

**BMRA response to the Home Office review
of *The Scrap Metal Dealers Act 2013*, dated
December 2016**



A. Executive Summary

- A.1. The British Metals Recycling Association (BMRA) is the UK trade association for ferrous and non-ferrous metal recycling companies. It represents some 250 businesses from multi-national companies to small family-owned enterprises. This £5 billion industry processes over 11 million tonnes of metal annually into valuable secondary raw material for metals manufacturing here in the UK and for a variety of export markets.
- A.2. The *Scrap Metal Dealers Act 2013 (SMDA)* was introduced at a time of acute national threat to infrastructure and heritage assets. BMRA worked closely with the Government, police services and others to support the introduction of the Act, which strengthened legislation for the metal recycling sector and introduced measures to reduce metal theft across England and Wales. However, we have always advised the Government that the legislation would only be successful if accompanied by effective enforcement.
- A.3. While the introduction of the SMDA has played a role in reducing metal thefts, BMRA contends that successful police enforcement preceding the SMDA and falling global metal prices had a far greater impact.
- A.4. The licensing requirements introduced by the SMDA and the cash ban initially introduced under the *Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO)* are routinely ignored by operators acting illegally. Additionally, significant funding cuts to enforcement since September 2014 mean legitimate businesses continuously lose out to illegal operators with cash payers appearing to operate with impunity.
- A.5. As market conditions for metal improve, metal theft appears to be on the rise and concern is growing amongst its victims. BMRA strongly supports the retention of the SMDA, but to ensure its success we request the following amendments:
- Introduction of a new offence of receiving cash for scrap metal;
 - Clarification and strengthening of the requirements to verify the identity the sellers of scrap metal;
 - Expanding police 'enter and inspect' powers to include stop and search provisions for mobile collectors;
 - Improving the application process to ensure transparency and consistency;
 - Requiring local authorities to provide data on licence holders to ensure the Public Register of metal dealers and itinerant metal dealers is accurate and up-to-date.

Alongside these amendments, it is imperative the Government develops a more effective enforcement regime to meet the objectives of the SMDA.

Separate to this Review, Government should implement a reverse-charge VAT system to further reduce the opportunities for criminal behaviour and in particular, defrauding HMRC.

1. In your view, has the Scrap Metal Dealers Act 2013 been successful in meeting the objective set out above? What evidence do you have to support your view?

- 1.1 BMRA believes that the SMDA has been successful in introducing a robust, modern and comprehensive regulatory regime for the metals recycling and vehicle dismantling sectors in order to tackle metal theft and the trade in stolen metals.
- 1.2 As indicated by official crime statistics, there has been a significant reduction in the number of metal thefts since the SMDA came into force on 1 October 2013. However, it would be complacent to attribute the reduction in the number of metal thefts (and related offences) purely to the introduction of the SMDA.
- 1.3 There are a number of contributing factors that must be considered when assessing the overall effectiveness of the Act. These are:
 - Effectiveness of enforcement and interventions.
 - A fall in metal prices driven by a reduction in global demand for metal.

Effectiveness of enforcement

- 1.4 There is a clear correlation between interventions and effective enforcement of scrap metal dealer legislation and the number of recorded metal theft offences. Figure 1 reproduces Home Office data and shows that recorded metal theft offences have fallen over the reference period Q1 2012/13 to Q4 2015/16. These data demonstrate that significant reductions in metal theft offences occurred prior to the commencement of the SMDA.

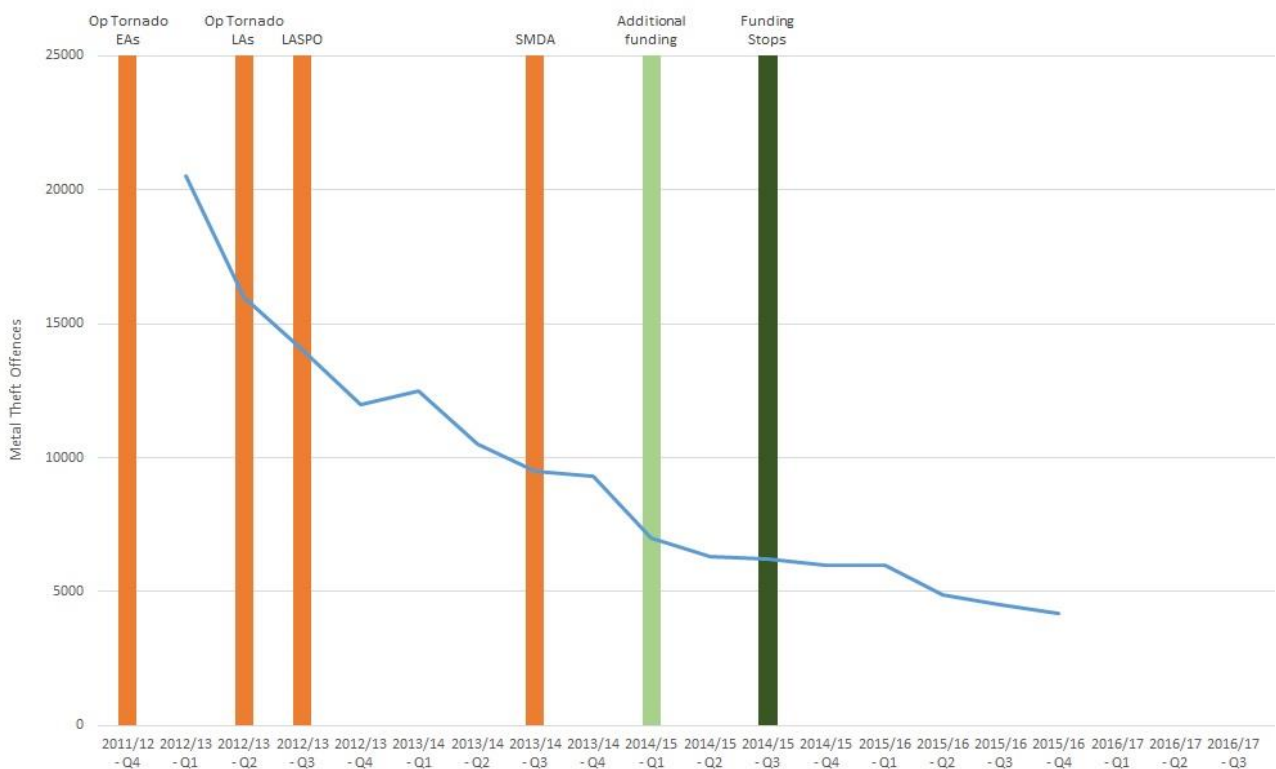
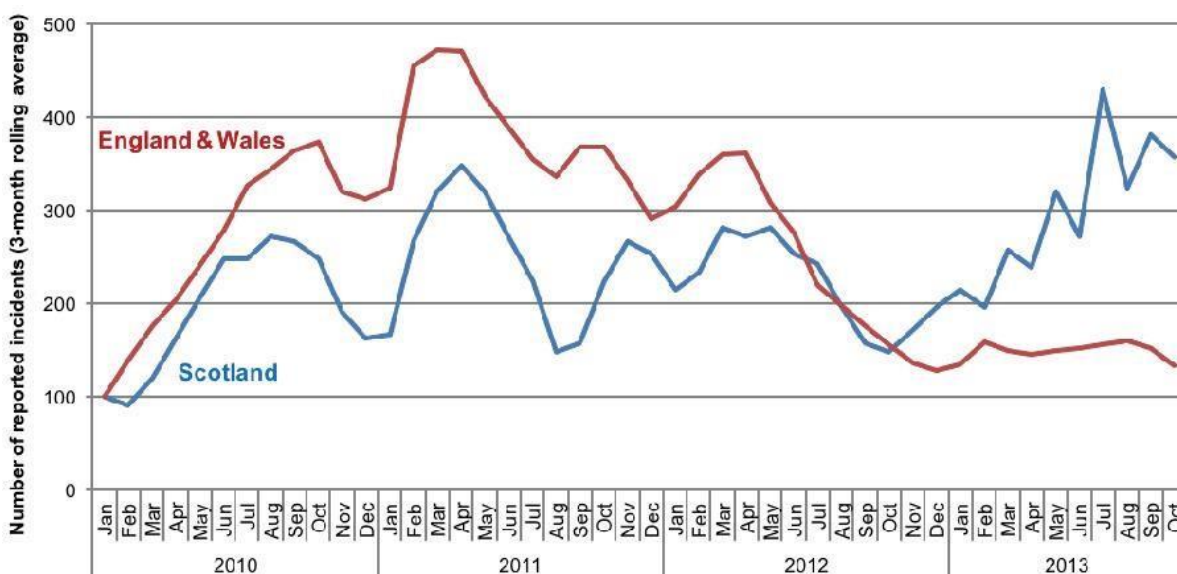


Figure 1 showing recorded metal theft for the period Q1 2012/13 to Q4 2015/16 and Government-backed interventions. Source: Office of National Statistics November 2016.

- 1.5 Between January 2012 and September 2014, £6.5m of funding was provided through the National Infrastructure Plan to establish and maintain a dedicated metal theft taskforce that complemented and enhanced all enforcement activity. During this period, the enforcement agencies developed their intelligence and knowledge of the metal recycling industry as well as those engaged with handling stolen metal, allowing for targeted, intelligence-led interventions. These interventions made metal theft less attractive to many criminals as the outlets were reduced and the metal recycling industry became better regulated.
- 1.6 Additionally, Operation Tornado was introduced by the British Transport Police. This voluntary scheme asked metal dealers to obtain photographic proof of the identity of the seller. The scheme started in the North-East of England in early 2012 before it was gradually rolled out across the country, with national participation by the end of the same year.
- 1.7 Finally, amendments to LASPO came into force on 3 December 2012. Specifically, it became an offence to buy scrap metal for cash. Two further measures within LASPO related to tackling metal theft were introduced, namely a revision of police entry powers to unlicensed scrap metal stores and increased penalties for offences under the *Scrap Metal Dealers Act 1964*.
- 1.8 Collectively, these measures provided the initial impetus to tackle metal theft. Further reductions were achieved after the Act came into force, with the downward trend maintained up to the point that funding for the National Metal Theft Taskforce was cut. After this time (end Q2 2014/15) the number of metal theft offences recorded each quarter are broadly similar.
- 1.9 The effectiveness of interventions or robust enforcement of metal dealer legislation is further supported when comparing reported metal theft data for Energy Networks Association (ENA) installations in England and Wales, and Scotland (Figure 2).
- 1.10 Home Office data¹ show that following Operation Tornado and commencement of LASPO, metal thefts increase significantly in Scotland, suggesting that crime has been displaced into a jurisdiction where there is no enforcement to tackle the disposal routes for stolen material.



¹ Home Office, January 2015, *An evaluation of government/law enforcement interventions aimed at reducing metal theft*, Nick Morgan, Jacqueline Hoare and Christos Byron

Figure 2 showing ENA reported metal thefts for the period January 2010 to October 2013 for England & Wales and Scotland. Source Home Office January 2015.

Metal price/global demand for metal

1.11 During the reference period (Q1 2012/13 to Q4 2015/16) the global demand for scrap metal fell significantly and with commensurate average reduction in value of 57%. For example, taking two representative commonly traded metals, light iron and dry bright copper wire, the price slump for both these materials noticeably matched the fall in thefts. While light iron dropped from £168 to £30 per tonne, bright copper dropped from £3,800 to £2,600 per tonne.



1.12 Since publication of the ONS data² prices have increased. In the case of copper, as of January 2017, the price is back up to £3,800. Unfortunately, official metal theft data is unavailable from Q1 2016/17 onwards. Prices for most other metals are increasing with significant gains in the six months to January 2017.

Possible future trends

1.13 There is growing anecdotal evidence to suggest that metal theft remains a significant issue and that the manner in which thefts are recorded in officially published data may obfuscate the seriousness of the problem.

1.14 Discussions between BMRA and ‘victims’ of metal theft, including the curators of national infrastructure and historic buildings, have confirmed individual metal thefts continued to fall until Q3 2016/17. However, towards the end of 2016, the number of thefts or attempted thefts of metal assets increased. These organisations also report the losses incurred with each theft have increased as the criminal profile has shifted from ‘opportunistic’ to ‘organised’. For example, whereas

² Office for National Statistics, November 2016, *Police Recorded Metal Theft 2015/16*, Crime and Policing Statistics Home Office

previously theft from a church roof may have involved a relatively small quantity of lead flashing or downpipe being removed by one or two individuals, entire roofs are now being stripped by gangs and loaded into vehicles for disposal in to illegally operated yards.

- 1.15 Since the funding for the National Metal Theft Taskforce was cut and regular visits by police to metal dealers' premises have reduced, BMRA is aware that the number of alleged metal dealer offences, notably payment in cash for scrap metals, is increasing.
- 1.16 For a number of years, BMRA has been collating reports of cash-paying yards. In early 2016, BMRA provided a list of some 200 alleged cash-paying operators to the British Transport Police and the Home Office. At the same time, it set up *Cash Stoppers*, an anonymous reporting system. However, unlike *Crimestoppers*, which is a recognised unverified reporting mechanism, *Cash Stoppers* has not gained the same recognition. Therefore, the police are reportedly unable to act on the information provided through the system. For this reason, information provided to the BMRA via *Cash Stoppers* has not yielded any successful prosecutions despite the best efforts of the industry to assist with the enforcement of SMDA.
- 1.17 Following a parliamentary question by David Hanson MP, the Ministry of Justice provided data in October 2016 showing that just six operators were prosecuted for paying cash for scrap metal between 2014 and 2015, five of which were found guilty and fined. This data stands in stark contrast to the experience of BMRA members, who report higher numbers of operators prepared to pay cash and who continue to undermine the legitimate industry.
- 1.18 Poor enforcement of legislation creates an uneven playing field in the sector and harms legitimate businesses. Fully licensed and compliant operators of metal recycling facilities would never knowingly accept stolen metal. Moreover, they pay taxes and are compliant with environmental and other regulation. In other words, the lack of enforcement is seriously impacting a significant number of operators from the very largest multi-site metals recyclers to SME's that form the backbone of the UK's most successful recycling industry.

2. Do you consider that it is appropriate to retain or repeal the Act or any of its provisions at this time? Please supply any evidence to support your view.

2.1 BMRA strongly believes that that the Act should be retained. However, there are a number of amendments that should be made to improve and strengthen its overall effectiveness and policy intent.

Changes to Section 12 – creating disincentives to receive cash payments

- 2.2 The Act states that a dealer must not pay for scrap by any means other than a non-transferable cheque or an electronic transfer of funds. However, despite BMRA requesting that the receipt of cash for scrap metal be made an equivalent strict liability offence whilst the *Scrap Metal Dealers Bill* was passing, this was not agreed. Currently, the receiving party in the transaction may only be held liable as an ‘aider and abettor’ under the principles of common law.
- 2.3 Many holders of lawfully sourced metal, such as engineering companies or plumbing merchants, continue to demand cash for their scrap metal. In their quest for cash, they may seek out scrap metal dealers prepared to operate illegally and pay cash. Moreover, those holders of legitimately sourced metal who are seeking cash would be greatly deterred if it were also an explicit offence to receive cash for their scrap. Reducing the overall number of people seeking cash for lawfully sourced scrap, would allow the police to focus on those wishing to dispose of stolen metal.

Proposal: Amend section 12 to make it an offence, under strict liability, to sell scrap metal for cash. This would also require the Explanatory Notes and Supplementary Guidance to be amended at the same time.

2.4 Given that some 2.5% of the UK population is unbanked or under-banked, it is likely that those who fall into this category and who do not want to use cheques will continue to seek anonymous or near cash alternatives. It is therefore essential that the prohibition on near cash alternatives or ‘payment in kind’ under section 12 (3) is extended to the seller in a scrap metal transaction.

Changes to Section 11 – improving traceability

2.5 Section 11 outlines a dealer’s responsibility to identify the person he is buying scrap metal from by verifying the person’s full name and address. The verification can only be achieved by suitable documents specified in the *Scrap Metal Dealers Act 2013 (Prescribed Documents and Information for Verification of Name and Address) Regulations 2013*. However, it is currently unclear whether the dealer must verify the name and address of the person presenting the scrap or, in the case of persons other than the beneficiary of the transaction, such as third parties, whose identity must be verified. For example, in the case of a third party haulier, it is unclear whether a metal dealer should verify the identity of the lorry driver or the directors of the company receiving the money.

Proposal: Amend section 11 to clarify and harmonise the definition of the word ‘person’ with secondary regulation. Whilst the legislation currently prescribes that the dealer must not receive scrap metal from a ‘person’ without verifying that person’s full name and address, the secondary regulation makes reference to the person ‘supplying the scrap metal’. Clarification is required as to whether the word ‘person’ refers to both natural and legal persons (a company) or only to natural persons. Should ‘person’ refer to companies as well as natural persons, the Act should clearly state whose identity should be verified to comply with the overarching principle of traceability.

Changes to Section 16 – police powers to inspect mobile collectors and unlicensed sites

- 2.6 Section 16 deals with the right to enter and inspect powers conferred on local authorities and the police to enter licensed sites. Under section 16 (9) constables and officers of a local authority may require a scrap metal dealer at a licensed site to produce records kept in compliance with record keeping provisions under the Act.
- 2.7 The SMDA does not confer powers on constables and local authority officers to inspect vehicles used for the purpose of carrying on business as a mobile collector. Moreover, if a collector stores their records at a home address, police have few options if they wish to inspect a collector's records. Police officers wishing to inspect a collector's records under the Act, may require a warrant to search a home address if the collector fails to produce the records when stopped. Whilst the police maintain powers elsewhere, primarily under PACE³ to stop and inspect vehicles, specific powers relating to mobile collectors should be implemented.
- 2.8 Currently, a constable or licensing officer must apply to the Magistrates Court for a warrant to search an unlicensed scrap yard. In practice, this is another hurdle for the police and licensing authorities to overcome in order to enforce the SMDA. If the police and licensing officers could enter and inspect premises under a reasonable suspicion without the need for a warrant, this would ensure unlicensed operators are tackled and prosecuted.

Proposal: Specific powers should be conferred for the purpose of inspecting mobile collectors and unlicensed scrap yards. For mobile collectors, police officers may request the production of records required under the Act on-the-spot in addition to their scrap metal dealers licence and Waste Carriers Licence. Additionally, powers should be conferred for the purpose of inspecting unlicensed scrap yards under a reasonable suspicion without the need for a warrant. Expanding inspection powers in this way would help to ensure all members of the scrap metal community are compliant with requirements under the Act.

³ Police and Criminal Evidence Act 1984

3. To what extent do you consider that the requirements relating to licences and the national registers have helped to achieve the Act's objective?

3.1 BMRA believes that the requirements relating to licences have not helped achieve the Act's objectives. This is because many local authorities have failed to fulfil their obligations. Local authority compliance in vetting licence applications, supporting the Public Register, and regulating and checking licence holders has been, at best, sporadic.

Creating a more rigorous licensing regime

3.2 Under section 3 (2) of the Act, there is widespread variation in how metal dealer and mobile collector applicants are assessed. BMRA is aware of local authorities charging anything from £1,522⁴ to £70⁵ to undertake the licensing application process.

3.3 Whilst there can be a degree of confidence that local authorities that charge higher amounts have allocated the sufficient time and resource to undertake all of the checks, it is unlikely that those who charge very low amounts will be able to assess the appropriateness of the applicant. Moreover, it is currently not mandatory for local authorities to act upon the checks that are undertaken and the information received as a result of those checks. Requiring that information received via the application process is acted upon would help ensure consistency and validity.

Proposal: Amend section 3(2) to read 'In determining whether the applicant is a suitable person, the authority **MUST REASONABLY ACT UPON** any information that it considers to be relevant [...]'

Proposal: Enable local authorities to better scrutinise an applicant's suitability to operate a scrap metal business. If consultations were carried out interested parties could share their concerns, which local authorities could take into account when determining a licence application. This may lead to greater transparency in the application process and demonstrate how fees are used to administer the licensing requirements.

3.4 Knowledge of scrap metal dealer licensing requirements and procedures within local authorities remains patchy and there is no formalised, common procedure for applications. As a result, multi-site operators can incur significant administrative burdens applying for and renewing and receiving licences in different local authority areas.

3.5 Mobile collectors must currently register in the local authority areas in which they wish to operate and are not permitted to operate outside of those areas. This disproportionately affects collectors in London boroughs and areas with a smaller geographical spread in terms of local authority licensing boundaries. For example, a mobile collector wishing to trade across all 32 London Boroughs would incur an initial cost of over £9,000 in licence fees.

Proposal: Simplify and harmonise the licensing renewals procedure across all local authorities. Additionally, there should be a single licence and application fee covering England and Wales for mobile collectors. This has been the case in Scotland since the introduction of the *Air Weapons and Licensing (Scotland) Act 2015* in October 2016.

⁴ Birmingham City Council sourced 2 January 2017, https://www.birmingham.gov.uk/downloads/file/810/application_form_-_scrap_metal_dealers_licence

⁵ Rushmoor Borough Council sourced 2 January 2017, <http://www.rushmoor.gov.uk/article/2648/Scrap-metaldealers-licence>

- 3.6 Despite having certain powers under the SMDA, local authorities do not appear to follow the licensing application requirements. Seemingly, very few checks are made, resulting in a risk that unsuitable applicants may be issued with licences. Similarly, there is little evidence that scrap metal dealers who are not abiding by the licensing requirements of the Act are being prosecuted.
- 3.7 If local authorities are informed about sites being operated illegally, they will reportedly either do nothing, or simply require the site to retrospectively apply for a licence. This approach does not meet the requirements of the Act and undermines the legitimate industry.

Proposal: Retrospective licensing should be considered only under exceptional circumstances. Those operating without a licence should otherwise be prosecuted.

Proposal: Local authority fees should be spent on initial assessments, follow-up visits and enforcement. Local authorities should be required to demonstrate how they have spent those fees.

An up-to-date Public Register of metal dealers and mobile collectors

- 3.8 The Public Register of metal dealers and mobile collectors, could be a valuable tool, if it were kept updated and all parties worked together. Evidence presented at the National Police Chief's Council Metal Theft Working Group in December 2016 shows that a number of non-compliant local authorities are still failing to provide information on metal dealers and mobile collectors to the Environment Agency. A number of BMRA members, including large multi-site operators, have come forward with concerns they cannot find a particular site on the Public Register, despite being fully licensed and compliant. BMRA considers the current Public Register to be unfit for purpose.

Proposal: Amend section 7 of the Act to require local authorities to submit accurate, up-to-date information on licence holders to the Environment Agency.

4. In your view, to what extent have the above requirements helped to achieve the Act's objective?

- 4.1 To date, the above requirements have had a limited impact in helping achieve the Act's objectives. Rather it is the preceding and subsequent interventions and enforcement actions combined with low metal prices and demand for scrap metals globally that led to a reduction in metal theft figures.
- 4.2 It would be complacent to assume that as metal prices go back up there will not be a corresponding increase in metal thefts. Victims of metal theft are already concerned by recent incidents. For example, at the end of 2016, four churches in Suffolk were victims of lead and copper theft resulting in tens of thousands of pounds' worth of damage.
- 4.3 It is understood there is an upper limit of £7,500⁶ for an insurance claim on the theft of a church roof unless it is fitted with a suitable alarm system⁷. Specialist alarm systems have a typical installation cost of £5,000⁸. This represents a significant burden on many churches often struggling with high maintenance bills. In turn, parishioners and the local community frequently have to cover the uninsured costs when a claim is made.
- 4.4 Moreover, insurance policies covering energy and communications assets such as copper cable typically have a policy excess of £100,000. This means that any theft falling under the excess may go unreported. In these instances, the cost of the theft is instead met by the network operator themselves. It is therefore possible, that the official metal theft data derived from the Security Incidents Reporting System (SIRS) is obscured by a reticence to report thefts by the networks. This may also apply to local authority assets such as schools, road traffic signs and street lighting etc., where the cost of replacement falls under the claim threshold.

Reverse charge VAT

- 4.5 The Act has also led to a new crime; paying cash for scrap metal. Some scrap metal dealers are paying cash as they know there is little appetite for enforcement and subsequently little risk. Some vendors also seek out cash-paying yards because they know that the cash they receive is outside the taxation system and they either do not know or care that paying cash is illegal.
- 4.6 Implementing reverse charge VAT would make the metal dealer responsible for accounting to HMRC for the VAT. This would serve as a deterrent to metal dealers paying cash and or under-declaring on their VAT returns and eradicate the issue of Missing Trader Intra-Community Fraud in the sector. The UK is the only major European economy that has not adopted a reverse charge or zero-rated system of VAT in the scrap metal sector. This exposes the UK economy and the sector to serious fraud.

Proposal: Reverse charge VAT should be introduced on scrap metal purchases.

Funding for multi-agency collaboration

- 4.7 Moreover, in the face of serious fraud, often connected with other serious or organised crime, there should be increased multi-agency collaboration. This would ensure joined-up thinking and increase the effectiveness of investigations connected with the SMDA and illegal operators more generally.

Proposal: Allocate specific funding to combat illegal operators connected with serious fraud and organised crime.

⁶ The Guardian, 'Suffolk churches count devastating cost of lead roof thefts', 10 October 2015, Harriet Sherwood

⁷ *ibid*

⁸ *ibid*

Conclusion

Metal theft harms communities by damaging public buildings connected with worship and community wellbeing. Additionally, sites of historic importance and vital infrastructure, communication and energy networks that support the UK economy remain continually under threat.

BMRA welcomed the Government's efforts to address this threat in 2012 through the introduction of regulation. However, without effective enforcement of this legislation metal theft will continue to blight the UK's infrastructure and cultural assets, as the price of metal and demand increase.

An effectively enforced regulatory regime is therefore essential to ensure theft is the exception and not the norm. The legitimate scrap metal industry must operate on a level playing field and not continue to compete with illegal operators who undercut the legitimate sector and openly break the law.

Supporting the legitimate industry ensures the disposal outlets for stolen metal are reduced and illegal operators are shut down. BMRA calls on the Government to retain the SMDA and implement changes to the Act that facilitate business within the bounds of a proportionate and well enforced legal framework.

If you have any questions on any aspect of this response, please contact Sam Pentony (sam@recyclemetals.org or 01480 455249)

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