

Act No: No. 1 of 2015

Act Title: SCRAP METAL

AN ACT of Parliament to make provision for the regulation of dealings in scrap metal, to provide for the establishment of a Scrap Metal Council and for connected purposes

[Act No. 1 of 2015.]

[Date of commencement: 23rd January, 2015.]

[Date of assent: 7th January, 2015.]

Subsidiary Legislation

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Subsidiary Legislation

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Scrap Metal Act, 2015.

2. Interpretation

In this Act, unless the context otherwise requires—

"agent" means a person or institution contracted by a licensee to buy or sell on behalf of such dealer in scrap metal whose weight does not exceed five thousand kilograms;

"to bale" means to—

(a) pack in drums or other containers; or

(b) bind, hold together by cordage, metal straps, canvas roping or other means;

"Cabinet Secretary", means the Cabinet Secretary responsible for matters relating to industrialization;

"collector" means a person appointed by a licensee to operate as a mobile collector in a designated area to gather, collect and buy scrap metal in order to sell to a licensed agent or dealer in quantities that do not exceed three thousand kilograms per transaction;

"conditional order" means an order issued by the court as provided under section 25(4);

"Council" means the Scrap Metal Council established under section 3;

"dealing" in relation to scrap metal, includes buying or otherwise acquiring,

selling or otherwise disposing of scrap metal whether by way of barter, pledge or otherwise;

"licence" means a licence issued under section 11;

"licensed dealer" means a person licensed to deal in scrap metal under section 11, whether or not such person engages in any other trade or business, and excludes a person generating or using such metal as a by-product;

"miller" means a person who buys scrap metal in its original form for the recycling and processing it into semi-finished or finished products;

"Principal Secretary" means the Principal Secretary responsible for matters relating to industrialization;

"scrap metal" includes—

- (a) any old metal, second-hand metal, broken metal, defaced or old metal goods (including machinery and plant), whether wholly or partly manufactured, and any metal which is the property of the Government, or is privately owned, whether ferrous, non-ferrous or ferro-alloyed, but does not include gold, silver or any metals of the platinoid group; and
- (b) used automobile batteries;

"inspector" means an officer appointed as a scrap metal inspector under section 29, and

"utility company" means a public body established under the relevant laws in the railway, telecoms, energy, water or roads sectors.

PART II – ESTABLISHMENT OF THE SCRAP METAL COUNCIL

3. Establishment and incorporation

(1) There is established the Scrap Metal Council.

(2) The Council shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of—

- (a) suing and being sued;

(b) purchasing or otherwise acquiring, holding or disposing movable or immovable property; and

(c) doing or performing all things or acts for the furtherance of the provisions of this Act which may be lawfully done or performed by a body corporate.

4. Composition of the Council

(1) The Council shall consist of—

(a) a chairperson appointed by the Cabinet Secretary who has at least five years' experience in the public or private sector;

(b) the Principal Secretary of the Ministry for the time being responsible for matters relating to transport or representative;

(c) the Commissioner General of the Kenya Revenue Authority or a representative;

(d) the Inspector-General of Police or a representative;

(e) the Principal Secretary of the Ministry for the time being responsible for matters relating to industrialisation or his or her representative;

(f) the following persons, nominated as follows, and appointed by the Cabinet Secretary—

(i) one person nominated by the Scrap Metal Dealers Association;

(ii) one person nominated by the metal cottage industry;

(iii) one person nominated by the Kenya Association of Manufacturers;

(iv) one person nominated by large utility companies or agencies in charge of infrastructure, to be appointed on rotational basis;

(v) one person nominated by the Consumer Federation of Kenya.

(2) The members of the Council shall elect a vice-chairperson from among their number during the first meeting of the Council.

(3) The chairperson and members of the Council, other than an ex-officio member shall be appointed by notice in the Gazette and hold office for a period of three years, but shall be eligible for reappointment once.

5. Removal of Council members from office

A member of the Council, other than an ex-officio member may—

(a) at any time resign from office by notice in writing to the Cabinet Secretary; or

(b) be removed from office by the Cabinet Secretary if the member is—

(i) absent from three consecutive meetings of the Council without the permission of the chairperson, or in the case of the chairperson, without the permission of the Cabinet Secretary;

(ii) adjudged bankrupt or enters into a scheme of arrangement with his or her creditors;

(iii) in breach of the Public Officers Ethics Act or other relevant laws;

(iv) incapacitated by reason of prolonged physical or mental illness from performing his or her duties as a member of the Council;

(v) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings; or

(vi) incompetent and the Council makes a written recommendation to this effect to the Cabinet Secretary.

6. Functions of the Council

(1) The functions of the Council shall be to—

(a) advise the Cabinet Secretary on—

(i) the appropriate measures and mechanisms for regulating the scrap metal industry in ensuring economic growth, protection of public health and conformity to the principles of environmental stewardship as required by the Basel Convention;

- (ii) the appropriate measures and mechanisms for protecting public interest against vandalism, theft of utility infrastructure and private property;
- (iii) the methods of attracting investors on the utilization of excess scrap materials and supporting existing users of scrap metal;
- (iv) the applicable license fees to be prescribed under this Act; and
- (v) any other matter relevant to the operations of this Act.

(b) receive, vet and process all applications for the grant and renewal of licenses.

(c) receive public complaints and disputes from the public and within the scrap metal industry.

(d) submit an annual status report on the scrap metal industry in Kenya to the Cabinet Secretary.

(2) The Council shall unless otherwise provided in this Act work in collaboration with the inspectors to bring order and integrity to the scrap metal trade.

7. Business affairs of the Council

(1) The conduct and regulation of the business and affairs of the Council shall be as provided for in the First Schedule but subject thereto, the Council may regulate its own procedure.

(2) The Ministry responsible for matters relating to industrialization shall provide secretariat services to the Council.

8. Protection from personal Liability

(1) No act or omission by any member of the Council or by any officer, employee, agent or servant of the Council shall, if the act or omission was done bona-fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Council of the liability to pay compensation to any person for any injury to him or her, his or her property or to any of his or her interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any action or omission.

PART III – ADMINISTRATION

9. Restriction from dealing in scrap metal

(1) A person shall not deal in scrap metal, unless that person has a licence issued by the Council and is a member of Scrap Metal Dealers Association.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction—

(a) or a first offence to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding three years or both; and

(b) for a second or subsequent offence to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding five years or both.

10. Application for licence

(1) A person seeking a licence or renewal of a licence shall apply to the Council as provided in the Second Schedule.

(2) The application in subsection (1) shall be in triplicate and shall—

(a) specify the name of the dealer;

(b) specify the premises in which the applicant intends to deal in scrap metal; and

(c) be accompanied by the prescribed fee.

(3) The Council shall consider the application for the grant or renewal of a licence and shall approve or reject the application within thirty days from the date of application.

(4) The Council may decline to issue or renew a licence—

- (a) if the applicant has been convicted of any offence under this Act at any time during the three years immediately preceding the date of the application;
- (b) if the applicant has been convicted of any offence involving fraud or dishonesty at any time during the five years immediately preceding the date of the application;
- (c) if the applicant is an un-discharged bankrupt or a company in liquidation; or
- (d) if the applicant's premises are in the opinion of the Council unsuitable for dealing in scrap metal;
or
- (e) in the case of renewal of a licence, if the applicant does not have a valid certificate of good conduct and a valid certificate of tax compliance.

(5) Where the Council refuses to issue a licence it shall give reasons for such refusal to the applicant within the period specified in subsection (3).

11. Issue of licence

Every licence granted or renewed under this section shall—

- (a) be issued in the form prescribed in the Third Schedule;
- (b) be valid for one year;
- (c) specify the licensee as the principal or agent to deal in scrap metal;
- (d) specify the location of all the premises in which the licensee is authorized to deal in scrap metal;
- (e) specify any type of scrap metal the licensee may or may not deal in; and

(f) be subject to such conditions as the Council may consider necessary.

12. Appeal to Cabinet Secretary

Where the Council refuses to issue or renew a licence, the applicant may appeal to the Cabinet Secretary.

13. Licence not transferable

(1) A licence shall not be transferable except with the consent of the Cabinet Secretary on the advice of the Council and shall authorize dealing at the specified premises.

(2) Notwithstanding subsection (1), the Council may, on the application of a licensee and upon payment of the prescribed fee, vary a licence by substituting for the specified premises, other premises as provided in the Sixth Schedule and thereupon all the provisions of this Act shall apply to such premises.

(3) Any licensee who contravenes this section commits an offence and is liable on conviction to a fine not exceeding three million shillings.

14. Cancellation of licence

(1) The Council may cancel a licence issued under this Act if—

(a) the licensee becomes bankrupt, or, being a company, goes into liquidation; or

(b) in the opinion of the Council, the premises of the licensee are unsuitable for dealing in scrap metal; or

(c) the licence was obtained by fraud, misrepresentation or non-disclosure of any material fact; or

(d) the licensee is convicted of an offence involving fraud or dishonesty or theft.

15. Appeal to High Court

A person whose licence has been cancelled by the Council may appeal to the Cabinet Secretary and if not satisfied by the decision of the Cabinet Secretary, may appeal to the High Court.

16. Display of signboard

(1) Every licensee shall conspicuously display a signboard within his or her premises the manner prescribed.

(2) Without prejudice to the generality of subsection (1), every signboard shall—

(a) bear the full name of the licensee:

(b) bear the words "LICENSED SCRAP DEALER" in capital letters;

(c) be in English or Kiswahili.

(3) Subsections (1) and (2) shall not apply to a person who internally generates scrap metal as a result of their internal processes.

(4) Any person who fails to comply with the requirements of subsections (1) or (2) commits an offence and is liable on conviction to a fine not exceeding two million shillings.

17. Record by licensee

(1) Every licensee shall prepare in duplicate, a record as prescribed in the Fourth Schedule or in such other form as the Cabinet Secretary may in any particular case approve, of each variety of scrap metal, which was at the date and time of the grant of the licence in the licensee's possession or under the licensee's control and shall sign the duplicate copy of the register and submit it to the Council within one month of the grant of the licence.

(2) The record shall contain the weight, dimensions and general description of the scrap metal.

(3) The licensee shall keep this record for a maximum of seven years.

(4) Any licensee who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding two million shillings and where such offence continues after conviction, to a fine not exceeding two thousand shillings for each day in which such offence continues or until the license is revoked.

18. Register by licensee

(1) Every licensee shall keep a register as prescribed in the Fifth Schedule, or in such other form as the Cabinet Secretary on the recommendation of the Council may approve and the register shall contain—

(a) the weight, dimensions and general description of the scrap metal which from time to time come into the possession or control of the licensee and in respect of each item, the name of the person whether the licensee, servant or agent, who purchased, acquired or received the scrap metal, and the date and time of, and the consideration for the transaction, and the name, identity card number, address and telephone number of the person from whom the licensee, servant or agent purchased, acquired or received the scrap metal from; and

(b) the weight, dimensions and general description of the scrap metal which the licensee sells, disposes or which otherwise ceases to be in his or her possession or control, and showing in respect of each item, the date and time of the transaction and the name, identity card number, address and telephone number or other means of identification of the person to whom the licensee, servant or agent sold, disposed of or parted with possession or control of such scrap metal.

(2) Every entry required to be made under subsection (1) shall be made within twenty-four hours of the time when the transaction took place, and the licensee shall ensure that every party to such transaction signs or affixes his or her left thumb-print to such entry.

(3) Any licensee, servant or agent who fails to comply with this section commits an offence and is liable on conviction—

(a) for a first offence, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year, or to both; and

- (b) for a second or subsequent offence to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both and such license shall be revoked.

19. Presumption as to records

Every entry required to be prepared or kept under section 17 or section 18 of this Act shall be deemed, unless the contrary is shown, to have been made with the authority of the respective licensee.

20. Restriction on licensees

(1) A licensee shall not deal in scrap metal—

- (a) except between the hours of half-past six o'clock in the morning and half-past six o'clock in the evening;

- (b) with any person under the age of eighteen years, whether that person is acting or purporting to act on his or her own behalf or on behalf of another person; or

- (c) with any person who does not satisfy the licensee as to his or her identity.

(2) A licensee shall not store or deal in any scrap metal elsewhere other than at the specified premises; unless the licensee is authorized by the Council.

(3) A variation of the licence shall be in the form prescribed in the Sixth Schedule

(4) Any licensee who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one million shillings and, where such offence continues after conviction, to a fine not exceeding two thousand shillings for each day in which such offence continues or until the license is revoked.

21. Restriction on disposing or changing the form of scrap metal

(1) A licensee shall not—

(a) dispose of;

(b) disfigure or in any way change the form or shape of; or

(c) bale any scrap metal within seven days of acquiring possession or control of the scrap metal except with the written permission of the Principal Secretary.

(2) Any person who contravenes sub-section (1) commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.

22. Information regarding stolen or lost property

(1) Where a description of any lost or stolen property has been given by an inspector to a licensee, and any property fitting such description is in the possession or control of the licensee or thereafter comes into the possession or control of the licensee or is thereafter offered or shown to the licensee, the licensee shall immediately report such incident to the nearest Police Station or inspector, and supply the following information—

(a) name;

(b) identity number;

(c) telephone number; and

(d) address of the person from whom he or she acquired or saw such property.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

23. Scrap metal of unknown origin

(1) No person whether a licensee, servant or agent shall allow scrap metal whose origin is unknown into his or her possession whether in the licensed premises or otherwise.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty million shillings or to imprisonment for a term not exceeding seven years or to both.

24. Destruction of infrastructure

(1) A person shall not remove, deface or destroy any scrap metal from the infrastructure designed for roads, bridges, railways, pipelines, telecommunication, electricity, water and sewerage, or any government infrastructure project.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding three years or to both.

25. Forfeiture of scrap metal

(1) Subject subsection (3), an inspector may seize any scrap metal whose ownership is undetermined and shall within a period of fourteen days present it before a Court and if the Court is satisfied that the owner cannot be found, declare it forfeited to the State.

(2) A Court may order that any scrap metal in respect of which an offence has been committed under this Act shall be forfeited to the State.

(3) Where the Court intends to make an order of forfeiture, the inspector shall issue the notice prescribed in the Seventh Schedule to the person from whom the scrap metal was seized from.

(4) An order for the forfeiture of scrap metal under subsection (1) or subsection (2) may be a conditional order, and upon a conditional order being made, the Court shall direct an inspector to advertise the order in the Gazette.

(5) If, within three months from the date of publication of the order in the

Gazette, a person proves to the satisfaction of the Court that—

- (a) the person has a lawful title to the scrap metal or part thereof in respect of which the conditional order of forfeiture has been made; or
- (b) the person is not involved in the commission of the offence in respect of which such order was made, the Court may order the scrap metal, or such part as the Court considers just, to be delivered to that person subject to the payment of any such sum the Court may direct to be paid for the reimbursement of the expenses incurred in recovering, transporting and storing such scrap metal and for publishing such advertisement and where the expenses are not paid within three months, the conditional order for forfeiture shall become absolute.

26. Exports of scrap metal

- (1) A person shall not export scrap metal in any form.
- (2) Notwithstanding subsection (1), the Cabinet Secretary for matters relating to finance, in consultation with the Cabinet Secretary responsible for industrialization and with the recommendation of the Council, may, under such circumstances as may be prescribed, authorize the export of specific scrap metal for a specified period.
- (3) A certificate for each consignment shall be issued by the Principal Secretary.
- (4) Any exemption allowed under this section shall be valid for six months from the date of issue of the certificate of exemption.
- (5) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both.

27. Actions by agents or servants

- (1) Where any act or thing is done or omitted to be done by an agent or servant employed by a licensee who, if done or omitted by such licensee would constitute an offence under this Act, such licensee shall be personally liable for such offence as if the act or omission was occasioned by the licensee.

(2) Every agent or servant employed by a licensee who in the course of business does or omits to do anything which would under this Act constitute an offence if done or omitted by a licensee commits an offence and is liable on conviction to the punishment prescribed under this Act.

28. Offence committed by a company, cooperative society or other person

Where an offence under this Act committed by a company, cooperative society or other body of persons, corporate or not corporate, is proved to have been committed with the consent of or to have been facilitated by the neglect of any director, chairperson, manager, secretary or other officer of the company, co-operative society or other entity, the director, chairperson, manager, secretary or other officer of the company as well as the company, cooperative society or other entity, shall upon conviction be liable to the punishment prescribed under this Act.

PART IV – ENFORCEMENT

29. Appointment of inspector

(1) The Cabinet Secretary shall, for purposes of enforcing the provisions of this Act, appoint such number of inspectors with adequate training in metallurgy or a related field of study, as the Cabinet Secretary may consider appropriate and shall issue to such inspectors, certificates of authority to act as scrap metal inspectors.

(2) A person appointed as an inspector under subsection (1)—

(a) shall hold office subject to such terms and conditions as the Cabinet Secretary may determine;

(b) shall have police powers in the exercise of his or her duties under this Act;

(c) may subject to the direction of the Director of Public Prosecutions summon, examine witnesses under oath or affirmation and conduct prosecutions for offences committed under this Act.

(3) The Cabinet Secretary may designate other public officers to be inspectors for purposes of this Act.

(4) The Cabinet Secretary may amend or withdraw the appointment of inspectors under this section.

(5) The appointment of inspectors under this section shall be by notice in the Gazette for a renewable period of three years.

30. Power of entry

(1) An inspector may at any reasonable time, with or without a search warrant—

- (a) enter upon and inspect any place, premises or vehicle at, on or in which goods that are reasonably suspected of being stolen scrap metal or vandalized infrastructure are to be found and make a record as provided in the prescribed form;
- (b) take the steps that may be reasonably necessary to terminate the deal or transaction on vandalized or stolen scrap metal at, on or in such place, premises or vehicle, and to prevent the recurrence of any such act in future:

Provided that the actions set out herein shall not include the destruction or alienation of the relevant scrap metal unless authorized by an order issued by a court of competent jurisdiction;

- (c) seize, detain, and, where applicable, remove for detention, all the scrap metal found at, on or in such place, premises or vehicle or other modes of conveyance;
- (d) seize detain, and, where applicable, remove for detention, any tools which may be used in processing such scrap metal;
- (e) if the inspector suspects that a person at, on or in such place, premises or vehicle may furnish any information with respect to any dealing in vandalized or stolen scrap metal—
 - (i) question that person and take down a statement from that person;
 - (ii) demand from that person any book, document, article, item or object which in any way may assist in identifying the location, source or destination of the scrap metal, or the identity and address of any person who may be involved in dealing as a supplier, miller, distributor, exporter or clearing and forwarding agent of the scrap metal.

(2) Nothing in this section shall be construed as requiring a person to answer any question or give any information, if to do so might incriminate him or her.

(3) The inspector shall make in duplicate and in the prescribed form, an inventory of all the scrap metal that has been detained and the inventory shall be signed by the inspector and licensee and each shall retain a copy.

(4) An inspector may, with or without a warrant, arrest any person whom the inspector suspects upon reasonable grounds of having committed an offence under this Act and may search and detain such a person for a maximum of twenty four hours at the nearest Police Station.

(5) Before acting under this section, an inspector shall, if required to do so, produce documentary evidence of his or her appointment.

(6) Any person who obstructs or hinders an inspector in the exercise of the inspector's powers under this section, or who fails to furnish any information required by the inspector commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding one year or to both.

PART V – MISCELLANEOUS

31. General penalty

A person who commits an offence under this Act for which no penalty is specifically provided, is liable to a fine not exceeding two hundred thousand shillings or for a term not exceeding three months or to both.

32. Power to make rules

(1) The Cabinet Secretary may on the recommendation of the Council make rules for the better carrying out of this Act.

(2) Without prejudice to the generality of subsection (1), rules made under this section may make provision for or with respect to—

- (a) prescribing the forms to be used under this Act; prescribing the fees to be charged under this Act;

- (b) prescribing the manner and particulars of the signs and notice boards that are required to be displayed by licensees;
- (c) prescribing the manner in which scrap metal forfeited under this Act shall be disposed of; and
- (d) generally for the carrying out of any of the purposes of this Act.

33. Repeal of Cap. 503

The Scrap Metal Act, 1962 is repealed.

FIRST SCHEDULE

[Section 7 (1)]

PROVISIONS RELATING TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE COUNCIL

1. The Council shall meet on a quarterly basis or as may be required by the Cabinet Secretary.
2. A meeting of the Council shall be held on such date and at such time as the chairperson shall decide.
3. The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Council.
4. Unless the majority of the total membership of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.
5. The quorum for the conduct of business at a meeting of the Council shall be at least five members of the Council.
6. The chairperson shall preside at every meeting of the Council and in the absence of the chairperson at a meeting, the vice-chairperson shall preside and in the absence of both the chairperson

and the vice-chairperson, the members present shall elect one of their number to preside and who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.

7. Unless a unanimous decision is reached, a decision on any matter before the Council shall be by concurrence of a majority of all the members.

8. Subject to paragraph 5, no proceedings of the Council shall be invalid by reason only of a vacancy among the members thereof.

9. The Council shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.

10. Except as provided by this Schedule, the Council may regulate its own procedure.

11. A member of the Council shall not transact any business or trade with the Council