

SCRAP METAL DEALERS BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared on behalf of Mr Roy Beggs MLA (“the Sponsor”), in order to assist the reader of the Bill and to help inform the debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum should be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill, and where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The principal objective of the Bill is to combat the trade of illegally obtained metal in Northern Ireland, particularly of high value metals such as copper and aluminium.
4. The outworking of this is supported by two further objectives of reducing the impact on victims of scrap metal crime and safeguarding expensive resources for individuals and organisations.
5. The Bill seeks to do this by licensing the carrying on of a scrap metal dealing business and certain aspects of the sale and purchase of metal in Northern Ireland. There has been significant cost and disruption to private individuals, churches, schools and public and private bodies as a result of stolen metal. At present, there is no legislative requirement for those dealing in scrap metal to provide an audit trail and reduce the ease with which stolen property is being traded.
6. At present, the regulation of scrap metal dealers falls under Regulation 6(1) of The Waste and Contaminated Land (Northern Ireland) Order 1997. This regulation makes provision for a waste management licence, defines controlled waste and makes provision for the treatment, keeping and disposal of waste. It also imposes on traders a duty of care in the transfer of waste.

7. In addition, The Waste Management Licensing Regulations (Northern Ireland) 2003 and The Pollution Prevention and Control Regulations (Northern Ireland) 2003 detail further the requirements for licensing either through a waste management licence or a pollution prevention control permit. The Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002 require that identification documents are noted during the transfer process.
8. However, while the recovery of scrap metal may deal with controlled waste and fall within the existing licensing regime, many other individuals may sell metal on to scrap metal dealers without documentation and outside of any regulation.
9. Metal theft has been shown to be closely related to metal prices. Crime figures indicate that a significant number of burglaries, robbery and theft offences include property items listed as metal, and there can be no doubt that the theft and illegal sale of scrap metal is a lucrative business. At the time of writing, the rise in metal theft, specifically aluminium and copper, and the link to price has been reported by the Home Office as being a global trend¹.
10. This is reflected in the plethora of legislation recently introduced or currently being scrutinised elsewhere in the United Kingdom and in the Republic of Ireland.
11. A voluntary code of conduct is in place in some areas under which each business displays at least one Police Service of Northern Ireland (PSNI) supplied poster showing that the firm is a 'metal theft aware premises'. The code asks that CCTV is used to record vehicles and customers, no metal is accepted without suitable identification and Vehicle Registration Mark (VRM) details are recorded. It has been noted in the consultation that the code is effective for those who use it.
12. The PSNI, in its response to the Member's consultation, has stated that "*The current absence of Scrap Metal Act 1964 powers and the Scrap Metal Dealers Act 2013 in Northern Ireland means we are not only more vulnerable to crimes related to any increase in metal prices, but exposed to additional displacement of thefts in the event of new legislation in the Republic of Ireland.*"
13. This is supported by anecdotal evidence that Scotland had experienced an increase in scrap metal crime as a result of organised gang activity following the introduction of the Scrap Metal Dealers Act 2013 in England and Wales. This appears to be a displacement of criminal activity in England and Wales which correlates with the introduction of new legislation covering those jurisdictions.
14. Recently, with the Air Weapons and Licensing (Scotland) Act 2015, similar provisions have been introduced in Scotland.

¹ An evaluation of government/law enforcement interventions aimed at reducing metal theft, Morgan et al, Home Office Research report 80, January 2015

15. The proposed legislation will bring Northern Ireland into line with England, Scotland and Wales, while ensuring that a local view is taken in order to address the particular concerns of Northern Ireland.

CONSULTATION

16. The Sponsor undertook an extensive public consultation over a ten week period on the policy objectives and proposed approach of the Bill. A total of 62 responses were registered, from which it was clear that the overwhelming majority agreed with the objectives of the Bill.
17. A majority of respondents stated that they believed that further legislation was required in order to help combat the problem of metal theft.
18. At the end of the consultation, the Sponsor made a detailed overview of the responses to each of the questions available to the public. The overview included the number and percentage of each response and an overview of both positive comments made and concerns expressed about each.

OPTIONS CONSIDERED

19. In developing this legislation, the following options were considered:

Option 1: Do nothing and rely on existing legislation to counter this particular criminal activity. However, there is no doubt that theft of high value metal is a burgeoning issue. There are many police and industry reports that show that the theft of high value metals is growing, that the approach to the thefts are becoming more sophisticated and successful, and that it is having a significant financial impact across Europe. The introduction of similar legislation in Great Britain has had an impact on the levels of this crime and those consulted were very positive about the measures that were introduced as part of that legislation and their impact on crime.

Option 2: Introduce new legislation to address the issue of metal theft, specifically through the licensing of scrap metal dealers in Northern Ireland, verifying the identity of scrap metal customers, enabling a financial audit trail and segregating specific materials to assist criminal investigations.

Option 2 was chosen on the basis that the current provisions in law are not sufficiently robust to counter the growing problem of metal theft. Given that the introduction of legislation in GB is still in its early stages, there is currently a paucity of statistical information on convictions or a commensurate reduction in thefts reported. However, anecdotally, the police have been able to demonstrate the converse - that metal thefts have sharply increased in jurisdictions where the legislation does not apply.

OVERVIEW

20. The Bill contains 21 clauses and 2 Schedules. It seeks to address the theft of stolen metal, particularly high value items by a clearer regime of licensing and regulations overseeing the scrap metal trade. It clearly describes the verification process for establishing the identity of vendors and the requirement for storing such information, the requirements for storage of metal which appears to be suspiciously defaced, the obligations on alerting the police, and specific direction on cash and cashless transactions to assist in enabling a financial audit trail.

COMMENTARY ON CLAUSES

Clause 1: Requirement for licence to carry on business as scrap metal dealer

Clause 1 introduces the requirement for a scrap metal dealer to hold a licence and a corresponding criminal offence and penalty for carrying on business as a scrap metal dealer without such a licence.

Clause 2: Form and effect of licence

Clause 2 provides further detail in respect of the licence, including that there are two types of licence, one for a site and the other for a mobile collector (carrying on business otherwise than at a site). It lists the information which must be detailed in the licence and establishes the Department as the issuing body.

The licence authorises the licensee to carry on business as a scrap metal dealer at the sites listed in it (in the case of a site licence) or within the Department area (in the case of a mobile collector's licence). A power is provided for the Department to prescribe the form and content of the licence in Regulations.

A site licence will require all of the sites at which the licensee carries on the business as a scrap metal dealer to be identified and a site manager to be named for each site. In doing so, they will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites.

A collector's licence authorises the licensee to operate as a mobile collector, permitting them to collect any scrap metal as appropriate. This includes commercial as well as domestic scrap metal. A licence does not authorise the licensee to carry on a business at a site - should a collector wish to use a fixed site, they will need to obtain a site licence. There is no restriction as to the location where the collector can transport and sell their metals.

The form in which a licence is issued must enable it to be displayed in accordance with clause 8 (see below).

Clause 3: Issue of licence

Clause 3 sets out the key criteria for determining whether to issue a licence, to ensure that a licensee is a suitable person. It requires the licensing authority to be satisfied that an applicant is a suitable person to carry on business as a scrap metal dealer. In considering suitability, the Department may have regard to any relevant information, including whether any relevant enforcement action has been taken against the applicant or whether the applicant has been convicted of a relevant offence. The Department has a power to prescribe in regulations the meaning of relevant offence and relevant enforcement action. It is intended that this will be in line with the criteria used by the Scrap Metal Dealers Act 2013 which bases its process on that used by the Environment Agency when issuing environmental permits under the Environmental Protection Act 1990.

This clause also allows the Department, when issuing a licence, to include conditions in it if the licensee or site manager has been convicted of a relevant offence. The intention is that these conditions represent a probationary arrangement when there was reason to believe that restrictions were appropriate but where non-issue (or revocation) of a licence was excessive. Clause 3(6) specifies the two conditions that can be imposed by local authorities on a licence, namely a restriction on opening hours and imposing ‘quarantine periods’.

Clause 4: Revocation of licence and imposition of conditions

Clause 4 provides the Department with the discretion to revoke a licence in particular circumstances, including where the Department is no longer satisfied that the licensee is a suitable person to carry on business as a scrap metal dealer. The revocation of a licence can only be carried out by a Department as the licensing authority. The clause also allows the licensing authority to vary a licence, imposing the conditions stipulated in clause 3, if the licensee or a site manager is convicted of a relevant offence. This includes the power to impose conditions during the period in which an appeal may be made, or if made, is being heard.

Clause 5: Further provision about licences

Clause 5 provides that Schedule 1 has effect. Schedule 1 sets out further and more detailed provisions about licences, including details as to the term of the licence, application procedures and fee, variations, requests for information and offences of giving false information, a representation and appeals process and a process for notification of decisions.

Clause 6: Notification requirements

Clause 6 imposes a duty on an applicant to notify the Department of any changes which materially affect the accuracy of any information which the applicant has provided in connection with the application. It also obligates a licensee to notify the Department if the name under which the licensee carries on the business as a scrap metal dealer changes (if they trade under a different name to the name of the licensee) or if the business ceases to operate. Failure to comply with these requirements is an offence.

Clause 7: Closure of unlicensed sites

Clause 7 provides that Schedule 2 has effect which covers the closure of sites at which a scrap metal business is carried on without a licence.

Clause 8: Display of licence

Clause 8 requires that the licensee displays a copy of their licence. For site operators this must be in a prominent place in an area accessible to the public. For mobile collectors, it must be in a manner which enables the licence to be easily read by a person outside the vehicle. A criminal offence is committed by any scrap metal dealer who fails to fulfil this requirement. This offence is punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

Clause 9: Verification of supplier's identity

Clause 9 places a requirement on scrap metal dealers, site managers and employees who have been delegated the responsibility to do so, to verify the identity of the person (the supplier) they are receiving metal from and the person's address. This verification must be done by reference to specific documents which bear a photo of the supplier. Section 9(3) details the acceptable identification documents. These are drawn from the Representation of the People (Northern Ireland) Regulations 2008 which are used to verify identity when voting. Given the requirement for photographic identification, some of the specified documents are qualified to ensure that they meet the criteria (for example, section 9 (3)(d)).

The Department may prescribe in regulations other documents which are acceptable or not, as the case may be, for verifying identity.

This clause also creates an offence of receiving scrap metal in breach of these requirements in failing to comply with this verification of identity requirement. Specifically, it will be an offence not to obtain and verify the seller's identity, punishable by a fine. The offence will apply to the scrap metal dealer, the site manager and any person who, under arrangements made by either the scrap metal dealer or the site manager, has responsibility for fulfilling this requirement on behalf of the business. A defence of making arrangements to ensure this requirement should be met and taking all reasonable steps to ensure those arrangements were complied with can be used by the scrap metal dealer or the site manager. However, this defence will not apply to the employee who has, notwithstanding those arrangements, breached the requirements of the section. This ensures there is always somebody liable if the requirements of this provision are not complied with - the intention is to provide a defence to the licensee/site manager (who might be relatively high up the managerial chain) where they had in good faith put in place procedures to meet these requirements and done what was reasonable to ensure these are carried out.

In addition, a person supplying scrap metal to a scrap metal dealer who gives a false name or address is liable on summary conviction to a fine.

Clause 10: Offence of buying scrap metal for cash etc.

Clause 10 makes it a criminal offence to purchase scrap metal except by means of an electronic transfer of funds or a non-transferrable cheque, i.e. traceable methods. It is included to create a clearer trail of information in investigating theft of high value metals such as copper or aluminium. Recognising that small amounts of low value metal are sold, there is provision for cash payments of £100 or less (or payment in kind of the same value). This is included to both to ensure the regulations for scrap metal dealers are not needlessly onerous and to not deter business. This is balanced by the safeguards against frequently recurring payments below the £100 threshold.

There is provision for the Department to introduce by order other payment methods and amend, remove or set a time limit on the £100 threshold for cash payments.

The offence applies to the scrap metal dealer, the site manager and any person who makes the payment acting for the dealer. A defence of making arrangements to ensure this payment method requirement is met, and taking all reasonable steps to ensure those arrangements were complied with, can be used by the scrap metal dealer or the site manager. However, as with clause 9, this defence will not apply to the employee who has breached the relevant requirements. Anyone convicted will be liable on summary conviction.

Clause 11: Receipt of metal

Clause 11 sets out the record-keeping requirements in respect of any scrap metal received by a scrap metal dealer in the course of their business. It is included as a means to discourage the sale of stolen goods (which in turn discourages the initial theft) and to create a robust audit trail to aid investigation. Information that is required to be recorded includes the type of metal being purchased; the time/date of the transaction; personal information on the seller; who is acting on behalf of the dealer and proof of the non-cash transaction. It also introduces obligations relating to the receipt of 'suspicious scrap metal' which has been included specifically to combat theft of high value metals. In this instance, the suspicious scrap metal is defined in detail in clause 11(8) with a corresponding provision in 11(9) for the Department to vary this description by order.

There is a related duty to inform the PSNI of any suspicious metal received (including all the relevant details that are required to be recorded) and to hold it available for inspection for no less than one week.

Failure to comply with the requirements of this clause is an offence.

Clause 12: Disposal of metal

This clause makes similar provision to the previous one but relates to records of metal being disposed of by a site licensee or collector. The same sanctions apply.

Clause 13: Records: supplementary

Clause 13 sets out the duties and offences in relation to the recording and keeping of records and establishes that breach of the requirements is an offence.

The offence applies to the scrap metal dealer, the site manager and any person who has responsibility for fulfilling the requirement under arrangements made by a dealer or seller. A defence of making arrangements to ensure this requirement is met, and taking all reasonable steps to ensure those arrangements were complied with, can be used by the scrap metal dealer or the site manager. However, as with clause 9, this defence will not apply to the employee who has breached the relevant requirements.

Anyone convicted will be liable on summary conviction.

Clause 14: Right to enter and inspect

Clause 14 provides the PSNI with a right to enter and inspect the premises of licensed and unlicensed scrap metal dealers. This is subject to the issue of a warrant in certain circumstances. This includes the right of a constable to enter and inspect a licensed site at all reasonable times on notice to the site manager as well as the circumstances where entry and inspection may be made without giving notice to the site manager and exempts residential premises from these rights of entry. It also establishes that force cannot be used to gain entry to premises in the aforementioned instances.

Clause 14(5) to (8) provides a right of entry exercisable by warrant to secure compliance with the provisions of the Act and to ascertain whether the provisions of the Act are being complied with. This right of entry applies to premises, including residential premises, which are a licensed site or to premises that are not licensed but where there are reasonable grounds for believing that they are being used by a scrap metal dealer in the course of business. Reasonable force may be used in the exercise of a right of entry under warrant.

This clause also establishes that the PSNI may ask for the production of any scrap metal or records kept in accordance with clauses 10 to 13 as part of the right of entry and inspection.

This clause also creates an offence to obstruct the right of entry or inspection or to fail to produce the records that are required. It is punishable on summary conviction with the maximum fine on the standard scale. The level 5 maximum fine is a departure from similar legislation in Great Britain where the penalty for preventing investigation was less severe than the penalties for breaching the requirements of the Act.

Clause 15: Offences by bodies corporate

Clause 15 establishes that if an offence is committed by a body corporate, both individuals and the body corporate can be held liable. This applies to offences that are committed with the consent or connivance of a director, manager, secretary or other similar officer.

Clause 16: “Carrying on business as a scrap metal dealer” and “scrap metal”

Clause 16 provides definitions for the purposes of the Act including the definitions for ‘a scrap metal dealer’, ‘a mobile collector’ and ‘scrap metal’.

Clause 17: Orders and regulations

Clause 17 sets out the level of Assembly control in respect of Ministerial orders and regulations made under the Act. In particular, the Bill provides that the order-making powers in general are subject to negative resolution. However, affirmative procedures are used for the orders to amend the lawful payment methods (clause 10(8)(a)), the amendment or removal of the cash exemption (clause 10(8)(b)) and the commencement of provisions (clause 19(1)(a)).

Clause 18: Interpretation

Clause 18 defines various terms referred to in the Bill.

Clause 19: Commencement

Clause 19 allows for the Department to decide the dates on which the various provisions of the Act will take effect, though any provisions not already in force will automatically come into force 2 years after Royal Assent.

Clause 20: Review of implementation of Act

Clause 20 requires the Department to prepare and lay before the Assembly a report addressing the implementation of the Act 6 months after Royal Assent and at least once every 6 months thereafter, until all provisions of the Act are in force.

Clause 21: Short title

Clause 21 sets out the short title of the Act.

Schedule 1 – Further Provision about Licences

This schedule sets the terms of the licence including the time period it covers and the eventualities should the application be withdrawn, refused or renewed.

It details the information that must be provided in making an application as an individual, a company or a partnership and gives the Department a power to alter the information requirements.

In addition, the Department is given a power to vary the licence. It also details that a change in specified information provided by the applicant at the point of application also requires an application to vary the licence. However, the application to update the licence with new information expressly does not permit the transfer of a licence from one person to another. The licence variation arrangements also establish a penalty for failure to comply and provide a defence where there is proof that the person took all reasonable steps to comply.

Paragraph 4 permits the Department to request further information in considering the application and the option of declining to proceed upon failure of the person to produce the requested information.

An offence of making a false statement by an applicant is also created.

The Department must have regard to Department of Finance and Personnel guidance in setting a fee.

Paragraph 7 delineates the right of representation for applicants where the Department has refused an application. It specifies the time periods in which an applicant can make a proposal or indicate an intention to make a proposal, the consideration by the Department and the process in which representation is heard.

The notification of the decision is laid out and a requirement that the content includes information on making an appeal, the time limits and, if relevant, details of any variation or revocation of the licence terms.

Schedule 2 – Closure of Unlicensed Sites

Schedule 2 contains further and more detailed provisions relating to the closure of unlicensed sites, including a closure notice procedure, the provision for application to the court for a closure order, an appeals process and provisions for enforcement of a closure order.

It makes provision for the closure of sites at which a scrap metal business is carried on without a licence. This closure power does not affect the ability of the police to bring charges for the offence in clause 1.

The Schedule sets out that a police constable or the Department can issue a closure notice specifying the reasons for such action and the steps that may be taken to ensure that the alleged use of the premises ceases. Once a closure notice has been issued, the Department or constable can then make an application to a Magistrate for a closure order to close that site. Applications cannot be made where the premises are no longer being used by a scrap metal dealer in the course of their business and there is no reasonable likelihood that the premises will be used in this way in the future. If the court is satisfied, the court can then

make such an order as it considers appropriate for the closure of the premises. A closure order can only be made by the court. Such a closure order can vary between requiring the immediate closure of the premises, immediately discontinuing its use by a scrap metal dealer, and requiring a sum to be retained by the court until the requirements are met.

A constable or the Department can issue a certificate at any time to terminate the closure order where they are satisfied that the need for the order has ceased. Likewise, the court can issue a discharge order at any time where they are satisfied that there is no longer a need for such an order. Appeals in relation to all stages of this process will be available to the Crown Court.

The offence of operating premises in contravention of a closure order is punishable on summary conviction with a fine not exceeding level 5 on the standard scale.

FINANCIAL EFFECTS OF THE BILL

21. Currently, The Waste and Contaminated Land (Northern Ireland) Order 1997, The Waste Management Licensing Regulations (Northern Ireland) 2003 and The Pollution Prevention and Control Regulations (Northern Ireland) 2003 all require some form of licensing which may be relevant to scrap metal dealers. In addition, The Controlled Waste (Duty of Care) Regulations (Northern Ireland) 2002 requires that identification documents are noted during the transfer process.
22. A major cost of a new element is the administration associated with developing and implementing a new scheme. The Member hopes that the Department will be able to minimise the cost to the government and the licensee through absorbing the procedure into current licensing arrangements. That being the case, the cost of the licensing scheme and management of information will depend on the extent to which it can be merged with existing arrangements that are overseen by the Department. The Member hopes that the cost of the license will be operated on a full cost-recovery basis.
23. A research paper entitled ‘The Scrap Metal Dealers Bill (Northern Ireland: Costs Estimates’ was compiled for the Sponsor by the Northern Ireland Assembly Research and Information Service (RaISe) in September 2015.
24. It details that the ‘DoE has reported that the waste management scheme is not currently operating at full cost recovery in NI; with the estimated annual revenue of approximately £1 million and annual operating costs of £1,154,500’.
25. If these figures were used for comparative purposes and extrapolated to give an indication of future cost, then a standalone system which mirrored current arrangements to support the Scrap Metal Dealers Bill would run at a loss of £154,500 each year. However, given the expected economies of scale drawn from streamlining and embedding new procedures into existing ones, savings are expected.

26. There may be additional transitional costs which cover the promotion of the scheme, amendment of the current licensing process and staff training which must also be considered.
27. The Member believes that the net effect of reducing metal theft would result in a saving of costly resources currently expended by the court and policing services as well as direct financial benefits through insurance premiums.

HUMAN RIGHTS & EQUALITY ISSUES

28. The Bill is considered to be compatible with the European Convention on Human Rights.
29. It is further considered that the Bill will not have an adverse impact on any of the groups listed in Section 75 of the Northern Ireland Act 1998.

LEGISLATIVE COMPETENCE

30. At Introduction, the Member in charge of the Bill, Mr Roy Beggs, had made the following statement under Standing Order 30:

“In my view, the Scrap Metal Dealers Bill would be within the legislative competence of the Northern Ireland Assembly.”