



Scrap Metal Dealers Bill

Bill 9 of 2012-13

RESEARCH PAPER 12/39 10 July 2012

Incidences of metal theft are thought to have grown in recent years with rising global metal prices. Metal theft is estimated to cost the UK economy some £220-260 million per year—although the total costs could be up to £800 million.

The Government has introduced a range of measures to tackle the problem. However, it believes that additional regulatory controls on scrap metal dealers are required to reduce the opportunities for metal thieves to sell stolen material.

These controls will be taken forward by the *Scrap Metal Dealers Bill 2012*, Richard Ottaway's Private Member's Bill. The Bill extends to England and Wales. The Bill had its First Reading on 20 June 2012 and Second Reading is due on 13 July 2012.

Richard Ottaway said that the Bill will “empower local authorities with a more robust and enforceable licence regime for all those who deal and collect scrap metal”.

Please consult Library [Standard Note SN06150](#) for information on the full range of Government action on metal theft.

Oliver Bennett

Recent Research Papers

12/28	London Elections 2012	22.05.12
12/29	Members' pay and expenses – current rates and a review of developments since 2009	22.05.12
12/30	Defamation Bill [Bill 5 of 2012-13]	28.05.12
12/31	Inflation: the value of the pound 1750-2011	29.05.12
12/32	Economic Indicators, June 2012	07.06.12
12/33	Enterprise and Regulatory Reform Bill [Bill 7 of 2012-13]	07.06.12
12/34	Unemployment by Constituency, June 2012	20.06.12
12/35	Bank of England (Appointment of Governor) Bill [Bill 8 of 2012-13]	03.07.12
12/36	Economic Indicators, July 2012	03.07.12
12/37	House of Lords Reform Bill [Bill 52 of 2012-13]	04.07.12

Research Paper 12/39

Contributing Authors: Oliver Bennett, Waste Regulation, Science and Environment
Sally Lipscombe, Policing, Home Affairs
Roderick McInnes, Statistics, Social and General Statistics

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

We welcome comments on our papers; these should be e-mailed to papers@parliament.uk.

Contents

- 1 Introduction 2**
 - 1.1 Metal theft 2
 - 1.2 Statistics on metal theft 2
 - Energy networks 2
 - Churches 3
 - Railways 3
 - 1.3 The scrap metal industry 4
- 2 Current regulation of scrap metal dealers 5**
 - 2.1 The *Scrap Metal Dealers Act 1964* 5
 - 2.2 The *Environmental Protection Act 1990* 5
 - 2.3 The *Legal Aid, Sentencing and Punishment of Offenders Act 2012* 6
- 3 Problems with the current system 6**
- 4 The *Scrap Metal Dealers Bill 2012* 7**
- 5 Commentary on the Bill 7**
 - 5.1 Itinerant traders and vehicle salvage operators (Clauses 2, 16 and 18) 7
 - 5.2 Requiring dealers to be “suitable” (Clause 3) 8
 - 5.3 Power to vary and revoke licences (Clauses 3 & 4) 9
 - 5.4 Improving enforcement incentives (Clause 5) 9
 - 5.5 Improved coordination between regulatory bodies (Clauses 6, 7 & 8) 10
 - 5.6 Powers to close unauthorised sites (Clause 9) 10
 - 5.7 Enhanced identification and record keeping requirements (Clauses 10 & 12) 11
- 6 Issues the Bill will not address 12**
 - 6.1 Environment Agency funding 12
 - 6.2 Domestic appliance and gold traders 13
 - 6.3 Overlapping regulatory powers 13
- 7 Response to the Bill 13**
 - Local Government Association 13
 - British Transport Police 14
 - The Church of England 15
 - British Metals Recycling Association 15

Appendix 1— British Transport Police data on cable theft on transport networks

Summary

Incidences of metal theft have grown in recent years, partly because of rising global metal prices. Metal theft is estimated to cost the UK economy some £220-260 million per year—although the total costs could be up to £800 million.

The Government has introduced a number of measures to tackle the problem, such as the creation of a multi-agency national metal theft taskforce. However, it believes that additional regulatory controls on scrap metal dealers are required to reduce the opportunities for metal thieves to sell stolen material. Legislative reforms are supported by a number of bodies including the British Transport Police, the British Metals Recycling Association (BMRA) and the Association of Train Operating Companies.

The Government produced a hand-out Bill setting out proposals for a new licensing regime for scrap metal dealers. This was taken up by **Richard Ottaway MP**, who will take it through the House of Commons as the *Scrap Metal Dealers Bill 2012*. The Bill has Government support. It extends to England and Wales. The Bill had its First Reading on 20 June 2012 and Second Reading is due on 13 July 2012.

Richard Ottaway said that the Bill will “provide the strong legislative framework so desperately needed to empower our local councils and police forces in their fight against offenders who wilfully plunder this country of metal, whilst also strengthening and supporting legitimate scrap metal dealers”.¹ Key features of the Bill include:

- requiring all individuals and businesses to complete an enhanced application process to obtain a scrap metal dealer licence. Local authorities will have the power to turn down unsuitable applicants;
- giving local authorities the power to revoke a licence;
- requiring all sellers of metal to provide personal identification at the point of sale, which is then recorded by the scrap metal dealer;
- extending the offence of buying metal with cash to itinerant metal collectors;
- new powers for the police and local authorities to enter and inspect sites;
- creating a central public register, hosted by the Environment Agency, of all individuals and businesses licensed as scrap metal dealers; and,
- widening the definition of a scrap metal dealer to include motor salvage operators.

This Research Paper is not an exhaustive discussion of every aspect of the Bill. The [Bill and its Explanatory Notes](#) should be consulted, and Members can contact the House of Commons Library for further information.

The full range of Government action on metal theft is discussed in [Library Standard Note SN06150—Metal Theft](#).

¹ [Ottaway Introduces Bill to Re-regulate Scrap Metal Industry](#), RichardOttaway.com, 18 June 2012

1 Introduction

1.1 Metal theft

There is evidence that metal theft has increased recently.² The drivers of metal theft are thought to include high metal commodity prices, the widespread availability of metal to steal and a low risk of detection. It is also thought that the scrap metal industry has played a role by providing an avenue through which thieves can sell stolen material.³

The implications of metal theft extend across the economy, having the largest economic impact on the telecoms, utilities and transport sectors.⁴ The kinds of metal stolen include telecommunications cabling, gas pipes and war memorials. The combined costs have been estimated to be in the region of £220 to £260 million per year, although costs could be as high as £800 million.⁵ Metal theft can pose a serious risk to the security of national infrastructure and can cause serious accidents.^{6 7}

1.2 Statistics on metal theft

There is no specific offence of metal theft, so incidents involving the theft of metal cannot be separately identified within the standard police recorded crime datasets. This means there are no precise overall estimates of all types of metal theft nationwide. In its '[Tackling Metal Theft](#)' [impact assessment](#), the Ministry of Justice gives an estimate of 80,000-100,000 offences related to metal theft in England and Wales in 2010-11, amounting to around roughly a fifth of the 481,659 'other theft' offences recorded by the police in that year.⁸

As of April 2012 all police forces have started to collect metal theft data by attaching a 'flag' to an incident record to highlight the fact that the offence involved the theft of metal. However, some police forces (notably the British Transport Police – see below) had already been collating figures on incidents of metal theft prior to this. According to the MoJ impact assessment, "Data returned from 18 out of the 43 police forces across England and Wales showed that there had been a 56 percent increase in the number of metal theft police recorded offences in the first 6 months of 2011, compared to the first 6 months of 2010."

In addition to police data, some other organisations monitor the number of thefts and their resultant impacts.

Energy networks

The Energy Networks Association (ENA) has estimated that metal theft cost the energy generation industry around £11.7 million in 2010, and that by October 2011 this figure had increased to £60 million.⁹ The ENA also reported that there were 6,000 metal theft incidents in 2010. These involved 3 fatalities and 31 injuries to criminals and 135 occasions where there was a loss of supply to 'homes, schools and communities.'¹⁰

² [Tackling Metal Theft - prohibit cash payments and higher fines](#), Home Office impact assessment, 22 February 2012

³ [Tackling Metal Theft - prohibit cash payments and higher fines](#), Home Office impact assessment, 22 February 2012

⁴ Assessing the economic impact of metal theft on Great Britain – draft for discussion, *Deloitte*, September 2011

⁵ [Tackling Metal Theft - prohibit cash payments and higher fines](#), Home Office impact assessment, 22 February 2012

⁶ [Tackling Metal Theft - prohibit cash payments and higher fines](#), Home Office impact assessment, 22 February 2012

⁷ [Castleford explosion: Copper cabling theft linked to incident](#), BBC News, 8 July 2011

⁸ MoJ [Tackling Metal Theft - prohibit cash payments and higher fines impact assessment](#), 22 February 2012

⁹ [Energy Networks Association Metal Theft page](#) [on 10 July 2012]

¹⁰ Energy Networks Association press release, '[Energy networks call on MPs to change legislation to tackle dangerous metal theft](#)', 22 June 2011

Churches

2011 saw a large increase in the number of metal theft incidents affecting Church of England buildings – up by 48% compared with 2010:

Metal theft from UK Anglican Churches

	<i>Metal theft Claims</i>	<i>Cost (£)</i>
2010	1,769	2,946,351
2011	2,621	4,578,065
2012 to date (as of 31 May 2012)	490	866,884

Source:

HC Deb 18 Jun 2012 col 645-6W; HC Deb 2 July 2012 col 508W

Railways

Cable theft on the **Network Rail** operational network resulted in compensation and repair costs totalling over £60 million over the four years from 2008-09 to 2011-12, and caused on average nearly 5,500 hours of delays per year over this period.

Cable theft incidents causing delay on the railway network - Network Rail data

	Incidents (a)	Delay minutes (b)	Compensation cost (c)	Total cost (d)
2008/09	742	283,167	£7,858,516	£12,264,682
2009/10	656	321,570	£10,931,350	£13,511,889
2010/11	995	365,430	£12,132,860	£16,404,255
2011/12	845	344,680	£12,000,679	£18,337,504
April-May 2012	61	41,794	£1,460,115	n/a

Sources:

'Facts and Figures - Cable theft' Network Rail website, accessed July 2012

'Network Rail Supports New Scrap Metal Bill', Network Rail press release, 15 June 2012

Notes:

(a) Incidents which caused delay to the operational network. It does not include thefts from depots, engineering sites or redundant cable.

(b) Delay minutes show the inconvenience experienced by the passenger and vary with each incident.

(c) Compensation costs (known as schedule 8 costs) are paid to train and freight operators for the disruption caused.

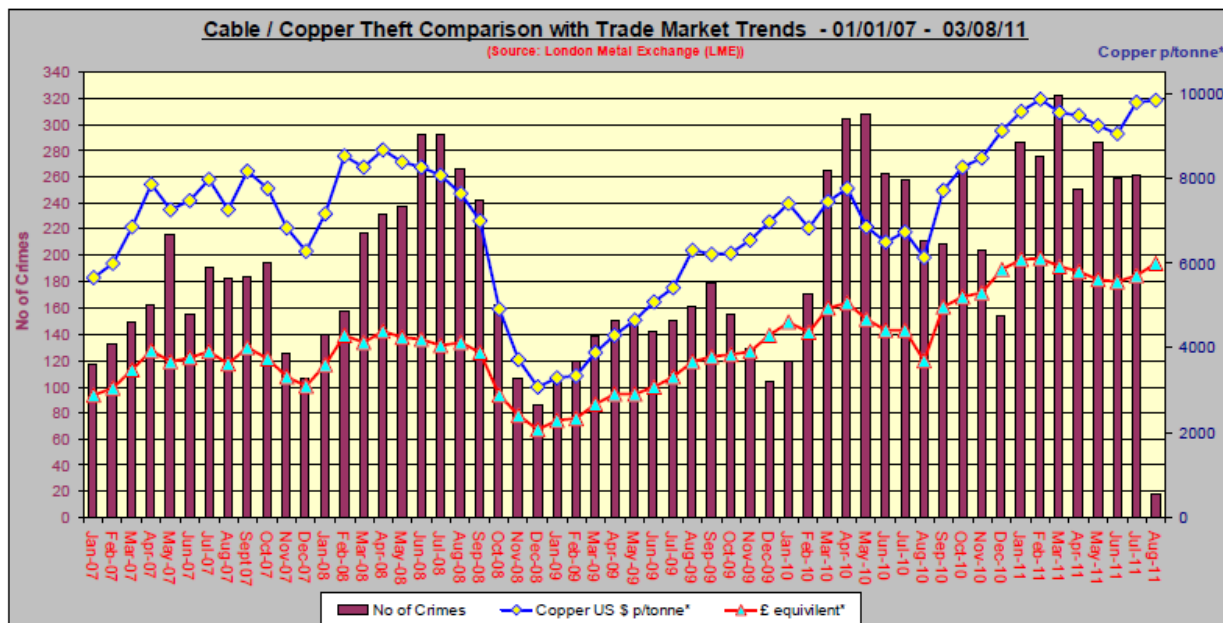
(d) Total Cost comprises schedule 8 (compensation to train operators) plus average costs of replacement cable; the average maintenance cost of attending to the fault and the average opportunity cost of diverting this labour from elsewhere.

The **British Transport Police's** (BTP) figures on crimes on the rail network show a 70% increase in cable theft between 2009-10 and 2010-11, from 1,593 incidents to 2,712. The table at Appendix 1 shows a breakdown by region and live/non-live cable, and detection rates.

The chart overleaf, reproduced from the MoJ impact assessment,¹¹ shows the commodity price of copper fluctuating broadly in tandem with the monthly number of cable theft incidents recorded by the BTP. There is an element of seasonality in both variables (lower in winter,

¹¹ MoJ [Tackling Metal Theft impact assessment](#), 22 February 2012, page 6

higher in summer), although winter 2011 (Quarter 1) saw both high copper commodity prices and high levels of cable theft.



1.3 The scrap metal industry

In 2011 the BMRA calculated that the metal recycling industry was worth some £4–5 billion per year and that it processed over 15 million tonnes of metal annually “into valuable secondary raw material for metals manufacturing both here in the UK and in a wide variety of export markets”.¹²

The Transport Select Committee described the scale of the scrap metal industry in its January 2012 report *Cable theft on the railway*. It said that the industry employed almost 8,000 people in the UK. It went on

There are approximately 3,500 registered scrap metal dealers in the UK. The BTP estimates that in addition to this there are also illegal sites and itinerant dealers that bring the total number of businesses operating in this sector to over 4,000. The British Metals Recycling Association (BMRA) told us that the illegal sites that are known to authorities represent only “the tip of the iceberg” and suggested that “the size of the illegal trade, in terms of numbers of sites, is possibly as large as the legal trade”.¹³

The Environment Agency calculated that there are currently 317 illegal waste metal sites in England and Wales.¹⁴ 190 illegal scrap yards were shut down in 2011/12.¹⁵

¹² Transport Committee, *Cable theft on the railway*, 24 January 2012, HC 1609, Vol II

¹³ Transport Committee, *Cable theft on the railway*, 24 January 2012, HC 1609

¹⁴ *The Environment Agency’s role in tackling metal theft*, Environment Agency, 15 June 2012

¹⁵ *The Environment Agency’s role in tackling metal theft*, Environment Agency, 15 June 2012

2 Current regulation of scrap metal dealers

Scrap metal dealers are covered by a range of legislation including the *Scrap Metal Dealers Act 1964*, the *Environmental Protection Act 1990* and the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*. The regulatory regimes overlap considerably.

2.1 The *Scrap Metal Dealers Act 1964*

Special regulations have applied to scrap metal dealers since at least 1882 in order to tackle the theft of metal.¹⁶ The *Scrap Metal Dealers Act 1964* placed controls on scrap metal dealers to discourage the trade in stolen metal. The controls include:

- dealers have to register with the local authority;
- local authorities maintain a list of dealers; and,
- dealers are required to keep a variety of records including details of types of metal received, details of the processing of that metal and the names of those disposing of metal at their site.

Currently, failures to meet the requirements of the Act can lead to a range of fines. The maximum available fines will increase this autumn when the relevant provisions of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* come into force (see below).

2.2 The *Environmental Protection Act 1990*

Scrap metal dealers are required to have planning permission to operate a site and are required to have permits or exemptions from the Environment Agency to operate a scrap metal site under the *Environmental Protection Act 1990*. Failure to have the correct permits can lead to a fixed penalty notice or fines of up to £50,000 or 5 years imprisonment.¹⁷

Those transporting metal to a scrap metal site for profit are required to be registered as a 'waste carrier'. Waste carriers must comply with the waste *Duty of Care*. Breach of the Duty of Care is a criminal offence that can lead to large fines under the *Environmental Protection Act 1990*. Specific requirements of the Duty of Care include that waste carriers must:

- ensure the waste goes to a properly licensed or exempt waste site; and,
- complete a Waste Transfer Note (WTN) - this must include a description of the waste and be signed by the carrier and the person that they give/sell the waste to. The WTN must be kept for a minimum of two years.¹⁸

Householders are not required to have a WTN when transporting their own domestic waste, although the waste Duty of Care still applies to them.¹⁹

¹⁶ [HL Deb 7 July 1882 c1768](#)

¹⁷ The *Environmental Protection Act 1990*, section 33

¹⁸ *Duty of Care*, Environment Agency [on 10 July 2012]

¹⁹ *Duty of Care*, Environment Agency [on 10 July 2012]

2.3 The Legal Aid, Sentencing and Punishment of Offenders Act 2012

The *Legal Aid, Sentencing and Punishment of Offenders Act 2012* will introduce the following changes to the regulation of scrap metal dealers:

- maximum fines for offences under the 1964 Act currently set at level 1 on the standard scale (£200) will be increased to level 3 (£1,000), and those currently set at level 3 will be increased to level 5 (£5,000);²⁰
- it created a new offence of buying scrap metal for cash (the “cashless offence”), so that a “scrap metal dealer must not pay for scrap metal except... by a cheque... or... by an electronic transfer of funds”; and,
- it introduced new powers for the police (on production of a warrant issued by a justice of the peace) to enter regulated scrap yards where there were reasonable grounds for believing that scrap metal paid for in cash was being (or had been) received or kept there.²¹

The changes are expected to come into force in autumn 2012.

3 Problems with the current system

Commentators have raised a number of concerns about the current regulatory system for scrap metal dealers including:

- overlapping regulations and a lack of coordination amongst regulators;
- limited powers to enter and inspect unregistered sites;
- the ban on scrap metal dealers paying for metal with cash does not extend to all those that deal with scrap metal;
- inadequate record keeping by scrap metal dealers; and,
- an inability to vary or revoke licences.

These issues are discussed in the following sections.

A number of bodies have called for legislation to address these issues including the British Transport Police, the BMRA, Network Rail and the Association of Train Operating Companies.²²

²⁰ Please note that section 85 of the 2012 Act will remove the current £5,000 cap on the maximum amount of a level 5 fine. Any offences punishable with a level 5 fine (including those under the 1964 Act) will therefore be punishable with a fine of any amount. However, section 85 has not yet been brought into force, so the £5,000 cap continues to apply for the time being.

²¹ The *Legal Aid, Sentencing and Punishment of Offenders Act 2012*

²² Transport Committee, *Cable theft on the railway*, 24 January 2012, HC 1609, Vol II

4 The Scrap Metal Dealers Bill 2012

The *Scrap Metal Dealers Bill 2012* is a hand-out Bill²³ taken up by **Richard Ottaway MP**, who will take it through the House of Commons as a Private Member's Bill. The Bill had its First Reading on 20 June 2012 and Second Reading is due on 13 July 2012.

The Bill seeks to replace the *Scrap Metal Dealers Act 1964* to “empower local authorities with a more robust and enforceable licence regime for all those who deal and collect scrap metal”.²⁴ Key features of the bill include:

- requiring all individuals and businesses to complete an enhanced application process to obtain a scrap metal dealer licence. Local authorities will have the power to turn down unsuitable applicants;
- giving local authorities the power to revoke a licence where appropriate;
- requiring all sellers of metal to provide personal identification at the point of sale, which is then recorded by the scrap metal dealer;
- extending the offence of buying metal with cash to itinerant metal collectors;
- new powers for the police and local authority to enter and inspect sites;
- creating a central public register, hosted by the Environment Agency, of all individuals and businesses licensed as scrap metal dealers; and
- widening the definition of a scrap metal dealer to include motor salvage operators.²⁵

5 Commentary on the Bill

Not all clauses or issues are discussed here. Please consult the [Bill and Explanatory Notes](#) for full information.

5.1 Itinerant traders and vehicle salvage operators (Clauses 2, 16 and 18)

The problem

The BMRA claimed that there were “loopholes” in the recent ban on cash transactions at scrap metal dealers. In particular it believed that as the ban did not apply to itinerant traders or vehicle salvagers, “such businesses will be able to continue trading in cash, leaving numerous points where stolen metal can be sold for cash”.²⁶

It went on that a failure to extend regulations to these businesses would lead to “confusion... over how a ban on cash can be enforced in cases where businesses are registered as both scrap metal dealers and, for example, vehicle salvage operators”.²⁷ It said that the cash ban

²³ A [hand-out Bill](#) is a Bill offered by the Government to a backbench MP to take forward as a Private Members' Bill. These are usually Bills for which the Government has not been able to find time in its programme or for some other reason it does not want to present itself.

²⁴ Personal communication with the Home Office, 3 July 2012

²⁵ Personal communication with the Home Office, 3 July 2012

²⁶ Briefing from the British Metals Recycling Association on the adjournment debate on Scrap Metal Theft 18 June, *BMRA*, June 2012

²⁷ Briefing from the British Metals Recycling Association on the adjournment debate on Scrap Metal Theft 18 June, *BMRA*, June 2012

would fail to tackle metal theft while damaging “those metal recyclers operating within the law and complying” with the law.²⁸

The Bill proposals

Clause 2 of the Bill extends the licensing regime to itinerant traders. They will be licensed through a “collectors licence”. The collectors licence does not permit the licensee to carry on a business at a site. The licence will be in a form prescribed under secondary regulations by the Secretary of State.

The Bill will incorporate the current vehicle salvage regulatory regime set out under the *Vehicles (Crime) Act 2001*. The relevant parts of that Act will be repealed by Clause 16. Clause 18 includes “motor salvage operators” under the definition of scrap metal dealer. As well as reducing the opportunities for stolen metal to be sold via vehicle salvage operators, the changes will rationalise legislation in this area.

5.2 Requiring dealers to be “suitable” (Clause 3)

The problem

Graham Allen MP, in a debate on scrap metal theft, called for a new licensing system that included “the power to refuse an application if there are concerns about the integrity of the dealer”. He went on:

This is something that the present registration system does not allow, although it would make it less likely that stolen metal was sold on to scrap metal dealers. A set of conditions should be met before a licence is issued, and there should be the powers of suspension and revocation.²⁹

The BMRA generally supported the application of a “set of conditions that have to be met before a licence is issued”.³⁰ In particular it said that “applicants with previous convictions for dishonesty or relevant environmental offences should be disqualified from registration as a scrap metal dealer”.³¹

The Bill proposals

Clause 3 of the Bill introduces conditions into the licence application process, and related provisions. It states that a “local authority must not issue or renew a scrap metal licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer”. In determining whether the person is “suitable” the authority can have regard to any information which it considers relevant including:

- previous convictions;
- previous refusals of scrap metal dealer or environmental permit applications;
- previous revocations of scrap metal dealer licences; and,
- the applicant’s ability to meet the requirements of the legislation.

²⁸ Briefing from the British Metals Recycling Association on the adjournment debate on Scrap Metal Theft 18 June, *BMRA*, June 2012

²⁹ HC Deb 18 June 2012 c712

³⁰ Briefing from the British Metals Recycling Association on the adjournment debate on Scrap Metal Theft 18 June, *BMRA*, June 2012

³¹ Personal communication with BMRA, 9 July 2012

The “suitable person” requirements extend to directors, secretaries or shadow directors of businesses operating as scrap metal dealers.

A Home Office official said that the list of relevant convictions that will be used by local authorities for the ‘suitability’ test will “replicate the list currently used by the Environment Agency when determining suitability for permits and licences under their regimes”.³² The official went on that:

Only ‘unspent’ convictions should be considered. This list of convictions includes previous offences under the Scrap Metal Dealers Act 1964, dishonesty offences and other offences under the Theft Act 1968 and related environmental offences where appropriate.³³

5.3 Power to vary and revoke licences (Clauses 3 & 4)

The problem

It is not possible under the 1964 Act to vary or revoke scrap metal dealer licences.³⁴ The Association of Chief Police Officers called for a new licensing scheme for metal dealers “with the opportunity for a licence to be revoked for non compliance with conditions or for criminal activity”.³⁵

The Bill proposals

Clause 3 (8) of the Bill enables licences to be varied to include conditions relating to the hours in which material can be received and requiring metal to be stored in its original form for set periods not exceeding 72 hours.

Clause 4 allows an authority to revoke a licence for a number of reasons, including where it is “no longer satisfied that the licensee is a suitable person”. Schedule 1 (7 to 9) sets out the process by which authorities can refuse or revoke licences, and the appeals process open to applicants.

5.4 Improving enforcement incentives (Clause 5)

The problem

The Transport Select Committee in its January 2012 report noted that there were limited incentives for local authorities to maintain an accurate register of scrap metal dealers, as registration was “the responsibility of dealers themselves and there is no fee associated with registration”.³⁶

The Bill proposals

Clause 5 of the Bill gives effect to Schedule 1, which provides that a licence application must be accompanied by a fee. The Secretary of State will be able to set a maximum level of fee in regulations. The Government stated that “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”.³⁷

³² Personal communication with Home Office, 9 July 2012

³³ Personal communication with Home Office, 9 July 2012

³⁴ Transport Committee, *Cable theft on the railway*, 24 January 2012, HC 1609

³⁵ Transport Committee, *Cable theft on the railway*, 24 January 2012, HC 1609, Vol II

³⁶ Transport Committee, *Cable theft on the railway*, 24 January 2012, HC 1609, Vol II

³⁷ Explanatory Notes to the *Scrap Metal Dealers Bill* [HC], Bill 9 of 2012-13

5.5 Improved coordination between regulatory bodies (Clauses 6, 7 & 8)

The problem

The BMRA said that there was a “lack of coordination between the Environment Agency and local authorities in licensing and permitting operators”, meaning that many dealers currently operate either without a dealer licence or the necessary environmental permits. It went on that this left “hundreds of businesses... operating as scrap metal dealers outside the regulatory and inspection framework”. It said that “not only do these businesses evade environmental and health and safety legislation, and avoid the compliance costs that legitimate businesses have to bear, they also act as the primary conduit for stolen metal”.³⁸

The BMRA recommended the creation of a “nationally-accessible register of all licensed metal recyclers and traders, to be administered by the Environment Agency (EA), collating EA permitting data and licensing data provided by local authorities”. It argued that this would provide “a low-cost means to ensure consistency of record-keeping and enforcement across the UK”.³⁹

The Bill proposals

Clause 6 of the Bill requires local authorities to share information upon request about scrap metal licences with other authorities, the Environment Agency and the police. Clause 8 (6) & (7) require local authorities to notify the Environment Agency of any changes to licences.

Clause 7 requires the Environment Agency to maintain a new national “register of scrap metal licences” containing details of all scrap metal licences issued in England and Wales. The information included on the database will include:

- the name of the licensee;
- the address of any scrap metal dealer site identified in the licence; and,
- the expiry date of the licence.

Please note that under Schedule 1 (1) a licence will expire after 3 years.

The register will be “open to inspection to the public”. The Environment Agency has to update the register when notified of any changes by a local authority. The Government hopes that “this register will... allow for the local authority and the Environment Agency to ensure that each entry has the necessary licence(s)/permit(s) from each organisation to operate”.⁴⁰

5.6 Powers to close unauthorised sites (Clause 9)

The problem

It is not possible to close premises trading in contravention of the 1964 Act.⁴¹ The British Transport Police (BTP) called for police to be given the power to shut suspected illegal scrap metal dealers on the spot in the same way that they can close pubs (subject to a review by the courts).⁴²

³⁸ Briefing from the British Metals Recycling Association on the adjournment debate on Scrap Metal Theft 18 June, *BMRA*, June 2012

³⁹ Briefing from the British Metals Recycling Association on the adjournment debate on Scrap Metal Theft 18 June, *BMRA*, June 2012

⁴⁰ Personal communication with Home Office, 9 July 2012

⁴¹ Transport Committee, *Cable theft on the railway*, 24 January 2012, HC 1609

⁴² *Police call for more powers to tackle metal thefts*, *BBC News*, 25 October 2010

The BMRA said that while the police can enter a licensed scrap metal site without a warrant, a warrant is required to enter an unlicensed site. It said that “this means that it is more difficult to target those operating outside the law than licensed, compliant operators”.⁴³ The Transport Select Committee called for “new powers for the police, so that officers are able to enter and inspect both registered and unregistered scrap metal sites”.⁴⁴

The Bill proposals

Clause 9 gives effect to Schedule 2 which provides for the closure of unlicensed sites. Where a constable or the local authority is satisfied that a non-residential premises is being used by a scrap metal dealer, and the premises is not licensed, a “closure notice” can be issued to the site manager or director. Seven days after a notice has been given the constable or local authority can apply to a justice of the peace for a “closure order”. An appeal mechanism is set out under Schedule 2 (8).

The Government said that these arrangements were “based upon the existing closure powers for unlicensed alcohol vendors under the *Criminal Justice and Police Act 2001*”.⁴⁵

Schedule 2 (9) would grant powers to the police and local authorities to enforce closure orders. They would be given new powers to enter unregistered properties that have failed to comply with a closure notice. Having entered the premises they would be able to “do anything reasonably necessary for the purpose of securing compliance with the order”.

Failure to meet the requirements of a closure order would lead to a fine not exceeding level 5 on the standard scale.

5.7 Enhanced identification and record keeping requirements (Clauses 10 & 12)

The problem

The Transport Select Committee said in its January 2012 report that “there is no duty on dealers to check the accuracy of the information provided by sellers, so the reliability of transaction records is questionable”. It said that “in our view the paucity of the audit trail for material within the scrap metal trade is likely to facilitate the laundering of illegitimately obtained material”. It recommended “a requirement for anyone selling metal to provide proof of identification, such as a passport and utility bill, before a transaction could take place”.⁴⁶

The BMRA called for a requirement to record “all transactions, and to collect and retain photographic identification of every seller of scrap metal who does not have a cashless account with the metal recycler or trader”.⁴⁷

The Bill proposals

Clause 10 states that scrap metal dealers “must not receive scrap metal from a person without verifying the person’s full name and address”. Verification has to be by reference to “reliable and independent” documentation, creating some discretion for dealers. The Secretary of State can prescribe in regulations what documents are sufficient for this purpose. Failure to meet these requirements will be an offence and could lead to fines not exceeding level 3 on the standard scale.

⁴³ Briefing from the British Metals Recycling Association on the adjournment debate on Scrap Metal Theft 18 June, *BMRA*, June 2012

⁴⁴ Transport Committee, *Cable theft on the railway*, 24 January 2012, HC 1609

⁴⁵ Explanatory Notes to the Scrap Metal Dealers Bill [HC], Bill 9 of 2012-13

⁴⁶ Transport Committee, *Cable theft on the railway*, 24 January 2012, HC 1609

⁴⁷ Briefing from the British Metals Recycling Association on the adjournment debate on Scrap Metal Theft 18 June, *BMRA*, June 2012

If someone delivering scrap metal gives a false name or address they will be guilty of an offence under clause 10 (7). They would be liable to a fine not exceeding level 3 on the standard scale.

Clause 12 requires the dealer to record and retain a range of information about metal transactions including:

- a description of the metal including its type and weight;
- the date and time of its receipt;
- the registration details of the vehicle that it has been delivered in;
- the name and address of the person delivering the material;
- a copy of the document used to verify name and address; and,
- copies of cheques and receipts of payments.

To improve traceability this information must be connected in some way to the metal when it is in the scrap yard. The records have to be retained for two years. Failure to comply with these requirements could lead to a fine not exceeding level 5 on the standard scale.

6 Issues the Bill will not address

6.1 Environment Agency funding

The BMRA called for reform of the Environment Agency's funding arrangements to allow it to use the money it receives from its permit activities to target illegal scrap metal sites. It said that the Agency "cannot use these resources to target those that do not" pay their fees. It claimed that "not only would such a shift allow the Environmental Agencies to target enforcement activities on those operating outside the permitting regime, it would also represent a much more effective use of public funds".⁴⁸

A Home Office official explained that Treasury rules "mean that the Environment Agency is not able to use income from the regulated sector to pay for its enforcement work against the unregulated sector". The official went on that:

...the Agency uses Defra grant-in-aid for this purpose and currently allocates a little over £17 million per year of its core budget to tackling waste crime, which includes identifying, investigating and taking action against illegal waste sites".

In the 12 months to the end of March 2012 using these resources, the Agency 'stopped' 759 illegal waste sites from operating, 190 of which were scrap metal yards, either by bringing them into compliance, or getting the activity to cease.

In spite of these considerable successes, new illegal sites come to the Agency's attention all the time. The Agency has therefore allocated just under £5m of extra money over an 18 month period to create a task force that it hopes will bring about a lasting reduction in the number of illegal waste sites of all types. This task force was set up in the autumn of 2011 and its first job was to improve intelligence about illegal

⁴⁸ Transport Committee, *Cable theft on the railway*, 24 January 2012, HC 1609, Vol II

waste activities. The Agency is now in the investigation phase, when it expects to see a significant reduction in the number of illegal sites.⁴⁹

6.2 Domestic appliance and gold traders

As well as extending the regulatory regime to itinerant traders and vehicle salvage operations, the BMRA called for second hand domestic appliance traders and used gold traders to be regulated in the same way. It said that “such businesses will be able to continue trading in cash, leaving numerous points where stolen metal can be sold for cash”.⁵⁰ It went on that:

Excluding second hand domestic appliances leaves a significant loophole that can be exploited to circumvent the intent of the new legislation. How will it be possible to distinguish whether an old, and perhaps unserviceable, domestic appliance that is sold by its owner is scrap metal, or a second hand item that may be considered (and subsequently rejected) for repair?

Excluding precious metals from the definition of scrap is illogical, particularly as we understand that the second-hand precious metals trade typically prices items by weight, and thus in effect for its "scrap" value. High street and mobile precious metal traders are increasingly buying copper and aluminium. If they are allowed to continue paying cash for scrap they will provide both unfair competition for legitimate operators and a ready outlet for stolen metal. There seems no logical justification for their exclusion.⁵¹

The Bill does not extend to these two groups.

6.3 Overlapping regulatory powers

In its Waste Review the Government thought that the “the overlapping powers, controls and obligations on businesses as currently set out in the *Scrap Metal Dealers Act 1964*, and the record-keeping requirements of waste legislation” created difficulties in the enforcement of legislation and created regulatory burdens for business.⁵²

The Bill does not merge the scrap metal dealer and environmental regimes. A Home Office official stated that it would not be possible to “integrate fully environmental regulation and this new regime as it would result in a fundamental shift in the Environment Agency's role from an environmental regulator as the Bill will not contain any measures that will directly deliver environmental benefits”.⁵³

7 Response to the Bill

Local Government Association

The LGA generally supported the Bill, but was concerned that local authorities should be given more flexibility to impose local conditions on dealers. In a briefing it said:

The Scrap Metal Dealers Bill offers the opportunity of introducing a comprehensive and modern system for running the metal recycling industry...

We would like to see the current registration process being replaced by a proper licensing system based on the alcohol licensing regime and administered by councils.

⁴⁹ Personal communication with Home Office, 9 July 2012

⁵⁰ Personal communication with BMRA, 9 July 2012

⁵¹ Personal communication with BMRA, 9 July 2012

⁵² [Government Review of Waste Policy in England 2011 - Action Plan](#), DEFRA, June 2011

⁵³ Personal communication with Home Office, 3 July 2012

This would enable councils to impose stricter controls where appropriate on the way dealers operate, including the installation of CCTV with automatic number plate recognition technology.

License conditions

We would like councils to have the ability to impose local conditions on the license where appropriate, in a similar way that they can with other forms of licenses.

This could include tougher receipt and recording arrangements for certain types of metal such as catalytic converters, or the requirement for CCTV with automatic number plate recognition technology to be installed at the yard entrance so there was a record of vehicles visiting the site.

The bill proposes that there be effectively two nationally set conditions in the Bill around record keeping and using cashless transactions.

These are sensible provisions but we are concerned that this would not be enough to change the behaviour of some of the worst run dealers, and that councils need to be able to exercise some flexibility in being able to impose local conditions.

The ability to review licences as included in the Bill, which could be instigated by the police or the licensing authority, and if necessary an ability to revoke a licence where there were significant concerns about the probity of a dealer, would make it much less likely that stolen metal could be sold on to scrap metal dealers.

Licensing fees

The Bill gives two options, one of which would be a nationally set fee for the licence applications.

There were a number of issues for councils with the very similar approach taken to fees for alcohol licences. The Government subsequently amended the fees setting process so that councils can recover the costs they incur with running and enforcing alcohol licences.

Whilst we would prefer a locally set regime, of the two options detailed in the Bill we would prefer a consistency with current licensing regimes which would allow councils to recover their fees.⁵⁴

British Transport Police

Deputy Chief Constable Paul Crowther of the British Transport Police supported the Bill. He said:

I very much welcome Richard Ottaway's initiative and wish his Bill well. The content of Legislation is of course a matter for Parliament but it is fair to say the Bill contains more or less the key elements that ACPO [the Association of Chief Police Officers] have been asking to be considered. Richard Ottaway's Bill looks to have Government support, and a great deal of cross-party consensus. There is of course a long route through parliamentary processes between First Reading and Royal Assent. We watch with interest.

The Bill builds on changes brought in earlier this year by the Government, introducing a criminal offence of trading in cash for scrap metal transactions, and increasing

⁵⁴ Scrap Metal Dealers Bill Second Reading, *Local Government Association*, 9 July 2012

penalties for breaches of existing scrap metal dealers legislation. In some cases this can lead to unlimited fines – a very serious disincentive to the casual thief.⁵⁵

The Church of England

The Cathedral & Church Buildings Division of the Church of England has welcomed the Bill. It said that metal theft caused “extensive expensive damage to church buildings”:

- Over a third of Anglican churches have suffered from metal theft
- Repeat thefts are common
- The total cost in the past six years is over £24 million pounds
- There is significant loss of and damage to our heritage through this crime
- It attacks buildings at the heart of communities
- The costs of repair place a huge burden on volunteers – in terms of both time and money.⁵⁶

It went on that the proposals “are proportionate to the impact of metal theft”:

They will not prevent legitimate trade and will not place onerous burdens on traders that are impossible to fulfil. The Bill will provide a level playing field for all scrap dealers. At present there are significant anomalies, with itinerant dealers able to trade for cash.

Through the work of the police in Operation Tornado many yards have voluntarily agreed to ask for photo ID and kept CCTV footage of cars entering their yards. This action has had a major impact on metal thefts in the areas where voluntary schemes are in place. However it is not realistic to expect local voluntary agreements to last indefinitely, especially for yards whose local competitors are continuing to use cash and not take ID. An enforceable legal framework is needed.⁵⁷

British Metals Recycling Association

The BMRA generally supported regulation in this area, although it had some concerns. It said that it wanted “severe penalties for those operating without a licence, the revocation of a licence and restrictions on the issue of future scrap metal licences for breaches of licensing conditions”.⁵⁸ It went on:

We welcome measures that level the playing field for legitimate operators by making it easier for police officers and other enforcement agencies to enter suspected unregistered/unlicensed sites and understand the tension between doing so and providing a loophole that could be misused to enable for entry into other premises...

We have serious concerns over some Local Authorities' resources, skills and commitment to manage this licensing regime effectively and consistently across England and Wales...

⁵⁵ “This is a battle the police intend to win”, Railnews, July 2012

⁵⁶ MPs Briefing note on the Scrap Metal Dealers’ Bill, The Church of England, 9 July 2012

⁵⁷ MPs Briefing note on the Scrap Metal Dealers’ Bill, The Church of England, 9 July 2012

⁵⁸ Personal communication with BMRA, 9 July 2012

Linked to these concerns is the fear that local concerns over planning, traffic movements and noise could become enmeshed in local councils' consideration of the issue of a Scrap Metal Dealer licence.⁵⁹

⁵⁹ Personal communication with BMRA, 9 July 2012

Appendix 1— British Transport Police data on cable theft on transport networks

	2009-10			2010-11		
	Offences recorded	Offences detected	Detection rate (%)	Offences recorded	Offences detected	Detection rate (%)
Great Britain total offences						
Live cable theft	782	64	8.2	1,372	116	8.5
Non-live cable theft	811	101	12.5	1,340	202	15.1
Total cable theft	1,593	165	10.4	2,712	318	11.7
<i>of which: individual BTP regions:</i>						
Scotland						
Live cable theft	14	2	14.3	79	1	1.3
Non-live cable theft	43	3	7.0	107	20	18.7
Total cable theft	57	5	8.8	186	21	11.3
North Eastern						
Live cable theft	370	23	6.2	674	32	4.7
Non-live cable theft	214	36	16.8	341	59	17.3
Total cable theft	584	59	10.1	1,015	91	9.0
North Western						
Live cable theft	78	16	20.5	105	16	15.2
Non-live cable theft	113	14	12.4	126	24	19.0
Total cable theft	191	30	15.7	231	40	17.3
London North						
Live cable theft	111	9	8.1	102	11	10.8
Non-live cable theft	127	13	10.2	185	30	16.2
Total cable theft	238	22	9.2	287	41	14.3
London South						
Live cable theft	49	8	16.3	114	1	0.9
Non-live cable theft	103	12	11.7	204	13	6.4
Total cable theft	152	20	13.2	318	14	4.4
London Underground/DLR						
Live cable theft	6	2	33.3	22	9	40.9
Non-live cable theft	56	4	7.1	98	14	14.3
Total cable theft	62	6	9.7	120	23	19.2
Wales & Western						
Live cable theft	154	4	2.6	276	46	16.7
Non-live cable theft	155	19	12.3	279	42	15.1
Total cable theft	309	23	7.4	555	88	15.9
of which:						
Wales						
Live cable theft	33	0	0.0	118	6	5.1
Non-live cable theft	45	7	15.6	91	18	19.8
Total cable theft	78	7	9.0	209	24	11.5
Western						
Live cable theft	121	4	3.3	158	40	25.3
Non-live cable theft	110	12	10.9	188	24	12.8
Total cable theft	231	16	6.9	346	64	18.5

Notes:

Detections may relate to crimes reported in earlier periods.
Information on the coverage of BTP regions is available at:
http://www.btp.police.uk/about_us/areas.aspx

Source:

BTP Statistical Bulletin 2010-11
http://www.btp.police.uk/pdf/BTP2011_Statistical%20Bulletin-d.pdf