

Taking the cash out of the scrap metal business

Scrap metal A steady rise in metal theft has led to a law reform which attempts to license a traditionally cash-based trade, write Julian Bass and Sarah Quy

Copper cables, drain covers, war memorials, fire escapes, garden statues, lead roofs, railings, rainwater pipes, lightning conductors and brass plaques on tombstones have one thing in common: they're all common targets for metal thieves.

Metal theft is not a new crime, but its volume increased steadily between 2009 and 2012. This upturn is thought to have been driven by rising commodity prices; the accessibility of metals such as lead, copper and aluminium; the ease with which those metals can be traded anonymously for cash through scrap metal dealers; the difficulty of identifying stolen metal once in the scrap metal chain; and the low risk of detection and prosecution by enforcement agencies.

The effect of metal theft has been felt across many sectors in the UK, including utility and power suppliers, transport and telecommunications industries, religious and heritage organisations, the construction industry, schools and local authorities. The Home Office warned last spring that metal theft constituted a threat to the national infrastructure, citing an example from December 2011 of the theft of copper cable in South Wales cutting the power supply to a hospital, with obvious consequences for patient safety.

Regulatory history

The scrap metal industry has in recent times been governed by the Scrap Metal Dealers Act 1964, which obliged dealers to record all transactions and made it an offence to trade in cash. However, in 2011, the government estimated that around a third of all scrap metal dealers dealt in cash transactions, and acknowledged that regulation of the sector was inadequate.

These concerns led to the introduction of supplemental provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the 2012 Act) which, from 3 December 2012, made it an offence for anyone regulated by the 2012 Act to buy scrap metal for any form of payment other than a crossed cheque or electronic money transfer. The 2012 Act applies to traditional scrapyards as well as 99% of itinerant collectors, or "rag and bone men". Critics argued that the



exemption from regulation of some dealers (such as motor vehicle salvage operators) created unfair competition for legitimate businesses and allowed loopholes for criminals to exploit. Greater sanctions were therefore required.

The new Act

As a result, the Scrap Metal Dealers Act 2013 was introduced in February and came into force on 1 October, when the 1964 Act was repealed. Its principal measures are as follows:

- Means of payment – scrap metal dealers have to pay for scrap by non-transferable cheque or by an electronic transfer of funds.
- Licences – all scrap dealers (site-based and mobile) must hold a licence issued by their local authority in order to trade legally. The licence fees (of around £500

for a site licence and £150 for a mobile licence) will finance the regulation scheme. Licences must be prominently displayed on sites and vehicles.

- Local authorities – can refuse to issue a licence if it deems that the applicant is not a "suitable person", and can vary or revoke licences.

- Registration – the Environment Agency runs a national public register of scrap metal licences.

- Records – dealers must obtain and record verifiable identification in respect of everyone from whom they buy scrap, and must also keep records of all their sales and purchases of scrap. These records must be retained for three years.

- Enforcement – this will be tougher and will include level 3 and level 5 fines (£1,000 and £5,000 respectively), prosecution of company officers as well as corporate bodies, and powers for local authority officials and police to enter and inspect sites and, if necessary, issue closure notices.

The main concern with the new regime is that dealers are already finding ways to circumvent the cash ban by, for instance, paying with pre-paid debit cards or providing on-site cheque-cashing kiosks. These practices do not breach the letter of the law, but mean that sellers do not need bank accounts and that transactions will therefore be hard to trace.

Despite this, Network Rail and Ecclesiastical (the church insurer) have pointed to lower theft rates in 2013 than in preceding years. This change has been attributed to both the implementation of better security measures by property owners and the increased regulation of the sector.

Julian Bass is a partner and Sarah Quy is a professional support lawyer in the real estate team at Travers Smith LLP

PROTECT YOUR PROPERTY: TIPS FOR OWNERS

- Mark your metal. There are three main techniques:
 - forensic marking can identify items for recovery purposes if they are stolen;
 - forensic grease marks the thief as well as the metal, so that the goods and the culprit can be linked to the same crime scene. For cost reasons this is normally only used on lower-level roofs, such as vestries or porches, rather than the whole roof; or
 - simple mechanical stamping of a name or location.
- On roofs, use mechanical fixings to make it harder for thieves to remove the

metal sheets, and install a roof alarm.

- Apply anti-climb paint to drainpipes, roof guttering and any scaffolding to restrict access to roofing. The paint should not be applied below a height of 2m and a warning notice must be prominently displayed to warn would-be thieves that it has been used.
- Restrict vehicular access to the site.
- Improve visibility of the building by, for instance, cutting down shrubs and trees and installing security lighting.
- Install CCTV – although be aware that sometimes an audacious thief will steal the cameras as well as the target metal.