



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Scrap Metal Dealers Bill:
Departmental Briefing

2 February 2016

Mr B Forde: No. A draft came to us just this morning. I am here; others are elsewhere. We will sit down to look at the amendments thoroughly tomorrow morning. There may be points that we need to discuss with Mr Beggs to clarify some issues. We will also want to make sure that the Northern Ireland Environment Agency (NIEA) is fine with some things, just to ensure that we are not overlooking anything. However, I am very hopeful that, on Thursday or Friday, we will have draft amendments for you to consider. That is as quick as we can reasonably do it. We have not been able to look at them yet because they have just been written. They need to be gone through, line by line, to make sure that they are accurate, proper and all the rest of it. It will be Thursday/Friday when we supply you with the draft amendments.

We intend, first, to provide them to you. Secondly, if the Bill proceeds, we will put forward the amendments for Consideration Stage, but we would put a caveat on them. We have not given them complete scrutiny this week, because we are moving at a fast pace, so there may be slight tweaks to the amendments that do not impact at policy level but might make the wording clearer and avoid wrong effects. We will also keep Mr Beggs in the loop on that because, obviously, it is still his Bill as it moves to Consideration Stage. That is the best pace that we can manage. There are other issues completely outside of that on which the Committee wants input from us — the same people — by Friday. We are trying to move things on on a lot of fronts. That covers the main backdrop.

I will give the Committee a flavour of the detail of the clauses and so on. The key point is the agreement with Mr Beggs that we do not need a separate licensing system on top of the existing waste management licensing regime. We have consistently argued that point in our evidence. Mr Beggs will have a view on that, but, from our perspective, that would overcomplicate things and be potentially burdensome and unnecessary, in that some of the revised requirements of waste management licensing have tightened procedures considerably and will continue to do so. The immediate impact of that is that six of the 21 clauses in the original Bill will be removed in full, with reductions in scope of other provisions. We will go through these in detail. There are also a couple of provisions that, in discussion with Mr Beggs, we have agreed would not work properly as framed, but I will cover those in detail in a second or two.

The key elements of what Mr Beggs is trying to achieve are still intact in the Bill, as far as we can see, and I think that Mr Beggs agrees with that. I will quickly go through those. Under clause 8, anyone dealing in scrap metal will need to display the relevant waste management licence, as it will be. Under clause 9, waste operators and carriers will need to verify and record the identity and address of a person selling or involved in the scrap metal business. Under clause 11, a record must be kept of any of the financial transactions involved in that business.

Those are key issues for Mr Beggs, and, from our perspective and our view of the world — I cannot speak for the Committee — they are fine. Of course, there is also clause 10, and Mr Beggs had indicated in previous evidence to you that he was willing to make the provisions on financial transactions an enabling power. From our perspective, that, too, was very welcome. In the draft amendment for that, DOE will get not only the power but a duty to consult the Chief Constable, the Department of Justice and the industry itself when, further down the line, we make the regulations to do with the financial form and the nature of all of that.

The Chairperson (Ms Lo): Will you look across the border to see whether the Republic of Ireland is doing the same thing?

Mr B Forde: We are not doing the regulations now, but I expect that, when we put them forward, there will be statutory consultees in the framework that we set up. We will take a view across the piece of how things are working across the water and down South and come to a considered, proper consultation on it. From our perspective, that is welcome because we are not doing something in haste that may or may not work. There was also a sense that, in the Committee itself, there was a potential difficulty with that.

The Chairperson (Ms Lo): Will there be an amendment from Mr Beggs?

Mr B Forde: At this stage, the agreement is that we will bring forward the amendments at Consideration Stage, and Mr Beggs seems content with that.

The overall impact is the additional regulation: the display of licences, the verification of a person's ID, a record of financial transactions being kept and so on. From our perspective, none places a big regulatory burden on the agency, because it is not another licence on top of an existing licence. From

an operator perspective, the cost would be nil or very minimal once the signage was sorted out. Of course, each transaction in scrap metal dealing would have to be recorded, so there is an implication for an operator there, too. From our perspective, the key thing is that there is no actual cost from more licensing, so the agency would not have to recoup its costs, and that is a good outcome for us as well.

Is that OK? In general, that is what the agreement is about. I emphasise that this has been agreed with our Minister, so I am talking not only as an official but with that authority behind me.

The Chairperson (Ms Lo): OK. What about from clause 13 to the end — the right to enter and all that? Do you want to stop there and see —

Mr B Forde: Yes. That was an overview of how we got to where we are now.

Mr Milne: Thanks, Brendan, for your presentation. Will you clarify whether a fella who collects a bit of scrap has to have a licence to transport that metal to the scrap yard?

Mr B Forde: There are a couple of angles in that. Somebody who normally collects metal is already covered in waste management legislation as a waste carrier. They will have to carry a waste transfer note anyway, but that is someone whose normal business is to deal in waste and scrap metal. That scenario will still exist. When that person turns up at a site, if the ID requirements and all the rest are there, there is full traceability in that sense.

The Chairperson (Ms Lo): That would include plumbers.

Mr B Forde: Clause 16 relates to “Carrying on business as a scrap metal dealer”. I was going to go through that in a minute or two, but I should mention that we think that we have a way to handle that. The electrician or plumber who sells just odd bits, which is a natural part of his ordinary job, will be excluded from being a scrap metal dealer. That is the policy intention, and our draftsman has tried to construct something to make that possible.

The Chairperson (Ms Lo): How does all that fit into the voluntary code of conduct? Will this make it redundant?

Mr B Forde: The voluntary code is wider than the Department's environmental responsibilities. If we were going down the route of the voluntary code becoming mandated, it should have been coming in through the Department of Justice because there are duties and responsibilities for a lot of parties, including the police. I imagine that all this copper-fastens some of the elements in the voluntary code, but it would not be a direct replacement.

The Chairperson (Ms Lo): Will the voluntary code still be operational?

Mr B Forde: I imagine that, if this becomes law, the people who are responsible — principally, the police — will review it in the context of what the law now provides. Ultimately, how they proceed with that is a matter for them.

Is that OK on the overview? I am happy to go through the clauses and give you a feel for those.

The Chairperson (Ms Lo): It would be good if you could go through the clauses. You have provided a table, and members have a copy of that.

Mr B Forde: The first amendment that we will put forward is to remove the first six clauses. We have agreed with Mr Beggs that there is no need for a separate licensing system per se.

The Chairperson (Ms Lo): So Mr Beggs will not move those clauses, or will the clauses be deleted?

Mr B Forde: He has agreed with us. We might need to clarify the mechanics of how that would work as we move forward, but I do not think that I am misrepresenting his position. I had a chat with Mr Beggs before we came in here today, and it is in good faith that we say that we have an agreement between the parties — the Department and Mr Beggs — that the licensing provisions from clauses 1 to 6 will not proceed. DOE would put forward an amendment to remove clause 1, clause 2 and so on.

The Chairperson (Ms Lo): OK.

Mr B Forde: I will pick up on the closure of unlicensed sites at the end of the briefing because that relates to schedule 2, and there are slight complications. If you do not mind, I will move on.

The Department has agreed that the display of the licence is a useful tool, as your document says. There could be some tweaking of the wording to make it fit a bit better with waste management carriers legislation and waste management licensing legislation. If the Bill is brought in, we would also consider the implications for wider waste management operations.

The Chairperson (Ms Lo): It makes sense, Brendan.

Mr B Forde: It is a sensible initiative from our perspective too, and that is reflected in our commentary on clause 8.

Clause 9 relates to the verification of the supplier's ID. It is for the Committee and, ultimately, the Assembly, if the Bill proceeds, to take their view. From the DOE perspective, the ID requirement for scrap metal dealing is fine. There may be one or two tweaks, when the draftsman is looking at it, in respect of the address aspects. It is not that there is anything specifically wrong in how clause 9 is set out, but the address requirements are not in all the documents identified. The tweaking will be along the lines of, "These are the things that will confirm your ID and your address". There will also be a power for us in regulations to adjust those if the type of ID moves on in time.

The Chairperson (Ms Lo): OK.

Mr B Forde: Clause 10 relates to the form of financial transactions, which has been the subject of much debate in the Committee. Mr Beggs has indicated that he would be content with the Department being given the power. As I have outlined to you, we would specifically consult the Department of Justice, the Chief Constable and representatives of the industry. DOJ officials and police administrative staff support that. It is not particularly onerous.

The Chairperson (Ms Lo): Will you put a timescale on when you will do that?

Mr B Forde: We will cover that when we come to the commencement. It would be done by affirmative resolution, so the Assembly would have the opportunity to shape what is, perhaps, a difficult issue.

Clause 11 relates to the receipt of metal. The main issue about clause 11(1) to (6) is that they contain some features that are already part of waste management handling procedures. We will keep in only the new features. The rest are already in operation through councils' waste management licensing. That is only a technical tweak.

The Chairperson (Ms Lo): Are you going to change the definition of scrap metal? Will it still be:

"(i) copper;

(ii) aluminium;

(iii) any other prescribed metal"?

Mr B Forde: Where is that?

The Chairperson (Ms Lo): Clause 11(8).

Mr B Forde: I was covering only clause 11(1) to (6). I was just about to say that, beyond that, in clause 11(7) to (9), we have difficulties, and Mr Beggs has acknowledged that. This is something that came out of his consultation work in Northern Ireland, and it is a Northern Ireland thing that has been added to the GB legislation. There are some fundamental difficulties with it, not least at clause 11(7), which states:

"If the dealer receives any suspicious scrap metal".

There is a risk of big issues arising there. Under the Theft Act (Northern Ireland) 1969, you cannot handle or receive stolen goods if you know that they have been stolen — as the law says "knowingly". There is a fundamental issue with clause 11(7) to (9), and Mr Beggs has agreed with us that it is not sensible to introduce that in its current form. From our perspective, that will be the end of that part of it. Our draftsman wanted to look at whether, if some category of person was missed, they could be covered by reframing an aspect of that. However, I had a quick look this morning at what had just come in from the draftsman, and he does not think that he can fix it. There is the fundamental issue of receiving stolen goods, if you like. Having a procedure for how you handle stolen goods will not really work.

The Chairperson (Ms Lo): OK.

Mr B Forde: A lot of the material in clause 12 — "Disposal of metal" — is already in waste management licensing. After the draftsman's amendments, there is not much left of it, if anything, because it is all duplication of things that are already there. Mr Beggs's clause 12(3) states:

"Where the disposal is of metal which in total weighs in excess of 50 kilograms".

Mr Beggs is happy not to progress that aspect. There are practical difficulties in how you would do all that, particularly in small-scale operations. Clause 12 will either be introduced with very little in it or, ultimately, will not be required at all. We had a negotiation with Mr Beggs, and we will go back to him and go through anything that is slightly different from our original agreement.

The Chairperson (Ms Lo): So you are possibly keeping clauses 12(1) and (2) but not 12(3).

Mr B Forde: The trouble is that, with that clause and the waste transfer notes, all that material is recorded in any event, but we will clarify that in the amendments.

The Chairperson (Ms Lo): OK.

Mr B Forde: There is nothing at all wrong with the principle of supplementary records in clause 13. Clause 13(1)(a) will, potentially, be most of what is left of clause 13 because, when you move into the methods by which you keep records, there is an immediate danger of being dated. If you read clause 13(1)(b) as it is, for example, it states that people must keep information in "books with serially numbered pages" or by this and that. Given that there have been changes in technology in the last period and that there are now apps for this, that and the other, and there are all sorts of electronic ways to hold information — we are piloting an electronic duty of care (edoc) system for some improvements — it is not ideal to be very prescriptive in that clause. Clause 13(1)(a) reads:

"The information mentioned in [other parts] must be recorded —

in a manner which allows the information and the scrap metal to which it relates to be readily identified by reference to each other".

It keeps it open. The ultimate objective is that you should be able to tie in who landed with a piece of metal and have a financial transaction that you can associate with that. Those records should be kept properly, and there should be an audit trail, including where it then went. That should be done without being prescriptive about the actual record types that are in the legislation.

The Chairperson (Ms Lo): Would the transfer note cover all that?

Mr B Forde: At the minute, it does not cover verification that the ID had been used — a passport number, a driving licence number or whatever. None of that is that in place. That is one example.

I should draw your attention to something. You asked whether we can produce this by magic, if you like, by Thursday. Clause 13(6) refers to what the offence level should be. Given that we are reshaping the Bill entirely, we have not had time to examine the penalties for various aspects and how they relate to the waste management side of things in order to have proper consistency in how it is framed. We will specifically target that in our work in the next couple of days to ensure that all of it is proper and proportionate to the types of offences that people might commit in record-keeping, deliberately receiving material that they should not have and anything in between.

The Chairperson (Ms Lo): What is the difference between the original proposals and your new —

Mr B Forde: There may not be a difference, Chair, but all I am saying is that, because of the speed with which we are dealing with the Bill, we do not have it singularly in our focus yet. The Bill needs to be going in a direction that you think might work. Once you have done that, it is then easier to start to look at the bits and how they tie in penalties. I am not saying that anything is wrong with it at this stage — I hope that you do not take it that way — but it is just that we have not had the luxury of being able to examine it properly.

The Chairperson (Ms Lo): It may still be level 5?

Mr B Forde: Yes, it could be.

The only change to clause 14 would be that power would also be given to authorised officers of the Department. The current Bill gives power only to constables. It would be revised on that basis.

The Chairperson (Ms Lo): OK. You have argued before that your staff are scientists, not people who are equipped to look at financial transactions. Would those staff get training?

Mr B Forde: The way that we see this working in practice is that the Department's officers, when they visit a site, would check that the records were properly in play but would not routinely look at how a particular financial transaction was tied up with somebody who was known to the police or had previous history — whatever it might be. Given that the power is also given to a constable, it would be more likely to be on a practical basis if the police had reason to think that something was going on that was amiss or irregular. They would be the people who would put the resource into examining the financial transactions, and the role of the agency would be more about ensuring that the records are intact so that, if there was an issue, someone else could deal with it properly.

The Chairperson (Ms Lo): Would DOE staff or the new Department's NIEA staff go with the police to visit a site?

Mr B Forde: If there were reason to believe that something was going on, they would. That is normal practice. If the Department's authorised officer thought that there was something wrong with regard to waste management, the police have the physical powers of entry, but our authorised officers stand alongside them.

The Chairperson (Ms Lo): OK.

Mr B Forde: I do not think that we have anything to add on clause 15. It would remain. If we did make any change, it would be slight, and it is fine from our perspective.

Mr Milne mentioned clause 16. There are a couple of issues, and I will clarify our thinking. It is a wee bit different from when I was here on 21 January. Clause 16(2) states:

*"A person carries on business as a scrap metal dealer if the person —
carries on a business which consists"*

and it goes on from that. Our draftsman has advised — I am sure that our lawyer will confirm — that because it says "a business", that in itself will keep the councils out of it, if that is what you wish. I know that you had representations on that.

The Chairperson (Ms Lo): Yes.

Mr B Forde: Mr Milne mentioned — we and Mr Beggs are in agreement on this — that you do not want to penalise a small-scale plumber or electrician when part of his business is to offload some metal and get a few pounds back. That is covered in clause 16(3), and we think that we can change it. It states:

"For the purposes of subsection (2)(a), a person who manufactures"

— that is the crucial word —

"articles is not to be regarded as selling scrap metal".

What we are working on — the draftsman has a form of words, but I have not yet gone over it with him — is trying to replace the word "manufactures" with one that means that small-scale plumbers, electricians and so on, who, from time to time, would like to get some benefit from the odds and sods in their business, can legitimately do so without being hit with any onerous provisions in being classified as a scrap metal dealer. We think that that is solvable with better wording, and it would certainly meet the policy intent. Obviously, it is for the Committee to determine whether it agrees with that policy intent. From our perspective and that of Mr Beggs, that is definitely an area of agreement.

The Chairperson (Ms Lo): OK.

Mr Patterson: The word "manufactures" is critical. You need to define who can sell those things.

Mr B Forde: Exactly. Hopefully, we will cure that one.

The Chairperson (Ms Lo): The issue with local authorities is also a problem.

Mr B Forde: That is covered. We thought that there was another way to deal with it through clause 16(2)(a), which talks about:

"a business which consists wholly or partly in buying or selling".

If a council was not buying, we thought that, if we changed the word "or" to "and", it might have solved that. However, the very fact that it is about "a business" immediately excludes councils anyway, and we are content with that.

The Chairperson (Ms Lo): OK.

Mr B Forde: A couple of technical tweaks are needed to how clause 17 is set out, but I will not bother the Committee with that.

Clause 18 needs a bit of a rewrite. Some elements will be there, and there will be amendments to it because of changes elsewhere in the Bill. I want to flag up one thing on which we have not yet had a conversation with Mr Beggs. We think that something is needed in the body of the legislation, probably under current clause 18 — "Interpretation". There has been an issue in waste management licensing about who has breached the conditions and who can be prosecuted. You have the owners of the land, the owners of the business, site managers and all sorts of things. Notwithstanding the fact that we think that waste management licensing can cover some of those things, it is not shaped in a very clear way in waste management licensing. So, from our perspective, we are happy either to put a very specific amendment to an existing clause or to bring forward a brand-new clause that sets out that a duty for scrap metal dealing applies to the business owner, the landowner or the site manager. The decision on who will potentially be brought forward for prosecution by the police will depend on the circumstances of the breach. It is about clarity. We might need to add something that is not there at the minute.

The Chairperson (Ms Lo): I see that clause 18(5) includes "mobile collector".

Mr B Forde: That was in the original Bill but, as I clarified, hopefully —

The Chairperson (Ms Lo): So that will be deleted?

Mr B Forde: It will be out of the equation.

The Chairperson (Ms Lo): OK.

Mr B Forde: There will be other tweaks to that because of the way the rest of the Bill is being shaped.

Clause 19 — "Commencement" — states:

"expiration of 2 years from the day on which this Act receives Royal Assent if not in operation by that date."

We need to tighten up the meaning of that a wee bit. We would have been worried if it had said that, in two years' time, the Bill will come in as is and that we would have to live with it, even if it did not work or if we did not have other things in place. We are looking at the wording of that automatic two years. This was our original position, but, since we met Mr Beggs, our only concern on that relates to the provisions in relation to schedule 2 and clause 7, which is about the closure of unlicensed sites. We need to do a bit of work on that, and that will determine how we put forward the amendment. We will talk to Mr Beggs about that to get something to our equal satisfaction.

The Chairperson (Ms Lo): So the wording for the commencement date would be "as and when appropriate" or something like that.

Mr B Forde: We appreciate that it is not a good way to do it. It needs to be tied in to specific things, but it is potentially tied in to matters such as when the regulations will be in play for the finance side or the closure of unlicensed sites. The truth is that we need to put our minds to that a wee bit. We would have been more concerned if the whole Bill was going forward, because there seemed to be regulations spinning off forever. That is not the case now. We do not have our form of words for what that will be, but I appreciate exactly what you are saying. It cannot be never-ending, or it might never get there. I appreciate that. We want to come in with something that is proper and tied in to specifics.

The Chairperson (Ms Lo): Some sections can start two years after Royal Assent, but others —

Mr B Forde: There are various ways to deal with it.

The Chairperson (Ms Lo): Others can commence at the right time.

Mr B Forde: Even two years is less difficult in some ways, compared with when we started the process, because there was a lot more to it at that point.

The Chairperson (Ms Lo): OK.

Mr B Forde: I move now to clause 20. As it stands, the Department must:

"not later than 6 months after this Act receives Royal Assent"

start to do a review. We got agreement that we can extend that to "not later than 12 months", because we will not have data and experience of it, and we will want to wipe the brow after having gone through this before having to review it.

The Chairperson (Ms Lo): I understand that.

Mr B Forde: Schedule 2 relates to the closure of unlicensed sites. The issues for us are not so much to do with Mr Beggs's idea of what the Bill was; they are more to do with whether we could put in place additional benefits through the legislation — benefits like those identified in your document about stop notices and so on. I read the draftsman's view this morning. Our waste management licensing system is not conducive to setting up stop notices. Amongst other things, it would require a different power. We are likely to come up with an amendment to schedule 2. There is a lot of detail in schedule 2: details about complaints, about seven days for this and no more than six months after that, about appeals processes to courts, whereas we already have the Planning Appeals Commission. There are also time frames that are askew with our existing practice. At the minute, we do not have time to try to fix schedule 2 in an appropriate way. We will go back to Mr Beggs and propose that we are given the power to set the terms for the closure of unlicensed sites and all that follows in subsequent regulations. It is almost five pages long, and there is definitely conflict with existing practices.

Clause 13 states that records will be kept for a year; maybe it is also in the schedule. Waste management records need to be kept for two years, so we want to revert to the existing practice, where it is appropriate. Hopefully, I have covered that schedule properly. It will be there, but the Bill will set out what it must have. We will then produce regulations that do the nitty-gritty work in waste management.

The Chairperson (Ms Lo): That is very useful, Brendan, and it clarifies what the Department intends to do. I am glad that you are working in tandem with Mr Beggs. The Committee is waiting to see the amendments. With the agreement of members, we will probably schedule an additional meeting for next Tuesday. Will you have the amendments ready by then?

Mr B Forde: Unless something really left-field comes into play this week, we hope to have the amendments with you by Friday. That will allow you to look at the proper wording.

We are moving at a pace, and our Minister has not seen the amendments at this stage, but we have his agreement: Part of what we agreed with him was that, as long as we were not straying from the main policy intent, he is content for us to share the amendments with you. If the Bill proceeds towards Consideration Stage, we will work forward from this. There may or may not be slight tweaks, but the policy intent will be what I covered with you today.

The Chairperson (Ms Lo): Thank you very much; we appreciate it. Has anyone any questions?

Mr McElduff: I should have recorded that Cathal Boylan sends his apologies.

There are concerns about cash transactions, consultation with the industry —

The Chairperson (Ms Lo): That is included in the Bill.

Mr McElduff: — and some aspects of licensing. Will we look at those next Tuesday?

The Chairperson (Ms Lo): Yes. There are no more questions. With the agreement of the Committee, we hope to see you next Tuesday.

Mr B Forde: I am tempted to say that I look forward to it. *[Laughter.]*

The Chairperson (Ms Lo): We trust that you will bring us some really good amendments.

Mr B Forde: Thank you.

The Chairperson (Ms Lo): Are members content with Brendan's explanation so far?

Members indicated assent.