

Draft Agreement between Mr Beggs MLA and DOE Officials at meeting on 27th January 2016

Clause	Subject	Issues and suggested Amended Position
1-6	SMD Licensing	It was agreed to remove Clauses 1-6 and Schedule 1 and that the Department would include specific registration/licensing requirements by way of the WML regime.
7	Closure of unlicensed sites	Remains unchanged – though see comment below for Schedule 2
8	Display of Licence	The Department agreed that this was a useful tool and should remain, subject to technical amendment. The Department will also consider extending this to the wider WML operations, particularly for waste carriers as part of the planned consolidation of waste carriers legislation.
9	Verification of supplier's identity	Again, subject to technical amendments, this Clause should remain and be extended to include acceptable means of proof of address where required.
10	Offence of buying scrap metal for cash etc.	Mr Beggs indicated that he was content for Clause 10 to be amended to give the Department a broad power to make Regulations governing the process etc of SMD financial transactions. There would be a requirement for the Department to consult specifically with DOJ, the Chief Constable and the Industry, prior to such Regulations being introduced. These Regulations would be subject to affirmative resolution.
11	Receipt of metal	Clause 11(1)-(6) will be amended to remove those areas where duplication occurs with the Duty of Care regime (ie the completion and retention of Waste Transfer Notes (WTNs)). Amendment will include reference the Irish equivalent of the Vehicle Excise and Registration Act 1994. Clause 11(7)-(9) – the issues around how this sits with the Theft Act and if anyone accepting suspicious scrap metal, even for the purpose of notifying it to the PSNI could be charged with handling stolen goods was discussed. The draftsman undertook to consider how to introduce a requirement that would allow such notification to the PSNI without jeopardising compliance with existing criminal law (“a category in the middle”).
12	Disposal of metal	Again a number of the requirements of this Clause are already covered by WTNs and will be removed from

		<p>the Bill, including the 50kg de-minimis for scrap metal. The Department agreed to ensure that any provisions of the Bill that are not already covered by WML will be brought in under WML if possible. Those areas, for which vires is not in place under WML, will be included in the revised Bill. Specifically in relation to the de-minimis issue, Mr Beggs was keen to ensure that any requirements would be proportionate. The Department/NIEA assured him that it would use its discretion in relation to small exchanges of scrap metal, eg someone purchasing a used wing mirror to replace a broken one.</p>
13	Records: Supplementary	<p>Remove areas already covered under WML and ensure that consistency with WML is applied in relation to the retention time for records and levels of fines etc (the latter will need to be looked at across the board when a more definite amended Bill is available).</p>
14	Right to enter and inspect	<p>“authorised officers of the Department” is to be included where appropriate throughout this Clause.</p>
15	Offences by corporate bodies	<p>Remains unchanged.</p>
16	“Carrying on business as a scrap metal dealer” and “scrap metal”	<p>Clause 16 is to remain broadly unchanged, however, there are issues around the definition of SMD as someone who buys OR sells scrap metal. Use of ‘or’ broadens those captured by the requirements but also captures those who are involved in very small scale transactions which is over-burdensome. It was agreed that local authorities were not businesses and were exempt. However, it captures the plumbers, traders etc. It was suggested that Clause 16(3) should be amended to reflect some form of exemption for such people. The draftsman is to look at how to re-word Clause 16 to reflect these issues.</p> <p>Note to draftsman – the term ‘by-product’ is used, we need to ensure that this complies with Article 5 of the Waste Framework Directive.</p>
17	Orders and Regulations	<p>Clause 17(1) remains but with the words ‘order or’ removed.</p> <p>Clause 17(2)(a) and (b) refer only to Clause 10 and will, therefore, be reflected in Clause 10.</p> <p>Clause 17(2)(c) relates to commencement orders which are not subject to resolution – this sub-clause should be removed.</p>
18	Interpretation	<p>Will be amended as appropriate based on the amended Bill.</p>

19	Commencement	<p>Will need to be amended to reflect the changes to the Bill (numbering etc).</p> <p>Q – to Draftsman- do we need an ‘or’ after 19(1)(a)?</p> <p>19(1)(b) provides that if commencement of all Articles has not already taken place, then commencement is automatic 2 years after the Bill receiving Royal Assent. The only concern the Department would have with this is the commencement of Schedule 2 – Closure of unlicensed sites. The Department would like to be able to extend the use of ‘Stop Notices’ to the wider WM sector. However, it may not be possible to do this by way of the Bill which would require separate WML legislation. As such, the 2 year commencement period imposed by way of 19(1)(b) may be restrictive for the Department. See comment at Schedule 2.</p>
20	Review of the implementation of this Act	To be amended to ‘not later than 12 months’ in paragraph (a) and (b) to ‘periodically’ thereafter.
21	Short title	N/A
	Schedule 2 – Closure of unlicensed sites	<p>THIS MAY REQUIRE FURTHER DISCUSSION!</p> <p>The Department is of the opinion that Schedule 2 should be extended to allow further actions. It would be useful for the Bill to include a power to allow an Authorised Officer to issue a prohibition notice to require anyone illegally dealing in scrap metal, to stop an activity immediately (effectively a STOP Notice). The discussion with Mr Beggs included that this should also empower the Authorised Officer to close the site, i.e. locking the gates.</p> <p>The offence of ‘contravention of the terms of a prohibition notice’ should be created. The penalties for such offences should be applied proportionally with larger offences carrying the maximum penalty already provided for under the Waste and Contaminated Land (Northern Ireland) Order 1997 for Article 4 offences (unlimited fine and up to 5 years imprisonment when sentencing is carried out by a Crown Court). For smaller, more innocuous offences fixed penalty notices such as those provided for by way of Article 4A of the 1997 Order could be included in these proposals.</p> <p>It should be noted that the Department is considering introducing similar powers for all waste offences. However, no timescale is currently available for this work to be undertaken. The Department is concerned</p>

		<p>that it is not seen to apply the law unfairly or more rigorously on any particular section of the waste management industry. Accordingly, it would be keen to try to co-ordinate the commencement of Clause 7 (which brings Schedule 2 into effect) with the introduction of these penalties across the board. To this end, the time limit placed on the coming into operation of the Bill/Act would be very restrictive on the Department.</p>
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