

FROM THE OFFICE OF THE JUSTICE MINISTER



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Ciara McKay  
Committee Clerk  
Committee for the Environment  
Northern Ireland Assembly  
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9 December 2015

Dear Ciara,

**SCRAP METAL DEALERS BILL – DEPARTMENTAL RESPONSE TO THE ENVIRONMENT COMMITTEE**

You will be aware that the Environment Committee wrote to the Department of Justice requesting the submission of written evidence on the proposed Scrap Metal Dealers Bill by 11 December.

I understand that Departmental Officials will also be in attendance on 15 December to provide oral evidence to the Committee. We have already provided the names of officials who are likely to be in attendance at the Committee and we will confirm these details shortly.

The Departmental response to the Committee's call for evidence has been considered and endorsed by the Minister of Justice and is enclosed.

**TIM LOGAN**  
**DALO**  
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## **Scrap Metal Dealers Bill**

### **Part 1**

#### **DOJ General Comment on the Scrap Metal Dealers Bill**

The Department is aware that metal theft has been a significant challenge for enforcement agencies both here in Northern Ireland and wider afield. As the recent Assembly Research paper [NIAR 651-2015] highlights there have been a number of estimates placing the cost of metal theft to the UK Economy between £220m to £770m.

It is clear that its impact often goes beyond the financial loss suffered by victims and there can be very real and often tragic consequences as a result of this type of acquisitive crime.

The trend in metal theft has been linked to the price of metal and is considered to be the principal driver for the significant rise in the volume of thefts between 2009 and 2012. The number of burglary, robbery and theft offences where metal has been stolen has fallen every year since 2011/12. The most recent figures (March 2015) has shown a decrease of almost 50% on the previous twelve months.

Whilst it has no locus over the operational practices or regulation of the waste management industry, the Department of Justice has always supported a collaborative response to taking action to reduce metal theft and help eradicate or reduce outlets for stolen metal. The introduction of the Voluntary Code in September 2012 was delivered alongside a number of other targeted interventions by the PSNI in partnership with colleagues from the Northern Ireland Environment Agency (NIEA) which included crime prevention advice to businesses, an awareness raising campaign, alongside enforcement action against illegal sites.

A Home Office assessment, in January 2015 explored a similar package of interventions in England, Wales and Scotland aimed at targeting metal theft which

concluded that they did drive a reduction in offences over and above the effect of the fall in metal prices and the other factors driving trends in acquisitive crime.

Whilst the Department is not aware of any similar evaluation having been carried out in Northern Ireland, it is highly probable that interventions such as the Voluntary Code, alongside awareness raising campaigns and other interventions outlined above, have been a contributory factor in significantly reducing the level of this type of acquisitive crime.

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The Department notes that the proposed Bill is largely reflective of the provisions contained within the Scrap Metal Dealers (SMD) Act 2013 with a number of variations proposed in response to the consultation process undertaken by Mr Beggs.

There are also some departures from the SMD Act 2013 which the Committee may wish to consider. Many of which are also highlighted in the Assembly Research Paper (NIAR 651-2015).

In particular, provision for a Register of Licences is not included within the proposed Bill. Whilst the issuing Department would maintain such a list, provision was made in England and Wales for such a register to be open to the public. The Department considers that such a provision would assist the public in ensuring that a dealer operating in their area was licensed appropriately and may be particularly helpful in the case of mobile collectors.

Moreover, whilst Part 2 of the proposed Bill is entitled "Conduct of Business" there appears to be scope for an additional part to be entitled "Supplementary" from Clause 16 onwards to provide a clearer distinction between the conduct of business provisions and others such as interpretation and commencement. This amendment would reflect the structure within the SMD Act 13.

Improving the traceability of disposed metal is an important element to tackling this type of crime and it should be noted that the £100 limit for cash transactions is not reflective of the provision in England and Wales, or Scotland. The PSNI have

indicated that this provision is too wide, open to abuse and would be very difficult to police. The PSNI support a complete ban on cash transactions and have also expressed their concern about dealers who also operate an on site bureau de change.

The PSNI suggest that forthcoming changes to exemptions under paragraphs 12 and 45 of the Waste Management Licensing Regulations (Northern Ireland) 2003 do not go far enough and will continue to allow smaller dealers to operate in the absence of planning permission or environmental impact report and consequently the Department of Environment are not required to prepare a related feasibility study and there is no requirement for an effluent discharge facility.

Whilst the DOE recently consulted on these exemption amendments, the PSNI believe that if the current legislation is not amended that an opportunity to protect the environment would be missed. They also believe the removal of these particular exemptions would create a level playing field for all licensed scrap metal dealers by preventing those from continuing to abuse the current exemptions process.

The PSNI also suggests that powers of arrest in relation to illegal activities at licensed sites, un-licensed sites and illegal land fill sites should mirror that of other jurisdictions such as Holland, which allow their Environmental Agency to carry out arrests.

The PSNI also note that the powers to enter and inspect within the Bill are placed solely with them. Building on the partnership approach to date between the PSNI and NIEA in combating these types of crimes, it may be more appropriate for the provisions to be expanded to include authorised officers from the department administering the scheme or related agency.

In DOJ's response to the original consultation we supported the proposal that PSNI and DOE would have authority to carry out inspections.

The Bill contains a number of offences punishable on summary conviction and punishable by a fine only. All of the offences and penalties are similar to those contained in the Scrap Metal Dealers Act 2013 as enacted which relates to England

and Wales. The Department is generally content with the offences and penalties as they are consistent with the current offences and penalties framework in Northern Ireland.

There are two main comments in relation to the level 5 offence in clause 14(12) and the narrow range of the false statement offence in Schedule 1 paragraph 5. These are detailed in Section 2 below. We have also drawn attention to provisions relating to offences by bodies corporate and the right to enter and inspect premises.

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It would also be important to note that there may be a need for engagement with the Office of the Lord Chief Justice in the event that any amendments to existing court rules are required.

## **Section 2 – DOJ Specific comment on clauses**

### **Clause 1(2)**

Content with the offence and level 5 fine on summary conviction

### **Clause 4(4)**

Should start “Section 3(2) to (5)...”

### **Clause 6(6)**

Content with the offence and level 3 fine on summary conviction

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### **Clause 8(4)**

Should read “... referred to in subsection (3) ...”.

### **Clause 8(5)**

Content with the offence and level 3 fine on summary conviction

### **Clause 9(5)**

Content with the offence and level 3 fine on summary conviction

### **Clause 9(8)**

Content with the offence and level 3 fine on summary conviction

### **Clause 10(3)**

Content with the offence and level 5 fine on summary conviction

### **Clause 13(4)**

Content with the offence and level 5 fine on summary conviction

### **Clause 14**

Enforcement in the Bill is solely carried out by a constable. Section 16 of the Scrap Metal Dealers Act 2013 refers to “a constable or an officer of the local authority”.

It may be more appropriate for authorised officers, either from DOE or a district council, to carry out the enforcement actions alongside the PSNI if they are administering the scheme.

In DOJ’s response to the original consultation we supported the proposal that PSNI and DOE would have authority to carry out inspections.

### **Clause 14(12)**

In the Scrap Metal Dealers Act 2013 this offence is punishable by a Level 3 fine on summary conviction. This would seem a more appropriate level of fine for obstructing a right of inspection or failing to produce a record but ultimately this is a policy decision.

### **Clause 15**

Section 20 of the Interpretation (Northern Ireland) Act 1954 applies in cases where offences are committed by bodies corporate.

It limits enforcement to those offences committed by a body corporate the liability of whose members is limited. Will all prosecutions under this Bill be against bodies corporate the liability of whose members are limited, or should an amendment be made to dis-apply section 20 of the Interpretation Act in this case?

### **Schedule 1 paragraph 3 (5)**

Content with the offence and level 3 fine on summary conviction

### **Schedule 1 paragraph 5 –**

Content with the offence and level 3 fine on summary conviction. Although it is the same as the England and Wales offence, it only applies to the narrow circumstances in Schedule 1 paragraph 4(1) in relation to extra information required. It does not apply for general application information or for renewal or variation of a licence.

### **Schedule 1 paragraph 9**

This is a civil matter under Part 8 of the Magistrates' Courts (NI) Order 1981 and consistent with other similar appeals against licensing decisions.

### **Schedule 2 paragraph 9(1)**

Content with the offence and level 5 fine on summary conviction.