

**EXPLANATORY MEMORANDUM TO
THE SCRAP METAL DEALERS ACT 2013 (PRESCRIBED RELEVANT
OFFENCES AND RELEVANT ENFORCEMENT ACTION)
REGULATIONS 2013**

2013 No. 2258

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 A local authority must not issue or renew a scrap metal dealer's licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer. In determining whether the applicant is a suitable person, a local authority may have regard to whether the applicant or scrap metal site manager has been convicted of a relevant offence or has been the subject of any relevant enforcement action. These regulations prescribe what constitutes a relevant offence or relevant enforcement action for the purposes of a local authority's decision on suitability.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 These regulations are being made to implement a new Act, the Scrap Metal Dealers Act 2013. Section 3 (3) (b) and (c) of the Scrap Metal Dealers Act 2013 gives the Secretary of State for the Home Department the power to prescribe in regulations the offences and enforcement action which will be relevant to the local authority's decision on whether an applicant for a scrap metal dealer's licence is suitable. This is the first time this enabling power has been used. This instrument is linked to The Scrap Metal Dealers Act 2013 (Prescribed Documents and Information for Verification of Name and Address) Regulations 2013. The regulations will be laid in Parliament in September 2013.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England and Wales.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government believes that the regulation of the scrap metal industry, the Scrap Metal Dealers Act 1964, is no longer effective and does little to raise trading standards of the industry or prevent the trade of stolen metal which is estimated to cost the UK at least £220m per annum (Deloitte 2011). Parts of the scrap metal industry are recognised by the Association of Chief Police Officers as being the principal market for stolen metal. Reform of the sector is therefore considered vital and so the Government intends to commence the Scrap Metal Dealers Act 2013 on 1 October 2013.

7.2 The overall policy aim of the Scrap Metal Dealers Act 2013 is to provide a robust, modernised, and comprehensive regulatory regime for the metal recycling sector that enables agencies to tackle unlawful behaviour and metal theft. Local authorities will consider whether an applicant is 'suitable' to hold a scrap metal dealer's licence and only those issued with a licence are permitted to operate. When considering whether an applicant is suitable, local authorities may have regard to, amongst other things, whether the applicant has been convicted of a relevant offence or subject to relevant enforcement action as set out in these regulations. This information may indicate potential criminality or re-offending or that the applicant has a relaxed approach to certain regulations (particularly regarding the environment) and therefore that the person may not be suitable to hold the roles and responsibilities of a scrap metal dealer's licence holder.

7.3 There has been significant media interest in metal theft, particularly in relation to thefts from war memorials and damage to church roofs. There has also been a high level of public interest; the Home Office has received significant volumes of correspondence since 2010 on the subject of metal theft, all supporting the need for change. Parliament has also debated the response to metal theft and ruled in a motion in February 2012 after a Backbench Committee Debate that legislative action was required to revise the Scrap Metal Dealers Act 1964.

7.4 Secondary legislation is required to prescribe the relevant offences and relevant enforcement action because section 3 (3) of the Scrap Metal Dealers Act 2013 requires that this is achieved via regulations; thus it would not be possible to do this via guidance or a code of practice.

7.5 There is no requirement for consolidation because these regulations are not amending another statutory instrument.

8. Consultation outcome

8.1 The Scrap Metal Dealers Act 2013 was introduced by Richard Ottaway MP with significant input by the Home Office. The Home Office consulted the Home Affairs, Economic Affairs and Reducing Regulation Committees on the approach to tackle metal theft and the legislative response. The Scrap Metal Dealers Act 2013 was agreed by the Welsh Government Assembly as the geographic extent of this Act covers both England and Wales. Separate discussions have been held with the Scottish Government and Northern

Ireland Assembly, as well as with overseas representatives including the Royal Canadian Mounted Police. This consultation took place over the period of one year.

8.2 There was widespread agreement between Government, the scrap metal industry, police and the public that the system regulating the scrap metal sector needed to change and therefore no formal consultation took place as it was considered to be of minimal benefit. With the bill being a Private Members Bill it was, by its very nature, deemed to be uncontroversial. However, the Home Office has met and obtained the views from the British Metals Recycling Association (the key representative body of the scrap metal industry), three scrap metal firms, the Local Government Association, the Association of Chief Police Officers and other members of the multi-agency Association of Chief Police Officers Metal Theft Working Group such as the Church of England, English Heritage, Network Rail and energy providers.

8.3 It is widely accepted that the Scrap Metal Dealers Act 1964 has severe limitations and needs to be revised. This view is shared by, amongst others, the scrap metal industry. The British Metals Recycling Association, the trade association for the industry, said in a position paper released in April 2012 that they '*continue to call for a rapid and comprehensive reform of regulations in order to tackle metal theft including a tough new licensing regime, a single national register of merchants and reform of the out-dated Scrap Metal Dealers Act (1964)*'. In addition, core components of the Act are already considered good practice by the industry and are included within the British Metal Recycling Association's voluntary code of practice which is adopted by their members. Seeking additional identification from the seller is part of this code of practice and is now commonly used as business as usual by the majority of scrap metal dealers.

8.4 The Home Office has received similar support from other scrap metal firms and from those with an informed opinion of the matter. SITA UK, a significant business within the scrap metal industry, believes that the cash in hand nature and lax record keeping that dominates this industry is facilitating tax avoidance/evasion; they publically believe that £1 billion of transactions is avoiding tax each year. Tackling this was a significant driver behind our decision to seek a criminal offence of cash payments that we made through the Legal Aid, Sentencing and Punishment of Offenders Act and subsequently the Scrap Metal Dealers Act. Through the Act we seek to tighten up the record keeping requirements further, including requiring identification.

9. Guidance

9.1 The Home Office will issue statutory guidance under section 3 (6) of the Scrap Metal Dealers Act 2013 to assist local authorities when determining suitability. The Local Government Association, police and scrap metal industry trade associations will also be issuing guidance to ensure that interested parties are informed of the Act and their requirements under it.

10. Impact

10.1 The impact on business, charities or voluntary bodies is that businesses in the scrap metal industry will need to comply with the revised regulation of the scrap metal sector. Any reductions in metal theft would reduce the social and economic costs estimated at around £220m per annum.

10.2 The impact on the public sector is that local authorities will have an enhanced role in administering the new licensing regime (they currently have responsibility for regulating scrap metal dealers via a registration scheme under the Scrap Metal Dealers Act 1964) by ensuring compliance with it, taking enforcement action against scrap metal dealers who break the law and ensuring that appropriate information is shared with other law enforcement organisations. The additional burden of administering the regime will be funded through a licence fee paid by scrap metal dealers. The Scrap Metal Dealers Act will impact police forces as they will be responsible for responding to the criminal offences under the new regime. The Environment Agency will be impacted as they must host and maintain a publicly accessible register of licensed scrap metal dealers. There may be an increase in the number of offences that enter the justice system.

10.3 The Impact Assessment for the Scrap Metal Dealers Act 2013 has not yet been finalised and we will publish once this process is complete.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The Home Office received a waiver from the moratorium on regulating micro businesses for the measures contained in the Scrap Metal Dealers Act (as well as for measures under the Legal Aid, Sentencing and Punishment of Offenders Bill 2012). The Department for Business, Innovation and Skills recognised the urgent requirement to protect the wider economy, particularly infrastructure, and that metal dealers, the vast majority of which are micro businesses, have an important role in combating and stopping metal theft.

11.3 We have used the recycling trade press to bring the proposed changes to the attention of small businesses and responded to a large number of letters from small dealers setting out and explaining the reasons for changes. A more robust licensing system will ensure that legitimate small businesses will be able to compete on a level playing field as illegal dealers are shut down.

12. Monitoring & review

12.1 The success criteria for this instrument will be improved trading standards within the scrap metal industry and a reduction in metal theft offences.

12.2 This instrument will be reviewed when necessary. For example, if the Department for Environment and Rural Affairs or the Environment Agency amend their relevant offences guidance.

13. Contact

13.1 Breesha Lowe at the Home Office - Tel: 020 7035 8471 or email: breesha.lowe3@homeoffice.gsi.gov.uk - can answer any queries regarding the instrument.