



Department of the  
**Environment**

[www.doeni.gov.uk](http://www.doeni.gov.uk)

DOE Private Office  
8<sup>th</sup> Floor  
Goodwood House  
44-58 May Street  
Town Parks  
Belfast  
BT1 4NN

Ciara McKay  
Clerk to the Environment Committee  
Northern Ireland Assembly  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Telephone: 028 9025 6022

Email: [Private.office@doeni.gov.uk](mailto:Private.office@doeni.gov.uk)

Your reference:

Our reference:

Date:

Dear Ciara

**Scrap Metal Dealers Bill (Private Member's Bill) – Call for evidence**

The Environment Committee has called for evidence from the Department on the Private Member's Bill on Scrap Metal Dealers, which was introduced in the Assembly by Roy Beggs MLA on 19<sup>th</sup> October.

The attached paper (and associated Annexes) sets out the Department's views on the Bill.

If you require any further information, please contact me directly.

Yours sincerely,

Greg Cunningham  
DALO  
[by e-mail]

## **Call for Evidence on Scrap Metal Dealers Bill: Response by Department of the Environment (DOE)**

### **Introduction**

1. This is the response of the Department of the Environment (DOE) to the call for evidence to the Scrap Metal Dealers Bill, made by the Environment Committee on 20 November 2015. The response is in two parts. The first part provides the Department's perspective on:

- the need for the Bill;
- the potential role designated by the Bill for the Northern Ireland Environment Agency (NIEA) as scrap metal dealer regulators. This includes comment on its existing remit to regulate waste operations and thereby protect the environment and human health and how scrap metal dealers are regulated throughout the rest of the UK and Ireland;
- the Department's change agenda particularly in relation to Better Regulation and the impact of central government re-structuring; and
- the potential impact of the Bill on waste operators.

2. The second part of the response considers the Bill on a clause by clause basis in terms of its coherence, effectiveness and whether there are already existing provisions within waste regulation.

3. The Committee should note that the Department has engaged with Mr Roy Beggs MLA on this issue over a number of years. Both previous Minister Attwood and current Minister Durkan have met with him. This Department has always maintained that it is not the most appropriate to bring forward the legislation, or, more importantly at this stage, to be the regulating authority. The Minister's latest correspondence with Roy Beggs MLA on 22 October 2015 offered to meet with him and set out waste legislative developments that are relevant.

## **Part 1 Response to Bill – Need for Bill, NIEA role, DOE Change Agenda and Impact on Waste Operators**

### **Need for Bill**

4. The Department fully supports the need to address metal theft crime. It clearly has negative impacts on local communities including theft from essential utilities, the damage to our built heritage and disruption to services.

5. That said a key point for the Department is whether in fact a new Bill is needed since regulation of all waste operators, which includes all scrap metal dealers, has been (and is being) tightened significantly to deal with environmental risks associated with illegal waste operations, for example the illegal waste site at Mobuoy.

6. The Member's consultation on the Bill dates back to 2013. Over the past two years the Department has introduced a number of measures which have placed more stringent controls on waste operators and waste carriers. They include:

- The Controlled Waste and Duty of Care Regulations (Northern Ireland) 2013, the relevant provisions of which specify the information that must be contained in a Waste Transfer Note (WTN). The Regulations place a new duty on those transporting waste to carry WTNs along with the waste to which they relate, and to produce such a note if stopped by an authorised officer or constable. These came into operation on 30th November 2013;
- The Controlled Waste (Seizure of Property) Regulations (Northern Ireland) 2013, which provide for the seizure and disposal of property suspected of being used in illegal waste activity. These Regulations came into operation on 6th December 2013. They have been successfully used in a number of prosecution cases;
- The Waste Management Licensing (Amendment) Regulations (Northern Ireland) 2015 update the technical competence requirements for waste operators. Prior to the introduction of these Regulations, scrap metal dealers and those engaged in dismantling end-of-life vehicles were excluded from the

requirement to be technically competent. However, this exclusion was removed by these Regulations. As a result any scrap metal dealer who is not technically competent to handle waste cannot obtain a waste management licence.

7. In addition to the above measures, the Department is about to introduce two further sets of Regulations that will impact on scrap metal dealers and the proposal for a Bill. They are:

- The Waste Management Licensing (Amendment No. 2) Regulations (Northern Ireland) 2015 will update the list of prescribed offences that allow the Department to determine if an individual is a fit and proper person to hold a waste management licence. The current proposals also broaden the spectrum of prescribed offences to take into account other criminal activities such as fraud and theft. The rationale behind this is that it will allow the Department to take into account an applicant's proven criminal background and indicate if there are any reputational facts about the person applying for a licence that would preclude them from being granted, or from continuing to hold, a licence. These regulations will come into operation at the end of December 2015.
- The Waste Management Licensing (Amendment No. 3) Regulations (Northern Ireland) 2015, which contain amendments to the list of waste management licensing exemptions, including those which relate to the storage and processing of scrap metal. The proposed amendment will allow an exemption only for the storage of scrap metal at a quayside prior to loading a vessel. The result of this is that any activity outside of the conditions of this exemption requires a full waste management licence. These regulations have been approved by the Committee and are to be made in the near future.

8. It is anticipated that all of these measures combined will go some way to dealing with illegal waste activities, which will have a knock-on effect on scrap metal activities. In fact, the Department is of the view that it now has a sufficient legislation review programme in place to allow it to clamp down on illegal waste activity, which in turn will assist the PSNI in preventing and investigating metal theft.

9. The Department believes that it is significant that the Explanatory and Financial Memorandum that accompanies the Bill states that only two options were considered. One option is to do nothing, and the second is to bring in the Scrap Metal Dealers Bill. **The Memorandum does not consider the ongoing improvements to controls on all waste operators, which includes all scrap metal dealers, as set out above.** Part 2 of this response, which deals with the clauses of the Bill, will show that effectively the tighter requirements on registration and dealers are already largely in place. For example, a “suitable person” in this Bill is already covered in waste legislation through the concept of a “fit and proper person” whereby licences are only provided to those who are financially sound, technically competent, and satisfy criteria related to previous relevant offences.

### **Role of NIEA**

10. Whilst agreeing in principle with the need to address the problem of metal theft, the Department would have major concerns that the Bill as currently framed, is flawed, and may be unworkable. Fundamentally, the Bill makes environmental regulators responsible for regulating financial transactions relating to scrap metal (including potentially criminal transactions). If this were to be enacted, there would be resourcing, capability and suitability issues for NIEA to run a scrap metal licensing scheme that relates to non-environmental crime. NIEA staff who carry out waste and other environmental inspections are essentially scientists. They would not have the skills needed to monitor financial transactions effectively.

11. Regardless of where responsibility rests, the Department believes that it would not be possible to introduce the proposed measures **without significant investment in additional resources and potential recruitment of financial expertise. More importantly, the Department believes that, if NIEA is to take on the role, it will distract from the significant challenges it faces in protecting the environment.**

12. In England, Wales and Scotland, scrap metal legislation has been introduced by the relevant “justice departments” with responsibility for regulation placed on local authority officers. No regulatory responsibilities have been placed on environmental operators for scrap metal transactions. Environmental regulators in England, Wales

and Scotland continue to regulate waste operations in order to fulfil their primary role which is to protect the environment.

13. In the Republic of Ireland, in an attempt to address metal theft, some changes were made to waste permit requirements by way of the Waste Management (Facility Permit and Registration) (Amendment) Regulations 2014, which do not apply specifically to scrap metal dealers but to all waste operators. The Regulations provide for record keeping of waste movements. However, officials in the Republic believe that a more successful method of recovering stolen metal was achieved as a result of wider enforcement action on **illegal waste sites**, which, of course, were operating outside of all waste legislation. Other measures, e.g. cashless transactions, may be considered at a later date but it is understood that these are not intended to be brought forward by the Department of Environment, Community and Local Government.

### **Change Agenda**

14. There are a number of important points to be made about the change agenda for the Department, including NIEA, **that impact on both its capacity and suitability to deal with a Scrap Metal Dealers Bill at this time.** They are:

- NIEA itself has to adjust to the more stringent regulatory requirements for waste management (see paragraphs 15-22 for the impacts on operators). The Department believes that it is questionable whether introducing a non-environmental role in relation to scrap metal theft is sensible at this time;
- The Department is also pursuing a Regulatory Transformation Programme as part of its Better Regulation agenda, which will result in significant change to permitting/licensing and associated regulation. It makes sense that change is made at a pace that assists operators and the regulator alike to adjust. It is not clear at this stage what the full implications will be, including on the permitting regime, and the Department believes that a new regulatory requirement for scrap metal dealers would not be helpful at this time;

- NIEA is currently reviewing its approach to fees and charges for regulatory inspections. The broad approach will be for full cost recovery in keeping with guidance from the Department of Finance and Personnel (DFP);
- Environmental staff in the Department will be forming part of the new Department of Agriculture, Environment and Rural Affairs (DAERA) from May 2016. This, combined with the impacts of the Voluntary Exit Scheme (VES), adds to uncertainty for existing staff in terms of policy and direction; and
- Of particular relevance is an ongoing “Review of Official Controls and Inspections Services” across DARD and DOE. The purpose of the review is to identify synergies and efficiencies across all inspections/controls under the new DAERA. The target for completing the Review is 31st March 2016, with external consultants making recommendations for a future working model(s).

### **Impact on operators**

15. Nearly all licensed waste management sites in Northern Ireland accept scrap metal, not only those whose primary purpose is the management of waste metal. The proposals will, therefore, affect a large proportion of the Northern Ireland waste industry.

16. There are three regulatory regimes pertaining to waste facilities, depending upon such factors as the nature and size of the facility, and the potential for harm to human health and the environment. Those larger facilities that have the greatest potential for harm are regulated under the stringent requirements of The Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013, and require a permit to operate, which contains a number of stringent conditions that must be fulfilled.

17. At the other end of the spectrum are waste exemptions, which are reserved for small scale low-risk activities, that may benefit from lighter touch regulation. Exemption certificates are issued in accordance with specific paragraphs detailed in Part 1 of Schedule 2 to The Waste Management Licensing Regulations (Northern Ireland) 2003. All other waste facilities are required to hold a waste management

licence issued under The Waste and Contaminated Land (Northern Ireland) Order 1997. As previously stated, there is a Better Regulation programme already underway, which aims to simplify and streamline waste regulation in Northern Ireland.

18. There are currently 24 operators with a waste permit, nearly 300 operators with a waste management licence and nearly 180 operators with an exemption who allow metal waste into their facility. These facilities range from large waste management companies, dealing with a range of wastes to smaller waste operators, often operating long established family businesses in rural locations. There are 62 current exemption holders that may be affected by the proposed changes in licensing legislation, as described earlier. Some of these operators will be required to apply for a waste management licence in order to be able to continue their operations.

19. As waste operators adjust to the ongoing stricter requirements of waste regulation, the Department believes that there are questions regarding the viability of smaller legally compliant operators in particular.

20. The introduction of the requirement for all scrap metal dealers and those involved in dismantling end-of-life vehicles to obtain certification of technical competence, the requirement for more detailed information to be provided on waste transfer notes and, most importantly, the need for a large number of currently exempt scrap metal dealers to obtain full waste management licences will have a huge impact on the industry (and the regulator), not least in terms of cost. One effect of scrap metal dealers transferring to full licences is that they will undergo a more regular and rigorous inspection regime as a matter of course.

21. The Explanatory and Financial Memorandum associated with the draft Bill is silent on the matter of additional burden, with no Regulatory Impact Assessment. It is also silent on the matter of rural proofing given that many waste operators are based outside urban areas and there may be unintended consequences for the rural community.

22. In addition, the Department believes that having separate scrap metal and waste licensing arrangements may be confusing to the courts and legitimate operators and the lesser penalties associated with this Bill compared to that relevant to waste

regulations may undermine the significant effort that is required to fight environmental crime, e.g. Mobyuoy.

## **Part 2 Response to the Bill as set out in clauses**

23. A full “clause by clause” analysis of the Bill is set out at Annex A to this paper. There are fundamental issues with the drafting of the legislation that have the potential to cause conflict with existing waste legislation. The most salient points the Department would make are:

- Clause 1: differences in fine levels: The proposed Scrap Metal Dealers Bill seeks to introduce summary offences which only attract a maximum fine of £5,000. Article 4 offences under the Waste and Contaminated Land (Northern Ireland) Order 1997 (the 1997 Order) attract a £50,000 fine and/or six months imprisonment in the Magistrates’ Court. In Crown Court situations they attract an unlimited fine and/or five years imprisonment. It is difficult to see how a further layer of licensing **with lesser penalties** will achieve the desired result. Conversely, it may weaken the Department’s position when prosecuting offenders, as their counsel could argue for the minor offence rather than that provided for by the 1997 Order.
- Clause 2: differences in terminology and definitions: It should be noted that differences in terminology and definitions may cause ambiguity and confusion and may lead to the undermining of the existing environmental legislation, should these proposals sit beside them. For example, there are conflicts with definitions in waste legislation regarding the Bill’s definitions of collector, mobile collector, metal, sites etc. The Bill would need re-drafted in order to achieve cohesion.
- Clause 3: the concept of “suitable person”: There is already a comprehensive regime which determines whether a person is a “fit and proper person” to hold a waste management licence. This includes tests in relation to previous offences (see Schedule 6 of the Waste Management Licensing (Amendment No. 2) Regulations (NI) 2015 - attached at Annex B), technical competence and financial provision. The “suitable person” concept in the new Bill brings confusion but adds little to what is in place;

- Clause 10: cashless transactions: Rather than facilitate traceable methods, this requirement may have the opposite effect. It should be recognised that many legitimate transactions for scrap metal are carried out by householders. It is not reasonable to force householders or small enterprises (such as an independent plumber) to enter into a cashless transaction. The result of this would simply be to force legitimate transactions ‘under the table’. That aside, a power of inspection of bank accounts would be required, similar to those available to Financial Investigators who are accredited under the Proceeds of Crime Act 2002. Environmental officers would not be qualified to carry out this function (also see clause 14); and
- Clause 14: right to enter and inspect: The Bill proposes that all powers of inspection be given to a constable – there are no powers for inspectors from the Department to enter premises or to inspect records. It is difficult to see, therefore, how officers of the Department could perform this function effectively. Again, this highlights the conflict between the Scrap Metal Dealers Bill and existing environmental legislation.

## **Conclusion**

24. The Department is supportive of efforts to address metal theft. There is no doubt that the effects of such crime are detrimental to wider society. That said, the problem to be solved is one of theft/fraud and other related criminal behaviour surrounding scrap metal dealers. This needs to be the clear responsibility of the PSNI, both strategically (in terms of legislation) and operationally (in terms of enforcement). It is not, in the Department’s view, appropriate to use environmental legislation and institutions to deal with a criminal issue such as this.

25. There are matters concerning environmental protection which are properly matters for NIEA. While there will be some overlap, the two regimes should be distinct in terms of dealing with the criminal issues and the environmental issues.

26. The Bill itself takes no account of new waste legislation which will deliver much of the licensing requirements set out in the Bill. It places a burden on NIEA which is not appropriate for its role in regulating waste and is at odds with the position in the rest of the UK. There is no proper assessment of the regulatory and financial burden,

particularly on small legitimate waste operators who are already dealing with a much stricter enforcement regime. There are some fundamental flaws in the drafting of the Bill which would make it unworkable, if introduced as it stands. Finally, the timing is not helpful, given the very significant change agenda set out in this paper for both the regulator and operators.

## Annex A : Clause by Clause Analysis of Bill

Scrap Metal Dealers Bill - Clause	Similar Environmental Legislation	Comments/Gaps/Issues
<p><b>1 Requirement for licence to carry on business as scrap metal dealer</b></p> <p>(1) No person may carry on business as a scrap metal dealer unless authorised by a scrap metal licence.</p> <p>(2) A person who carries on business as a scrap metal dealer in breach of subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.</p>	<p><b>Article 4 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (the 1997 Order)</b></p> <p><b>Prohibition of unauthorised or harmful deposit, treatment or disposal, etc., of waste</b></p> <p><b>4. —</b> (1) Subject to paragraphs (2) and (3) a person shall not—</p> <p>(a) deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence;</p> <p>(b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of—</p> <p>(i) in or on any land, or</p> <p>(ii) by means of any mobile plant, except under and in accordance with a waste management licence;</p> <p>(c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.</p> <p>(2) Subject to paragraph (2A), sub-paragraphs (a) and (b) of paragraph (1) do not apply in relation to household waste from a domestic property which is treated, kept or disposed of within the curtilage of the property.</p> <p>(2A) Paragraph (2) does not apply to the treatment, keeping or disposal of household waste by an establishment or undertaking.</p> <p>(3) Paragraph (1)(a), (b) or (c) do not apply in</p>	<p>Article 4 of the 1997 Order <b>requires anyone who treats, keeps, deposits or disposes of waste to have a licence.</b> Failure to do so is an offence.</p> <p>Scrap metal dealers fall under the definition of anyone who handles waste and, therefore, require a Waste Management Licence (WML) or an exemption for smaller scale activities which lead to recovery. However, to reduce the environmental impact of some scrap metal activities DOE has consulted on proposed changes which in effect would mean that, in the near future, only the storage of scrap metal and de-polluted end-of-life vehicles at a quayside prior to loading a vessel will be allowed under exemption. All other scrap metal activities will require a full licence.</p> <p>The impact of this change on the industry is major as more or less all those dealing in scrap metal will be required to become fully licensed facilities. Exemptions cost between £281 and £611 pa, dependent on the type of exemption. These costs will now increase in some instances into the £1,000s!</p> <p>The proposed SMB seeks to introduce summary offences which only attract a maximum fine of £5,000. Article 4 offences attract a £50,000 fine and/or six months imprisonment in the Magistrates' Court. In Crown Court situations</p>

	<p>prescribed cases.</p> <p>(4) When making regulations under paragraph (3) the Department shall have regard in particular to the expediency of excluding from the controls imposed by waste management licences—</p> <p>(a) any deposits which are small enough or of such a temporary nature that they may be so excluded;</p> <p>(b) any means of treatment or disposal which are innocuous enough to be so excluded;</p> <p>(c) cases for which adequate controls are provided by another statutory provision.</p> <p>(5) Where controlled waste is carried in and deposited from a vehicle, the person who controls or is in a position to control the use of the vehicle shall, for the purposes of paragraph (1)(a), be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.</p> <p>(6) A person who contravenes paragraph (1) or any condition of a waste management licence shall be guilty of an offence.</p> <p>(7) It shall be a defence for a person charged with an offence under this Article to prove—</p> <p>(a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or</p> <p>(c) that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—</p> <p>(i) he took all such steps as were reasonably</p>	<p>they attract an unlimited fine and/or five years imprisonment. It is difficult to see how a further layer of licensing <b>with lower levels of penalty</b> will achieve the required effect of the SMD proposals. Conversely, it could weaken the Department's position when prosecuting offenders, as their counsel could argue for the minor offence rather than that provided for by the 1997 Order.</p> <p>Article 4(5) places responsibility for waste carried in or deposited from a vehicle on the person who controls the vehicle, in most cases the driver. Therefore, anyone transporting stolen metal under the guise of waste will be regarded as the person responsible under an Article 4 offence. In addition, if it is discovered that the metal is stolen, the Police have powers under the Theft Act to prosecute.</p>
--	---	---

	<p>practicable in the circumstances for minimising pollution of the environment and harm to human health; and</p> <p>(ii) particulars of the acts were furnished to the Department as soon as reasonably practicable after they were done.</p> <p>(8) Subject to paragraph (9), a person who commits an offence under this Article is liable—</p> <p>(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £50,000 or to both; and</p> <p>(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.</p> <p>(9) A person (other than an establishment or undertaking) who commits a relevant offence shall be liable—</p> <p>(a) on summary conviction, to a fine not exceeding the statutory maximum;</p> <p>(b) on conviction on indictment, to a fine.</p> <p>(10) In this Article “relevant offence” means an offence under this Article in respect of a contravention of Paragraph (1)(c) consisting of the treatment, keeping or disposal within the curtilage of a domestic property.</p> <p>(11) in determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to him in consequence of the offence.</p>	
<p><b>2</b>      <b>Form and effect of licence</b></p>	<p><b>See 1 above. Article 4 of the 1997 Order applies in</b></p>	<p>It should be noted that differences in</p>

<p>(1) A scrap metal licence is to be issued by the Department.</p> <p>(2) A licence must be one of the following types—</p> <p>(a) a site licence; or</p> <p>(b) a collector's licence.</p> <p>(3) A site licence authorises the licensee to carry on business at any site which is identified in the licence.</p> <p>(4) A site licence must—</p> <p>(a) name the licensee;</p> <p>(b) identify all the sites at which the licensee is authorised to carry on business;</p> <p>(c) name the site manager of each site; and</p> <p>(d) state the date on which the licence is due to expire.</p> <p>(5) A collector's licence authorises the licensee to carry on business as a mobile collector.</p> <p>(6) A collector's licence must—</p> <p>(a) name the licensee; and</p> <p>(b) state the date on which the licence is due to expire.</p> <p>(7) A licence is to be in a form which—</p> <p>(a) complies with subsection (4) or (6); and</p> <p>(b) enables the licensee to comply with section 8 (display of licence).</p> <p>(8) The Department may in regulations prescribe further requirements as to the form and content of licences.</p>	<p><b>parts here also.</b></p> <p><b>Article 38 of the 1997 Order - Offence of transporting controlled waste without registering</b></p> <p><b>38.</b> — (1) Subject to the following provisions of this Article, if any person who is not a registered carrier of controlled waste, in the course of any business of his or otherwise with a view to profit, transports any controlled waste to or from any place in Northern Ireland he shall be guilty of an offence.</p> <p>(2) A person shall not be guilty of an offence under this Article in respect of—</p> <p>(a) the transport of controlled waste within the same premises between different places in those premises;</p> <p>(b) the transport to a place in Northern Ireland of controlled waste which has been brought from a country or territory outside Northern Ireland and is not landed in Northern Ireland until it arrives at that place;</p> <p>(c) the transport by air or sea of controlled waste from a place in Northern Ireland to a place outside Northern Ireland.</p> <p>(3) Regulations may provide that a person shall not be required for the purposes of this Article to be a registered carrier of controlled waste if—</p> <p>(a) he is a prescribed person or a person of such a description as may be prescribed; or</p> <p>(b) without prejudice to sub-paragraph (a), he is a person in relation to whom the prescribed requirements under the law of any member State are satisfied.</p>	<p>terminology and definitions could cause ambiguity and confusion and could lead to the undermining of the environmental legislation, should these proposals be forced to sit beside them. The Bill would need re-working in order to allow any dovetailing were it required. Eg, “Collector” is not defined in the Bill. “Mobile collector” is defined under Section 18(5) as follows:-</p> <p>(5) “Mobile collector” means a person who—</p> <p>(a) carries on business as a scrap metal dealer otherwise than at a site, and</p> <p>(b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.</p> <p>The 1997 Order and any Regulations made under the powers conferred by that Order and in transposition of the European Waste Framework Directive (the WFD). Under the WFD anyone who normally and regularly transports waste must be registered as a waste ‘carrier’.</p> <p>Therefore, anyone who collects or transports waste is already bound by legislative requirements. The Bill does not specify ‘metals’, it states ‘waste materials’, which would mean</p>
--	---	--

	<p>(4) In proceedings against any person for an offence under this Article in respect of the transport of any controlled waste it shall be a defence for that person to show—</p> <p>(a) that the waste was transported in an emergency of which notice was given, as soon as practicable after it occurred, to the Department; or</p> <p>(b) that he neither knew nor had reasonable grounds for suspecting that what was being transported was controlled waste and took all such steps as it was reasonable to take for ascertaining whether it was such waste;</p> <p>(5) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.</p> <p>(6) In this Article “emergency”, in relation to the transport of any controlled waste, means any circumstances in which, in order to avoid, remove or reduce any serious danger to the public or serious risk of damage to the environment, it is necessary for the waste to be transported from one place to another without the use of a registered carrier of such waste.</p> <p><b>Registration of carriers</b></p> <p><b>39.</b> — (1) Subject to Article 40, regulations may make provision for the registration of persons with the Department as carriers of controlled waste and, for that purpose, for the establishment and maintenance by the Department, in accordance with the regulations, of such registers as may be prescribed.</p>	<p>that this provision is dual regulation, which is prohibited under the European Communities Act.</p> <p>The licence requirements for waste operators are set out by way of the Waste Management Licensing Regulations (NI) 2003 (the 2003 Regulations), which are made under Article 4 of the 1997 Order. Waste Management Licences (WML) are, for the most part, site based, however, there is also provision in regulation 11 for mobile plant, which are specifically named and not relevant to the Bill’s proposals. As stated above, what the Bill defines as ‘mobile’ differs from that put in place already to ensure compliance with the WFD.</p> <p>In addition to the basic information of who the applicant is, where the site is located etc, the WML applications require specific information on the site, waste-streams, waste-activities/treatment methods, and quantities etc. Based on this information the WML will contain conditions of how that waste must be managed in order to ensure the protection of the environment and human health.</p>
--	--	--

	<p>(2) Regulations under this Article may—</p> <ul style="list-style-type: none"><li>(a) make provision with respect to applications for registration;</li><li>(b) impose requirements with respect to registers of carriers of controlled waste;</li><li>(c) provide for the issue of a certificate of registration to a registered carrier of controlled waste both on his registration and on the making of any alteration of any entry relating to him in a register of such carriers;</li><li>(e) provide that the provision to a registered carrier of such copies of a certificate of registration as are provided in addition to the certificate provided in pursuance of provision made under sub-paragraph (c) is to be made subject to the payment of a charge imposed under the regulations.</li></ul> <p>(3) Provision contained in any regulations under this Article under paragraph (2)(a) may, in particular, include provision which—</p> <ul style="list-style-type: none"><li>(b) prescribes the period within which an application for the renewal of any registration which is due to expire is to be made;</li><li>(c) imposes requirements with respect to the information which is to be provided by an applicant;</li><li>(d) requires the imposition of charges in respect of the consideration of applications.</li></ul> <p>(4) Without prejudice to the generality of paragraph (3)(c)—</p> <ul style="list-style-type: none"><li>(b) the power to impose requirements with respect to information under sub-paragraph (c) includes power to make provision requiring an</li></ul>	
--	--	--

	<p>application to be accompanied by such information as may reasonably be required by the Department.</p> <p>(5) Provision contained in any regulations under this Article under paragraph (2)(b) may, in particular, include provision—</p> <p>(a) specifying or describing the information to be incorporated in any register maintained under any such regulations;</p> <p>(b) requiring a registered carrier of controlled waste to notify the Department of any change of circumstances affecting information contained in the entry relating to that carrier in that register;</p> <p>(c) requiring the Department, to such extent and in such manner as may be prescribed, to make the contents of any such register available for public inspection free of charge; and</p> <p>(d) requiring the Department, on payment of such charges as may be imposed under the regulations, to provide such copies of the contents of any such register to any person applying for a copy as may be prescribed.</p> <p>(5A) Regulations under this Article may include provision for—</p> <p>(a) the registration of a person as a carrier of controlled waste to be subject to conditions relating to the vehicles used by him in transporting such waste; or</p> <p>(b) the revocation by the Department of the registration of a carrier of controlled waste who has breached a condition imposed on him under sub-paragraph (a).</p>	
--	---	--

(5B) Provision contained in any regulations under this Article by virtue of paragraph (5A) may, in particular, include provision—

- (a) for inspection by the Department of the vehicles of registered carriers of controlled waste for the purpose of ensuring compliance with conditions imposed under paragraph (5A)(a);
- (b) for the Department to impose charges on registered carriers of controlled waste in respect of such inspections

(6) Paragraphs (2) to (5B) are without prejudice to the generality of paragraph (1).

(7) Article 35 shall apply in relation to a register maintained under this Article as it applies in relation to a register maintained under Article 34.

Ⓐ 1

**Restrictions on power under Article 39**

**40.** — (1) Nothing in any regulations under Article 39 shall authorise the Department to refuse an application for registration except where—

- (a) there has, in relation to that application, been a contravention of the requirements of any regulations made under Article 39(2)(a); or
- (b) the applicant or another relevant person has been convicted of a prescribed offence and, in the opinion of the Department, it is undesirable for the applicant to be authorised to transport controlled waste.

(2) Nothing in any regulations under Article 39 shall authorise the Department to revoke any person's registration as a carrier of controlled waste except in accordance with regulations under paragraph (5A) of that Article or where—

	<p>(a) that person or another relevant person has been convicted of a prescribed offence; and</p> <p>(b) in the opinion of the Department, it is undesirable for the registered carrier to continue to be authorised to transport controlled waste;</p> <p>but registration in accordance with any regulations under that Article shall cease to have effect after such period as may be prescribed or if the registered carrier gives written notice requiring the removal of his name from the register.</p> <p>(3) Regulations under Article 39 may require every registration in respect of a business which is or is to be carried on by 2 or more persons in partnership to be a registration of all the partners and to cease to have effect if any of the partners ceases to be registered or if any person who is not registered becomes a partner.</p> <p>(4) any regulations under Article 39 shall have the effect of bringing the revocation of any person's registration as a carrier of controlled waste into force except—</p> <p>(a) after the end of such period as may be prescribed for appealing against the revocation under Article 41; or</p> <p>(b) where that person has indicated, within that period, that he does not intend to make or continue with an appeal.</p> <p>(5) Article 3(6) shall apply for the purposes of any provision made under paragraph (1) or (2) as it applies for the purposes of Article 3(3)(a).</p> <p>(6) In determining for the purposes of any provision made under paragraph (1) or (2) whether it is</p>	
--	--	--

desirable for any individual to be or to continue to be authorised to transport controlled waste, the Department shall have regard, in a case in which a person other than the individual has been convicted of a prescribed offence, to whether that individual has been a party to the carrying on of a business in a manner involving the commission of prescribed offences.

Ⓐ ↓

**Appeals against refusal of registration, etc.**

**41.** — (1) Where a person has applied to be registered in accordance with any regulations under Article 39, he may appeal to the Planning Appeals Commission if—

- (a) his application is refused; or
- (b) the relevant period from the making of the application has expired without his having been registered;

and for the purposes of this paragraph the relevant period is 2 months or, except in the case of an application for the renewal of his registration by a person who is already registered, such longer period as may be agreed between the applicant and the Department.

(2) A person whose registration as a carrier of controlled waste has been revoked may appeal against the revocation to the Planning Appeals Commission.

(3) Part I of Schedule 2 shall have effect with respect to appeals under paragraph (1) or (2).

(4) On receipt of an appeal under paragraph (1) or (2) the Planning Appeals Commission shall give notice of the appeal to the Department.

(5) Where, on such an appeal, the Planning Appeals Commission confirms the decision of the Department the Department shall not register the appellant or, as the case may be, cancel the revocation.

(6) Where, on such an appeal, the Planning Appeals Commission determines that the decision of the Department shall be altered the Department shall register the applicant or, as the case may be, cancel the revocation.

(7) Regulations may make provision with respect to appeals under this Article and in particular as to the period within which and the manner in which appeals are to be brought.

(8) Where an appeal under this Article is made in accordance with regulations under this Article—

(a) by a person whose appeal is in respect of such an application for the renewal of his registration as was made, in accordance with regulations under Article 39, at a time when he was already registered; or

(b) by a person whose registration has been revoked,

that registration shall continue in force, notwithstanding the expiry of the prescribed period or the revocation, until the appeal is disposed of.

(9) For the purposes of paragraph (8) an appeal is disposed of when any of the following occurs, that is to say—

(a) the appeal is withdrawn;

(b) the appellant is notified by the Department that the decision of the Department has been

	<p>confirmed; or  (c) the Department complies with any determination made by the Planning Appeals Commission to renew the appellant's registration or to cancel the revocation.</p> <p><b>The Controlled Waste (Registration of Carriers and Seizure of Vehicles) (Northern Ireland) 1999 (the 1999 Regulations)</b> – sets out the specific registration details that are required in order for someone to carry waste in NI.</p> <p><b>The Waste Management Licensing (Northern Ireland) Regulations 2003 (the 2003 Regulations)</b> - make provision for the operation of NI's waste management licensing system.</p>	
<p><b>3 Issue of licence</b></p> <p>(1) The Department will not issue or renew a scrap metal licence unless it is satisfied that the applicant is a suitable person to carry on business as a scrap metal dealer.</p> <p>(2) In determining whether the applicant is a suitable person, the Department may have regard to any information which it considers to be relevant, including in particular—</p> <p>(a) whether the applicant or any site manager has been convicted of any relevant offence;</p> <p>(b) whether the applicant or any site manager has been the subject of any relevant enforcement action;</p>	<p><b>Meaning of “fit and proper person”</b></p> <p><b>3.</b> — (1) The following provisions apply for the purposes of the discharge by the Department of any function under this Part which requires the Department to determine whether a person is or is not a fit and proper person to hold a waste management licence.</p> <p>(2) Whether a person is or is not a fit and proper person to hold a licence is to be determined by reference to the carrying on by him of the activities which are or are to be authorised by the licence and the fulfilment of the requirements of the licence.</p> <p>(3) Subject to paragraph (4), a person shall be treated as not being a fit and proper person if it appears to the Department—</p>	<p>Article 3 of the 1997 Order requires the DOE to determine whether a person is or is not a fit and proper person to hold a waste management licence.</p> <p>The Fit and Proper Person (FPP) test comprises of 3 parts:-</p> <ol style="list-style-type: none"> <li>1. That the person (or another relevant person) has not been convicted of a prescribed offence.</li> <li>2. That they are technically competent.</li> <li>3. That they have adequate financial provision to discharge the obligations arising from the licence.</li> </ol> <p>Article 3 also provides DOE with powers to make Regulations in relation to the technical</p>

<p>(c) any previous refusal of an application for the issue or renewal of a scrap metal licence (and the reasons for the refusal);</p> <p>(d) any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal);</p> <p>(e) any previous revocation of a scrap metal licence (and the reasons for the revocation);</p> <p>(f) whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of this Act are complied with.</p> <p>(3) In this section—</p> <p>(a) “relevant offence” means an offence which is prescribed for the purposes of this section in regulations made by the Department; and</p> <p>(b) “relevant enforcement action” means enforcement action which is so prescribed.</p> <p>(4) In determining whether a company is a suitable person to carry on business as a scrap metal dealer, the Department will have regard, in particular, to whether any of the following is a suitable person—</p> <p>(a) any director of the company;</p> <p>(b) any secretary of the company;</p> <p>and</p>	<p>(a) that he or another relevant person has been convicted of a prescribed offence;</p> <p>(b) that the management of the activities which are or are to be authorised by the licence are not or will not be in the hands of a technically competent person; or</p> <p>(c) that the person who holds or is to hold the licence has not made and either has no intention of making or is in no position to make financial provision adequate to discharge the obligations arising from the licence.</p> <p>(4) The Department may, if it considers it proper to do so in any particular case, treat a person as a fit and proper person notwithstanding that paragraph (3)(a) applies in his case.</p> <p>(5) Regulations may prescribe the qualifications and experience required of a person for the purposes of paragraph (3)(b).</p> <p>(6) For the purposes of paragraph (3)(a), another relevant person shall be treated, in relation to the licence holder or proposed licence holder, as the case may be, as having been convicted of a prescribed offence if—</p> <p>(a) any person has been convicted of a prescribed offence committed by him in the course of his employment by the holder or, as the case may be, the proposed holder of the licence or in the course of the carrying on of any business by 2 or more persons in partnership one of such persons was the holder or, as the case may be, the proposed holder of the licence;</p> <p>(b) a body corporate has been convicted of a</p>	<p>competence and prescribed offences elements of the FPP test. Both of these elements have recently been amended to bring them up to date, to broaden the spectrum of offences and to place more stringent controls, particularly in relation to scrap metal dealers and those involved in dismantling motor vehicles including end of life vehicles.</p> <p>Regulation 2 of the 2003 Regulations prescribe the relevant offences has just been amended by way of replacing the old Regulation 2 and developing a new Schedule to the Regulations which sets out a list of prescribed offences. These are broken down into three tables covering ‘environmental’, ‘financial’ and ‘other’ offences. A copy of Schedule 6 is attached. The operational dates for these changes is 31<sup>st</sup> December 2015.</p> <p>Regulations 3-5 of the 2003 Regulations set out the technical competence requirements for waste operators. These have recently been amended with effect from 17th August 2015. The key relevant change affecting the Bill is that the exclusion for scrap metal dealers and those involved in dismantling motor vehicles including end of life vehicles, from the requirement to obtain certification as a technically competent person, has been removed.</p> <p>Fundamental differences that exist between the proposal and current environmental legislation</p>
--	---	---

<p>(c) any shadow director of the company (that is to say, any person in accordance with whose directions or instructions the directors of the company are accustomed to act).</p> <p>(5) In determining whether a partnership is a suitable person to carry on business as a scrap metal dealer, the Department will have regard, in particular, to whether each of the partners is a suitable person.</p> <p>(6) If the applicant or any site manager has been convicted of a relevant offence, the Department may include in the licence one or both of the following conditions—</p> <p>(a) that the dealer must not receive scrap metal except between 9 a.m. and 5 p.m. on any day;</p> <p>(b) that all scrap metal received must be kept in the form in which it is received for a period specified in the condition but which may not exceed 72 hours beginning with the time when it is received.</p>	<p>prescribed offence committed when the holder or, as the case may be, the proposed holder of the licence was a director, manager, secretary or other similar officer of that body corporate; or</p> <p>(c) where the holder or, as the case may be, the proposed holder of the licence is a body corporate, a person who is a director, manager, secretary or other similar officer of that body corporate—</p> <p>(i) has been convicted of a prescribed offence; or</p> <p>(ii) was a director, manager, secretary or other similar officer of another body corporate at a time when a prescribed offence for which that other body corporate has been convicted was committed.</p> <p><b>The Controlled Waste (Registration of Carriers and Seizure of Vehicles) (Northern Ireland) 1999 (as amended – relevant amendment S.R. 2015 No.</b></p> <p>1.—(1) The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999 are amended in accordance with paragraphs (2) and (3)—</p> <p>(2) In regulation 1(2) for the definition of “prescribed offences” substitute—</p> <p>““prescribed offences” means an offence under regulation 2 of the 2003 Regulations;”.</p> <p>(3) Schedule 1 is revoked.</p>	<p>are those relating to the restriction on scrap metal dealers who have been convicted of an offence to deal only between the hours of 0900 and 1700; and that such persons must retain any metal received for inspection by the police for up to 72 hours.</p> <p>Neither of these proposed measures relate to the protection of the environment and/or human health and under the proposals contained in the Bill regulation of both these conditions would be the responsibility of the PSNI. Therefore, it would not be appropriate for DOE to legislate for these elements.</p>
--	--	---

**The Waste Management Licensing (Northern Ireland) Regulations 2003 (as amended – relevant amendments S.R. 2015 No. 301 and S.R. 2015 No. ??)**

**Amendment of the Waste Management Licensing Regulations (Northern Ireland) 2003**

—(4) The Waste Management Licensing Regulations (Northern Ireland) 2003 are amended in accordance with paragraphs (2) to (6)—

For regulation 3 (Technical Competence) substitute—

“**3.**—(1) Without prejudice to the European Communities (Recognition of Professional Qualification) Regulations 2002, Schedule 1 has effect to prescribe the qualifications and experience required of a person if that person is to be considered technically competent for the purposes of Article 3(3)(b) of the 1997 Order (management of activities to be in the hands of a technically competent person).

(2) A person holding an existing Certificate of Technical Competence shall be required to acquire a relevant up-to-date qualification as detailed in Schedule 1 within 24 months of the date of operation of these Regulations.

(3) A person who has acquired technical competence must undertake an assessment every 24 months to ensure that that

	<p>competence is kept up to date.”.</p> <p>Regulation 4 (Technical competence - transitional provisions) is revoked.</p> <p>In regulation 5 (Pre-qualification technical competence) for paragraph (1)(a) substitute—</p> <p>“(a) a person has applied to the Waste Management Industry and Advisory Board (“WAMITAB”) for an Operator Competence Certificate in relation to one of the types of activities mentioned in paragraph (2);”.</p> <p>In regulation 5(1) for paragraph (d) substitute—</p> <p>“(d) the Department is satisfied that but for regulation 3 he would be a technically competent person, then, in relation to the activity in respect of which the application mentioned in sub-paragraph (b) was made and until the expiry of 12 months from the grant of a licence pursuant to that application, regulation 3 shall not apply to that person and he shall be treated as technically competent for the purposes of Article 3(3)(b) of the 1997 Order.”.</p> <p><b>Amendment of the Waste Management Licensing Regulations (Northern Ireland) 2003</b></p> <p><b>1.—(1)</b> The Waste Management Licensing Regulations (Northern Ireland) 2003 are amended in accordance with paragraphs (2) and (3)—</p>	
--	--	--

	<p>(2) For regulation 2 substitute—</p> <p>“2. Schedule 6 has effect to prescribe offences for the purposes of Article 3(3)(a) of the 1997 Order.”.</p>	
<p><b>4 Revocation of licence and imposition of conditions</b></p> <p>(1) The Department may revoke a site licence if it is satisfied that the licensee does not carry on business at any of the sites identified in the licence.</p> <p>(2) The Department may revoke a site licence if it is satisfied that a site manager named in the licence does not act as site manager at any of the sites identified in the licence.</p> <p>(3) The Department may revoke a scrap metal licence if it is no longer satisfied that the licensee is a suitable person to carry on business as a scrap metal dealer.</p> <p>(4) Subsections 3(2) to (5) apply for the purposes of determining whether a person remains a suitable person pursuant to subsection (3).</p> <p>(5) If the licensee or any site manager named in a licence is convicted of a relevant offence, the Department may vary the licence by adding one or both of the conditions set out in section 3(6).</p> <p>(6) A revocation or variation under this section comes into effect when no appeal</p>	<p><b>Articles 10-12 of the 1997 Order allow DOE to vary, revoke or suspend licences under certain conditions. These are further supplemented by the 2003 Regulations.</b></p> <p><b>Variation of licences</b></p> <p><b>10.</b> — (1) While a licence is in force, the Department may, subject to regulations under Article 6(6),—</p> <p>(a) on its own initiative, modify the conditions of the licence to any extent which, in the opinion of the Department, is desirable and is unlikely to require unreasonable expense on the part of the holder; and</p> <p>(b) on the application of the licence holder accompanied by the fee payable under Article 15, modify the conditions of his licence to the extent requested in the application.</p> <p>(2) While a licence is in force, the Department shall, except where it revokes the licence entirely under Article 12, modify the conditions of the licence—</p> <p>(a) to the extent which in the opinion of the Department is required for the purpose of ensuring that the activities authorised by the licence do not cause pollution of the</p>	<p>DOE already has sufficient powers to vary, revoke or suspend a waste management licence. However, as the specific criteria that would provide for the revocation of an SMD licence under the Bill’s proposals are exclusively non-environmental and are ‘trade’ based, the Department believes that these provisions should not fall under the responsibility of DOE; should not be absorbed into waste legislation; could be construed as dual regulation; and could very much undermine existing waste provisions by ‘muddying the waters’ between environmental offences and trading offences.</p>

<p>under paragraph 9 of Schedule 1 is possible in relation to the revocation or variation, or when any such appeal is finally determined or withdrawn.</p> <p>(7) But if the Department considers that the licence should not continue in force without conditions, it may by notice provide—</p> <p>(a) that, until a revocation under this section comes into effect, the licence is subject to one or both of the conditions set out in section 3(6); or</p> <p>(b) that a variation under this section comes into effect immediately.</p>	<p>environment or harm to human health or become seriously detrimental to the amenities of the locality affected by the activities; and</p> <p>(b) to the extent required by any regulations in force under Article 6(6).</p> <p>(3) Any modification of a licence under this Article shall be effected by notice served on the holder of the licence and the notice shall state the time at which the modification is to take effect.</p> <p>(4) Article 8(5) and (8) shall with the necessary modifications apply to a proposal by the Department to modify a licence under paragraph (1) or (2)(a) as they apply to a proposal to grant a licence, except that—</p> <p>(a) the Department may postpone the reference so far as the Department considers that by reason of an emergency it is appropriate to do so; and</p> <p>(b) the Department need not consider any representations as respects a modification which, in the opinion of the Department, will not affect the Health and Safety Executive for Northern Ireland or] any body or person mentioned in the paragraphs so applied.</p> <p>(5) If within the period of 2 months from the date on which the Department received an application by the holder of a licence for a modification of it, or within such longer period as the Department and the applicant may at any time agree in writing, the Department has neither granted a modification of the licence in consequence of the application nor given notice to the applicant that the Department has refused the application, the Department shall</p>	
---	--	--

be deemed to have refused the application.  
(6) This Article shall have effect subject to Article 11.

**Consultation before certain variations**

**11.** — (1) This Article applies where—  
(a) the Department proposes to modify a licence under Article 10(1) or (2)(a); and  
(b) the licence, if modified as proposed, would be subject to a relevant new condition.

(2) For the purposes of this Article, a “relevant new condition” is any condition by virtue of which the holder of the licence might be required to carry out any works or do any other thing—

(a) which he might not be entitled to carry out or do, and

(b) which he could not be required to carry out or do by virtue of the conditions to which, prior to the modification, the licence is subject.

(3) Before modifying the licence, the Department shall serve on every person appearing to the Department to be a person falling within paragraph

(4) a notice which complies with the requirements set out in paragraph (5).

(4) A person falls within this paragraph if—

(a) he is the owner, lessee or occupier of any land; and

(b) that land is land in relation to which it is likely that, as a consequence of the licence being modified so as to be subject to the relevant new condition in question, rights will have to be granted by virtue of Article 6(4) to

	<p>the holder of the licence.</p> <p>(5) A notice served under paragraph (3) shall—</p> <p>(a) set out the relevant new condition in question;</p> <p>(b) indicate the nature of the works or other things which that condition might require the holder of the licence to carry out or do but which he could not be required to carry out or do by virtue of the conditions (if any) to which, prior to the modification, the licence is subject; and</p> <p>(c) specify the date by which, and the manner in which, any representations relating to the condition or its possible effects are to be made to the Department by the person on whom the notice is served.</p> <p>(6) The date which, pursuant to paragraph (5)(c), is specified in a notice shall be a date not earlier than the date on which expires the period—</p> <p>(a) beginning with the date on which the notice is served, and</p> <p>(b) of such length as may be prescribed.</p> <p>(7) Before the Department issues the licence it shall, subject to paragraph (8), consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under paragraph (3).</p> <p>(8) Paragraph (7) does not require the Department to consider any representations made by a person after the date specified in the notice served on him under paragraph (3) as the date by which his</p>	
--	--	--

representations in relation to the condition or its possible effects are to be made.

(9) The Department may postpone the service of any notice or the consideration of any representations required under this Article so far as the Department considers that by reason of an emergency it is appropriate to do so.

**Revocation and suspension of licences**

**12.** — (1) Where a licence is in force and it appears to the Department—

(a) that the holder of the licence has ceased to be a fit and proper person by reason of his having been convicted of a prescribed offence; or

(b) that—

(i) the continuation of the activities authorised by the licence would cause pollution of the environment or harm to human health or would be seriously detrimental to the amenities of the locality affected; and

(ii) the pollution, harm or detriment cannot be avoided by modifying the conditions of the licence; the Department may exercise, as it thinks fit, either of the powers conferred by paragraphs (3) and (4).

(2) Where a licence is in force and it appears to the Department that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person, the Department may exercise the power conferred by paragraph (3).

(3) The Department may, under this paragraph,

revoke the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the Department specifies in revoking the licence.

(4) The Department may, under this paragraph, revoke the licence entirely.

(5) A licence revoked under paragraph (3) shall cease to have effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the Department in revoking the licence but shall not affect the requirements imposed by the licence which the Department, in revoking the licence, specify as requirements which are to continue to bind the licence holder.

(6) Where a licence is in force and it appears to the Department—

- (a) that the holder of the licence has ceased to be a fit and proper person by reason of the management of the activities authorised by the licence having ceased to be in the hands of a technically competent person; or
- (b) that—
  - (i) serious pollution of the environment or serious harm to human health has resulted from, or is about to be caused by, the activities to which the licence relates or the happening or threatened happening of an event affecting those activities; and
  - (ii) the continuing to carry on those activities, or any of those activities, in the circumstances will continue or, as the case may be, cause serious pollution of the environment or serious harm to

	<p>human health; the Department may suspend the licence so far as it authorises the carrying on of the activities specified in the licence or such of them as the Department specifies in suspending the licence.</p> <p>(7) A licence suspended under paragraph (6) shall, while the suspension has effect, be of no effect to authorise the carrying on of the activities specified in the licence or, as the case may be, the activities specified by the Department in suspending the licence.</p> <p>(8) Where a licence is suspended under paragraph (6), the Department, in suspending it or at any time while it is suspended, may require the holder of the licence to take such measures to deal with or avert the pollution or harm as the Department considers necessary.</p> <p>(9) A requirement imposed under paragraph (8) may require the holder of a licence to carry out works or do other things notwithstanding that he is not entitled to carry out the works or do the thing and any person whose consent would be required shall grant, or join in granting, the holder of the licence such rights in relation to the land as will enable the holder of the licence to comply with any requirements imposed on him under that paragraph.</p> <p>(10) Paragraphs (2) to (7) of Article 9 shall, with the necessary modifications, apply where the Department proposes to impose a requirement under paragraph (8) which may require the holder of a licence to carry out any such works or do any such thing as is mentioned in</p>	
--	--	--

	<p>paragraph (9) as they apply where the Department proposes to issue a licence subject to any such condition as is mentioned in paragraph (1) of that Article, but as if—</p> <ul style="list-style-type: none"><li>(a) the reference in paragraph (3) of that Article to Article 6(4) were a reference to paragraph (9); and</li><li>(b) any reference in those paragraphs—<ul style="list-style-type: none"><li>(i) to the condition, or the condition in question, were a reference to the requirement; and</li><li>(ii) to issuing a licence were a reference to serving a notice, under paragraph (14), effecting the requirement.</li></ul></li></ul> <p>(11) The Department may postpone the service of any notice or the consideration of any representations required under Article 9, as applied by paragraph (10), so far as the Department considers that by reason of an emergency it is appropriate to do so.</p> <p>(12) A person who, without reasonable excuse, fails to comply with any requirement imposed under paragraph (8) otherwise than in relation to [<sup>F10</sup>hazardous waste] shall be guilty of an offence and shall be liable—</p> <ul style="list-style-type: none"><li>(a) on summary conviction, to a fine not exceeding the statutory maximum; and</li><li>(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.</li></ul> <p>(13) A person who, without reasonable excuse, fails to comply with any requirement imposed under paragraph (8) in relation to hazardous waste shall be guilty of an offence and shall be</p>	
--	--	--

	<p>liable—</p> <p>(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both; and</p> <p>(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.</p> <p>(14) Any revocation or suspension of a licence or requirement imposed during the suspension of a licence under this Article shall be effected by notice served on the holder of the licence and the notice shall state the time at which the revocation or suspension or the requirement is to take effect and, in the case of suspension, the period at the end of which, or the event on the occurrence of which, the suspension is to cease.</p> <p>(15) If the Department is of the opinion that proceedings for an offence under paragraph (12) or (13) would afford an ineffectual remedy against a person who has failed to comply with any requirement imposed under paragraph (8), the Department may take proceedings in the High Court for the purpose of securing compliance with the requirement.</p>	
<p><b>5 Further provision about licences</b> Schedule 1 (which makes further provision about licences) has effect.</p>	<p>Schedule 1 to the Bill sets out details about the proposed Scrap Metal Dealers licensing regime. As most of the requirements set out in the Schedule are not environmental there is no equivalent in existing waste legislation.</p>	<p>Details required relate to trading names/ registered companies etc – more specific to DETI than DOE.</p>
<p><b>6 Notification requirements</b> (1) An applicant for a scrap metal licence, or</p>	<p>Please see 4 above in relation to variations of waste management licences. However, it should</p>	<p>Again as these clauses relate to ‘trading’ and are not related to the protection of the environment</p>

<p>for the renewal or variation of a scrap metal licence, must notify the Department of any changes which materially affect the accuracy of the information which the applicant has previously provided in connection with the application.</p> <p>(2) A licensee who is no longer carrying on business as a scrap metal dealer must notify the Department of that fact.</p> <p>(3) Notification under subsection (2) must be given within 28 days of the beginning of the period in which the licensee has ceased to carry on business.</p> <p>(4) If a licensee carries on business under a trading name, the licensee must notify the Department of any change to that name.</p> <p>(5) Notification under subsection (4) must be given within 28 days of the change occurring.</p> <p>(6) An applicant or licensee who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p> <p>(7) It is a defence for a person charged with an offence under this section to prove that the person took all reasonable steps to avoid committing the offence.</p>	<p>be noted that the rationale behind the 1997 Order requirements and that proposed in the Bill differs significantly, therefore, whilst Article 10 of the 1997 Order may seem similar on the face of it, one is not comparing like with like.</p>	<p>and human health, DOE believes this clause should not fall within its remit as it introduces a conflict in the legislation, particularly in relation to offences and penalties.</p>
<p><b>7</b> <b>Closure of unlicensed sites</b> Schedule 2 (which makes provision for the closure of sites at which a scrap metal</p>	<p>Non-environmental – DOE has the power to close unlicensed waste sites and to prosecute the operator/s under an Article 4 offence which could</p>	<p>Again, this clause relates solely to ‘trading’ or ‘operating as a business’ and has no environmental related requirements. DOE</p>

<p>business is being carried on without a licence) has effect.</p>	<p>result in imprisonment or fines of up to £50k.</p>	<p>would be concerned that this Clause could have the effect of clashing with and undermining waste offences which attract higher penalties than those proposed in the Bill.</p>
<p><b>8 Display of licence</b></p> <p>(1) A scrap metal dealer who holds a site licence must display a copy of the licence at each site identified in the licence.</p> <p>(2) The copy licence referred to in section 8(1) must be displayed in a prominent place in an area accessible to the public.</p> <p>(3) A scrap metal dealer who holds a collector's licence must display a copy of the licence on any vehicle that is being used in the course of the dealer's business.</p> <p>(4) The copy licence referred to in section 8(3) must be displayed in a manner which enables it easily to be read by a person outside the vehicle.</p> <p>(5) A scrap metal dealer who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p>	<p>No environmental legislation equivalent.</p>	<p>NIEA holds copies of all licences and their specific conditions. Waste operators may be required to produce their licence by authorised officers as and when required. However, the need to display a waste management licence is not required under waste legislation.</p>
<p><b>9 Verification of supplier's identity</b></p> <p>(1) A scrap metal dealer must not receive scrap metal from a person without verifying the person's full name and address.</p> <p>(2) The verification referred to in subsection</p>	<p>No environmental equivalent legislation.</p>	<p>This measure is non-environmental and is seen as being more relevant to business trading and trading standards, therefore, it is not required under environmental legislation. Such a measure under environmental legislation could be considered '<b>gold-plating</b>' and over-</p>

<p>(1) must be by reference to documents, data or other information from a reliable and independent source which in each case bear a photograph of the person concerned and are prescribed as being sufficient for that purpose.</p> <p>(3) The following documents are prescribed as being sufficient for the purpose of verifying a person’s full name and address pursuant to subsection (1)—</p> <ul style="list-style-type: none"> <li>(a) a valid United Kingdom passport, within the meaning of section 33(1) of the Immigration Act 1971;</li> <li>(b) a valid passport issued by an EEA state;</li> <li>(c) a valid Great Britain or Northern Ireland photo-card driving licence;</li> <li>(d) a valid driving licence issued by the Government of an EEA state if the licence bears the photograph and address of the person to whom it is issued;</li> <li>(e) a current electoral identity card issued under section 13C of the Representation of the People Act 1983;</li> <li>(f) a Senior, Blind Person’s or War Disabled SmartPass issued under the Northern Ireland Concessionary Fares Scheme for use from 1st May 2002;</li> </ul>		<p><b>burdensome.</b></p> <p>A consideration, should the Bill be brought forward further, would be the inclusion of vehicles registered in the Republic of Ireland.</p>
---	--	---

<p>(g) a valid UK biometric immigration document issued in accordance with regulations made under section 5 of the UK Borders Act 2007.</p> <p>(4) The Department may prescribe in regulations—</p> <p>(a) other documents, data or other information which are sufficient for the purpose referred to in subsection (2); and</p> <p>(b) documents, data or other information which are not sufficient for that purpose.</p> <p>(5) If a scrap metal dealer receives scrap metal in breach of subsection (1), each of the following is guilty of an offence—</p> <p>(a) the scrap metal dealer;</p> <p>(b) if the metal is received at a site, the site manager; and</p> <p>(c) any person who, under arrangements made by a person within paragraph (a) or (b), has responsibility for verifying the name and address of a person as required by subsection (1).</p> <p>(6) It is a defence for a person within subsection (5)(a) or (b) who is charged with an offence under subsection (5) to prove that the person—</p> <p>(a) made arrangements to ensure that the metal was not received in breach of subsection (1), and</p>		
---	--	--

<p>(b) took all reasonable steps to ensure that those arrangements were complied with.</p> <p>(7) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p> <p>(8) A person who, on delivering scrap metal to a scrap metal dealer, gives a false name or false address is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p>		
<p><b>10 Offence of buying scrap metal for cash etc</b></p> <p>(1) Subject to subsection (2) a scrap metal dealer must not pay for scrap metal except—</p> <p>(a) by a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or</p> <p>(b) by an electronic transfer of funds (authorised by credit or debit card or otherwise).</p> <p>(2) A scrap metal dealer may pay for scrap metal otherwise than in accordance with subsection (1) provided that:</p> <p>(a) the total payment for the scrap metal concerned is no more than £100; and</p> <p>(b) the scrap metal dealer concerned may only enter into one such transaction with the same seller</p>	<p>No environmental equivalent legislation</p>	<p>As this measure is non-environmental it is not required under environmental legislation. Such a measure under environmental legislation could be considered <b>‘gold-plating’ and over-burdensome</b>, particularly for smaller waste operators.</p> <p>The implications of this suggestion need to be fully considered. Rather than facilitate traceable methods, this requirement could have the opposite effect. It should be recognised that many legitimate transactions for scrap metal are carried out by householders. It may not be reasonable to enforce householders or small enterprises (such as an independent plumber) to enter into a cashless transaction. The result of this may be to force current legitimate transactions ‘under the table’.</p>

<p>of scrap metal during any calendar month.</p> <p>(3) If a scrap metal dealer pays for scrap metal in breach of subsection (1), each of the following is guilty of an offence—</p> <p>(a) the scrap metal dealer;</p> <p>(b) if the payment is made at a site, the site manager;</p> <p>(c) any person who makes the payment acting for the dealer.</p> <p>(5) It is a defence for a person within subsection (3)(a) or (b) who is charged with an offence under this section to prove that the person—</p> <p>(a) made arrangements to ensure that the payment was not made in breach of subsection (1), and</p> <p>(b) took all reasonable steps to ensure that those arrangements were complied with.</p> <p>(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.</p> <p>(7) In this section paying includes paying in kind (with goods or services).</p> <p>(8) The Department may by order:</p> <p>(a) amend subsection (1) to permit other methods of payment;</p> <p>(b) amend, remove or set a time limit for the removal of the exemption in subsection (2) from the requirement to comply with</p>		<p>That aside, for this requirement to be effective at any level there will need to be a power of inspection of bank accounts - similar to those available to Financial Investigators who are accredited under the Proceeds of Crime Act 2002. Environmental officers would not be qualified to carry out this function.</p> <p>The inspections required under these proposals would require a totally different skills base. DOE inspectors are scientists. They do not presently have the skills necessary to carry out inspections into bank/financial records. To do so could be considered a misuse of a specifically trained staff resource. This could negatively impact on environmental inspections which would have a detrimental effect on the environment and human health and would mean that DOE is failing in its primary function. The alternative is to have a separate resource which would be trained to carry out the inspections required by this Bill, which, by default would mean an additional inspection regime.</p> <p>However, this Bill does not suggest that environmental officers but rather the PSNI is responsible for inspections.</p> <p>This proposed provision highlights the disparate nature of the rationale behind the Scrap Metal Dealers Bill (ie the prevention of metal theft) and the requirements already in place to protect the environment and human health.</p>
---	--	---

subsection (1).		
<p><b>11 Receipt of metal</b></p> <p>(1) This section applies if a scrap metal dealer receives any scrap metal in the course of the dealer's business.</p> <p>(2) The dealer must record the following information—</p> <p>(a) the description of the metal, including its type (or types if mixed), form, condition, weight and any marks identifying previous owners or other distinguishing features;</p> <p>(b) the date and time of its receipt;</p> <p>(c) if the metal is delivered in or on a vehicle, the registration mark (within the meaning of section 23 of the Vehicle Excise and Registration Act 1994) of that vehicle;</p> <p>(d) if the metal is received from a person, the full name and address of that person;</p> <p>(e) if the dealer pays for the metal, the full name of the person who makes the payment acting for the dealer.</p> <p>(3) If the dealer receives the metal from a person, the dealer must keep a copy of any document which the dealer uses to verify the name or address of that person.</p> <p>(4) If the dealer pays for the metal by cheque, the dealer must keep a copy of the</p>	<p><b>Article 5 of the 1997 Order - Duty of care, etc., as respects waste</b></p> <p><b>5. —</b> (1) Subject to paragraph (2), any person who imports, produces, collects, carries, keeps, treats or disposes of controlled waste or, as a broker or dealer, has control of such waste, shall take all such measures applicable to him in that capacity as are reasonable in the circumstances—</p> <p>(a) to prevent any contravention by any other person of Article 4;</p> <p>(aa) to prevent any contravention by any other person of regulation 9 of the Pollution Prevention and Control Regulations (Northern Ireland) 2003 or of a condition of a permit granted under regulation 10 of those Regulations;]</p> <p>(b) to prevent the escape of the waste from his control or that of any other person; and</p> <p>(c) on the transfer of the waste, to secure—</p> <p>(i) that the transfer is only to an authorised person or to a person for authorised transport purposes;</p> <p>(ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that Article or any condition of a permit granted under regulation 10 of those Regulations and to comply with this paragraph as respects the escape of waste; and</p> <p>(iii) that any waste oils are separately collected where technically feasible.</p> <p>(2) Paragraph (1) does not apply to an occupier of domestic property as respects the household waste produced on the property.</p>	<p>Article 5 of the 1997 Order, places a Duty of Care (DOC) on anyone handling waste to do so in a manner that will not cause harm to the environment and human health. It also places a duty on those transferring waste to complete a 'Waste Transfer Note' (WTN). Details of what information must be contained in a WTN are established by way of the Controlled Waste (Duty of Care) Regulations (NI) 2002 (as recently amended).</p> <p>Whilst the WTN is a form of audit for all waste transfers, its purpose is different from that proposed by the SMB. The information requirements of the waste legislation are set out by way of a WTN that is included in the statutory Waste Duty of Care Code of Practice.</p> <p>It would be problematic to introduce a separate WTN specifically for scrap metal. WTNs are required by the WFD. Their provision is made for by way of powers under Article 2(2) of the ECA. To include anything beyond what is required to comply with the European legislation would be ultra vires, be seen as gold-plating and be challenged in the Courts.</p> <p>The only way to get past this would be to have a separate receipting system under the Bill. However, this flies in the face of the believed intention of making life less burdensome for</p>

<p>cheque.</p> <p>(5) If the dealer pays for the metal by electronic transfer—</p> <p style="padding-left: 20px;">(a) the dealer must keep the receipt identifying the transfer, or</p> <p style="padding-left: 20px;">(b) if no receipt identifying the transfer was obtained, the dealer must record particulars identifying the transfer.</p> <p>(6) If the dealer pays for the metal by cash or in kind the dealer must record particulars identifying the transaction.</p> <p>(7) If the dealer receives any suspicious scrap metal the dealer must:</p> <p style="padding-left: 20px;">(a) as soon as reasonably practicable notify a constable of the information referred to in paragraph (2)(a) to (e);</p> <p style="padding-left: 20px;">(b) retain the suspicious scrap metal in the form in which it was received and separately from any other scrap metal for a period of no less than one week beginning with the day on which the suspicious scrap metal was received; and</p> <p style="padding-left: 20px;">(c) during this period make it available to a constable for inspection at any reasonable time on notice to the site manager (in the case of a dealer operating under a site licence) or the licensee (in the case of a dealer</p>	<p>(2A) It shall be the duty of the occupier of any domestic property to take all such measures available to him as are reasonable to take all such circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes.</p> <p>(3) The following are authorised persons for the purpose of paragraph (1)(c) or paragraph (2A) —</p> <p style="padding-left: 20px;">(a) any district council;</p> <p style="padding-left: 20px;">(b) any person who is the holder of a waste management licence under Article 6 or of a disposal licence under Article 7 of the 1978 NI 19 Pollution Control and Local Government (Northern Ireland) Order 1978;</p> <p style="padding-left: 20px;">(c) any person to whom Article 4(1) does not apply by virtue of regulations under paragraph (3) of that Article;</p> <p style="padding-left: 20px;">(d) any person registered as a carrier of controlled waste under Article 39;</p> <p style="padding-left: 20px;">(e) any person who is not required to be so registered by virtue of regulations under Article 38(3).</p> <p style="padding-left: 20px;">(f) any person who is the holder of an authorisation under Article 6 of the Industrial Pollution Control (Northern Ireland) Order 1997 in so far as such authorisation concerns controlled waste for the purposes of this Article; and</p> <p style="padding-left: 20px;">(g) any person who is the holder of a permit under regulation 10 of the Pollution Prevention and Control Regulations (Northern Ireland)</p>	<p>operators, of the Better Regulation agenda and would not only increase the burden on operators but on the PSNI, who, according to the Bill would be responsible for regulating and monitoring this Clause.</p> <p>In relation to the holding of metal for inspection etc, the ‘quarantine’ of metals – particularly for smaller operators with limited space is problematic. DOE would have concerns that this clause could have the opposite outcome than that intended, ie, that even legitimate operators, rather than create more work and more burden for themselves will simply ignore these requirements and move the scrap metal transaction ‘under the table’.</p>
--	---	--

<p>operating under a collector's licence).</p> <p>(8) In this section "suspicious scrap metal" means scrap metal</p> <p>(a) which wholly or predominantly consists of:</p> <p>(i) copper;</p> <p>(ii) aluminium;</p> <p>(iii) any other prescribed metal,</p> <p>and</p> <p>(b) which has been, burnt, defaced or otherwise marked in such a way as to give rise to a reasonable suspicion that the scrap metal concerned may have been stolen.</p> <p>(9) In this section "prescribed metal" means a metal or alloy which is prescribed for the purposes of this section in regulations made by the Department.</p>	<p>2003 which authorises the carrying out of a specified waste management activity within the meaning of those Regulations.</p> <p>(4) Regulations may amend paragraph (3) so as to add, whether generally or in such circumstances as may be prescribed, any person specified in the regulations, or any description of person so specified, to the persons who are authorised persons for the purposes of paragraph (1)(c) or paragraph (2A).</p> <p>(5) The following are authorised transport purposes for the purposes of paragraph (1)(c) or paragraph (2A) —</p> <p>(a) the transport of controlled waste within the same premises between different places in those premises;</p> <p>(b) the transport to a place in Northern Ireland of controlled waste which has been brought from a country or territory outside Northern Ireland not having been landed in Northern Ireland until it arrives at that place; and</p> <p>(c) the transport by air or sea of controlled waste from a place in Northern Ireland to a place outside Northern Ireland.</p> <p>(6) For the purposes of paragraph (1)(c)(ii)—</p> <p>(a) a transfer of waste in stages shall be treated as taking place when the first stage of the transfer takes place, and</p> <p>(b) a series of transfers between the same parties of waste of the same description shall be treated as a single transfer taking place when the first of the transfers in the series takes place.</p>	
--	---	--

(7) Regulations may make provision imposing requirements on any person who is subject to the duty imposed by paragraph (1) as respects the making and retention of documents and the furnishing of documents or copies of documents.

(8) Any person who fails to comply with paragraph (1) or paragraph (2A) or with any requirement imposed under paragraph (7) shall be guilty of an offence and shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to a fine.

(9) The Department shall, after consultation with such persons or bodies as appear to the Department representative of the interests concerned, prepare and issue a code of practice for the purpose of providing to persons practical guidance on how to discharge the duty imposed on them by paragraph (1).

(10) The Department may issue modifications of, or withdraw, a code of practice issued under paragraph (9); but where a code is withdrawn, the Department shall prepare and issue a new code under that paragraph in substitution for it.

(11) The draft of the code prepared under paragraph (9) shall be laid before the Assembly.

(12) If within the statutory period beginning with the day on which a copy of the draft is laid before the Assembly, the Assembly so resolves, no further proceedings shall be taken thereon but without prejudice to the laying before the Assembly of a new draft.

(13) A code of practice issued under paragraph (9)

	<p>shall be admissible in evidence and if any provision of such a code appears to the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.</p>	
<p><b>12 Disposal of metal</b></p> <p>(1) This section applies if a scrap metal dealer disposes of any scrap metal in the course of the dealer's business.</p> <p>(2) For these purposes metal is disposed of—</p> <p>(a) whether or not it is in the same form in which it was received;</p> <p>(b) whether or not the disposal is to another person;</p> <p>(c) whether or not the metal is despatched from a site.</p> <p>(3) Where the disposal is of metal which in total weighs in excess of 50 kilograms and is made in the course of business under a site licence, the dealer must record the following information—</p> <p>(a) the description of the metal, including its type (or types if mixed), form and weight;</p> <p>(b) the date and time of its disposal;</p> <p>(c) if the disposal is to another person, the full name and address of that person;</p> <p>(d) if the dealer receives payment for the metal (whether by way of sale or exchange), the price or other consideration received.</p> <p>(4) Where the disposal is in the course of business under a collector's licence, the</p>	<p><b>Please see Clause 11 in relation to the requirements already in place under Article 5 of the 1997 Order – Waste Transfer Notes.</b></p> <p><b>Regulation 17 the Waste Regulations (NI) 2011 – compliance with the Waste Hierarchy under the WFD</b></p>	<p>Potential dual regulation issues as outlined at Clause 11.</p> <p>Secondly, the term disposal is of concern here.</p> <p>Under the WFD “‘disposal’ in relation to waste, includes its disposal by way of deposit in or on land”. It further defines ‘disposal’ operation by way of Annex I to the Directive.</p> <p>The Bill does not define ‘disposal’ but implies that any kind of transference or trading in scrap metal is ‘disposal’.</p> <p>Article 5 of the WFD requires operators to comply with the Waste Hierarchy – see column 2.</p> <p>Therefore, the understanding of the term ‘disposal’ as set out in the Bill is problematic.</p> <p>It would not be possible to work these requirements together with waste requirements.</p>

<p>dealer must record the following information—</p> <ul style="list-style-type: none"> <li>(a) the date and time of the disposal;</li> <li>(b) if the disposal is to another person, the full name and address of that person.</li> </ul>		
<p><b>13 Records: supplementary</b></p> <p>(1) The information mentioned in sections 11(2), (5) and (6) and 12(3) and (4) must be recorded—</p> <ul style="list-style-type: none"> <li>(a) in a manner which allows the information and the scrap metal to which it relates to be readily identified by reference to each other;</li> <li>(b) in books with serially numbered pages, or by means of a device for storing and processing information.</li> </ul> <p>(2) The records mentioned in section 12(3) and (4) must be marked so as to identify the scrap metal to which they relate.</p> <p>(3) The dealer must keep the information and other records mentioned in sections 11(2) to (6) and 12(3) and (4) for a period of 1 year beginning with the day on which the metal is received or (as the case may be) disposed of.</p> <p>(4) If a scrap metal dealer fails to fulfil a requirement under section 11 or 12 or this section, each of the following is guilty of an offence—</p> <ul style="list-style-type: none"> <li>(a) the scrap metal dealer;</li> </ul>	<p>No environmental equivalent per se – see column 3 for comments.</p>	<p>The specific information required here is not environmental, therefore, no equivalent legislation exists. However, comments on Clauses 11 and 12 apply.</p> <p>Under the duty of care requirements, WTNs must be held by operators for a minimum of 2 years. If the waste is hazardous then the holding period for consignment notes is 3 years.</p>

<p>(b) if the metal is received at or (as the case may be) despatched from a site, the site manager;</p> <p>(c) any person who, under arrangements made by a person within paragraph (a) or (b), has responsibility for fulfilling the requirement.</p> <p>(5) It is a defence for a person within subsection (4)(a) or (b) who is charged with an offence under this section to prove that the person—</p> <p>(a) made arrangements to ensure that the requirement was fulfilled, and</p> <p>(b) took all reasonable steps to ensure that those arrangements were complied with.</p> <p>(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.</p>		
<p><b>14 Right to enter and inspect</b></p> <p>(1) A constable may enter and inspect a licensed site at any reasonable time on notice to the site manager.</p> <p>(2) A constable may enter and inspect a licensed site at any reasonable time, otherwise than on notice to the site manager, if—</p> <p>(a) reasonable attempts to give such notice have been made and have failed,</p>	<p>Non-environmental – PSNI related – not for DOE</p>	<p>The SMB proposes that all powers of inspection are given to a constable – there are no powers for inspectors from the Department to enter premises or to inspect records. It is difficult to see, therefore, how officers of the Department could perform effectively. Again this highlights the different purpose of the SMB to environmental legislation.</p>

<p>or</p> <p>(b) entry to the site is reasonably required for the purpose of ascertaining whether the provisions of this Act are being complied with or investigating offences under it and (in either case) the giving of notice would defeat that purpose.</p> <p>(3) Subsections (1) and (2) do not apply to residential premises.</p> <p>(4) A constable is not entitled to use force to enter premises in the exercise of the powers under subsections (1) and (2).</p> <p>(5) A lay magistrate may issue a warrant authorising entry (in accordance with subsection (7)) to any premises within subsection (6) if the magistrate is satisfied by information on oath that there are reasonable grounds for believing that entry to the premises is reasonably required for the purpose of—</p> <p>(a) securing compliance with the provisions of this Act, or</p> <p>(b) ascertaining whether those provisions are being complied with.</p> <p>(6) Premises are within this subsection if—</p> <p>(a) the premises are a licensed site, or</p> <p>(b) the premises are not a licensed site but there are reasonable grounds for believing that the premises are being used by a</p>		
---	--	--

<p>scrap metal dealer in the course of business.</p> <p>(7) A warrant issued under subsection (5) must be a warrant signed by the magistrate which—</p> <p>(a) specifies the premises concerned, and</p> <p>(b) authorises a constable to enter and inspect the premises at any time within one month from the date of the warrant.</p> <p>(8) A constable may, if necessary, use reasonable force in the exercise of the powers under a warrant under subsection (5).</p> <p>(9) A constable may—</p> <p>(a) require production of, and inspect, any scrap metal kept at any premises mentioned in subsection (1) or (2) or in a warrant under subsection (5);</p> <p>(b) require production of, and inspect, any records kept in accordance with section 11 or 12 and any other records relating to payment for scrap metal;</p> <p>(c) take copies of or extracts from any such records.</p> <p>(10) Subsection (11) applies if a constable seeks to exercise powers under this section in relation to any premises.</p> <p>(11) If the owner, occupier or other person in charge of the premises requires the</p>		
---	--	--

<p>constable to produce—</p> <p>(a) evidence of the constable's identity, or</p> <p>(b) evidence of the constable's authority to exercise those powers, the constable must produce that evidence.</p> <p>(12) A person who—</p> <p>(a) obstructs the exercise of a right of entry or inspection under this section; or</p> <p>(b) fails to produce a record required to be produced under this section, is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.</p>		
<p><b>15 Offences by bodies corporate</b></p> <p>(1) Where an offence under this Act is committed by a body corporate and is proved—</p> <p>(a) to have been committed with the consent or connivance of a director, manager, secretary or other similar officer, or</p> <p>(b) to be attributable to any neglect on the part of any such individual, the individual as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.</p> <p>(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and</p>	<p>Non-environmental</p>	<p>N/A</p>

<p>omissions of a member in connection with that management as if the member were a director of the body corporate.</p>		
<p><b>16 “Carrying on business as a scrap metal dealer” and “scrap metal”</b></p> <p>(1) The following provisions apply for the purposes of this Act.</p> <p>(2) A person carries on business as a scrap metal dealer if the person—</p> <p>(a) carries on a business which consists wholly or partly in buying or selling scrap metal, whether or not the metal is sold in the form in which it was bought, or</p> <p>(b) carries on business as a motor salvage operator (so far as that does not fall within paragraph (a)).</p> <p>(3) For the purposes of subsection (2)(a), a person who manufactures articles is not to be regarded as selling scrap metal if that person sells scrap metal only as a by-product of manufacturing articles or as surplus materials not required for manufacturing them.</p> <p>(4) For the purposes of subsection (2)(b), a person carries on business as a motor salvage operator if the person carries on a business which consists—</p> <p>(a) wholly or partly in recovering salvageable parts from motor vehicles for re-use or sale and</p>	<p>No environmental equivalent – this relates to ‘trading’ in metal</p>	<p>N/A</p>

<p>subsequently selling or otherwise disposing of the rest of the vehicle for scrap,</p> <p>(b) wholly or mainly in buying written-off vehicles and subsequently repairing and reselling them,</p> <p>(c) wholly or mainly in buying or selling motor vehicles which are to be the subject (whether immediately or on a subsequent re-sale) of any of the activities mentioned in paragraphs (a) and (b), or</p> <p>(d) wholly or mainly in activities falling within paragraphs (b) and (c).</p> <p>(5) “Scrap metal dealer” means a person who is for the time being carrying on business as a scrap metal dealer, whether or not authorised by a licence.</p> <p>(6) “Scrap metal” includes—</p> <p>(a) any old, waste or discarded metal or metallic material, and</p> <p>(b) any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as being of insufficient utility or value to retain or as having reached the end of its useful life.</p> <p>(7) The following are not scrap metal—</p> <p>(a) gold;</p>		
--	--	--

<p>(b) silver; and  (c) any alloy of which 2 per cent or more by weight is attributable to gold or silver.</p> <p>(8) The Department may by order amend the definition of “scrap metal” for the purposes of this Act (whether by amending subsection (6) or (7) or otherwise).</p>		
<p><b>17 Orders and regulations</b></p> <p>(1) Except where subsection (2) provides otherwise, any order or regulations made under this Act are subject to negative resolution.</p> <p>(2) The following orders are not to be made unless a draft has been laid before, and approved by a resolution of, the Assembly—</p> <p>(a) an order under section 10(8)(a) (amendment of lawful methods of payment for scrap);</p> <p>(b) an order under section 10(8)(b) (amendment or removal of low value cash payments exemption);</p> <p>(c) an order under section 19(1)(a) (commencement).</p>	<p>From an environmental perspective DOE believes that it has sufficient legislation in place to allow it to carry out its basic function, viz, the protection of the environment and human health. The requirements provided for here are non-environmental.</p>	
<p><b>18 Interpretation</b></p> <p>(1) The following provisions apply for the purposes of this Act.</p> <p>(2) “Department” means the Department of the Environment.</p>	<p>No further comment – see previous issues in relation to potential clashes with European environmental requirements.</p>	<p>N/A</p>

<p>(3) “Licensed site” means a site identified in a scrap metal licence.</p> <p>(4) “Licensee” means the holder of a scrap metal licence.</p> <p>(5) “Mobile collector” means a person who—</p> <p style="padding-left: 40px;">(a) carries on business as a scrap metal dealer otherwise than at a site, and</p> <p style="padding-left: 40px;">(b) regularly engages, in the course of that business, in collecting waste materials and old, broken, worn out or defaced articles by means of visits from door to door.</p> <p>(6) “Premises” includes any land or other place (whether enclosed or not).</p> <p>(7) “Site” means any premises used in the course of carrying on business as a scrap metal dealer (whether or not metal is kept there).</p> <p>(8) “Site manager”, in relation to a site at which a scrap metal dealer carries on business, means the individual who exercises day-to-day control and management of activities at the site.</p> <p>(9) An individual may be named in a licence as site manager at more than one site; but no site may have more than one site manager named in relation to it.</p> <p>(10) “Trading name” means a name, other than that stated in the licence under section 2(4)(a) or 2(6)(a), under which a licensee carries on business as a scrap metal dealer.</p>		
--	--	--

<p><b>19 Commencement</b></p> <p>(1) The provisions of this Act, except sections 17, 20, 21 and this section, come into operation on—</p> <p>(a) such day as the Department may by order appoint;</p> <p>(b) the expiration of 2 years from the day on which this Act receives Royal Assent if not in operation by that date.</p> <p>(2) Different days may be appointed for different purposes under subsection (1)(a).</p> <p>(3) This section and sections 17, 20 and 21 come into operation on the day after this Act receives Royal Assent.</p>	N/A	N/A
<p><b>20 Review of implementation of this Act</b></p> <p>(1) The Department must—</p> <p>(a) not later than 6 months after this Act receives Royal Assent, and</p> <p>(b) at least once in every period of 6 months thereafter until all provisions of this Act are in force, prepare and lay before the Assembly a report on the implementation of this Act.</p>	N/A	N/A
<p><b>21 Short title</b></p> <p>This Act may be cited as the Scrap Metal Dealers Act (Northern Ireland) 20[ ].</p>	N/A	N/A

<p><b>SCHEDULE 1</b>                      <b>Section 5</b></p> <p><b>FURTHER PROVISION ABOUT LICENCES</b></p> <p><b>1</b>      <b>Terms of licence</b></p> <p>(1)      A licence expires at the end of the period of 3 years or such period, not being less than 1 year, as the Department may specify in the licence beginning with the day on which it is issued.</p> <p>(2)      But if an application to renew a licence is received before the licence expires, the licence continues in effect and—</p> <p style="padding-left: 40px;">(a) if the application is refused, the licence expires when no appeal under paragraph 9 is possible in relation to the refusal or any such appeal is finally determined or withdrawn;</p> <p style="padding-left: 40px;">(b) if the licence is renewed, it expires at the end of the period of 3 years or such period, not being less than 1 year, as the Department may specify in the renewed licence beginning with the day on which it is renewed.</p> <p>(3)      Sub-paragraphs (1) and (2) are subject to section 4 (revocation of licence).</p>	<p>See Clause 5 above.</p>	<p>See Clause 5 above.</p>

**2 Applications**

(1) A licence is to be issued or renewed on an application, which must be accompanied by—

(a) if the applicant is an individual, the full name, date of birth and usual place of residence of the applicant,

(b) if the applicant is a company, the name and registered number of the applicant and the address of the applicant's registered office,

(c) if the applicant is a partnership, the full name, date of birth and usual place of residence of each partner,

(d) any proposed trading name,

(e) the e-mail address (if any) and the telephone number of the applicant,

(f) the address of any site at which the applicant carries on business as a scrap metal dealer or proposes to do so,

(g) details of any relevant environmental permit or

<p>registration in relation to the applicant,</p> <p>(h) details of any other scrap metal licence issued to—</p> <ul style="list-style-type: none"><li>(i) the applicant;</li><li>(ii) any partnership in which the applicant is or was a partner; and</li><li>(iii) any company of which the applicant is or was a director;</li></ul> <p>within the period of 3 years ending with the date of the application,</p> <p>(i) details of the bank account which is proposed to be used in order to comply with section 10 (offence of buying scrap metal for cash etc),</p> <p>(j) details of any conviction of the applicant for a relevant offence, or any relevant enforcement action taken against the applicant, and</p> <p>(k) any other information or documentation the Department</p>		
--	--	--

may specify in guidance.

(2) If the application relates to a site licence, it must also be accompanied by—

(a) the address of each site proposed to be identified in the licence (or, in the case of an application to renew, of each site identified in the licence whose renewal is sought), and

(b) the full name, date of birth and usual place of residence of each individual proposed to be named in the licence as a site manager (other than the applicant).

(3) If the application relates to a site licence, the references in sub-paragraph (1)(g), (h) and (j) to the applicant are to be read as including any individual proposed to be named in the licence as a site manager.

### **3 Variation of licence**

(1) The Department may, on an application, vary a licence by changing it from one of the types of licence specified in section

<p>2(2) to the other.</p> <p>(2) If there is a change in any of the matters mentioned in section 2(4)(a), (b) or (c) or (6)(a), the licensee must make an application to vary the licence accordingly.</p> <p>(3) But the power to amend the name of the licensee does not include the power to transfer the licence from one person to another.</p> <p>(4) An application under this paragraph—  (a) is to be made to the Department' and  (b) must contain particulars of the changes to be made to the licence.</p> <p>(5) A licensee who fails to comply with subparagraph (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p> <p>(6) It is a defence for a person charged with an offence under this paragraph to prove that the person took all reasonable steps to avoid committing the offence.</p>		
<p><b>4 Further information</b></p> <p>(1) The Department may request (either when the application is made or later) that the applicant provide such further information as the Department considers relevant for the purpose of considering</p>		

<p>the application.</p> <p>(2) If an applicant fails to provide information requested under sub-paragraph (1), the Department may decline to proceed with the application.</p> <p><b>5 Offence of making false statement</b></p> <p>An applicant who in an application or in response to a request under paragraph 4(1)—</p> <p>(a) makes a statement knowing it to be false in a material particular, or</p> <p>(b) recklessly makes a statement which is false in a material particular, is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p> <p><b>6 Fee</b></p> <p>(1) An application must be accompanied by a fee set by the Department.</p> <p>(2) In setting a fee under this paragraph, the Department must have regard to any guidance issued from time to time by the Department for Finance and Personnel.</p> <p><b>7 Right to make representations</b></p> <p>(1) If the Department proposes—</p>		
--	--	--

<p>(a) to refuse an application made under paragraph 2 or 3, or</p> <p>(b) to revoke or vary a licence under section 4,</p> <p>the Department must give the applicant or licensee a notice which sets out what the Department proposes to do and the reasons for it.</p> <p>(2) In this paragraph and paragraph 8 the applicant or licensee is referred to as “A”.</p> <p>(3) A notice under sub-paragraph (1) must also state that, within the period specified in the notice, A may either—</p> <p>(a) make representations about the proposal, or</p> <p>(b) inform the Department that A wishes to do so.</p> <p>(4) The period specified in the notice must be not less than 14 days beginning with the date on which the notice is given to A.</p> <p>(5) The Department may refuse the application, or revoke or vary the licence under section 4, if—</p> <p>(a) within the period specified in the notice, A informs the Department that A does not wish to make representations, or</p> <p>(b) the period specified in the notice expires and A has neither made representations nor informed the Department that A wishes to do so.</p>		
--	--	--

<p>(6) If, within the period specified in the notice, A informs the Department that A wishes to make representations, the Department—</p> <p style="padding-left: 40px;">(a) must allow A a further reasonable period to make representations, and</p> <p style="padding-left: 40px;">(b) may refuse the application, or revoke or vary the licence under section 4, if A fails to make representations within that period.</p> <p>(7) If A makes representations (either within the period specified in the notice under sub-paragraph (1) or within the further period under sub-paragraph (6)), the Department must consider the representations.</p> <p>(8) If A informs the Department that A wishes to make oral representations, the Department must give A the opportunity of appearing before, and being heard by, a person appointed by the Department.</p>		
<p><b>8 Notice of decision</b></p> <p>(1) If the Department refuses the application, or revokes or varies the licence under section 4, it must give A a notice setting out the decision and the reasons for it.</p> <p>(2) A notice under this paragraph must also</p>		

state—

- (a) that A may appeal under paragraph 9 against the decision,
- (b) the time within which such an appeal may be brought, and
- (c) in the case of a revocation or variation under section 4, the date on which the revocation or variation is to take effect.

**9 Appeals**

- (1) An applicant may appeal to a magistrates' court against the refusal of an application made under paragraph 2 or 3.
- (2) A licensee may appeal to a magistrates' court against—
  - (a) the inclusion in a licence of a condition under section 3(6), or
  - (b) the revocation or variation of a licence under section 4.
- (3) An appeal under this paragraph is to be made within the period of 21 days beginning with the day on which notice of the decision to refuse the application, to include the condition, or to revoke or vary the licence under section 4, was given.
- (4) The procedure on an appeal under this paragraph is to be by way of complaint for an order and in accordance with the Magistrates' Courts (Northern Ireland)

<p>Order 1981.</p> <p>(5) For the purposes of the time limit for making an appeal under this paragraph, the making of the complaint is to be treated as the making of the appeal.</p> <p>(6) On an appeal under this paragraph, the magistrates' court may—</p> <p style="padding-left: 40px;">(a) confirm, vary or reverse the Department's decision, and</p> <p style="padding-left: 40px;">(b) give such directions as it considers appropriate having regard to the provisions of this Act.</p> <p>(7) The Department must comply with any directions given by the magistrates' court under sub-paragraph (6).</p> <p>(8) But the Department need not comply with any such directions—</p> <p style="padding-left: 40px;">(a) until the time for making an application under Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (application by way of case stated) has passed, or</p> <p style="padding-left: 40px;">(b) if such an application is made, until the application is finally determined or withdrawn.</p>		
<p><b>SCHEDULE 2</b></p> <p style="text-align: right;"><b>Section 7</b></p> <p style="text-align: center;"><b>CLOSURE OF UNLICENSED SITES</b></p> <p><b>1 Interpretation</b></p>	<p>Non-environmental – no relevance to DOE</p>	<p>See Clause 7 above.</p>

For the purposes of this Schedule, a person has an interest in premises if the person is the owner, leaseholder or occupier of the premises.

**2 Closure notice**

(1) This paragraph applies if a constable or the Department is satisfied—

(a) that premises are being used by a scrap metal dealer in the course of business, and

(b) that the premises are not a licensed site.

(2) But this paragraph does not apply to any part of such premises that is used solely as residential premises.

(3) The constable or the Department may issue a notice (a “closure notice”) which—

(a) states that the constable or the Department is satisfied as mentioned in sub-paragraph (1),

(b) gives the reasons for that,

(c) states that the constable or the Department may apply to the court for a closure order, and

(d) specifies the steps which may be taken to ensure that the alleged use of the premises ceases.

(4) The constable or the Department must give the closure notice to—

(a) the person who appears to the constable or the Department to

<p>be the site manager of the premises, and</p> <p>(b) such person (other than the person in head (a)), if any, who appears to the constable or Department to be a director, manager or other officer of the business in question.</p> <p>(5) The constable or the Department may also give the notice to any person who has an interest in the premises.</p> <p>(6) Sub-paragraph (7) applies where—</p> <p>(a) a person occupies another part of any building or structure of which the premises form part, and</p> <p>(b) the constable or the Department reasonably believes, at the time of giving the notice under sub-paragraph (4), that the person’s access to that other part would be impeded if a closure order were made in respect of the premises.</p> <p>(7) The constable or the Department must give the notice to that person.</p> <p><b>3 Cancellation of closure notice</b></p> <p>(1) A closure notice may be cancelled by a notice (a “cancellation notice”) issued by a constable or the Department.</p> <p>(2) A cancellation notice takes effect when it is given to any of the persons to whom</p>		
---	--	--

<p>the closure notice was given under paragraph 2(4).</p> <p>(3) The cancellation notice must also be given to any other person to whom the closure notice was given.</p> <p><b>4 Application for closure order</b></p> <p>(1) Where a closure notice has been given under paragraph 2(4), a constable or the Department may make a complaint to a lay magistrate for a closure order.</p> <p>(2) A complaint under this paragraph may not be made—</p> <ul style="list-style-type: none"><li>(a) less than 7 days after the date on which the closure notice was given, or</li><li>(b) more than 6 months after that date.</li></ul> <p>(3) A complaint under this paragraph may not be made if the constable or the Department is satisfied that—</p> <ul style="list-style-type: none"><li>(a) the premises are not (or are no longer) being used by a scrap metal dealer in the course of business, and</li><li>(b) there is no reasonable likelihood that the premises will be so used in the future.</li></ul> <p>(4) Where a complaint has been made under this paragraph, the lay magistrate may issue a summons to answer to the</p>		
---	--	--

<p>complaint.</p> <p>(5) The summons must be directed to any person to whom the closure notice was given under paragraph 2(4).</p> <p>(6) If a summons is issued under subparagraph (4), notice of the date, time and place at which the complaint will be heard must be given to all the persons to whom the closure notice was given under paragraph 2(5) and (7).</p> <p>(7) The procedure on a complaint under this paragraph is to be in accordance with the Magistrates' Courts (Northern Ireland) Order 1981.</p>		
<p><b>5 Closure order</b></p> <p>(1) This paragraph applies if, on hearing a complaint under paragraph 4, the court is satisfied that the closure notice was given under paragraph 2(4) and that—</p> <p style="padding-left: 40px;">(a) the premises continue to be used by a scrap metal dealer in the course of business, or</p> <p style="padding-left: 40px;">(b) there is a reasonable likelihood that the premises will be so used in the future.</p> <p>(2) The court may make such order as it considers appropriate for the closure of the premises (a "closure order").</p> <p>(3) A closure order may, in particular, require—</p>		

<p>(a) that the premises be closed immediately to the public and remain closed until a constable or the Department makes a certificate under paragraph 6;</p> <p>(b) that the use of the premises by a scrap metal dealer in the course of business be discontinued immediately;</p> <p>(c) that any defendant pay into court such sum as the court determines and that the sum will not be released by the court to that person until the other requirements of the order are met.</p> <p>(4) A closure order including a requirement mentioned in sub-paragraph (3)(a) may, in particular, include such conditions as the court considers appropriate relating to—</p> <p>(a) the admission of persons onto the premises;</p> <p>(b) the access by persons to another part of any building or other structure of which the premises form part.</p> <p>(5) A closure order may include such provision as the court considers appropriate for dealing with the consequences if the order should cease to have effect under paragraph 6.</p> <p>(6) As soon as practicable after a closure order is made, the complainant must fix a copy of it in a conspicuous position on the premises in respect of which it was made.</p>		
---	--	--

<p>(7) A sum which has been ordered to be paid into court under a closure order is to be paid to the designated officer for the court.</p> <p><b>6 Termination of closure order by certificate of constable or the Department</b></p> <p>(1) This paragraph applies where—</p> <ul style="list-style-type: none"><li>(a) a closure order has been made, but</li><li>(b) a constable or the Department is satisfied that the need for the order has ceased.</li></ul> <p>(2) The constable or the Department may make a certificate to that effect.</p> <p>(3) The closure order ceases to have effect when the certificate is made.</p> <p>(4) If the closure order includes a requirement under paragraph 5(3)(c), any sum paid into court under the order is to be released by the court to the defendant (whether or not the court has made provision to that effect under paragraph 5(5)).</p> <p>(5) As soon as practicable after making a certificate, the constable or the Department must—</p> <ul style="list-style-type: none"><li>(a) give a copy of it to any person against whom the closure order was made,</li><li>(b) give a copy of it to the</li></ul>		
--	--	--

<p>designated officer for the court which made the order, and (c) fix a copy of it in a conspicuous position on the premises in respect of which the order was made.</p> <p>(6) The constable or the Department must give a copy of the certificate to any person who requests one.</p> <p><b>7 Discharge of closure order by court</b></p> <p>(1) Any of the following persons may make a complaint to a lay magistrate for an order that a closure order be discharged (a “discharge order”)—</p> <ul style="list-style-type: none"><li>(a) any person to whom the relevant closure notice was given under paragraph 2;</li><li>(b) any person who has an interest in the premises but to whom the closure notice was not given.</li></ul> <p>(2) The court may not make a discharge order unless it is satisfied that there is no longer a need for the closure order.</p> <p>(3) Where a complaint has been made under this paragraph, the lay magistrate may issue a summons directed to—</p> <ul style="list-style-type: none"><li>(a) such constable as the lay magistrate considers appropriate, or</li></ul>		
---	--	--

<p>(b) the Department, requiring that person to appear before the magistrates' court to answer to the complaint.</p> <p>(4) If a summons is issued under subparagraph (3), notice of the date, time and place at which the complaint will be heard must be given to all the persons to whom the closure notice was given under paragraph 2 (other than the complainant).</p> <p>(5) The procedure on a complaint under this paragraph is to be in accordance with the Magistrates' Courts (Northern Ireland) Order 1981.</p> <p><b>8 Appeals</b></p> <p>(1) An appeal may be made to the Crown Court against—</p> <ul style="list-style-type: none"><li>(a) a closure order;</li><li>(b) a decision not to make a closure order;</li><li>(c) a discharge order;</li><li>(d) a decision not to make a discharge order.</li></ul> <p>(2) Any appeal under this paragraph must be made before the end of the period of 14 days beginning with the day on which the order or the decision in question was made.</p>		
---	--	--

<p>(3) An appeal under this paragraph against a closure order or a decision not to make a discharge order may be made by—</p> <ul style="list-style-type: none"> <li>(a) any person to whom the relevant closure notice was given under paragraph 2;</li> <li>(b) any person who has an interest in the premises but to whom the closure notice was not given.</li> </ul> <p>(4) An appeal under this paragraph against a decision not to make a closure order or against a discharge order may be made by a constable or (as the case may be) the Department.</p> <p>(5) On an appeal under this paragraph the Crown Court may make such order as it considers appropriate.</p>		
<p><b>9 Enforcement of closure order</b></p> <p>(1) A person is guilty of an offence if the person, without reasonable excuse—</p> <ul style="list-style-type: none"> <li>(a) permits premises to be open in contravention of a closure order, or</li> <li>(b) otherwise fails to comply with, or does an act in contravention of, a closure order.</li> </ul> <p>(2) If a closure order has been made in respect of any premises, a constable may</p>		

<p>(if necessary using reasonable force)—</p> <ul style="list-style-type: none"><li>(a) enter the premises at any reasonable time, and</li><li>(b) having entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order.</li></ul> <p>(3) Sub-paragraph (4) applies if a constable seeks to exercise powers under this paragraph in relation to any premises.</p> <p>(4) If the owner, occupier or other person in charge of the premises requires the constable to produce—</p> <ul style="list-style-type: none"><li>(a) evidence of the constable’s identity, or</li><li>(b) evidence of the constable’s authority to exercise those powers,</li></ul> <p>the constable must produce that evidence.</p> <p>(5) A person who intentionally obstructs a constable in the exercise of powers under this paragraph is guilty of an offence.</p> <p>(6) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.</p>		
--	--	--

## Annex B : Schedule 6 Prescribed Offences

The Waste Management Licensing (Amendment No. 2) Regulations (Northern Ireland) 2015

“SCHEDULE 6

Regulation 2

Prescribed Offences

1. The offences to be regarded as prescribed offences for the purposes of Article 3(3)(a) of the 1997 Order are listed in Tables 1-3—

**Table 1**

**Relevant Environmental Offences**

<i>Number</i>	<i>Offence(s)</i>
1.	Articles 33(4) and 36(1) of and paragraph 9 of Schedule 5, paragraph 5 and paragraph 9(2) of Schedule 6 and Part 1, paragraph 14 of Schedule 7 to the Drainage (Northern Ireland) Order 1973
2.	Articles 29 and 72(3) of the Pollution Control and Local Government (Northern Ireland) Order 1978
3.	Articles 4, 5(8), 5E(7), 5E(9), 6(7), 12(12), 12(13), 15(5A), 16(4), 18, 21(6), 22(6), 27(5), 28(5), 29(3), 31(2), 38(1), 42, 44(2) and 74 of the Waste and Contaminated Land (Northern Ireland) Order 1997
4.	Articles 7(1), 7(5), 12(3), 19(1), 28(3) and 29(1) of the Water (Northern Ireland) Order 1999
5.	Regulations 12(1), 12(2), 12(3) and 12(4) of the Environmental Protection (Disposal of Polychlorinated Biphenyls and Other Dangerous Substances) Regulations (Northern Ireland) 2000
6.	Article 20 of the Environment (Northern Ireland) Order 2002
7.	Regulation 12 of the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) Regulations (Northern Ireland) 2003
8.	Regulations 31, 42(1) and 42(2) of the End of Life Vehicles Regulations 2003
9.	Regulations 18(1) and 22(1) of and paragraphs 12(1), 12(2), 14(5), 14(7) and 14(8) of Part 1 of Schedule 3 to the Waste Management Licensing Regulations (Northern Ireland) 2003
10.	Regulation 17(1) of the Landfill Regulations (Northern Ireland) 2003
11.	Regulations 13(1) and 16(3) of the Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2005
12.	Regulations 43(1), 43(3) and 43(5) of the Hazardous Waste Regulations (Northern Ireland) 2005

13.	Regulation 6(1) of the Radioactive Contaminated Land Regulations (Northern Ireland) 2006
14.	Regulations 18(10), 24(1) and 24(2) of the Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006
15.	Regulation 40 of the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007
16.	Regulations 17, 18, 19, 21, 22, 23, 24, 25, 26, 31, 32, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 52, 53, 54, 55 and 57 of and paragraphs 4 and 5 of Schedule 1 and paragraph 6(3) of Part 1 of Schedule 5 to the Transfrontier Shipment of Waste Regulations 2007
17.	Regulation 42 of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008
18.	Regulations 89(1), 89(2), 89(3), 89(4), 89(5) and 89(6) of the Waste Batteries and Accumulators Regulations 2009
19.	Regulations 9, 10, 17, 26 and 27 of the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009
20.	Regulations 19(1), 24(3) and 25(3) of the Groundwater Regulations (Northern Ireland) 2009
21.	Section 85 of the Marine and Coastal Access Act 2009
22.	Regulation 25 of the Nitrates Action Programme Regulations (Northern Ireland) 2010
23.	Regulation 24 of the Waste Regulations (Northern Ireland) 2011
24.	Articles 42(6), 43(5), 76(9), 85(1), 85(5), 103(1), 109(3), 117(1), 126(1), 126(3), 127(1), 134(1), 134(5), 137(1), 146(9), 147(2), 149(5), 150(12), 152(9), 168(1), 168(6), 172(1), 175(2), 178(2), 178(5), 237(2), 237(3) and 240(3) of the Planning Act (Northern Ireland) 2011
25.	Regulations 82(6), 89(10) and 90 of the Waste Electrical and Electronic Equipment Regulations 2013
26.	Sections 32(1) and 33(1) of the Marine Act (Northern Ireland) 2013
27.	Regulation 36 of the Pollution, Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013

**Table 2**

**Relevant Financial Offences**

<i>Number</i>	<i>Offence(s)</i>
1.	Sections 24, 50, 64, 67, 68, 68A, 100, 129, 136, 159, 167, 168, 170, 170A and 170B of the Customs and Excise Management Act 1979
2.	Sections 1, 2, 3, 4, 5, 14, 15, 16, 17, 18 and 19 of the Forgery and Counterfeiting Act 1981
3.	Paragraphs 15(1), 15(3), 15(4), 15(5), 15(6) and 15(7) of Part IV of Schedule 5 to the Finance Act 1996
4.	Sections 1, 6, 7, 9, 11 and 12 of the Fraud Act 2006

**Table 3****Other Relevant Offences**

<i>Number</i>	<i>Offence(s)</i>
1.	Section 114 of the Public Health Act 1878
2.	Sections 1, 8, 9, 10, 11, 17, 18, 21 and 23A of the Theft Act (Northern Ireland) 1969
3.	Sections 4, 6, 8, 9, 11, 19, 20, 21 and 23 of the Misuse of Drugs Act 1971
4.	Sections 24, 24A, 25, 25A, 25B, 26, 26A, 26B and 27 of the Immigration Act 1971
5.	Articles 98(3) and 98(4) of the Local Government Act (Northern Ireland) 1972
6.	Articles 31(1), 34(1) and 34(2) of the Health and Safety at Work Order 1978
7.	Articles 3, 9(13), 11A(1), 15B(11), 19G(4), 31E, 72(1), 72(2), 73A(4), 81(1), 82, 86(1), 90(4), 91A, 95(2), 96(2), 97(3), 168A(1), 172, 172B, 174(2), 175(2), 180(1), 180(4) and 180(6) of the Road Traffic (Northern Ireland) Order 1981
8.	Articles 30(4), 31(1), 39(3), 40(1), 40(3), 47(1), 47(2), 53 and 54(1) of the Criminal Justice (Northern Ireland) Order 1996
9.	Sections 49, 50, 51, 52, 53 and 58 of the Drug Trafficking Act 1994
10.	Sections 11, 12, 13, 15, 16, 17, 18, 19, 21A, 21D, 54, 56, 57, 58, 58A, 59, 60, 61, 62, 63, 63A, 63B, 63C, 63D, 87, 89, 93, 94, 95, 96, 103 and 116 of and paragraphs 3(7), 14(1), 15(4), 16(3), 19(7), 20(6) and 32(3) of Schedule 5, paragraphs 1(3) and 8(2) of Schedule 6, paragraph 18 of Schedule 7 and paragraphs 2, 3, 4, 6(3), 15(1) and 16(3) of Schedule 13 to the Terrorism Act 2000
11.	Sections 327, 328, 329, 330, 331 and 332 of the Proceeds of Crime Act 2002
12.	Articles 3, 6(6), 10(3), 13(2), 15(10), 16(2), 21(4), 24, 27(6), 30(1), 35(9), 36(3), 37(4), 38(7), 39(3), 40(4), 41(5), 42(4), 43(5), 44(6), 45(1), 45(2), 45(5), 49(5)(b), 51(2), 52(4), 53(5), 54(2), 55(5), 56(3), 58(2), 59(2), 60(1), 61, 62, 63, 64, 65, 66, 67, 72, 72(2)(c) and 73 of the Firearms (Northern Ireland) Order 2004
13.	Articles 10(8), 15, 16(10), 21, 26, 31 and 32 of and paragraphs 8(1) and 8(2) of Schedule 1 and paragraphs 4, 5, 6 and 8(3) of Schedule 6 to the Justice and Security (Northern Ireland) Act 2007
14.	Sections 25, 44, 45 and 46 of the Serious Crime Act 2007
15.	Articles 1(7), 5(2), 9(3), 9(4), 11(2)(a), 16(1), 17(1), 28 and 45(6) of the Transport Act (Northern Ireland) 2011
16.	Regulations 17(1) and 18(1) of the Animal By-Products (Enforcement) Regulations (Northern Ireland) 2011
17.	Articles 1, 10 and 11 of the Scrap Metal Dealers Act 2013
18.	Sections 1, 2 and 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015”