the court can then make such an order that it considers appropriate for the closure of the premises. A closure order can only be made by the court. Such a closure order can vary between requiring the immediate closure of the premises, immediately discontinuing its use by a scrap metal dealer, and requiring a sum to be retained by the court until the requirements are met.
36. A constable or local authority officer can issue a certificate at any time to terminate the closure order where they are satisfied that the need for the order has ceased. Likewise, the courts can issue a discharge order at any time where they are satisfied that there is no longer a need for such an order. Appeals in relation to all stages of this process will be available to the Crown Court.
37. The offence of operating premises in contravention of a closure order is punishable on summary conviction with a fine not exceeding level 5 on the standard scale.

Clause 10: Display of the licence

38. Clause 10 requires that the licensee display the licence. For site operators this must be in a prominent place in an area accessible to the public. For mobile collectors, it must be in a

manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil this requirement. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

Clause 11: Verification of supplier's identity

39. Clause 11 places a requirement on scrap metal dealers, site managers and/or employees who have been delegated responsibility, to verify the identity of the person they are receiving metal from and their address. This verification can be done by reference to documents, data or other information obtained from a reliable or independent source, such as the Identity and Passport Service, the Driver and Vehicle Licensing Authority, a bank or utility company etc. The Secretary of State will prescribe in regulations the data or documents which are sufficient, or not sufficient as the case may be, for verifying identity.
40. It will be an offence not to obtain and verify the seller's identity, punishable by a fine not exceeding level 3 on the standard scale. The offence will apply to the scrap metal dealer, the site manager and any person, who under arrangements made by either the scrap metal dealer or the site manager, has responsibility for fulfilling this requirement on behalf of the business. A defence of making arrangements to ensure this requirement should be met and taking all reasonable steps to ensure those arrangements were complied with can be used by the scrap metal dealer or the site manager; this will cover situations where an employee has acted in a rogue manner, in breach of established working practices. In addition, a person who on selling metal to a scrap metal dealer gives a false name and address is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Clause 12: Offence of buying scrap metal for cash etc

41. Clause 12 re-enacts with modifications the amendments made by section 146 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which inserted section 3A into the Scrap Metal Dealers Act 1964, creating the offence of purchasing scrap metal for cash. The offence will apply to all scrap metal dealers.
42. This offence prohibits scrap metal dealers from paying for scrap metal other than by cheque or by electronic transfer – the Secretary of State can make an order to permit other methods of payment if considered appropriate under subsection (2).
43. As with clause 11, the offence applies to the scrap metal dealer, the site manager and any person who makes the payment acting for the dealer. A defence of making arrangements to ensure this requirement should be met, and taking all reasonable steps to ensure those arrangements were complied with, can be used by the scrap metal dealer or the site manager. Anyone convicted will be liable on summary conviction to a level 5 fine on the standard scale.

Clause 13: Records of dealings: received metals

44. Clause 13 sets out the record keeping requirements in respect of any scrap metal received by a scrap metal dealer in the course of their business. Information that is required to be recorded includes the type of metal being purchased; the time/date of the transaction; personal information on the seller; who is acting on behalf of the dealer and proof of the non-cash transaction. Failure to comply with the requirements of this section is an offence attracting a penalty up to level 5 on the standard scale (see clause 15).

Clause 14: Records of dealings: disposal of metal

45. This Clause makes similar provision to the previous one but relates to records of metal being disposed of by a site licensee or collector. The same sanctions apply.

Clause 15: Records: supplementary

46. As with clause 11, breach of the requirements of clause 13 or 14 is an offence. The offence applies to the scrap metal dealer, the site manager and any person who makes the payment acting for the dealer. A defence of making arrangements to ensure this requirement should be met, and taking all reasonable steps to ensure those arrangements were complied with, can be used by the scrap metal dealer or the site manager. Anyone convicted will be liable on summary conviction to a level 5 fine on the standard scale.

Clause 16: Right to enter and inspect

47. Clause 16 provides officers of the police force or local authority with a right to enter and inspect licensed and unlicensed scrap metal dealers.
48. Subsection (1) provides a right of entry and inspection to a constable or local authority officer to a licensed site at all reasonable times on notice to the site manager.
49. Subsection (2) sets out the circumstances in which where a constable or local authority officer can exercise a right of entry and inspection at all reasonable times without giving notice to the site manager. Subsection (3) makes it clear these powers of entry in subsection (1) and (2) (which are exercisable without warrant) do not apply to residential premises and subsection (4) makes it clear they cannot be exercised with the use of force.
50. Subsection (5) provides a right of entry exercisable by warrant to secure compliance with the provisions of the Bill and to ascertain whether the provisions of the Bill are being complied with. This right of entry applies to premises, including residential premises, that are a licensed site or to premises that are not licensed but where there are reasonable grounds for believing that they are being used by a scrap metal dealer in the course of business. Reasonable force may be used in the exercise of a right of entry under warrant.

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as brought from the House of Commons on 12th November 2012 [HL Bill 54]*

51. It is an offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale to obstruct the right of entry or inspection or fail to produce the records that are required.

Clause 17: Offences by bodies corporate

52. Clause 17 makes provision for where an offence under the Bill is committed by a body corporate to attribute liability to both an individual and the body corporate. This applies to offences that are committed with the consent or connivance of a director, manager, secretary or other similar officer.

Clause 18: Review of Act

53. Clause 18 places a duty on the Secretary of State to review the Act within five years of the licensing requirement coming into force. The purpose of this review is to assess whether the licence regime has achieved the objectives that it was set out to achieve and whether it is appropriate to retain the Act. The Secretary of State must publish a report of the conclusions of this review.

Clause 19: Consequential Amendments

54. Clause 19 makes the necessary consequential amendments to existing legislation to give effect to this Bill including the Scrap Metal Dealers Act 1964 and all linked legislation; Part 1 of the Vehicles (Crime) Act 2001 that regulated motor salvage operators and the relevant provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Clause 20: Orders and regulations

55. Clause 20 makes provision for the procedural requirements for any orders and regulations made under the Bill.

Clauses 21 and 22: Definitions:

56. Clauses 21 and 22 provide definitions for the purposes of the Bill including the definitions for 'a scrap metal dealer', 'a mobile collector' and 'scrap metal'.

Clause 23: Extent, commencement and short title

57. Clause 23 is self explanatory.

COMMENCEMENT

58. Clauses 20 and 23 will come into force on Royal Assent. The other provisions of the Bill will be brought into force by means of commencement orders made by the Secretary of State. It is anticipated that a period of at least six months will be required between Royal Assent and commencement to allow licensing authorities to put in place suitable infrastructure to meet the new demands.

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