



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Scrap Metal Dealers Bill: RaISe Briefing

26 November 2015

Ms Cave: Yes. On pages 11 and 12 of the paper, it goes into a bit more detail on that, in relation to the Home Office report. It explores that in a bit more detail.

The Chairperson (Ms Lo): Look at figure 2 on page 11: that is a very good diagram. So, too, is figure 3.

Ms Cave: Under figure 2, I have given a bit more explanation on how you can connect the number of thefts to the changing trends in the price of metal, but also how the Home Office has explored the effects of the legislation, which takes the drop in crime to slightly lower levels than you would expect from the drop in the price of metal.

Section 2.2 looks at the current legislative situation here for scrap metal dealers. They are regulated by waste legislation and other requirements, such as pollution prevention control permits and planning.

Section 2.3 looks at how England and Wales, Scotland and the Republic of Ireland have introduced legislation for scrap metal dealers. The main difference is that, in the South, they have amended existing waste management legislation, connecting the issue of scrap metal to environmental protection; whereas England, Wales and Scotland have not related their legislation to waste or the environment and have focused more on the aspect of theft.

The rest of the paper deals with the detail of the Bill itself. Section 3 provides just a brief overview as the explanatory and financial memorandum (EFM) gives a clause-by-clause description. In summary, the Bill seeks to address the theft of metal. Essentially, the Bill can be split into two parts: the first is about the requirement for scrap metal businesses to have a scrap metal licence and the responsibility of DOE in relation to licensing; and the second part is about how scrap metal dealers must conduct their business in line with licensing requirements.

I will not go into detail on section 4. It lists the secondary legislation that will be produced on the back of this Bill and the type of scrutiny that is afforded to it. It also lists any guidance that is to be produced as well.

Section 5 focuses on changes that have occurred since the consultation. I will talk you briefly through those changes. There is a new exemption to allow for cash payments below £100, and that is detailed in clause 10. That is instead of a £1,000 limit, as suggested in the consultation summary document. That type of exemption will be unique to Northern Ireland.

There has been the removal of the general hold period for metal but the introduction of a 72-hour hold period under clause 3, if the applicant of a licence or a site manager has been convicted of an offence, and another hold period of one week, if the metal received is considered suspicious. A definition of "suspicious scrap metal" is given in clause 11, and it is detailed under this section on page 17 of the paper.

There has been a slight change in respect of the implementation of the Bill. It is to come into effect within two years after passing through the Assembly instead of the one year suggested in the consultation.

Section 6 looks at certain aspects that appear not to have been included in the Bill. There is no mechanism for a long-term or ongoing review. Further clarity should be sought on clause 20, as it appears that there is no longer-term or continued requirement to review the Act after all provisions come into force.

As the Bill stands, there are no provisions for a register of licences. However, England, Wales and Scotland have a requirement in their legislation.

There appears to be a lack of flexibility. For dealers selling small amounts of metal, which is anything under 50 kg, flexibility is shown where the identity of a buyer is not needed. However, the same level of flexibility is not shown for smaller volume transactions that are received or bought. There is also no mechanism in the Bill for amending the maximum and minimum period of a licence, and no inclusion of precious metals.

Section 7 of the paper suggests a number of areas for further consideration. The first is responsibility. The responsible Department for implementing the Bill and issuing licences is named as DOE, with the PSNI having rights to enter and inspect. It appears that the main intention of the Bill is to regulate the

business conduct of scrap metal dealers so as to reduce the theft of scrap metal, which is a crime and is the responsibility of the Department of Justice and PSNI. Little attention is given to the remit of the DOE, such as the improvement of environmental protection, improved recycling or the protection of historic buildings.

On the point about DOE's remit, there is also a lack of local government involvement, and the PSNI have the only rights to enter and inspect. This conflicts with current arrangements under waste legislation and the Environmental Better Regulation Bill, where the Northern Ireland Environment Agency (NIEA) and, in certain cases, local council officers have powers to enter premises for inspection and investigation. In that regard, members may wish to consider the possibility of bringing the Bill more in line with the remit of DOE in relation to environmental protection, protection of historic buildings and powers to local councils; or to consider whether, as it stands, it would sit best with the Department of Justice. In England and Wales, the legislation sits with the Home Office, and in Scotland, it is with the Department of Justice. In the South, however, the legislation provides an example of existing waste management regulations being amended. These regulations also provide an obvious link to the remit of the Department of the Environment, Community and Local Government through the protection of the environment and human health. That is shown on page 21 of the paper. Again, consideration may be given to using a similar approach to that used in the Republic of Ireland.

Section 7.2 considers the aspect of the Environmental Better Regulation Bill. If DOE is the responsible Department, it may be of interest to find out from the Department where the provisions under the Bill sit or align with the new streamlined environmental permitting regime of the Environmental Better Regulation Bill. The aim of that Bill is to streamline the environmental permitting process, and a separate scrap metal licence might be seen as counteractive to its focus. Also under the Environmental Better Regulation Bill, punishment is provided by indictment, and there is the potential for greater levels of fines, beyond those provided in the Scrap Metal Dealers Bill. That is discussed in more detail in section 7.4.

It may also be of interest to find out whether responsibilities would transfer with all environmental protection to the new Department of Agriculture, Environment and Rural Affairs. If that is the case, it may also be of interest to ask the DOE whether it foresees any conflict of interest in the new Department due to the increased licensing and enforcement nature of the Bill and possible impacts on agriculture and rural affairs. In this regard, I am talking about conflict with, say, farm diversification measures in the rural development programme.

The final section of the paper looks at cost implications. This section was produced by the financial scrutiny unit in RaISe, so I will just provide a brief summary, and if anybody has any specific questions, I am happy to take them back to my colleague.

It is anticipated and stated in the EFM that the absorption of the new licensing scheme into prevailing licensing arrangements would minimise costs. As set out in section 8 of the paper, the DFP guidelines state:

"fees for services should generally be charged at cost".

The present waste management licensing scheme does not operate on a full cost recovery basis, as the costs are not met by the revenue generated via fees. It is, therefore, currently operating at a loss.

The Chairperson (Ms Lo): Although when you look at it, you see that it is a small amount; it is only a fraction. It is £1,154,500, so the Department really gets about £1 million from fees. That is near enough full cost recovery.

Ms Cave: The EFM acknowledges that and expects that it will be overcome through economies of scale from streamlining the system into the existing waste management licensing schemes. However, the problem is that there is no detail provided on how those potential economies of scale could actually be realised. So, again, members may wish to seek further information on that.

For illustrative purposes, table 2 on page 28 provides examples of licence fees throughout England, Scotland and Wales. That is just to give you an indication of what they are charging. The fees range from £90 to just over £1,200 per site licence. A collector's licence or mobile licence can cost anything between £76 and £900.

The Chairperson (Ms Lo): Those are for three years, are they not? They are not yearly fees. I think that I read that last night.

Ms Cave: I will just check.

The Chairperson (Ms Lo): The impact assessment for the 2013 Act states that it is:

"estimated to be some £500 paid every three years".

Ms Cave: I will conclude. While there has been a clear drop in metal theft figures, the question is really whether there is a need to address the problem of metal theft in Northern Ireland, even as a preventative measure. The Scrap Metal Dealers Bill aims to address the problem and provide a potential legislative avenue for redress. However, further discussion may be needed on the impacts of the existing voluntary code of practice.

There are areas of the Bill that need to be clarified from the outset, particularly in relation to the responsible Department. The Bill as introduced has a clear focus on reducing metal theft, which is a Department of Justice issue. The Bill identifies DOE as the responsible Department; yet there appears to be very little link to its remit. That said, the South has amended existing waste management regulations and made that link to its Department of the Environment, Community and Local Government. There is also uncertainty about where the licensing system would sit in DOE, should it remain the lead Department. Alignment with the environmental permitting system, especially for any changes to come through the Environmental Better Regulation Bill, might need to be considered. Either way, without the introduction of legislation to Northern Ireland to bring it into line with the rest of the UK and the Republic of Ireland, the question remains as to whether Northern Ireland would run the risk of displacement of the problem brought about by the movement or storage of stolen metal here from the rest of the UK and from across the border.

The Chairperson (Ms Lo): Scotland had that experience when England and Wales had the legislation and it did not. There was quite an increase. Scotland became the dumping ground.

Ms Cave: I am happy to take questions.

The Chairperson (Ms Lo): That was very useful, Suzie. I read your paper last night. We can now put a lot of questions to the Department and ask for its response. We can also ask the British Metals Recycling Association, which is coming to the Committee next week, about a lot of the issues.

Mr Girvan: I come back to my old chestnut, which is the associated costs. It would cost £1.154 million to implement the legislation through the Department, if it were to be run by the Department of the Environment. The majority of costs will probably be staffing costs, and we have just heard about 304 staff going and a potential saving of £9.1 million —

The Chairperson (Ms Lo): Three hundred and forty-four.

Mr Girvan: Three hundred and forty-four members of staff are to go next year, which, if you work it out using the same format as for the 40 who have gone this year, equates to over £9 million of a saving. On that basis, this is another opportunity for the Department to beef up its numbers after some people have gone under the voluntary exit scheme. This is something that I will need to get clarification on, but would it mean additional staff having to be recruited, or else red-ringing some people so that they did not leave because they would be key to such a programme?

Having had conversations with people involved in the industry, I have some concerns. Some scrap metal dealers have said to me that some of the guys have an unsavoury background and that they could become quite difficult if they were to feel that there was a means in place to try to record stuff about them. As a consequence, some scrap metal dealers might come under additional pressure to turn a blind eye to things or to put fraudulent details on forms being sent in for monitoring processes. Some of them said, "We're going to need an extra policing presence for this". I have real difficulty with the DOE taking control of it. It is something that should be a DOJ matter. More consultation needs to be done on what Department the responsibility is to lie with. We should not be holding our hands up and saying that it is coming to DOE. There may be a licensing issue associated with DOE, but there needs to be protection so that another empire is not created in the Department that ultimately is there just to make things awkward for certain people out there.

I am wary of the figure — it seems to be quite precise — of £1,154,500. As such, I would like some clarification. On this occasion, is it a case of another empire being created through the bureaucracy of the Northern Ireland Civil Service and the Department of the Environment?

Ms Cave: As I said, my colleague helped me with the paper. The figures were provided by the Department on the basis of the existing waste licensing scheme.

Mr Girvan: By saying that the Department would do it within the existing waste licensing scheme, I understand that to mean that it would be paying the same wages to the same people to do the same job that they are already doing. We are going to get rid of 340-odd members of staff, and, to be honest, we will not notice any difference. I appreciate that some people say that there will be a difference, but the public will not see any major change in what is being delivered. Is there sufficient capacity to absorb the cost? My understanding is that it is an additional cost. By putting in an additional cost, more jobs will be created in that one Department.

Ms Cave: The question is whether the licensing system would be completely separate to an existing waste licence or whether it would be absorbed into the environmental permitting scheme, as it is now and as it may change under the Environmental Better Regulation Bill.

The Chairperson (Ms Lo): I think that the whole idea is for it to be within the waste management unit or the permitting and licensing unit. It would be strange to have it sit outside that.

Ms Cave: As the Bill stands, it would be a completely separate licence. The Member has talked about the idea of bringing it into the existing waste management licensing regime, but it would need better alignment. There are areas in which it would not currently fit.

The Chairperson (Ms Lo): I think that it was you, Paul, who said that this is a hot potato.

Mr Girvan: It really is.

The Chairperson (Ms Lo): DOE has not accepted it as its Bill. I have spoken to the Minister, and he is not too happy. From reading your paper and the Bill, I think that there is a need to tackle this crime, but the question is whether it is for DOJ or DOE to do so, particularly now that responsibility for local government will go to the new Department for Communities. Functions will be split. It is mentioned quite a bit in the Bill what local government can do.

Mr Boylan: Thanks very much, Suzie, for the paper. To be honest, this crime should be tackled irrespective of whether the legislation comes through or not, because it is about the theft of metal. That lies with a different Department at the moment.

We had a good debate on it. I do not know whether the end justifies the means. Suzie's paper has brought us more questions than answers. It will take a lot of scrutiny. This could sit within a waste management licensing regime or be done by some other means and the crime issue could sit with DOJ. The Member has gone to a lot of work to bring forward the Bill, but, if you talk to the industry, as I have, you will hear that there is a voluntary scheme at the minute and that the dealers are recording.

The Chairperson (Ms Lo): It is not working.

Mr Boylan: Ultimately, crime is crime, and there will be always crime. Luckily, at the minute, prices are down, so that type of theft is reduced. The Member sold the Bill in the House on the basis that it is about addressing crime, but there are other ways of doing that. Mr Girvan made a point about more staff being recruited and about how we will police scrap metal theft and enforce the legislation, but it is theft, so it should be dealt with anyway. That is my point.

The Chairperson (Ms Lo): There is law to deal with it.

Mr Boylan: Exactly.

Like I say, it is a good paper, and you have highlighted things. I certainly agree with the displacement issue. There is no point in moving stolen metal a mile down the road from where I live. It will move across the border.

Suzie, are there any stats for England and Scotland? Scrap metal is probably hard to trace. There is also a cost to the industry, which is struggling at the minute. The price of metal and scrap metal is down across the board, from copper to cars. The whole industry is affected.

Your paper has given us food for thought. A lot of questions have to be asked and answered. There needs to be a lot of scrutiny, and then there is the question of responsibility. If there is to be legislation enacted or a new licensing regime, we could look at bringing in another Bill, along the lines of a having waste management licence or something like that. I am up for a discussion.

The Chairperson (Ms Lo): The remit is still the big question.

Regarding flexibility in the Bill, in England, Wales and Scotland, there is a cashless transaction. Absolutely no money is allowed to change hands. How does that work in those jurisdictions? Has it worked well?

Ms Cave: They have looked at the impact of the legislation there on thefts rather than at its actual functioning and how the transactions have worked. The overall impact has been a reduction in thefts, and that was presented as positive by the Home Office. I am afraid that I have no details on the practicalities of operating a cashless system.

The Chairperson (Ms Lo): The Bill would introduce a £100 limit.

Mr Irwin: There are dangers in that. I am not so sure that the scrap metal dealers do not know who is bringing in stolen goods. I would say that the vast majority know what stuff is stolen. We cannot prove that, but I would be surprised if they did not know. I have looked at this, and the £100 cash limit can be got around. You could give two, three or four different people £100 each. It would be better to take cash out of the system. Using cheques would make it more difficult to pass on stolen metals.

The Chairperson (Ms Lo): Yes.

Ms Cave: There is a limit on how many times the same buyer and seller can use the cashless system.

The Chairperson (Ms Lo): Once a month. However, William is saying that different people could go in.

Mr Boylan: There is a loophole. Anybody could lift the licence and go in. Suzie is saying that people could go in one or two times. How would you operate it? If you had a licence and you went in twice and that was your limit, who is to say that somebody else could not go in with the same licence? Would the limit be on the licence? That is not clearly stated. There is a lot of work to be done.

The Chairperson (Ms Lo): There are a lot of questions to be asked and answered.

Mrs Overend: Thank you very much for a good paper. You mentioned the flexibility of the Bill and referred to transactions above 50 kilograms in volume. Can you explain that to me a bit more?

Ms Cave: If dealers wanted to sell on scrap metal, in most circumstances they would have to record the identity of the buyer, or their name and address. However, the Bill allows for any weight under 50 kilograms to be sold on without recording the identity of the buyer. I just felt that there was not the same level of flexibility if the dealer was buying a smaller weight from somebody else.

The Chairperson (Ms Lo): It would depend on what type of metal it is, too. Fifty kilograms of lead would be more expensive than 50 kilograms of rusty metal.

Ms Cave: The Bill includes a list of metals that are covered, as well as "prescribed metal". There would need to be a bit more detail on that. Lead is not mentioned in the Bill.

The Chairperson (Ms Lo): People steal lead: I know that. They steal the lead flashing on roofs.

Mr Milne: We need to clarify once and for all where the Minister and the Department stand on the Bill. There is no point in putting a pile of people through a pile of work only for, somewhere down the line, the Minister or somebody else to say, "No, it is not ours". Rather than have meeting after meeting

discussing this and it coming to nothing, we need to hear from the Minister or the Department exactly where the Bill sits.

The Chairperson (Ms Lo): What is the procedure when we go through all this, and the legislation then goes to Consideration Stage? Would one of the Departments be told, "You must accept the Bill"?

The Committee Clerk: If it passes all its stages, the legislation will give DOE the power to introduce the licensing for the PSNI.

The Chairperson (Ms Lo): Therefore, it cannot refuse it. The DOE will have to accept it.

The Committee Clerk: If the Bill is passed, that power will fall to the Department of the Environment.

The Chairperson (Ms Lo): As Cathal said, there are more questions than answers with this Bill. Thank you very much for a very good piece of research, Suzie. I am sure that we will go back to it again and again.

Mr Boylan: For clarification, the Bill has passed Second Stage and is in Committee, and you are saying — I mentioned this — that the Minister and the Department are not keen on introducing it. We are going to go through a number of weeks' work for the Bill to go to the next stage. It will go back to the House and could very well fall when it is voted on. Are we saying here today that we are legally obliged to go through the Committee Stage of the Bill without assurances from the Minister that he will not —

The Committee Clerk: As part of the Committee Stage, we can seek evidence from the Department of the Environment and the Department of Justice. One of the recommendations is to get that evidence in Committee, but we will need to take a decision on when you want to get that evidence. Obviously, they are key stakeholders, and we have already asked for a written submission from both Departments and from the PSNI, as we have from others.

Mr Boylan: That is fine. I am familiar with the procedures. I just ask the question now, as we might as well discuss it now. We have undertaken to start taking evidence, so we will invite people in and see how it goes from there.