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Assembly

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Scrap metal; legislation and responsibilities

1 Introduction

In response to a request from the Environment Committee, this briefing paper will provide an *indicative* framework of regulation governing scrap metal dealing across the UK. It updates RalSe paper [Scrap metal: theft and regulation of the industry](#) by providing guide to departmental responsibility with regards to implementing and overseeing the legislation. It also provides information on *The Scrap Metal Dealers Bill 2012* which was presented to the House of Commons on 20 June 2012. An update regarding the consultation on the *Civic Government (Scotland) Act 1982 (Metal Dealers' Exemption Warrants) Order 2012* is also provided.

2 Regulations in Northern Ireland

2.1 Waste

Scrap metal dealers are primarily regulated by waste legislation. The *Waste Management Licensing (NI) Regulations 2003* along with the *Pollution, Prevention and Control (NI) Regulations 2003* require scrap metal dealers to have a waste management licence or a

pollution prevention control (PPC) permit.¹ Schedule 2 of the Licensing Regulations allows for the recovery of scrap metal.

The following response to an Assembly question details departmental responsibility and possible forward plans to deal with metal theft:

The primary responsibility for combating theft (including of metal) lies with the PSNI and the Department of Justice. However, DOE recognises the benefit of using the environmental legislation that it is charged with enforcing to assist in tackling the problem using a multi-agency approach.

Through a strategic partnership, the Northern Ireland Environment Agency is working with the PSNI on all environmental crime and the harm it does to communities. The issue of metal theft has been identified as one where the environmental legislation implemented by DOE has a role to play in tackling the issue of metal theft. As a result of the Department's officers sharing knowledge on DOE's waste enforcement powers and working with PSNI colleagues, a number of cases involving suspected metal theft are currently being progressed through the Courts where defendants have breached environmental legislation as part of their activities.

The Department has a robust monitoring system for licensed waste management facilities including those that can accept scrap metal, and will also be participating in an inter-agency group, to be led by the Department of Justice, examining possible responses to tackling the issue of metal theft in Northern Ireland.²

2.2 Planning

Under Article 11 of the *Planning (Northern Ireland) Order 1991*³, planning permission is required for waste disposal on land whether it consists of engineering operations to infill land, the temporary deposit or the final disposal of waste material on land.⁴

Planning Policy Statement 11 (PPS11) provides planning guidance with regards to planning and waste management. It details considerations that will be assessed when applications are received for a proposed waste management facility. PPS11 categorises scrap metal as an 'industrial waste'.

¹ Northern Ireland Assembly, 17 November 2011, AQO 864/11-15

² Northern Ireland Assembly, 3 June 2012, AQW 9310/11-15

³ The Planning (Northern Ireland) Order 1991 <http://www.legislation.gov.uk/nisi/1991/1220>

⁴ The Planning Service, *Planning Policy Statement 11 (PPS11); Planning & Waste Management*, December 2002
http://www.planningni.gov.uk/index/policy/policy_publications/planning_statements/pps11.htm

3 Regulations in Great Britain

3.1 England and Wales

The *Scrap Metal Dealers Act 1964* requires that all scrap metal dealers register with their local authority. The *Legal Aid, Sentencing and Punishment of Offenders Act 2012* provided for prohibition of cash payments to purchase scrap metal and an increase in the fines for offences under the existing Scrap Metal Dealers Act 1964. Furthermore, the Home Office is in discussion with other government departments regarding possible changes to the 1964 Act.⁵

Scrap metal dealers are required to have planning permission to operate a site. The *Environmental Protection Act 1990* legislates that scrap metal dealers must hold the relevant permits and/or exemptions from the Environment Agency (EA). The Act imposes a duty of care to ensure that there is no unauthorised deposit, treatment or disposal of waste and that it only be transferred to an authorised person and along with a written description of the waste⁶. The Act states that anyone who does not have the correct permits can be subject to a fixed penalty notice or fines of up to £50,000 or 5 years imprisonment.⁷

The Environmental Permitting Regime is a single regulatory framework for waste management licensing, pollution prevention and control, water discharge consenting, groundwater authorisations and radioactive substances regulation.⁸ The Regime covers facilities previously regulated under the Pollution Prevention and Control Regulations 2000, and Waste Management Licensing and exemptions schemes (as superseded by the Environmental Permitting (England and Wales) Regulations 2007), some parts of the Water Resources Act 1991, the Radioactive Substances Act 1993 and the Groundwater Regulations 2009.⁹

Current Bills before Parliament

*The Scrap Metal Dealers Bill*¹⁰ is a government produced Hand-out Bill. A Hand-out Bill is defined as:

Occasionally the Government will offer a Bill to a backbench MP to take forward as a Private Members' Bill. This is known as a Hand-out Bill. These are usually Bills for which the Government has not been able to find time in

⁵ HL Deb, 28 May 2012, c127W

⁶ *Environment Protection Act 1990*, Section 34(1)

⁷ *Environment Protection Act 1990*, section 33

⁸ Department for Environment, Food and Rural Affairs, *Environmental permitting*. Available at: <http://www.defra.gov.uk/environment/quality/permitting/>. [Accessed 22 June 2012]

⁹ Department for Environment, Food and Rural Affairs, *Environmental Permitting Guidance*, March 2012. Available at: <http://www.defra.gov.uk/publications/files/pb13560-ep2010guidance-120309.pdf> [Accessed 22 June 2012]

¹⁰ The draft bill and progress through Parliament can be viewed online at: <http://services.parliament.uk/bills/2012-13/scrapmetaldealers.html>

*its programme or, for some other reason; it does not want to present itself. Since such Bills come with government support, they stand a good chance of becoming law and are often taken up.*¹¹

This Bill was introduced to Parliament on 20 June 2012 by Richard Ottaway MP. The Bill received its second reading on 13 July 2012. Provisions of the Bill include:

- Extending the offence of buying metal with cash to mobile collectors and vehicle salvage operators;
- Obliging scrap metal dealers to verify the identification of all sellers;
- Requiring scrap metal dealers must have a licence from their local authority. The licence will be valid for three years and a fee levied to cover administration and enforcement of the scheme;
- Providing Local Authorities with power to turn down an application for a licence or revoke a licence;
- Giving police and authorities the power to enter and inspect as well as the power to close unlicensed premises with a court order;
- Requiring the Environment Agency must maintain a register of scrap metal licences which is open to inspection by the public

During the Second Reading, Richard Ottaway MP commented:

*The Bill on its own is not a silver bullet. It is part of the overall picture, and it will be necessary to work with the Home Office and the police on its enforcement. The Bill will give the authorities the necessary power to implement a much tougher regime than the one that we have now, which is manifestly not working.*¹²

3.2 Scotland

Section 28 of the *Civic Government (Scotland) Act 1982* provides for the licensing and regulation of metal dealers. It requires that anyone who is carrying out business as a metal dealer must obtain a metal dealer's licence. Licences are subject to conditions set by the licensing authority (local councils), and maintaining full records is a mandatory condition of all licences. The council that issues the licence can attach further conditions that they deem necessary. An exemption warrant may be granted where the business has a certified turnover of over £100,000.

¹¹ UK Parliament, *Hand-out Bills*. Available at: <http://www.parliament.uk/site-information/glossary/hand-out-bill/> [Accessed 14 September 2012]

¹² HC Deb, 13 July 2012, c581

The Scottish Government have proposed an increase in the exemption figure to £10 million through the *Civic Government (Scotland) Act 1982 (Metal Dealers' Exemption Warrants) Order 2012*.¹³ Consultation on the contents of the Order closed on 29 February 2012. Following an analysis of consultation responses, Justice Secretary Kenny MacAskill announced in June 2012¹⁴ that dealers with an annual turnover of £1 million or less will need a licence to operate. Consideration is also being given to remove the exemption entirely so that all dealers are brought into the scheme. Furthermore, action will be taken on cash payments for metal with the view of removing the attraction of 'easy ready cash payments'.

With the exception of the planned increased to £1m in the turnover required for an exemption, other steps would require further consultation and it is likely that primary legislation will be required in order to make the required changes to the scheme. The Scottish Government have stated that they are committed to legislating to make changes to the licensing scheme for metal dealers during the course of the current Parliament.¹⁵

¹³ The Scottish Government, *Consultation on Civic Government (Scotland) Act 1982 (Metal Dealers' Exemption Warrants) Order 2012*. Available at: <http://www.scotland.gov.uk/Publications/2011/11/29083550/3> [Accessed 30 May 2012]

¹⁴ The Scottish Government, News release: *Scrapping metal theft*, 6 June 2012. Available at: <http://www.scotland.gov.uk/News/Releases/2012/06/metaltheftconsultation06062012> [Accessed 08 June 2012]

¹⁵ The Scottish Government, *Consultation on Civic Government (Scotland) Act 1982 (Metal Dealers' Exemption Warrants) Order 2012*. Metal Dealer Consultation – response, July 2012. Available at: <http://www.scotland.gov.uk/Publications/2012/07/5193/1>

Annex 1

The table below provides an indicative list of legislation governing scrap metal in the UK and a guide to the 'lead' department that is responsible for the legislation. It should be kept in mind that due to the nature of the government structures, legislation will often 'cross-cut' departments, i.e. different departments may have responsibility for certain parts of a piece of legislation. Furthermore, departmental responsibility can change over time as departments are amalgamated or functions cease to be in their remit.

With regards to *The Scrap Metal Dealers Bill* that is currently progressing through Parliament the Home Office is the lead department. However, it was recognised that the regulation of scrap metal dealers would have considerable overlap with waste management regulation and enforcement. The Department for the Environment, Food and Rural Affairs (DEFRA) and the Environment Agency were therefore involved in the development of the proposals.¹⁶

Table 1 - Legislation governing scrap metal and associated departmental responsibility

Legislation	Responsibility
Scrap Metal Dealers Act 1964	Home Office
Legal Aid, Sentencing and Punishment of Offenders Act 2012	Ministry of Justice, however according to the Legislation's Impact Assessment, the Home Office are the lead department with regards to metal theft and DEFRA was a contributory department in the development of proposals. ¹⁷
Environmental Protection Act 1990	DEFRA
Environmental Permitting Regime	DEFRA
Civic Government (Scotland) Act 1982	Directorate for Local Government and Communities

¹⁶ Information received from the House of Commons Research Service on 13 September 2012 following a request from RalSe.

¹⁷ Ministry of Justice, *Legal Aid, Sentencing and Punishment of Offenders Act 2012, Impact Assessment for Tackling Metal Theft*. Available at: <http://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/laspo-metal-theft-ia.pdf> [Accessed 14 September 2012]