

HOME OFFICE GUIDANCE ON THE OFFENCE OF BUYING SCRAP METAL FOR CASH

LEGAL AID, SENTENCING AND
PUNISHMENT OF OFFENDERS ACT
2012 THE OFFENCE OF BUYING
SCRAP METAL FOR CASH

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Home Office



INTRODUCTION

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 received Royal Assent on 1 May 2012. The legislation sets out changes to the Scrap Metal Dealers Act 1964 that currently regulates the scrap metal industry. The changes aim to remove the rewards that make metal theft such a low risk criminal enterprise for metal thieves and unscrupulous dealers.

The revised legislation creates a new criminal offence which prohibits scrap metal dealers from paying for scrap metal in cash, only permitting electronic payment or payment by cheque. The Act will also increase significantly the fines available for key offences under the existing Scrap Metal Dealers Act 1964 so that the most serious breaches can result in a level 5 fine and revise the police powers of entry into scrap metal yards, allowing the police to enter, by warrant, any place to which admission is reasonably required to ascertain whether the prohibition on cash payments is being complied with.

This document provides details of the new offence of purchasing scrap metal for cash and sets out how the new offence will be implemented from 3 December 2012.

THE OFFENCE OF BUYING SCRAP METAL FOR CASH

Section 146 of the LASPO Act 2012 provides that:

- (1) A scrap metal dealer must not pay for scrap metal except—
 - (a) by a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or
 - (b) by an electronic transfer of funds (authorised by credit or debit card or otherwise).
- (2) The Secretary of State may by order amend subsection (1) to permit other methods of payment.
- (3) In this section paying includes paying in kind (with goods or services).
- (4) If a scrap metal dealer pays for scrap metal in breach of subsection (1), each of the following is guilty of an offence—
 - (a) the scrap metal dealer;
 - (b) a person who makes the payment acting for the dealer;
 - (c) a manager who fails to take reasonable steps to prevent the payment being made in breach of subsection (1).

Therefore from the commencement of this provision cash cannot be used to purchase scrap metal, only payment by cheque or an electronic transfer of funds will be acceptable.

WHO WILL THIS MEASURE APPLY TO?

The requirement to purchase scrap metal without cash will apply to all scrap metal dealers as defined by the Scrap Metal Dealers Act 1964, regardless of whether they are registered with their local authority. Any business that buys or sells scrap metal must be registered with their local authority as a scrap metal dealer under the Scrap Metal Dealers Act 1964 - trading without a registration is a criminal offence.

The only exemption from this measure is for some itinerant collectors; itinerant collectors are defined in section 9 of the Scrap Metal Dealers Act 1964. For an exemption, collectors must both:

- be registered with their local authority under section 1 of the Scrap Metal Dealers Act 1964; and
- have obtained a separate order under section 3(1) of the Scrap Metal Dealers Act 1964 which exempts them from certain record keeping requirements. Local authorities must consult with the Chief Officer of the local police force prior to issuing every order.

Should an itinerant collector not fulfil either of these requirements they will not be exempted and cannot purchase scrap metal for cash.

METHODS OF PAYMENT

The over-riding requirement is for transactions to have traceability and to provide an effective audit trail. All transactions therefore must be either by cheque or an electronic transfer of funds, both of which mean that the payment will be linked to a readily identifiable account, for both the payee and the payer.

ELECTRONIC TRANSFERS

The legislation provides a clear focus on electronic transfers of money. This means that non-paper forms of payment such as direct debit, direct credits, BACS payments, faster payments, standing orders, credit transfers, on-line, phone and mobile banking are all acceptable forms of payment within the legislation. These methods of payment all provide the required traceability with a record of the transaction from the payer's account to the payee's account.

Re-loadable Electronic-Money products which are issued to a named account (which verifies the customers identification) and undertakes full customer due diligence and "Know Your Customer" checks under the Money Laundering Regulations are permitted. If Scrap Metal Dealers are unclear whether an E-Money product undertakes full customer due diligence and "know your customer" checks they are strongly advised to make payment by other means.

The payment methods listed above ensure compliance with the Law. The list is not however exhaustive. The electronic payments market is rapidly evolving with new products regularly entering the market.

CHEQUE PAYMENTS

Cheque payments are acceptable within the cashless operating model but this is limited to "Crossed Cheques", which are payable to a named individual(s) or firm and not made out to cash. Crossed cheques are non-transferable and the money will be paid to the intended beneficiary of the cheque.

UNACCEPTABLE METHODS OF PAYMENT

Payment instruments which do not come within the methods above (crossed cheque or electronic transfer) and which provide anonymous or near cash alternatives are not acceptable within the legislation. This includes the use of postal orders, foreign currency, electronic vouchers, virtual currencies, mobile phone airtime credits, retailer / supermarket gift cards and vouchers.

Single, non-reloadable pre-paid debit cards and re-loadable debit cards which are anonymous in nature and require only simplified due diligence under the Money Laundering Regulations are unacceptable.

RECORD KEEPING

Scrap metal dealers are required to record each transaction under the existing Scrap Metal Dealer Act (1964) and this requirement has been extended as part of the LASPO Act, section 146(6). It now also includes a requirement for scrap metal dealers to provide details of the transaction as part of each record. This record must either be a copy of a named cheque or a print out receipt of the electronic payment made. A record must also be made giving the details of the person who made the payment and the person who took receipt.

Records which fail to show the transaction and how the payment was made will be considered incomplete and deemed an offence under s2 of the Scrap Metal Dealers Act.

Local authorities and police forces are responsible for checking the records of scrap metal dealers under the existing Scrap Metal Dealers Act 1964 and they will remain responsible for ensuring compliance with the new cashless trading provisions. The police and local authorities will expect to see the records required under the Act for instance a copy of the cheque or any receipt identifying the payment along with Scrap Metal Dealers' record of each transaction. The receipts kept must be marked so as to identify the scrap metal by reference to the entry in the records relating to the receipt of the metal.

FURTHER LEGISLATION - SCRAP METAL DEALERS BILL

Initial legislative action to tackle metal theft has been taken through the LASPO Act however these amendments have always been considered a first step in reforming the regulation of the scrap metal industry. There remains an urgent need for wider reform and modernisation of the Scrap Metal Dealers Act through a more robust regime to regulate the scrap metal industry.

That is why Government fully supports Richard Ottaway's (MP for Croydon South) Scrap Metal Dealers Bill which received first reading in the House of Commons on 20 June. The Bill would introduce a rigorous new, local authority administered licensing regime with the local authority able to refuse and revoke trading licences; to require those selling metal to provide proof of identity; to include the LASPO cash prohibition and to widen the definition of a scrap metal dealer to include motor salvage operators. It will also create a central public register, hosted by the Environment Agency, of all individuals and businesses licensed as scrap metal dealers.

Significantly, the new legislation would also remove the existing record-keeping exemption which relates to some itinerant collectors who, until this legislation comes into force, will be excluded from the cashless provision.



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