



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Scrap Metal Dealers Bill:
Departmental Briefing

10 December 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Mr Cathal Boylan
Mr Paul Girvan
Mr Alban Maginness
Mr Ian Milne
Mrs Sandra Overend
Mr George Robinson

Witnesses:

Ms Mairead Adams	Department of the Environment
Mr Brendan Forde	Department of the Environment
Ms Helen Lewis	Northern Ireland Environment Agency

The Chairperson (Ms Lo): I welcome Mr Brendan Forde, Ms Mairead Adams and Ms Helen Lewis, who are all from the DOE's environmental policy division. You are very welcome. I am losing my voice. Just to let everybody know, this is being recorded by Hansard. We have your written paper, so will you give us a brief presentation on it, please?

Mr Brendan Forde (Department of the Environment): Thanks very much for inviting us along to back up the written evidence with this oral session. We are a bit like you, in that we have been moving very quickly to get some collective views together and produce the paper, so I would like to qualify the paper in that regard.

To clarify who I am, I have worked in environmental policy division for a number of years now, but I have taken over as the head of our waste legislation team only very recently. I was involved in climate change and EU funding previously, so I have met some of you in those regards before. Mairead Adams is a long-standing member of staff who has been working in waste legislation for about nine years, so she has a good fundamental understanding of that. Helen has been working in the Northern Ireland Environment Agency for 15 years, so, again, hopefully, she will bring some operational perspectives to it. Maybe between the three of us, we can help a bit. You have the paper, as I said, and the annex table of the clause-by-clause analysis, comparing what is in the Bill with what is already in play in waste management licensing and so on.

To give an overview of the paper, it is set out in a number of regards. There are four bits to it. There is the need for the Bill, in a sense; the potential designated role indicated for the Northern Ireland Environment Agency and the scrap metal dealer licensing people; the Department's change agenda, which links into some of the issues that Mr Beggs has identified about timing, particularly; and then,

most importantly, the potential impact of the Bill on waste operators. The first few paragraphs — paragraphs 1 to 3 — cover that.

The need for the Bill is one of the fundamental areas of difficulty for the Department, in a sense. We also have to be mindful of the Department being involved in any sort of double regulation of people as well. In many senses, the Bill sets out measures in its licensing requirements that are already in place or are being put in place to tighten up some of the issues you were discussing in the previous item about waste infrastructure — the whole waste crime side of things and the impact of Mobuoy.

Paragraph 6 — I will not quote all the regulations in full — identifies the Controlled Waste and Duty of Care Regulations (Northern Ireland) 2013, which were to do with waste transfer notes. The Controlled Waste (Seizure of Property) Regulations (Northern Ireland) 2013 provide for the regulator to successfully prosecute people and seize property. This is a very relevant one as regards the nature of the people who operate businesses and making sure that they are sound in all regards. The Waste Management Licensing (Amendment) Regulations (Northern Ireland) 2015 update technical competence requirements for scrap metal dealers. All those are already in play.

Paragraph 7 indicates a couple of things that the Committee is probably familiar with in some respects. It outlines a number of amendment regulations. There is one on prescribed offences, which means that other criminal activities, such as fraud and theft, are part of the waste management licensing system and have to be taken into account in order to make sure that people involved in the businesses are proper persons in that context. There is another important set of amendment regulations that cover exemptions. These new regulations will come into play over the next six months. There is a lead period of about six months to allow operators to adjust to the new requirements. People who were previously exempt from licensing requirements are now being drawn into having to apply for a waste management licence and they are, obviously, suitably regulated on that basis.

I will not pick out all the paragraphs. Paragraph 9 goes to the heart of the Member's Bill. The explanatory and financial memorandum accompanying the Bill does not have an option to cover the improvements on the waste management licensing side. It does not seem to take any account of that. It considers two options; the where things are, or "do nothing" option, or bringing in the Bill. There is no real consideration of the programme of tightening waste management regulation.

The whole concept of a suitable person in the Scrap Metal Dealers Bill is replicated in that of a fit and proper person in the Waste Management Licensing (Amendment) Regulations (Northern Ireland) 2015. In summary, we have difficulties with dual regulation. It would seem that, through the Northern Ireland Environment Agency and the Department, all of this already seems to be in play.

I would just like to clarify what we say in paragraphs 10 and 11; some of this was done with great speed. I am happy to put it into the Hansard record to clarify an amendment, if need be, to these paragraphs. We realise that there is a split in the Bill between the licensing arrangement and the powers of entry and inspection and so on that fall to the police. Obviously, there may be perceived to be issues about that which, I am sure, the Committee will put its mind to at some point. We say that if, in the course of your considerations, this is more joined-up and falls back on the Northern Ireland Environment Agency, we would have issues about it, in terms of the suitability, skills and capabilities of people who are, essentially, scientists dealing with this type of work. Again, that is not how the Bill sits at the minute, but, certainly in our view, it would need tidying up from the perspective of somebody who licenses. We would not have powers of entry or anything like that in the way the Bill is currently set up.

I come to paragraph 12. I have heard evidence provided by others, including Assembly Research. I have to say that it was an excellent paper that Suzie Cave and company provided; it helped us, too, when we were trying to deal with the issue. From our perspective, the main point at paragraph 12 is that the issue has been dealt with in England, Wales and Scotland through separate licensing by local authorities and that legislation was put in place through the relevant justice departments. I will not state that any further; you are well aware of that.

Paragraph 13 deals with the Republic. Yes, there was a failed attempt to introduce similar legislation to that in England and Wales, particularly. There has also been an amendment to their Waste Management (Facility Permit and Registration) (Amendment) Regulations 2014. Basically, it introduces the concept of ID, which is obviously relevant. We do not have an ID system for our waste transfer and operations; we do not ID people in the same way. That would be a consideration for us, if this is progressed on the waste management side of things and if things could be improved, whilst we

are tightening belts across the board. We do not yet have an ID facility, but it is something that we would obviously be interested in pursuing, if need be.

I move on to the change agenda for us and to timing, I suppose. You heard about waste infrastructure and so on in the previous item you were discussing. It is a pretty testing time for the Environment Agency, particularly. I should say, on our behalf, that it affects the legislative programmes as well, particularly on the enforcement side of things. When we have been changing the legislation, that affects the operators and the regulator. The regulator needs to adjust. That is identified there. There is the issue of the better regulation agenda and, whilst the primary legislation you have been dealing with is very broad in scope, it is when it comes to the secondary aspects of this — the actual proposals, how they are consulted on and what the responses are — that we are not totally aware of where this will end up. The concern for us is that, if there is another licensing system added to the fray, it will complicate things.

You should also be aware that there are reviews going on of fees and charges in our current inspection regime. As the research paper you received from Assembly Research identified, we are not recovering our costs as it is on the waste management licensing side of things. Obviously, it would not be unreasonable to expect that this would be considered as the Department moves into more stringent budgetary times. Again, we are moving into the new Department of Agriculture, Environment and Rural Affairs (DAERA), and there are uncertainties about that. We have had the voluntary exit scheme. There is a particularly relevant aspect of that, which is that there is a review of official controls and inspection services under way at DARD and DOE. This is really looking at how we will join up properly in the new world. Of course, scrap metal dealer licensing is not part of that picture at the minute.

I move on to the impact on operators. We have been trying to tighten things up. There are a few background issues covered in paragraphs 15, 16 and 17, explaining the system. There is a permitting regime. The Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013 (PPC) require operators to have a permit, and I will talk about the numbers in a minute. In the middle, there are waste management licensing regulations. That is where you need a licence. There are also people who need to let themselves be known to us, but they actually register on a waste exemption basis, if you like, and it is those waste exemptions that have been tightened up.

I am aware that you have been trying to bottom out some figures. Hopefully, paragraph 18 will help you in that regard. Under the more heavy duty — if I can say that— PPC waste permit side of things, there are 24 operators. There are nearly 300 already in the waste management licensing system. There are 180 waste operators that are exempt, but 62 of those in the next period of time will be brought into the licensing system. In other words, we have tightened up on the scrap metal dealing side of things, and those operators will now have to apply for a licence with associated costs and inspection. Overall, you are talking about nearly 400 operators or businesses involved in this.

I will move on to the explanatory and financial memorandum at paragraph 21. It does not really address what the impacts on waste management operators will be, given that we are changing the playing field for them. There are additional costs, not only licensing costs, and Helen, I am sure, can give you details of those. People have to be technically competent, and there are costs associated with being trained to be technically competent. Those things will continue as well.

I will maybe hold fire here. This is the main gist. There are issues about the individual clauses that I am sure we can touch on today, if required, and pick up on at a future point as well. The one I did want to mention in this overview was clause 1, at paragraph 33. This deals with the differences in fine levels. Under article 4 offences, if you do not comply with the licensing arrangements for being a waste operator, you can attract a fine of around £50,000 and/or six months' imprisonment. In this legislation on scrap metal dealers, the level of fine is considerably lower. There are issues about how that sits with our regime, and we certainly would be a bit concerned. You can appreciate that, where someone, maybe of a dubious nature, was in the court system in real life, they might rely on the confusion about what it was that they felt they had to comply with and, hence, escape from a more serious pollution problem into one that is more to do with — well, not a less serious thing in some senses — a scrap metal offence, which may actually be less important. Overall, from our perspective, we certainly do not see this as being a specifically Department of the Environment one. We can understand Mr Beggs's view that in the interests of joined-up government you would like to make things as slick as possible and less problematic in how you regulate, but there are potential issues for us, including whether this organisation is responsible for it under EU law and so on. If you have dual regulation with different licences, it can get complicated.

The Chairperson (Ms Lo): Brendan, thank you very much. I hear your concerns. You are also saying that over the past two years you have put in a lot more measures to tighten permitting and —

Ms Mairead Adams (Department of the Environment): If you like, I can work through that now. I can put meat on the bones of what Brendan has just said.

Basically, we all know that people stealing metal has been a scourge, and nobody disputes the fact that something should be done to tackle it. That is not the issue. The issue for me, as an environmental legislator, is that, first and foremost, the purpose of the Scrap Metal Dealers Bill is to tackle crime — theft. The purpose of the legislation that I bring forward is to ensure that waste is treated and managed in such a way as to protect human health and the environment; and the two do not dovetail so well together. Environmental legislation should not really be used to deal with what is, ultimately, theft. For a start, the way the Bill is set out does not allow me, as a legislator, to dovetail the two together; it would not allow me to combine what it proposes with what waste laws already set out. In addition, the European Commission wants to avoid, as Brendan said, dual regulation. The waste framework directive, which is where I take all my guidance from, requires that home legislation be drafted in such a way as to avoid unnecessary overlaps and duplications of rules. The Bill, as proposed, would do just that. That was backed up by the Research and Information Service people; they picked that up too.

Most of the licensing proposals being put forward are already in place, such as holding a licence and recording the movement of scrap metal. I will call it "scrap metal" as opposed to "waste" in this instance. All of that is already provided for. My concerns are that, if we try to dovetail something that does not sit together, we could be challenged in the courts, and it could go through a judicial review. Europe's eye would be drawn our way, and we could incur infraction proceedings from Europe. Most of my legislation is done under section 2(2) of the European Communities Act 1972. This would not fall under that, but the primary legislation would do so.

We know that, overall, the proposal is to try to make things easier for people and let everybody do a one-stop-shop thing, but, unfortunately, the way the Bill sits means that that cannot happen; it would have to be separate. That does not apply just to the primary legislation side of it; it applies right down to the subordinate legislation that the Bill provides for. The Bill also provides for statutory guidance, so it would follow the path the whole way down. What you are really looking at here is the fact that two separate systems would need to be brought in and, if the Bill goes forward, they could not be joined together. To me, that is a fundamental flaw in the way it has been brought forward.

There are conflicts, as Brendan said. The main one being, of course, in the level of offences. I will point out, with a wee bit of clarity, what that means. After the agency or the police go in and catch people doing illegal activities, those people will get their barrister to stand up and go, "Oh, you're right. I was a bold boy. I didn't have a scrap metal dealer's licence. Therefore, I'm guilty of that", and they will get a £5,000 fine. However, if it goes through the waste channels, you are talking about, potentially, a £50,000 fine or even imprisonment. The scrap metal dealers proposal could undermine what we have at the minute.

The Chairperson (Ms Lo): We can amend that at Committee Stage.

Mr Girvan: How many have been prosecuted at that level, or have any been prosecuted at that level?

Ms Adams: Does the agency have the figures?

Ms Helen Lewis (Northern Ireland Environment Agency): I do not have the figures here, but I could find out for you.

Mr Girvan: I would appreciate that. We deal with this all the time: you hear about penalties, but then you find that they have never been applied.

The Chairperson (Ms Lo): You mention in your paper that a number of them have been prosecuted.

Ms Adams: There are lots of prosecutions, but it is whether that level of fine is actually applied by the judiciary.

Other things such as the terminology, definitions etc would need to be clarified because, as I say again, there is a clash between what has come out of the waste framework directive, which is what we have to legislate for. Another issue I have is that the Bill requires the DOE to license and the PSNI to inspect and investigate. The DOE has no power to do the latter; it does not give DOE the powers to do that.

The Chairperson (Ms Lo): You always have the power to inspect once someone holds a permit.

Ms Adams: Yes, but we only have powers to inspect and regulate what we have the vires for. Under the Bill, we do not have the vires to do that. The vires for that is handed to the police, so we cannot do it.

The Chairperson (Ms Lo): But we can again change that at Committee Stage.

Ms Adams: That is a potential change, but I think what you will find is that our PSNI and DOJ colleagues will say to you, "If we think that there is something illegal going on, we already have the powers to go in anyway". There is that element.

Appeals mechanisms differ; that is another fundamental difference. Under the proposed legislation, documents must be held for one year; it is already two years under ours. Those are some of the fundamental differences. A big issue for me is that little evidence has been produced to indicate that the full impacts of the Bill have been investigated. No evidence has been put forward to show the regulatory impact of the Bill on top of all the other regulation that takes place. If we introduce another licensing regime to an industry that we are already trying to hit hard to cut down on all the waste crime and illegal activity, it needs to be shown that this has been taken into account. The stuff that we have done in the past two years is evidence of that. None of it has been taken into account. I will go back to that.

On costs and the financial implications, I know that Suzie Cave and the research people introduced figures, but those were the figures at that stage. In looking at the Bill, I have not seen any evidence that this has been taken into account either. The synopsis stated that equality and human rights assessments had been carried out and that those were not impacted. However, there is no indication that rural proofing was done. This has the potential to impact on rural communities, particularly those around the border area. It could drive business across the border, so our local legal operators would lose money. Not only that, think about farmers and the way that a lot of them have had to diversify over recent years. Many have taken to holding waste as a transfer and making that part of their diversification and a means of supplementing their agricultural income. They would be affected by this. None of that seems to have been covered by any kind of impact assessment. That is some of the stuff that I have difficulties with.

Two years ago, when all the initial stuff kicked off in relation to scrap metal and it was a bigger issue than it is now — it has dropped due to prices, operations that have taken place already and so on — we started looking at what we could do environmentally to assist the police in what they were doing. A strategic partnership was set up, and Helen can speak about that in more detail. However, some of what we started to introduce and then, because of Mobuoy, pushed forward with a lot of vim and vigour has specific effects on scrap metal dealers. The thing to realise is that nearly every waste operator in Northern Ireland can accept scrap metal. Therefore, 90-odd % of our waste operators could be scrap metal dealers.

The proposals to amend exemptions will mean a big change. Exemption 45, in particular, affects scrap metal. What that means on the ground is that most of the people who deal in scrap metal will have to have full waste management licences in order to operate. An awful lot of them have been working through exemptions, which is basically a light-touch operation. However, exemptions will no longer be allowed for scrap metal operators, so they will all have a licence.

The Chairperson (Ms Lo): From when?

Ms Adams: Hopefully, within the next six months. We have consulted, and the synopsis has come to you. It is going through some final tweaking before the SL1 comes to the Committee.

Mr B Forde: There is a slight delay caused by the agency considering what would be a proper and reasonable time for the ongoing legitimate operators to adjust. We have had some legal advice on that. It looks like it will be six months, so you are talking about that being in play by the summer.

The Chairperson (Ms Lo): That can be done through the SL1. We do not need primary legislation.

Ms Adams: Yes, and it is all done.

Exemptions were previously used to disguise larger or even illegal operations. With scrap metal, that will not happen any more: all dealers will have to be licensed. It also means that, as fully licensed operators, they will have to adhere to licensed conditions instead of the general soft-touch rules with which they have had to comply. They will also have to comply with the fit and proper person test. Currently, exemptions do not have to comply with the fit and proper person test in waste management licensing. Dealers will have to be technically competent, which means that they will have to go for training. We recently brought in the regulations that said, "The exemption that applied to scrap metal dealers is now revoked. You all have to become technically competent. You all have to obtain certificates", just to make life easy. In addition, anybody applying for a waste licence will have to comply with our prescribed offences. The regulations were made last week and will become operational on 31 December. That broadened the list of offences to include financial and reputational offences etc, as well as environment-related offences. The regulations did not apply to them before but will from 31 December.

The cost of becoming a licensed operator will be higher. Instead of maybe £800 every three years, it will be thousands of pounds, and operators will have to apply every year. A lot of these things will affect them. The seizure regulations that we introduced in 2003 were to assist the police. Under those regulations, the police are given powers to stop vehicles to seize if they think that they are about to be — not even if they are being — used to transport illegal material etc. If our officers or the police think that that is about to happen, they can go in. In 2013, we also changed our duty of care legislation. We have become more stringent than across the water. We have prescribed the information that must be contained in waste transfer notes. In addition to saying that the waste transfer note has to have all this information, we have said that the note must be held with the waste to which it applies. We also gave powers to the police to tell those whom they stop that they want to see their waste licence.

The next thing that I intend to hit the Committee with in the near future is that we have moved to tighten our registration of carriers legislation. It is a bit all over the place at the minute because of the way in which it was introduced and then changed by way of a revised waste framework directive. We will try to consolidate our legislation on registered waste carriers. One proposal is that we intend them to have to display on their vehicle their registration as a carrier.

All of that has come in or is about to come in. It has not really been taken into account in the Bill as proposed. How much of this is now needed has changed because we have already tackled a lot of it, and there are some things that we could absorb, such as what they did down South in relation to the ID issue. That could be done without primary legislation. If there is an easier way to do some of this and avoid the duplication that could attract judicial review, which could attract Europe's eye, we would bring it forward.

Mr B Forde: We have taken up quite a lot of your time, and I am sure that you want to make points, too. There is one final point from Helen on the cost of a licence. Do you want to clarify, Helen, the difference between an exemption and moving to a licensed operation?

Ms Lewis: Certainly. The cost of an exemption from waste management licensing is in the low hundreds of pounds for a three-year period. Depending on what activities an operator wishes to carry out and how much waste he wishes to take in, it could be up to about £8,000. There is not only an application fee but yearly subsistence fees that were not attracted under the exemption scheme. If the Bill proposes an additional licensing scheme — you will notice from the research paper that the cost for that goes from about £70 to about £1,200 — that would be an additional burden on operators. From a regulatory point of view, the subsistence fee is there for us to carry out regular site inspections based on risk. If we go out, as scientific staff, to the sites to check for compliance with waste licensing conditions and notice something incorrect to do with the theft of metal, we will not have the power to do anything about it, as we currently have under waste licensing regulations. Under current waste legislation, we can take evidence, we carry warrant cards and we can prepare cases for court; under this Bill, we would not be able to do that. Officers could be placed in the dangerous situation of seeing something but being unable to do anything about it.

The Chairperson (Ms Lo): Thank you very much. That was very thorough, and you went through more than was in the paper that you sent us. You say that, in the last two years, you have put in a lot

of additional measures to address the issue. I know that legislation is always one step behind the problem; sometimes it is many years before we can gather ourselves up to introduce better legislation. There are some significant issues that you are talking about, mostly the principle of environmental protection and crime —

Ms Adams: And separate purposes.

The Chairperson (Ms Lo): That is the basic difference. The public would say to you — we have the utilities people here — that they do not care which Department this goes to. They want this problem to be addressed — eradicated. DOJ says that it does not want it because it is an environmental issue, and you say that it is contradictory to your remit or duty. How can we resolve this, do you think?

Mr B Forde: What we said about licensing requirements is probably similar to much of what Mr Beggs intended through the suitable person concept. We already have not only in play but to come into play sufficient rigour and more rigour, when you look at penalties. That is notwithstanding the point made by Mr Girvan about whether those are applied. We will need to investigate that properly for you. There is no reason to believe that something will be applied more through the Scrap Metal Dealers Bill than on the waste side, but we will certainly pursue that.

We are not saying only that it is not a natural home, in the sense that, elsewhere, these things are dealt with separately and are not in the environment brief. We are also saying that, in the Bill, it lies with us to do the licensing, but we already have waste management licensing that is more rigorous, potentially, than what is in the Bill.

We also have to be very careful about dual regulation. This authority, through the Northern Ireland Environment Agency, will be trying to regulate two different things for different purposes but with a different impact on the same operator. That, as Mairead said, does not comply with European law. It is more than just saying, "We do not want it": we have concerns with the fundamentals of the Bill and how it would work.

The Chairperson (Ms Lo): The public will say, "OK. You have had licensing and permits, but it is obvious that you have not done enough because metal worth millions of pounds has been stolen".

Mr B Forde: That is correct, yes.

The Chairperson (Ms Lo): People will say that they want a new stronger and more rigorous law.

Mr B Forde: The review programme that we have been covering today and have included in the paper is a direct result of the Mobuoy situation. That all came out of — I am sure that you are familiar with the terminology — the Chris Mills review.

The Chairperson (Ms Lo): It was a very good review.

Mr B Forde: That is the origin of it. Other origins may predate it, but they were all consolidated and came together through this approach: "We need to review the legislation that is in place". That is why there is the ongoing tightening in relation to the serious pollution incidents that have occurred.

Ms Adams: May I bounce in on the back of that? Much of what we have just introduced, including all the legislation, needs a bit of time to work. Not only that, it ties in with our colleagues in the PSNI, who have the voluntary code of practice, which none of us has mentioned today. There is tightening, along with the running of the voluntary code, and we feel that, in some ways, there is a timing issue. Give it a chance to work, and, if it's broke, fix it, but, if it ain't broke, leave it alone.

The Chairperson (Ms Lo): Then again, it seems that the voluntary code has not been complied with or that not many people have registered. That is why Roy Beggs is saying that there is a need for this legislation.

Mr B Forde: Mr Hetherington's evidence last week was interesting. He talked about the fact that the South had an ID requirement on the waste licensing side and about how they were very interested in encouraging the gardaí to have a voluntary code as well. There may or may not be issues in that — others are better placed to make a statement about it — but there is no doubt that, because of the bad

experiences with illegal waste, we are trying to tighten up the waste legislation for which we are responsible.

Mr Boylan: Thank you very much for your presentation. It is a pity that we did not receive it before Second Stage, to be honest with you.

Mr Girvan: You are dead right.

Mr Boylan: Mr Beggs has done a lot of work to introduce a Bill that genuinely addresses the problems. That said, we have a responsibility to scrutinise it properly. I agree with you that, from the start, this was driven by the rise in the market price of copper and so on, which led to everything else. That is not to say that it will not happen again in a couple of years' time. Ultimately, it is a theft issue. It is a crime, and it belongs in a different Department. I just wanted to make those initial comments.

Fair play to you, Mairead, for answering a lot of questions that I was going to ask about the Bill. Your presentation was comprehensive. I have a few concerns. One is the issue of exactly what in the Bill is new: what is in the Bill that is not already in place or that you plan to introduce?

Mr B Forde: The cashless transactions — the £100 limit. The regulator will speak from his perspective, but we are not into the financial transaction side, so that whole section would not have anything to do with DOE, as far as we can see.

Mr Boylan: That is fine. I have written down the points and am trying to tease it out.

Mr B Forde: We would not record waste transfer notes or anything like that.

Mr Boylan: ID and cash are the two issues in the Bill.

Ms Adams: I can bring the ID in under subordinate legislation.

Mr Boylan: I will come to that in a minute. The point about cash transactions, which I raised in the Chamber and at Committee last week, is that I know a lot of electricians and plumbers who collect a bit of scrap metal on-site. That is not stealing. They get a few pounds for it, and that is grand. Now, however, they will have to use ID. The jury is still out on ID, but, if it goes that way, we could live with it. The issue is that, in border constituencies, the problem will simply move two miles down the road, and the only people who will suffer are those in the business. We have a responsibility to protect and grow business, so I have major concerns about that. The alternative is for us to amend the Bill to make the cash value higher, and that is not our role. The Chair asked earlier about amending the Bill. Our job is to scrutinise and, if need be, as a last resort, amend it, but it is not our job to amend the Bill as a Committee. Each Committee member can table an amendment, and that is grand. If this proposal goes forward, I will have to look at a higher cash value to mitigate the problems that businesses would be hit with. I would have concerns about that.

Mr B Forde: The Department does not have a view on the £100 at this stage.

Mr Boylan: I understand that 100%, but part of Mairead's contribution was about primary legislation and the subsequent subordinate legislation. My point is that we would have to get into that process. We talked about plumbers and electricians — we call them "sparks" down our way — and we need to take account of the impact that it would have on them. Those people are regulars at most of the scrap dealers we know. The Bill specifies £100 a month, and I definitely have issues with that. That is all that is new — the ID issue and the cash issue.

Mr B Forde: Yes.

Mr Boylan: I want to move on to what you are going to introduce. You talked about licensing and increased fees, but businesses struggle enough at the moment, and I have concerns about that. The new things will be a cost to them. Up to now, the voluntary code has been good enough for some of the people I have talked to, and we can tighten it. Maybe ID is an issue, and it could be a way forward, but surely you could do that under existing licensing regulations.

Ms Adams: Do you mean bringing in the ID requirements? I could do that under subordinate legislation as part of licence conditions. That part could be addressed.

Mr Boylan: I have a final question, Chair. I know that other members are looking to get in. I want to ask about the percentage of theft in the whole scrap metal industry: what are we looking at? Do you have any figures on what you were talking about earlier? Like I said, it is a DOJ issue.

Ms Adams: I was going to say that, under the voluntary code, the police were taking stats on that. We do not have the stats.

Mr Boylan: No problem.

Mr Girvan: Thank you for your very helpful presentation. I agree that had this presentation been made a few weeks ago, we might be in a different position. The Bill should not be with this Committee, because it deals with theft. I am not necessarily a believer in creating more legislation. Guidance from and regulation by the Department might be the way to move forward to ensure that we deal with other aspects and that, from a justice point of view, more stringent measures are taken against those found to have been breaking the law by stealing and trying to offload material.

How long would it take to introduce some of the changes that, you believe, would be helpful to the industry? There are people in the industry who want openness and transparency and want to ensure that they are running a business that does not get a bad name. We have to encourage them rather than putting more red tape in their way and creating more difficulty. You have to understand that those who want to break the law will break the law. How do you make the penalties high enough and sufficiently rigorous to ensure that they do not?

Ms Adams: That does not stand with us alone. The big issue for us is bringing the judiciary along and trying to educate them, for want of a better word — Helen might want to come in on this — in having a punishment that fits the crime. Our existing legislation allows for fines of up to £50,000 or whatever, yet it is not being applied. It is partly about bringing them along and educating them.

Mr Girvan: There was a voluntary scheme put forward for registration and record-keeping —

Ms Adams: Yes, and ID, which is part of the voluntary code.

Mr Girvan: The word "voluntary" does not lie too easily with me. There should be a regulatory requirement for those measures to be in place in the industry. I appreciate that it is included in the Bill, but I do not think that you need a Bill to do that. If you went along the subordinate legislation route, that might be more helpful. How would that impact? I think that record-keeping is key to ensuring that stock is held for a certain period. Then, if there were theft, the stock would still be in the system to be identified. We could go back to whoever supplied it within a week, or whatever the time period might be that the stock has to be held. Can that all be dealt with by regulation?

Ms Adams: The short answer is yes. What I will say is that something that would need to be considered is that — and again, Helen might wish to touch on this — under waste management licensing conditions we can set certain things to protect the environment and human health etc. If holding times etc were to be introduced, then, on paper, it is possible for that to happen by way of a set of regulations introducing a change to conditions. OK? Now, on the ground, a lot of small operators who would be asked to hold things separately may not have the capacity to do so for any length of time. You will find that, basically, they will say, "Do you know what? There is no point setting this to the side." They will just mix it in with other stuff. Would that serve the purpose? I do not think it would. Logistically, on the ground, for small waste operators to hold other stuff separate from waste, especially when it has come in with everything else — you are talking about segregating, or holding to the side, etc — is problematic to say the least. Helen?

Ms Lewis: There are potential health and safety implications, as well, in holding large amounts of waste in an area that is, maybe, not appropriate. There are possible planning implications. It would certainly be difficult for some operators to be able to do that.

Mr Girvan: That is an area that needs some focus if we are to press ahead with the Bill, because from that point of view it will create problems and difficulties.

Ms Adams: You will probably find that it will force it underground rather than deal with it.

The Chairperson (Ms Lo): Roy Beggs's Bill is, more or less, copied from England and Wales. How do they do it there? I am talking about the holding and the ID. They are totally cashless there now, I understand. We have the flexibility of cash transactions up to £100; cash transactions over there are banned totally.

Ms Adams: Scotland's is not commenced yet. This regime was brought in in 1964, before we were in the EU and had all the EU stuff etc. This regime was brought in for scrap metal dealers, so they have been applying it throughout since 1964. They have amended it and brought in the changes etc in 2003, but that was an established system that was already in place and served a different purpose from what I am engaged in on a day-to-day basis, which is the management of waste. Because that system was already there, it took away some of the issues that we have with dual regulation. It was already there for a set purpose, brought in by the Home Office — the judiciary side of the house if you like — and implemented by local authorities, which have licensing sections, for want of a better term, who look after bar licences, fireworks licences etc. All those different licences are under the auspices of local authorities. They are the people who look after this over there and were already established.

What we are trying to do here is bring something in and tie it in, understandably, to better regulation, and not just bombard people with having Tom, Dick, Harry and Susan going out and inspecting them and bringing in different stuff. We do not have the flexibility of saying, "OK, the waste stuff has a separate purpose, and we are keeping it separate for European transposition records etc". This was already there. What we are trying to do is to put a new pair of shoes on old feet. Ours is back to front from theirs across the way, which is why they are able to run the two things. However, again, they are divorced from each other. They are done by the local authorities and the Home Office or the Justice Directorate in Scotland. That is set aside. They are not trying to do it in the same way as proposed here. That is where we have an issue.

Some of these issues do not dovetail. We have talked about the cashless side of things. As I say, the Bill, as it sits, does not actually allow DOE people to go in and investigate anyway. However, even if that were to change to allow it to happen, our people are scientists who go out to make sure that the ground is banded, that the concrete surface is impermeable, and that the environment is protected etc. That is what they are trained to do; it is what they did in university. If they were to go in and try to look at somebody's cash records, how would they know what to look for or find a discrepancy? It is a totally different skill set and would require a totally different group of people that we are not resourced for at the minute. Therefore, it is hard to marry the two together, which is why we feel that this does not sit with us.

The Chairperson (Ms Lo): Would scientists want to do that? They are trained to do environmental work.

Ms Adams: I know that people go out to rural locations especially. Take an agricultural place where the guy has diversified: you will have an agricultural inspector and an environmental inspector going out. In a lot of ways, that is fine, and it is enough; it is needed already. However, you are talking about a third party going out because neither the agricultural inspector nor the environmental inspector has the wherewithal or the skill set to look at the cashless stuff. You may say, "Why can't the one guy do the whole thing?". However, would you eat a steak, sat on your table, that one of our scientists had looked at and said, "Aye, that cow looks OK to go into the food chain"? Different skills are needed for the different operations.

The Chairperson (Ms Lo): Sorry, Paul.

Mr Girvan: No, I am all right.

Mr Boylan: Comprehensive.

The Chairperson (Ms Lo): You are OK; you are finished.

Mr Girvan: I am fine. It just makes me think that, although we are legislating, we should look at doing something slightly different. I appreciate that we cannot just lift it and cut and paste because it is not quite the same.

Mr Boylan: I agree. Make sure you know where you get your steaks next.

Mr Milne: Wait until the site meeting ends here.

Thanks very much for your presentation. I have listened intently to the conversation. Roy's Bill has been in the system for maybe a couple of years. I am asking myself, "Are you reacting to Roy's Bill by undermining it, and by saying that you can do all this without a Bill?"

Ms Adams: No.

Mr Milne: You could say that, because the stuff you suggest that you have introduced, and will introduce, has maybe been taken directly from the Bill. So, it could be suggested that you have reacted to the Bill coming towards you by undermining the position of putting a Bill in place in the first place. It is only a thought.

For my part, I think that the Bill would leave a lot of problems for the industry here in the North. From the little we know about the operation in England and Scotland, it seems that the operation moved to Scotland after the legislation was introduced in England. Am I right in saying that? Have you any statistics or facts on the damage that was done to the industry in England in the aftermath of the legislation being introduced there? It says there that the thieves moved their operation to Scotland.

Mr B Forde: We are not in the best position to answer that type of question. Some of the best information we have seen is in the Assembly research paper. Our inability to answer that question tells you something, too. Our organisation, as a whole, has not been dealing with the crime of scrap metal theft, so we have no sense of it. We have had conversations with Roy Beggs going back a couple of years, as you said, Mr Milne. What was always put in play was the fact that we needed to tighten up the waste side of things and the licensing scheme, because of all the issues that we have talked about previously with illegal sites. I suppose, from our perspective, it was a bit of a surprise to find that the Bill actually came at us at the end of the day despite those conversations.

Mr Milne: That is fair enough. The last point I want to make is to do with the licence. I agree with Cathal and think that the other speakers also agree that increasing a licence fee to £8,000, in this day and age, seems very harsh and extreme.

Ms Lewis: It is an additional cost burden that, I think, cannot really be justified.

Mr Milne: After all, thieves work in a network, and we do not want to persecute people who are trying to make a legitimate living.

Ms Adams: Metal theft is recognised as organised crime.

Mr Milne: Yes. Therefore, you are only targeting the legitimate companies.

Ms Lewis: I am sure that the thieves do not really have due regard for legislation or for regulators so — *[Laughter.]*

The Chairperson (Ms Lo): We hear what you say. Unfortunately, this has now landed with the Committee, so we have to go through it. We will talk more with you during the informal and formal clause-by-clause scrutiny and see what we can do.

Mr B Forde: Yes. We are happy to do that. Thank you.

The Chairperson (Ms Lo): OK. Thank you.