

**Ms Ciara McKay**

The Committee Clerk  
Room 247  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

4 December 2015

Dear Ms McKay,

**FSB response to the Scrap Metal Dealers Bill Committee Stage consultation**

I am writing in response to your call for evidence for the Committee Stage of the Scrap Metal Dealers Bill. The Federation of Small Businesses is Northern Ireland's largest business organisation with approximately 6,500 members, from across all sectors of industry. FSB Northern Ireland lobbies decision makers to create a better business environment.

FSB Northern Ireland supports legislation to tackle the theft of scrap metal through tighter regulation of metal dealers. A significant negative impact on small businesses is metal theft. This can be vast, not only as a result of direct thefts from business premises, but from associated factors as well, such as damage to electricity infrastructure and equipment which may result in power outages.

For the committee's information I have included with this letter a copy of FSB Northern Ireland's response to the Consultation on Scrap Metal Dealers (Northern Ireland) Bill last year.

**Yours faithfully,**

**Wilfred Mitchell OBE**

**Northern Ireland Policy Chairman**



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# **FSB NI response to Consultation on Scrap Metal Dealers (Northern Ireland) Bill**

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**February 2014**

## Question 1

Do you believe that current provisions regulating the sale of scrap metal are adequate in detecting the trade of stolen metal?

Yes No Don't Know

Comments:

FSB NI notes the PSNI figures which show that burglary, robbery and theft offences where the property stolen includes metal have risen considerably from under 500 in 2007/08 to 1,426 in 2012/13. This outlines the growing seriousness of the problem and the inadequacy of current regulation of this area.

It is also the case that Northern Ireland currently finds itself out of step with the rest of the United Kingdom in dealing with this crime given the Scrap Metal Dealers Act 2013 which is in place in England and Wales as well as section 28 the Civic Government (Scotland) Act 1982 which provides for the licensing and regulation of metal dealers in Scotland with further legislation planned for that region. We want to avoid a scenario where this type of crime increases further as it is displaced to Northern Ireland from the rest of the UK and the indeed the Republic of Ireland.

The negative impact on small businesses associated with metal theft can be vast both as a result of direct thefts from business premises or associated factors such as damage to electricity infrastructure and equipment which may result in power outages. FSB members also report having experienced rising overheads as they are forced to take further action in securing their assets. For these reasons FSB NI wants to see robust legislation in place including a licensing regime which is fit for the 21<sup>st</sup> century.

Some scrap metal dealers have subscribed to a voluntary code of conduct in relation to trading in scrap metal; not all dealers have adopted this scheme.

## Question 2

Do you believe that a voluntary code of guidance on the operation of scrap metal dealers is adequate?

Yes No Don't Know

Comments:

FSB NI does not believe that a voluntary code of guidance on the operation of scrap metal dealers is adequate in the long term.

We accept that the UK-wide British Transport Police (BTP) initiative 'Operation Tornado' has been successful to a degree. However, there is no penalty for opting out of this voluntary scheme and consequently not all metal dealers have signed up. This places legitimate dealers under more regulation whilst leaving the door open for criminality to continue.

Further to that, while the scheme requires anyone selling scrap metal to participating dealers to provide photographic proof of identity the legislation in England and Wales goes much further, for

example, in terms of the extent of records which must be kept as well as penalties for non compliance.

We believe it to be the case that enacting legislation would actually build on the partial success of the voluntary scheme within Operation Tornado.

### **Question 3**

Do you agree that legislation is required in order to assist in combating the problem of metal theft?

Yes No Don't Know

Comments:

As noted above, a voluntary code can be, and is, opted out of by some. Legislation provides a vehicle to advance a system whereby all metal dealers are subject to the same regulation through law.

Legislation is also more appropriate to ensure robust enforcement measures are in place and seems the only long term solution to tackle this criminality effectively. Our organisation supported this approach in England and Wales.

We would also state our strongly held position that the provisions contained within the legislation should be as bureaucratically light as possible for legitimate traders with the focus on tackling criminality.

## **My Proposal for Legislation**

It is my intention to bring forward a Bill which would legislate specifically the trading of scrap metal, in order to help combat the problem of scrap metal theft in Northern Ireland. I would plan to follow similar legislation which is making progress in Scotland and the Republic of Ireland and has been approved in England and Wales.

My proposals include:

- Providing traceability of the source of scrap metal by requiring specified photographic ID and proof of address to be provided to and recorded by the scrap metal merchant prior to purchase, and details to be kept on file for a period of not less than one year.

### **Question 4**

Do you agree with this proposal?

Yes No Don't Know

Comments:

FSB NI agrees with this proposal. This was an integral part of Operation Tornado as developed by the BTP in partnership with the British Metals Recycling Association (BMRA), the Association of Chief Police Officers (ACPO), the Home Office and others. It has therefore been proven to have a significant impact on the ability of local criminals to convert stolen metal into cash thereby reducing crime.

We believe its effectiveness will be enhanced through being enshrined in legislation.

- Requiring registration details of vehicles delivering scrap metal to merchants, to be recorded and details kept by the scrap metal merchant for a period of no less than one year.

### **Question 5**

Do you agree with this proposal?

Yes No Don't Know

Comments:

FSB NI notes the provisions under section 13 of the Scrap Metal Dealers Act 2013 which governs the information a dealer must record when in receipt of scrap metal. This sets out that if the metal is delivered in or on a vehicle, the registration mark of the vehicle must be recorded.

We see no reason to depart from this approach in Northern Ireland as proper record keeping by metal dealers when in receipt of scrap metal is essential to the success of this legislation.

All transactions to be cashless (either an electronic transfer or a crossed cheque) to provide an audit trail to the person selling the scrap metal.

### **Question 6**

Do you agree with the use of solely cashless transactions for the purchase of scrap metal?

Yes No Don't Know

Comments:

Although FSB NI recognises that a move towards cashless transactions should not be taken lightly in any sector and it may be argued in this case to disadvantage small, legitimately run scrap sites, overall we feel this approach represents an appropriate and balanced response to a growing problem.

The key to this working is ensuring that there is also effective enforcement against unregulated operators and therefore a level playing field for all metal dealers.

The fact is that stolen metal can become untraceable in a very short space of time through a cash transaction between a thief and metal dealer; this provision would effectively frustrate that criminal activity.

We believe this should also apply to mobile operators who may conduct collection of scrap metal on a site to site basis.

A holding period during which metal would be retained and segregated and could be subject to inspection, which would increase the ability of PSNI to trace stolen metal.

### **Question 7**

Do you agree with this proposal?

Yes No Don't Know

### **Question 8**

If yes, how long should the holding period be?

1 day 1 week 2 weeks Other (Please Comment)

Comments:

We consider a holding period to be essential in giving the PSNI the best possible opportunity to investigate fully any metal thefts which occur. However, the question of how long a holding period would be best worked out between the proposer of the Bill and the PSNI, with the proviso that such period does not unreasonably disadvantage the legitimate scrap trader whose property may be held in the course of a wider investigation.

Scrap metal thieves have been reported as having burnt identification information from stolen metal, or removed this information in another way. This prevents easy traceability to the source of the stolen metal, which hampers the ability to bring about criminal convictions for theft.

It is therefore proposed that restrictions are placed on the trade of metal which has been burnt or defaced to an extent where tracking information has been removed, and could therefore arouse suspicion of deliberate concealment. These restrictions could include reporting the trade of this type of metal to the responsible authority, either the Department of the Environment or the PSNI, or applying an increased holding time.

### **Question 9**

Do you agree with these proposals?

Yes No Don't Know Some of them (please comment)

Comments:

FSB NI welcomes what would amount to a further disincentive to criminals who would seek to limit the traceability of stolen material through removal of tracking information which could be used for identification.

Where this activity is apparent to metal dealers and deliberate concealment is suspected we believe it should be reported to the PSNI immediately and an increased holding time may well be required whilst the Police investigate the matter.

The following licensing recommendations are proposed as there is no current specific licence required in Northern Ireland for Scrap Metal Dealers. The proposal is to bring Northern Ireland into line with England and Wales.

□ Requiring all scrap metal dealers to have a form of licence which would only be granted subject to suitability, which must be registered to an address in Northern Ireland. It is proposed that licences would not be granted to any unsuitable person, as defined by the Scrap Metal Dealers Act 2013, which details some of the criteria for assessing such a person as having;

- a) been convicted of any relevant offence<sup>1</sup>, for example trading in scrap metal for cash, or failing to maintain proper records of scrap metal transactions
- b) been subject to any relevant enforcement action, for example for the offences outlined above.
- c) had a previous application for the issue of a scrap metal dealers licence refused
- d) had a scrap metal dealers licence revoked
- e) any other waste management licence or permit refused
- f) failed to demonstrate their ability to comply with other proposals put forward in this consultation

### **Question 10**

Do you agree with these proposals?

Yes No Don't Know Some of them (please comment)

Comments:

A robust licensing regime should be the cornerstone of this legislation and we therefore agree with the need for conditions to be met before the issue of a scrap metal licence. This is in order to ascertain the suitability of an individual to operate in this particular line of business.

However, we would contend that this is information which the licensing authority should *take into consideration* as a guide when making decisions as opposed to being bound by them. It should not be a closed list of conditions meaning that the licensing authority is free to take into account anything which they deem relevant when making decisions regarding the granting of licenses. This would more closely mirror the situation in England and Wales where a certain level of autonomy is granted to the licensing authority to make an informed decision specific to each application.

As regards the proposed licensing system, we would also restate our view that the legislation should avoid introducing unnecessary bureaucracy and the focus must be on rogue traders as opposed to legitimate operators.



The Department of the Environment is responsible for regulating waste and waste transfer. It is therefore proposed that they should also be responsible for the issue and regulation of scrap metal dealers licences.

### **Question 11**

Do you agree with this proposal?

Yes No Don't Know

Comments:

FSB NI is content for the Department of Environment to take the lead on the issue and regulation of scrap metal dealers' licenses. Overall, for the legislation to result in a meaningful reduction in metal theft we feel there must be a collaborative approach between a range of government Departments, the PSNI and the dealers themselves as well as business organisations. For any system to work fairly, it must be consistently applied across the entire jurisdiction.

It is proposed to also make the Department of the Environment, in accordance with current waste management legislation, responsible for monitoring compliance with legislation. If a breach occurs, the scrap metal dealers licence could be revoked and the matter referred to the PSNI. Both the PSNI and DoE will have the authority to carry out inspections without giving prior notice.

### **Question 12**

Do you agree?

Yes No Don't Know

Comments:

It is our understanding that the Northern Ireland Environmental Agency (NIEA) already visit metal dealers as part of their current role and the monitoring of compliance as well as the ability to carry out inspections could therefore be devolved to that agency within the Department of Environment.

The PSNI will of course have a fundamental role in this aspect of the legislation.

It is proposed that contravention of the proposed regulations for scrap metal dealers could result in revocation of any scrap metal dealers' licence and waste management licenses and could be subject to a range of fines depending on the severity of the offences. For example:

### **Question 13**

Level 3 (£1,000) fine on summary conviction for offences such as minor, administrative offences, such as failing to keep accurate records or failing to appropriately identify the person selling the metal.

Do you agree with this sanction?

Yes No Don't Know

Comments:

FSB NI notes that this level of fine corresponds with the similar legislation in England and Wales.

### **Question 14**

Level 5 (£5,000) fine on summary conviction for multiple minor offences, or a major offence, such as dealing in cash for scrap metal or carrying on business as a scrap metal dealer without a licence.

Do you agree with this sanction?

Yes No Don't Know

Comments:

FSB NI note that this level of fine corresponds with the similar legislation in England and Wales.

**Question 15**

A higher level of fines for repeat offenders

Do you agree with this sanction?

Yes No Don't Know

Comments:

**Question 16**

More serious or persistent repeat offences should potentially attract a term of imprisonment

Do you agree with this sanction?

Yes No Don't Know

Comments:

It is proposed that the Bill will include an appeals mechanism against decisions by the Department in relation to the granting and regulation of licences, as well as enforcement. Criminal proceedings have an established appeals process, through various levels of courts. This Bill makes no attempt to change this appeals process, therefore normal appeals procedures will apply.

**Question 17**

Do you agree?

Yes No Don't Know

Comments:

FSB NI agrees that an appeals mechanism is necessary as a means of challenging any decision not to grant, or revocation of, a scrap metal dealer licence if the applicant has due cause.

It is proposed that the law should come into effect after a minimum period of 3 months has elapsed after the Bill has passed and a maximum period of 1 year, in order to afford Scrap Metal Dealers, as well as the Department, necessary time to prepare for the changes.

### **Question 18**

Do you agree?

Yes No Don't Know

Comments:

FSB NI considers the timescales set out above to be appropriate especially in light of the on-going engagement which the proposer of the Bill has had with the various stakeholders to this proposed legislation.

### **Human Rights & Equality of Opportunity**

#### **Question 19**

How do you think the proposed legislation will impact on human rights?

Positively Negatively Not at all Unsure

Comments:

We do not consider this legislation to have any impact on human rights.

#### **Question 20**

How do you think the proposal will impact on equality of opportunity?

Positively Negatively Not at all Unsure

Comments:

FSB NI believe that equality of opportunity will be improved in this area should this Private Members Bill become law, as all metal dealers will be faced with the same robust compulsory framework in order to trade in this sector.

It is proposed that the fees imposed for gaining a scrap metal dealers licence are to be set on a cost recovery basis for the Department.

### **Question 21**

Do you have any comments on the likely cost/financial implications of the proposed legislation?

Given that ACPO has estimated that metal theft costs the UK economy £770 million every year, while others put the cost at £1 billion or higher, FSB NI firmly believes that the financial savings brought about by a reduction in this crime will far outweigh the cost implications of putting in place the regulatory regime contained within the proposed legislation.

In short, we believe this Bill has the potential to save substantial sums of money in the medium to long term through decreases in metal theft.

### **Question 22**

Do you have any further comments on the proposed legislation?

FSB NI notes the review period which is contained within section 18 of the Scrap Metal Dealers Act 2013. This means that before a period of 5 years is over the Secretary of State must carry out a review of that Act and publish a report including conclusions. The report must, in particular, set out the objectives intended to be achieved, the extent to which they have been achieved and an assessment of whether it would be appropriate to retain or repeal any part of the Act.

We believe that a review of this nature would be advisable within this proposed legislation to ensure that the correct balance is being struck between protecting against theft and allowing legitimate scrap metal sales without undue burden.

FSB NI also believe that a further interrogation of the prevalence of mobile collectors in the Northern Ireland context may be necessary as any legislation should cover those who regularly deal in scrap metal away from a site.