



Northern Ireland
Assembly

Research and Information Service Bill Paper

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Scrap Metal Dealers Bill

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This paper considers the Scrap Metal Dealers Bill as introduced to the Assembly. It provides the rationale for it, an overview of the provisions and highlights areas that may be of interest to Members for further consideration.

Executive Summary

Metal theft has been a widespread problem across the UK and Northern Ireland (NI). A number of figures have been produced over the years estimating the costs of metal theft to the UK Economy between £220m to £770million.

While figures from the PSNI have shown a considerable reduction in metal theft, the Home Office has linked the trend in metal theft to metal prices. Currently metal prices are low and while NI is experiencing a decrease in thefts, this may change should metal prices increase.

As highlighted by the U.S Department of Justice, often the stolen metal passes through scrap metal yards and dealers. With this in mind England, Wales and Scotland have targeted the principal market for stolen metal through the introduction of legislation for scrap metal dealers. However, NI is different as it does not have legislation tailored in a similar way.

Currently scrap metal dealers in Northern Ireland are primarily regulated by waste legislation. Like any individual, they also risk offence for the handling of stolen goods under the Theft Act 1969.

Similar to the Scrap Metal Dealers Act in England and Wales, the Bill seeks to address the theft of stolen metal. The Bill aims to do this by requiring scrap metal businesses to obtain a scrap metal licence from the Department of Environment (DOE), subject to particular requirements in relation to how they must conduct their business.

There have been a number of changes to the Bill since the consultation in 2013 such as an exemption to the ban on cash payments; payments in cash below £100 are now acceptable. However, one of the main considerations is where responsibility of the Bill should lie. The Bill identifies DOE as the lead department, however, the overall intent of the Bill, which is to reduce metal theft, does not appear align with DOE responsibilities as it stands.

In relation to integrating a new scrap metal licensing system into the current and new proposed environmental/waste permitting system of the DOE; the provisions do not align in a number of areas such as responsibility to local government and levels of fines.

In relation to costs the Bill requires that fees for services should be charged at cost. The present waste management licensing scheme does not operate on a full cost recovery basis and in fact runs at a loss.

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1 Introduction

The following Bill Paper is based on the Scrap Metal Dealers Bill (the Bill) as introduced to the Assembly 19 October 2015. It discusses the scale of the problem in terms of metal theft and the current legislative situation dealing with scrap metal in Northern Ireland and other jurisdictions (England and Wales, Scotland and the Republic of Ireland). It also provides a brief overview of the Bill itself, any secondary legislation and guidance to be produced, changes since the consultation exercise, areas not included in the Bill and suggests some areas for further consideration. Finally it provides a review of estimated costs associated with the provisions of the Bill.

2 Background

2.1 Scale of the problem

UK and ROI

Metal theft has been a widespread problem across the UK and Northern Ireland (NI). A number of figures have been produced over the years estimating the costs of metal theft to the UK Economy. According to a Department of Justice (UK) report, the Association of Chief Police Officers (ACPO) (2010) estimates £770 million every year; the Home Office (2011) suggests £220m per year and Deloitte (2011) estimates £220m-£260m per year.¹

However these figures should not be taken as final, according to the Department of Justice (UK), both ACPO and Deloitte used figures from self-reported data across a small number of business and sectors. However, DOJ (UK) did highlight that the figures illustrate the potential scale and impact of metal theft.²

In Scotland, Scottish Power made a statement that metal theft is “*one of the biggest threats to the country’s electricity supply*”³

In the Republic of Ireland it has been reported that the organised stealing of high voltage cables by gangs has resulted in 27,000 customers losing electricity so far in 2015, with the theft of around 40,000 tonnes of material valuing up to €240,000.⁴

¹ DOJ (UK) Tackling Metal Theft - prohibit cash payments and higher fines (2012)

<https://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/laspo-metal-theft-ia.pdf>

² DOJ (UK) Tackling Metal Theft - prohibit cash payments and higher fines (2012)

<https://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/laspo-metal-theft-ia.pdf>

³ Scottish Power (August 2014) [ScottishPower Meets Justice Secretary Kenny MacAskill Following Spate of Dangerous Metal Thefts.](#)

⁴ Irish Times (Nov 2015) [Balkans crime gang targets ESB power lines for scrap value.](#)

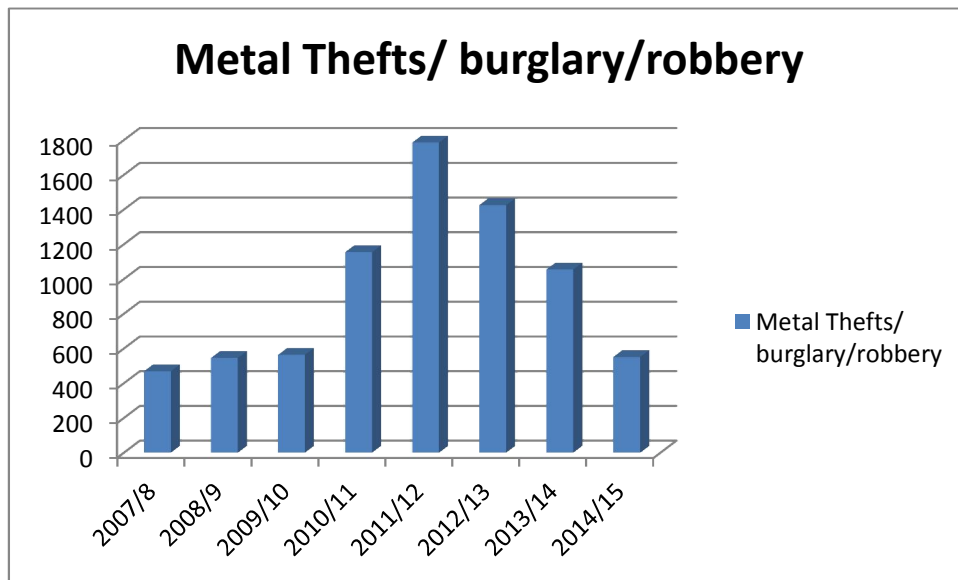
Northern Ireland

At the NI level, it was reported in 2012 that metal thefts have cost tax payers around £145,000 at just two of NI biggest public bodies namely NI Water and Translink.⁵ In fact a one of case reported to the court an estimated £30,000 worth of damage was caused during the theft of metal from a NI Water premises in Lisburn in 2014.⁶

Figures from the PSNI show that offences where metal has been stolen increased year on year from 2007/08 (469) to 2011/12 (1786), and have since fallen to the latest available statistics for 2014/15 (552). This shows a return to nearly the same levels experienced 2007/08.⁷

Figure 1 illustrates the trends in metal theft from 2007/08 to 2014/15 financial years:

Figure 1: Metal thefts/burglaries/robbery by financial year 2007/8 to 2013/14



Source: PSNI (2015)⁸

However, the trend in metal theft has been linked to metal prices by the Home Office⁹. Currently metal prices are low and while NI is experiencing a decrease in thefts, this may change should metal prices increase. For more detail see section 2.2 Figure 2 which shows the relationship between metal theft and metal prices in England and Wales as shown by the Home Office.

As highlighted by a U.S Department of Justice Report (2010), often the stolen metal passes through scrap metal yards and dealers,

⁵ BBC (August 2012) [£145k bill due to metal thefts at Translink and NI Water](#)

⁶ Ulster Star (September 2014) [Five men face theft charges](#)

⁷ PSNI Metal Theft in Northern Ireland: Quarterly Update to 31 March 2015 (May 2015)

⁸ Taken from Table 2 PSNI [Metal Theft in Northern Ireland: Quarterly Update to 31 March 2014 \(May 2013\)](#) – these are the latest figures for metal theft the PSNI currently have.

⁹ Home Office (February 2015) [An evaluation of government/law enforcement interventions aimed at reducing metal theft](#). P.4

Scrap metal buyers provide the necessary link for creating profit from scrap metal theft. The scrap metal theft problem is driven entirely by the ability to sell stolen goods to recyclers, and often these recyclers facilitate crime. While there is some recognition that thieves distribute other stolen goods to friends/family, they are far more likely to sell stolen metal for cash at a scrap metal yard where they may or may not know the buyer.¹⁰

In order to address the issue, the U.S DOJ report suggests that,

Communities confronting scrap metal theft problems should consider the different offenders working with scrap metal dealers for profit, and determine how these transactions can become more costly for both parties.¹¹

With this in mind England, Wales, Scotland and the ROI have targeted the principal market for stolen metal through the introduction of legislation for scrap metal dealers. However, NI is different in that it does not have legislation tailored in a similar way. The consultation document of the Bill considers this a major problem as

Northern Ireland would become a scrap metal sanctuary for criminals who may wish to sell stolen metal for scrap; due to lack of enforcement legislation¹²

For this reason, the Scrap Metal Dealers Bill introduces provisions for the further regulation of scrap metal dealers in Northern Ireland, to help deter the theft of metal for sale as scrap.

2.2 Current legislative situation NI

There is no specific overarching piece of legislation in NI governing scrap metal dealers beyond environmental permitting requirements. Any theft involving metal (or scrap metal) is the responsibility of the Department of Justice. That being said environmental legislation, under the remit of the Department of Environment (DOE), assists in tackling the problem.

Currently scrap metal dealers are primarily regulated by waste legislation. *The Waste and Contaminated Land Order 1997* requires a waste management licence to authorise the deposit, treating, keeping or disposal of controlled waste on any land¹³, which includes scrap metal as a waste, as defined under the Waste Framework Directive 2008:

¹⁰ U.S Department of Justice (2010) *Problem Orientated guides for Police: Theft of Scrap Metal*. P.7. A pdf is available from the Center for Problem -Orientated Policing http://www.popcenter.org/problems/metal_theft/1

¹¹ *ibid*

¹² Roy Beggs MLA [Consultation Paper on Scrap Metal Dealers Bill \(NI\)](#)

¹³ [The Waste and Contaminated Land Order 1997](#)

“..any substance or object which the holder discards or intends or is required to discard..”¹⁴

Waste management licences are granted under the the *Waste Management Licensing Regulations 2003*.¹⁵ As well as the waste management licence, scrap metal dealers are required to have a pollution prevention control (PPC) permit under the Pollution Prevention and Control Regulations 2003.¹⁶

The Department of Environment has a monitoring system for licensed waste management facilities, including those that can accept scrap metal.¹⁷ Sharing of information has existed between PSNI and DOE through their strategic partnership on environmental crime¹⁸ and inter agency working group on metal theft.¹⁹

Handling stolen goods

It is considered an offence under Section 21 (1) of the Theft Act (NI) for handling stolen goods, which includes receiving, undertaking, assisting the retention, removal or disposal.²⁰ Anyone guilty of such an offence is liable to up to fourteen years imprisonment on conviction on indictment.

Planning

Planning permission is required under Article 23 of the *Planning Act 2011* for waste disposal in, on, over or under land, including any associated engineering, building or mining work.²¹

2.3 Legislative situations in other jurisdictions

2.3.1 England and Wales

The Scrap Metal Dealers Act 2013, which progressed through parliament as a private members bill, came into force in October 2013. It replaced the existing Scrap Metal Dealers Act 1964 as amended. The Act requires all scrap metal dealers in England and Wales to hold a site or mobile collectors licence.²² It also prohibits any cash

¹⁴ For more information on what is considered a waste see *Guidance on the legal definition of waste and its application* (2012) http://www.doeni.gov.uk/waste_legal_def_guide.pdf

¹⁵ Schedule 2 of the Licensing Regulations exempts the recovery of scrap metal from a licence.

¹⁶ [Pollution Prevention and Control Regulations 2003](#)

¹⁷ [AQW 9310/11-15](#)

¹⁸ <http://www.doeni.gov.uk/niea/other-index/news.htm?act=d&id=52198>

¹⁹ [AQW 9310/11-15](#)

²⁰ [Theft Act \(NI\) 1969. Section 21](#). For more information also see the UK Government [Guidance: Relevant offences list for Northern Ireland](#) Section under *Theft and Dishonesty*

²¹ Article 23 Planning Act 2011 <http://www.legislation.gov.uk/nia/2011/25/section/23>

²² [Scrap Metal Dealers Act 2013](#) Section 2.

payments for scrap metal, and limits transactions by either cheque or electronic transfer.²³

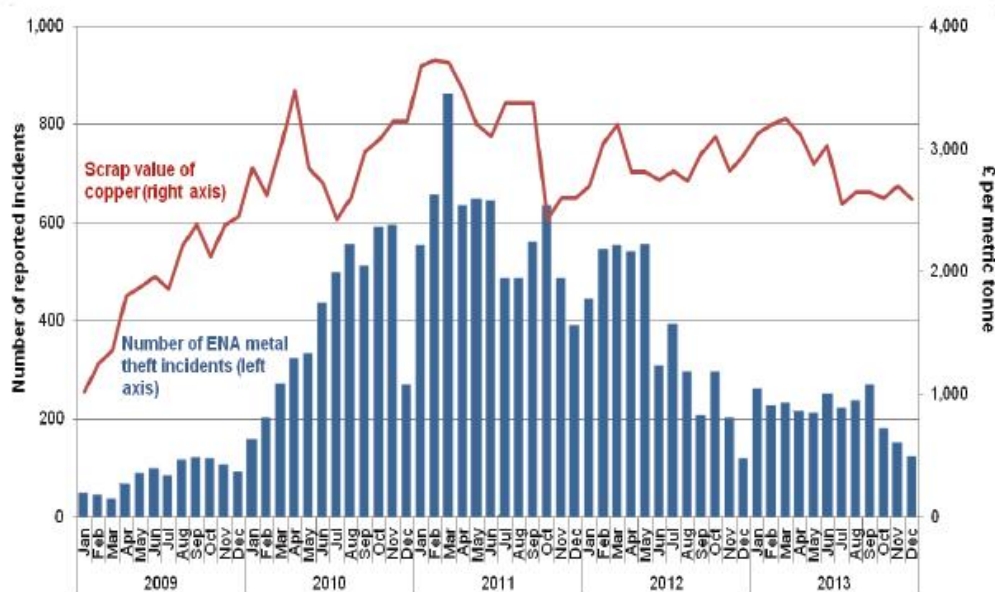
In terms of responsibility, licences are to be issued by local authorities²⁴, and the Act gives both local authorities and police enforcement powers, including powers of entry and inspection.²⁵

Impact of Scrap Metal Dealers Act

In February 2015, the Local Government Association reported that following the introduction of the Scrap Metal Dealers Act 2013, thefts fell from about 60,000 a year to 40,680 in 2013/14. The LGA also detailed that the number of metal theft offences recorded each month more than halved from 6,609 in April 2012 to under 3,000 in March 2014.²⁶ These figures correspond with figures produced by the Office for National Statistics in November 2014.²⁷

However, prices in metal theft have been linked to the price of metal as shown in figure 2.

Figure 2: Comparison of trends in Energy Networks Association reported metal thefts with trends in copper market price, England and Wales, Jan 2009–Dec 2013.



Source: Home Office 2015²⁸

²³ Ibid Section 12

²⁴ Ibid Section 2

²⁵ For more information see [Scrap Metal Dealers Act 2013 Compliance and enforcement guide \(LGA\)](#)

²⁶ LGA (February 2015) [Metal thefts down by a third](#)

²⁷ Office for National Statistics [Chapter 2: Property Crime - Metal Theft](#) 27 November 2014

²⁸ Home Office (February 2015) [An evaluation of government/law enforcement interventions aimed at reducing metal theft](#). P.4

The graph shows that thefts from the end of 2009 to 2011 rose sharply with metal prices, then dropped 2012 and 2013; however metal prices did not drop at the same rate. This begs the question as to whether the decrease in thefts since 2012 has been a result of the legislation, or due to a change in metal prices.

However, the Home Office has stated that the drop in metal prices,

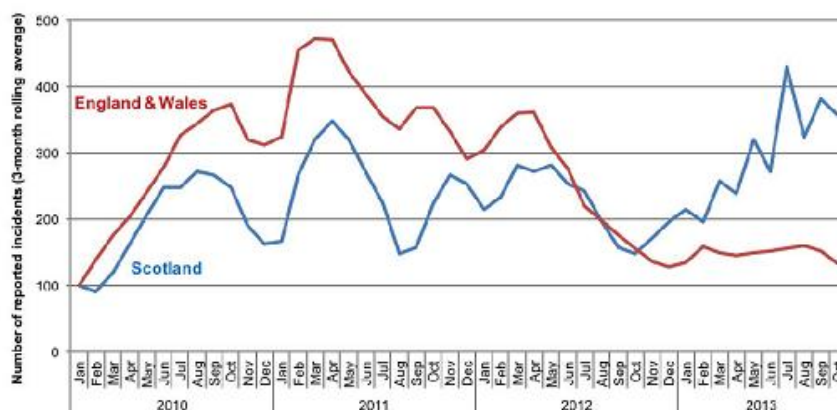
*fell to levels far lower during 2012 and 2013 than would be expected from the drop in metal prices alone.*²⁹

It is of the opinion that interventions launched during that period did contribute to a substantial reduction in the number of offences from 2012 and 2013.

The Home Office also found a possible impact of displacement in Scotland. According to the report, figure 3 shows

*a clear divergence in trends starting in the second half of 2012 as the intervention was rolled out nationally in England and Wales, but not in Scotland. This adds further evidence to the finding that the interventions reduced metal theft. But it also suggests there may have been some displacement, as thefts in Scotland actually increased in 2013*³⁰

Figure 3: Indexed trends in incidents of reported metal thefts (three-month rolling average, Jan 2010 = 100) from the ENA, England and Wales, and Scotland, Jan 2010 – Oct 2013.



Source: Home Office 2015³¹

²⁹ Home Office (February 2015) [An evaluation of government/law enforcement interventions aimed at reducing metal theft](#). P.3

³⁰ The report highlights that this increase is not correlated with metal prices. That in fact the correlation coefficient between metal prices and ENA metal theft in Scotland was actually negative for the period from January 2012 to December 2013. *Ibid* p.16

³¹ Home Office (February 2015) [An evaluation of government/law enforcement interventions aimed at reducing metal theft](#). P.16

2.3.2 Scotland

Section 28 of the *Civic Government (Scotland) Act 1982* provides for the licensing and regulation of metal dealers. It requires that anyone who is carrying out business as a metal dealer must obtain a metal dealer's licence. Licences are subject to conditions set by the licensing authority (local councils), and maintaining full records is a mandatory condition of all licences. The council that issues the licence can attach further conditions that they deem necessary.³² An exemption warrant may be granted where the business has a certified turnover of over £1 million³³.

However, the *Air Weapons and Licensing Act (2015)* removed the exemption all together, requiring all business to obtain a licence regardless of turnover. It also banned all cash payments, requiring all transactions by cheque or electronic transfer, and removed the requirement to store/hold metal for a period of 48 hours and introduced the need for³⁴

2.3.3 Republic of Ireland

A private members Bill *the Scrap and Precious Metal Dealers Bill (2013)* provided for the introduction of a licensing regime for scrap metal dealers. The proposals included:

- Dealers must record the details of transactions (including identity of sellers, nature of the material, origin of material, etc.) and retain such records for 5 years
- Dealers must retain material for 30 days and in the case of precious metals in an unaltered state for 5 days
- Powers for An Garda Síochána to enter premises, seize records, materials etc.
- Offences and penalties for non-compliance with provisions of the Act, in relation to such matters as falsification of records, withholding information etc.³⁵

However, the Bill was rejected at Second Stage on behalf of the Minister for Justice and Equality.³⁶ The reasons for the Bills rejection can be read in the [Minister's response](#).

However since the fall of the above private members Bill, the Irish Government made an amendment to the *Waste Management (Facility Permit and Registration) Regulations 2007* in 2014 (by the *Waste Management (Facility Permit and Registration) (Amendment) Regulations 2014*³⁷). This amendment strengthened conditions in relation to traceability of material being recovered or recycled by, in particular, putting an onus on proof of ownership and full traceability for material

³² The *Civic Government (Scotland) Act 1982* <http://www.legislation.gov.uk/ukpga/1982/45/contents>

³³ The *Civic Government (Scotland) Act 1982* (Metal Dealers' Exemption Warrants) Order 2012 amended the level from £100,000 to £1 million.

³⁴ See Section 67 and 68 of the [Air Weapons and Licensing \(Scotland\) Act 2015](#)

³⁵ Department of Justice and Equality (ROI) [Scrap and Precious Metal Dealers Bill 2013 \(Private Members Bill\) Response by Minister at Second Stage \(20 June, 2014\)](#)

³⁶ *ibid*

³⁷ Irish Statute Book [Waste Management \(Facility Permit and Registration\) \(Amendment\) Regulations 2014](#)

purchased at permitted waste facilities. According to the Department of Environment, Community and Local Government (DECLG), these regulations apply to all authorised waste management processes, including scrap metal.³⁸

3 Overview

The Scrap Metal Dealers Bill consists of 21 clauses with two schedules. As stated in the Explanatory and Financial Memorandum (EFM) the Bill seeks to address the theft of stolen metal.³⁹ Essentially the Bill can be split into two parts 1) the requirement for scrap metal businesses to have a scrap metal licence and the responsibility of DOE in relation to licensing and 2) how scrap metal dealers must conduct their business in line with the licensing requirements.

3.1 Part 1 – Licensing of scrap metal dealers

This section requires that all scrap metal businesses, as defined by the Bill, must hold a scrap metal licence. This part, along with further detail provided in Schedule 1, also details the form and content of a licence and specifies that the DOE will be responsible for the issue and enforcement of a scrap metal licence (of which Schedule 2 provides further detail).

3.2 Part 2- Conduct of business

This details how a business must display a licence (cl.8), verify supplier's identity(cl.9), and what records a business must keep when both receiving or disposing of metal (including selling) (cl. 11 and 12). This includes requirements for storage of metal which has been defaced ("suspicious metal") and alerting the PSNI (cl.11). It also bans any cashless transactions above £100, only allowing for payment by cheque or electronic transfer (cl.10). It also gives rights of entry and inspection for investigation by a constable of the PSNI (cl.14). A number of orders and regulations are to be produced by the DOE for which the level of scrutiny is provided (cl.17). The provisions of the Bill are detailed to commence within two years of Royal Ascent (and next day for some provisions as stated in cl.19). A review of the Act is to take place every six months after Royal Ascent until all provisions come into force (cl.20).

For a clause by clause description of the Bill refer to the [EFM](#)

³⁸ Information provided by Roy Beggs in correspondence with DECLG (24/11/2015)

³⁹ Scrap Metal Dealers Bill (NI) [Explanatory and Financial Memorandum](#) as introduced to the Assembly 19 October 2015

4 Secondary legislation and guidance

Under clause 17 of the Bill⁴⁰ the following orders are to be made by the Department (DOE) and laid before and approved by the Assembly by **affirmative resolution**:

1. An order under clause 10 (7)(a) – to allow an amendment to permit other methods of payment beyond cheque and electronic transfer.
2. An order under clause 10 (7)(b) – to allow an amendment or removal of the £100 cash limit allowed for payments. This also allows for the amendment of the one cash transaction per month limit between the same dealer and seller.

However clause 17 of the draft Bill refers to clause 10 (8) (a) and 10 (8) (b) when in fact the corresponding clauses are 10 (7)(a) and 10 (7)(b).

3. An order under clause 19 (1)(a) –to allow for the amendment to the commencement of the Act to be appointed by the Department.

Under clause 17 any other order or regulation not mentioned above is to be approved by **negative resolution**, these include:

- clause 2 (8) - regulations to be produced by the Department prescribing further requirements for the form and content of licences.
- clause 3 (3) – regulations to be produced by the Department prescribing “relevant offence” and “relevant enforcement action”.
- clause 9 (4) – regulations to be produced by the Department prescribing other documents/information, than those already listed, that may and may not be used for verifying a supplier’s identity.
- Clause 11 (9)- regulations to be made by the Department defining the meaning of “prescribed metal”.
- Clause 16 (8) – the Department may by order amend the definition of “scrap metal”.

4.1 Guidance

- Under Schedule 1(2)(k) - the Department may specify through guidance other documents/ information that must accompany an application for a licence.
- Under Schedule 1(6)(2) – when setting a fee for an application for a licence the Department must have regards to guidance issued by the Department of Finance and Personnel. ***It may be of interest to find out if this is existing guidance or guidance to be produced by DFP specifically for scrap metal licence fees.***

⁴⁰ [Scrap Metal Dealers Bill \(NI\)](#) As introduced to the Assembly 19 October 2015

5 Changes since the consultation

A consultation was carried out in November 2013 on the introduction of a Scrap Metal Dealers Bill.⁴¹ The consultation closed in February 2014 and a Summary Document of the responses was produced. This provided an overview of the responses to each of the consultation questions. It was clear from the outcome of the consultation that the majority (75%) of respondents were in support of the overall objective of the Bill to introduce legislation to combat metal theft. Most (75%) felt that current provisions, including the voluntary code, are not adequate enough.

However, a number of suggestions were made by respondents, and the consultation summary document provides a useful commentary on possible changes as a result of these. These changes are discussed in the following section.

5.1 Exemption to cashless payments

Similar to the rest of the UK, it was originally suggested in the consultation paper that all cash transactions should be banned and limited to payment by cheque or electronic transfer.⁴² However, as an outcome of the consultation exercise it was suggested that cash payments should be allowed for transactions under £1000,⁴³ however the Bill, under Clause 10, allows for cash payments below £100. Such transactions between a scrap metal dealer and the seller are limited to one per month. This exemption is unique to NI where there is nothing similar in corresponding legislation in the rest of the UK.

5.2 Hold periods

It was originally proposed in the consultation document that scrap metal, once received, should be segregated and stored or held for inspection by the PSNI.⁴⁴ However, following consultation this proposal has been removed from the draft Bill as it was felt the burden on scrap metal dealers in complying with this proposal would be too great.⁴⁵ There are no general hold periods in England and Wales under the Scrap Metal Dealers Act 2013, and just recently Scotland had them removed by the Air Weapons and Licensing Act 2015.⁴⁶

However specific hold periods do apply in the NI Bill e.g.:

- Under Clause 3 if the applicant of a licence or a site manager has been convicted of an offence, the licensing authority may put a condition on the licence requiring them to hold any metal they purchase for up to 72 hours. This is the same in England Wales.

⁴¹ Roy Beggs MLA [Consultation Paper on Scrap Metal Dealers Bill \(NI\)](#)

⁴² Roy Beggs MLA [Consultation Paper on Scrap Metal Dealers Bill \(NI\)](#)

⁴³ Roy Beggs MLA Consultation on a Scrap Metal Dealers (NI) Bill Summary Document

⁴⁴ Roy Beggs MLA [Consultation Paper on Scrap Metal Dealers Bill \(NI\)](#) P.16

⁴⁵ Roy Beggs MLA Consultation on a Scrap Metal Dealers (NI) Bill Summary Document. P.38

⁴⁶ See Section 67 and 68 of the [Air Weapons and Licensing \(Scotland\) Act 2015](#)

- Under Clause 11 the Bill provides for a hold period for ‘suspicious’ metal which is considered to be metal which has been burnt or purposefully defaced to remove any tracking information. A dealer must notify the PSNI of such metal and store it for at least one week so it can be inspected by the PSNI.

This concept of a hold period for ‘suspicious’ metal is unique to NI and is not included in the legislation in England and Wales, and Scotland. The Bill states in clause 11 that:

(8) In this section “suspicious scrap metal” means scrap metal—

(a) which wholly or predominantly consists of—

(i) copper;

(ii) aluminium;

(iii) any other prescribed metal, and

(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.⁴⁷

Under this clause, the Department is to specify a “prescribed metal” in regulations, and it may be of interest to find out whether this will include metals that do not appear on the face of the Bill such as lead.

5.3 Implementation

The consultation Summary Document stated that the legislation should come into effect within one year after passing through the legislative process⁴⁸. The Bill itself states that Clause 17 (production of regulations and orders), clause 20 (review of the Act) and Clause 21 (the short title) are to come into force the day after the Act receives Royal Assent. Whereas, the rest of the Bill is to come into force within two years of Royal Assent; and not one year as previously suggested. However respondents to the consultation felt enough time should be given for scrap metal dealers/businesses to prepare for the requirements; it is possible the increase to two years was a result of this.

⁴⁷ [Scrap Metal Dealers Bill \(NI\)](#) As introduced to the Assembly 19 October 2015

⁴⁸ Roy Beggs MLA Consultation on a Scrap Metal Dealers (NI) Bill Summary Document. P.40

6 Not included in the Bill

6.1 Long term/ongoing review

Further clarity should be sought in relation to Clause 20 of the Bill as it appears there is no longer term or continued requirement to review the Act after all provisions come into force. The clause details that a review must be carried out every six months after Royal Assent until all provisions come into force (within two years cl.19). In England and Wales under S. 18 of the Scrap Metal Dealer's Act, a review must be completed after 5 years of the Act coming into force.⁴⁹

A Practical Guide to Policy Making in Northern Ireland produced by OFMDFOM (2003) suggests that it is

*important to undertake effective appraisal of policy options initially, and to build ongoing monitoring and review mechanisms into the delivery of policy from the outset.*⁵⁰

6.2 Register

Both the England and Welsh legislation⁵¹ and the Scottish legislation⁵² require a register of licences to be kept. In England and Wales this is to be maintained by the Environment Agency, and responsibility in Scotland is to be determined through regulations. However, as the Bill stands there are no similar provisions for a register.

6.3 Flexibility

The flexibility of the Bill in terms of disposal requirements goes beyond the English and Welsh legislation. Clause 12 reduces the burden on smaller transactions in relation to the selling of metal for disposal, by only requiring dealers to record the name and address of the buyer for transactions above 50 kg in volume. However, in relation to receipt of metal in Clause 11, there is no threshold or level of flexibility shown for smaller volume transactions received or bought.

6.4 Amending mechanisms

Section 1 of Schedule 1 provides for the terms of licence where the Department can specify the exact period which is to be between one and three years. However, there is no mechanism in the Bill for amending the maximum and minimum period.

⁴⁹ [Scrap Metal Dealers Act \(England and Wales\) 2013](#) S. 18

⁵⁰ OFMDFOM (2003) [A Practical Guide to Policy Making in Northern Ireland](#)

⁵¹ Scrap Metal Dealers Act 2013 S.7

⁵² Air Weapons and Licensing Act 2015 S.71

Section 2 of Schedule 1 lists the documents and information that must accompany an application for licence; however there is no mechanism for amending these requirements over time.

6.5 Precious metals

Under Clause 21 of the Bill, scrap metal does not include gold, silver, or any metal with 2% or more by weight of gold or silver. However, the Bill allows for the Secretary of State to amend the meaning of scrap metal by order. That being said, England and Wales, and Scotland do not cover precious metals in their legislation. In the Republic of Ireland, the Private members Bill included precious metal dealers; however it did not pass Second Stage.

7. Areas for further consideration

7.1 Responsibility

The responsible department for implementing the Bill and issuing licences is the DOE, with the PSNI having the right to enter and inspect. It would appear that the main intention of the Bill is regulating the business conduct of scrap metal dealers so as to reduce the theft of scrap metal, which in itself is a crime, and is the responsibility of DOJ/PSNI. There is little attention given to the improvement of environmental protection, improved recycling or the protection of historic buildings.

There is also no local government involvement and the PSNI have the only rights to enter and inspect. This conflicts with current arrangements under waste legislation and the proposed Environmental Better Regulation (EBR) Bill⁵³ where NIEA, and in certain cases, local council officers have powers to enter premises for inspection and investigation.

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 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.

⁵³ [EBR Bill](#) as introduced to the Assembly June 22 2015

7.2 The Environmental Better Regulation Bill

With DOE being 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 EBR Bill. The aim of the EBR Bill is to streamline the environmental permitting process; a separate scrap metal licence may be seen as counteractive to the focus of the EBR Bill.⁵⁴

7.3 Departmental re-organisation

It may also be of interest find out whether the responsibilities would transfer with all environmental protection to the new Department of Agriculture, Environment and Rural Affairs. If this is the case, ***it may be of interest to ask the DOE whether they foresee any conflict of interest within the new Department due to the increased licensing and enforcement nature of the Bill and possible impacts on agriculture and rural affairs.***

7.4 Penalties and Offences

Some consultation responders felt that some of the penalties suggested under the Bill, e.g. clause 9 and 10 were too low. That being said there are cases where the level of fine is higher than the English equivalent e.g. clause 14 provides for a level 5 fine with respect to rights to enter and inspect, whereas a similar offence under S.16 of the Scrap Metal Dealers Bill is level 3.

All offences are punishable by summary conviction only (in the Magistrates Court) with some resulting in a maximum fine of £5000 (level 5 on the standard scale), ***however the question is whether an offence under this Bill would also be worthy of indictment.*** Indictment (determined by the Crown Court) may provide for a higher level of fine (and custodial sentence) beyond level 5, for more serious breaches. The Better Environmental Regulation Bill (EBR) provides for punishment by indictment, and the potential for greater levels of fines beyond the Scrap Metal Bill e.g. in relation to powers of entry in Clause 8 and section 13 of Schedule 1 *Enforcement and Offences*.⁵⁵ Again raising the question where the provisions of the Bill would fit in relation to the provisions of the EBR Bill.

7.5 Suitability

The Bill provides that a person must be deemed suitable to be issued with a licence. Clause 3 lists information that helps identify the suitability of an applicant, this includes whether the person has been convicted of any relevant offences; subject to any relevant enforcement actions; previously refused a scrap metal licence or relevant environmental permit.

⁵⁴ [EBR Bill](#) as introduced to the Assembly June 22 2015

⁵⁵ [EBR Bill](#) as introduced to the Assembly June 22 2015

While the Department is to provide further clarity of ‘relevant offences’ and ‘relevant enforcement actions’ through regulations, ***it is not clear whether similar offences from other jurisdictions will be included when determining suitability.***

The English Act goes a step further under S.3 by allowing for the licensing authority to consult with others regarding the suitability of an applicant e.g. local authorities; the Environment Agency; the Natural Resources Body for Wales; and police. The licensing authority must also have regard to guidance produced by the Secretary of state on determining suitability.

7.6 ROI

The ROI provides an example of amending existing waste management regulations to regulate scrap metal dealers, by amending the Waste Management (Facility Permit and Registration) Regulations 2007 in 2014 (as detailed in section 2.3.3). These Regulations also provide an obvious link to the remit of the DECLG and the protection of the environment and human health:

The Waste Management (Facility Permit and Registration) Regulations 2007 (No. 821 of 2007) are amended:-

(a) In article 19, by inserting the following after sub-article (1)(h):

(i) conditions aimed at ensuring full traceability of any waste purchased in order to ensure full compliance with the provisions of the Act and to protect the environment and human health⁵⁶

Could consideration be given to using a similar approach to the ROI by linking the positive environmental benefits of increased regulation of scrap metal as a waste, the improved traceability and regulation for recycling and reuse purposes, and the potential reduction in unauthorised burial/landfill?

7.7 Displacement

Currently there is legislation regulating scrap metal dealers in the rest of the UK and ROI. Therefore consideration should be given to the possible displacement of the problem (in terms of both theft and movement/storage of stolen metal) to NI from south of the border, and even across the water from England, Wales and Scotland. As discussed in section 2.3.1, an increase in metal thefts in Scotland was attributed, by the Home Office, to the introduction of legislation in England. This suggested a displacement of the problem as a result of the lack of regulation at the time in Scotland.

⁵⁶ Irish Statute Book [Waste Management \(Facility Permit and Registration\) \(Amendment\) Regulations 2014](#)

8 Review of Bill Costs⁵⁷

Sections 2-7 outlined the policy context of the Bill. This section provides a framework to orientate the Assembly's financial scrutiny of the Bill. It reviews the estimated costs that would be incurred by key clauses, assuming they are enacted as introduced by the Member. In particular, it examines the financial information outlined in the EFM, including the estimated figures, the cost drivers and the underlying assumptions. While there may be discussions around responsibility, this section refers to DOE as the responsible department, as suggested in the draft Bill.

Throughout scrutiny points are stated in bolded, italicised font.

It should be noted that the review of potential Bill costs outlined below make use of figures provided by DOE for the current waste management licensing scheme. However, as outlined in Section 7, above, there is no suggestion that a scrap metal licence would necessarily directly align with the current waste management licensing scheme.

8.1 Clauses 1 and 2 - Scrap Metal Licence

Clause 1 requires all scrap metal businesses, as defined by the Bill, to hold a scrap metal licence.

Clause 2 empowers the DOE to issue the scrap metal licence. If enacted, this would change the current licensing arrangements, which mainly concern waste management licensing, as presently administered by the Northern Ireland Environment Agency (NIEA) on behalf of the DOE.

The Member sponsoring the Bill seeks to minimise costs that would be incurred when implementing the new scrap metal licensing scheme prescribed by the Bill. The EFM states:

*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.*⁵⁸

To assess his statement, the Public Finance Scrutiny Unit (PFSU) within RaiSe examined the operating costs of the current waste management scheme. Of course it cannot be assumed that examination of those costs reflects financial implications that could arise under the new scheme in relation to DOE specifically. Nonetheless looking

⁵⁷ This Review of Bill Costs was compiled by the Public Finance Scrutiny Unit (PFSU) within the Research and Information Service (RaiSe), replying on available information from the DOE and elsewhere.

⁵⁸ [Scrap Metal Dealers Bill \(NI\)](#) As introduced to the Assembly 19 October 2015

at costs under the current scheme may be helpful in starting to understand what those may be for DOE under the new scheme.

In addition, it is important to note that the below costs concern only DOE. They do not address those that could be incurred in relation to the new scheme's enforcement by, for example, the Department of Justice. At present the Bill does not address the enforcement issue that apparently would arise from such a scheme.

With that in mind, the DOE advised that they are approximately **£1,154,500 for 2014/15**, explaining that this figure included costs relating to:⁵⁹

- Direct Staff;
- General administration expenditure;
- Accommodation; and,
- Branch/divisional administration.

Each is discussed in terms of what they include and how they may impact on the Bill's implementation.

8.1.1 Direct Staff Costs

On request, the DOE provided the PFSU with details about the number and grades of staff involved with the administration of the current scheme. Table 1, compiled by the DoE, provides the staffing complement of the NIEA, operating the current waste management licensing scheme:⁶⁰

Table 1: Waste Management Licensing Scheme: Staff Complement

Scientific Staff	Quantity	Administration Staff	Quantity
Principal Scientific Officer (PSO) ⁶¹	1	Staff Officer (SO)	1
Senior Scientific Officer (SSO)	3	Executive Officer I (EO1)	1
Higher Scientific Officer (HSO)	7	Executive Officer II (EOII)	3
Scientific Officer (ScO)	6	Admin Officer (AO)	4
-	-	Admin Assistant (AA)	1

The DOE further noted an additional 4 unfilled priority posts (1 x SSO, 2 x HSO, 1 x ScO). It stated that the cost to fill these additional posts is estimated at approximately **£160,000**.⁶²

On the information currently provided by the Member sponsoring the Bill, it is unclear as to what impact, if any, the new licensing scheme would have on current staffing

⁵⁹ Department of the Environment, E-mail correspondence received by RalSe, dated 31 July 2015.

⁶⁰ Table compiled by RalSe relying on data supplied by the Department of the Environment dated 31 July 2015.

⁶¹ PSO scientific grade is equivalent to NI civil service senior management Grade 7.

⁶² Department of the Environment, E-mail correspondence received by RalSe, dated 25 August 2015.

noted above, including both filled and unfilled posts. ***It may be of interest to ask the Member if he has engaged with the DOE about this; and if so, what was the outcome of such engagement? It also may be of interest to ask the DOE for its views in this regard.***

8.1.2 General administration expenditure

‘Administrative expenditure’ is a technical term used in public sector accounting. Her Majesty’s Treasury defines this term in its *Consolidated Budgeting Guidance 2015 to 2016* as follows:

*Administration budgets cover expenditure on running Central Government entities but excluding their frontline activities.*⁶³

It is noteworthy that the DoE uses the term ‘General administration expenditure’ in a broader manner than the above-cited Treasury guidance. Its definition includes the day-to day operation of the business area, including frontline activities.⁶⁴

It is likely any new scrap metal licensing scheme would require a budget to facilitate the day-to day operation of the new scheme, as well as frontline activities that include the issuing of the scrap metal licence.

The Member sponsoring the Bill does not specify how the above costs would be covered. ***It may be of interest to ask the Member if he has engaged with the DOE about this; and if so, what was the outcome of such engagement? It also may be of interest to ask the DOE for its views in this regard.***

8.1.3 Accommodation

The DoE confirmed that waste management licensing is administered on a centralised basis from one office located in Belfast. Accommodation costs typically include heating, lighting and rates bills.

The above expenses would be incurred by the body charged with the administration of the new scrap metal licence scheme.

The Member sponsoring the Bill does not specify how the above accommodation costs would be covered. ***It may be of interest to ask the Member if he has engaged with the DOE about this; and if so, what was the outcome of such engagement? It also may be of interest to ask the DOE for its views in this regard.***

⁶³ HM Treasury (2015) Consolidated Budgeting Guidance 2015-16:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417266/PU_1777_CBG_2015-6.pdf

⁶⁴ <http://www.investopedia.com/terms/g/general-and-administrative-expenses.asp>

8.1.4 Branch/divisional administration

Branch/divisional administration typically relates to the overhead costs within the division, where overheads are shared out (or apportioned) between divisional cost centres.⁶⁵

Generally speaking, the above-stated identified costs relate to the regular operational costs of the current waste management scheme. There are, however, other issues that may need to be taken into consideration either in respect of implementation or recurrent costs under that scheme. These include the following areas:

Training for staff on new scheme arrangements:

For all staff that would be implementing the Bill, it is reasonably foreseeable that they would require appropriate training to inform and guide their implementation of the Bill.

The Member sponsoring the Bill does not specify how the above training costs would be covered. ***It may be of interest to ask the Member if he has engaged with the DOE about this; and if so, what was the outcome of such engagement? It also may be of interest to ask the DOE for its views in this regard.***

Monitoring and reporting

Monitoring and reporting costs arising under the Bill could concern staffing, administration, and IT, for example

The Member sponsoring the Bill does not specify how the above monitoring and reporting costs would be covered. ***It may be of interest to ask the Member if he has engaged with the DOE about this; and if so, what was the outcome of such engagement? It also may be of interest to ask the DOE for its views in this regard.***

Enforcement

Enforcement costs arising under the Bill could include investigation of complaints about non-compliance and any related legal costs, if any. It is noteworthy that the DoE response to the PFSU's staffing information request (see Table 1 above) indicated all scientific grades that carry out enforcement duties as part of their regulatory activities. It is unclear from the currently available information as to whether the new licensing scheme would rely on this enforcement activity when administering the new licensing scheme.

The Member sponsoring the Bill does not specify how the above enforcement costs would be covered. ***It may be of interest to ask the Member if he has engaged with the DoE about this; and if so, what was the outcome of such engagement? It also may be of interest to ask the DOE for its views in this regard.***

⁶⁵ CIPFA (2004) Open learning material: Management Accounting.

8.2 Clause 5, Schedule 1 - Fees and Cost Recovery

Clause 5 refers to Schedule 1, which addresses the setting of scrap metal licence fees. At paragraph 6(2), it states:

*In setting a fee [...], the Department must have regard to any guidance issued from time to time by the Department for Finance and Personnel.*⁶⁶

Such departmental guidance is found in the DFP's *Managing Public Money*. Therein, departments are advised about the importance of correctly calculating costs when determining fee levels:

*With some exceptions, fees for services should generally be charged at cost, sometimes with an explicit additional element to match the returns of commercial competitors. So to set many fees for public services it is essential to calculate the cost of providing them accurately.*⁶⁷

As envisaged by the Member, it appears that the new scrap metal dealers licensing scheme would **not** be operating in a field in which there are commercial competitors. Hence, in line with the stated DFP guidance, the new licensing fees should be charged at cost, meaning fees should recover all costs that would be incurred under the proposed scheme – no more and no less.

However, the guidance further notes that income levels for a scheme may fluctuate, necessitating fee level adjustment, as appropriate:

*Despite every effort to measure and forecast costs, surpluses and deficits are bound to arise from time to time. Causes may include variations in demand, in year cost changes, and so on. It is good practice to consider mid-year adjustment to fee levels if this is feasible.*⁶⁸

This would apply to what the Bill proposes here.

In addition, the EFM states that:

*The Member [sponsoring the Bill] hopes that the cost of the licence will be operated on a full cost recovery basis.*⁶⁹

Put simply, it appears that the Member sponsoring the Bill envisages that the revenue to be generated in fees would need to be at a sufficient level to “pay for” the cost of the scheme, if the scheme is to be operating at full cost recovery.

⁶⁶ [Scrap Metal Dealers Bill \(NI\)](#) As introduced to the Assembly 19 October 2015.

⁶⁷ Department of Finance and Personnel (2015) *Managing Public Money: Chapter 6. Fees, Charges and Levies*. (paragraph A6.2.1).

⁶⁸ Department of Finance and Personnel (2015) *Managing Public Money: Chapter 6. Fees, Charges and Levies*. <https://www.dfpni.gov.uk/sites/default/files/publications/dfp/a.6.2-how-to-calculate-fees.pdf> (paragraph A6.2.8)

⁶⁹ [Scrap Metal Dealers Bill \(NI\)](#) As introduced to the Assembly 19 October 2015

To assess this aspect of the Bill, the PFSU looked at revenue generated by the current waste management licensing scheme in NI. The following paragraphs outline the PFSU's findings.

The DoE advised that the revenue generated per year under the current waste management licensing scheme varies from year to year, depending on the number of applications approved. Nonetheless the DoE approximated its annual revenue at approximately £1 million per year, based on figures for 2014/15. As mentioned in Section 6.1 above, the DoE advised that the operating costs of the current scheme is approximately **£1,154,500 for 2014/15**.⁷⁰ Given these figures, it appears that the cost of the current scheme is not met by the revenue it generates. It therefore seems that it does not operate on a full cost recovery basis.

In this regard, the EFM acknowledges that the new scheme, if enacted as introduced, would run at that stated loss:

*...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.*⁷¹

However, the EFM is silent about how these potential economies of scale would be realised. ***It may be of interest to ask the Member if he has engaged with the DOE about this; and if so, what was the outcome of such engagement? It also may be of interest to ask the DOE for its views in this regard.***

8.2.1 Scrap Metal Licence Fees in England, Scotland and Wales

In England and Wales, the *Scrap Metal Dealers Act 2013* (the 2013 Act) provides for the requirement of a licence to enable individuals or businesses to trade in scrap metal.

The Impact Assessment for the 2013 Act (IA 2013) estimated the licence fee based on one single scrap metal dealer licence. It stated

Fee: estimated to be some £500 paid every three years on application or renewal of licence.

The IA 2013 also stated:

....since the actual fee level would be at the discretion of local authorities, it is acknowledged that the true business impact may differ from that estimated. The high cost scenario assumes the value of the fee would be £1,000.

⁷⁰ Department of the Environment, E-mail correspondence received by RalSe, dated 25 August 2015.

⁷¹ [Scrap Metal Dealers Bill \(NI\)](#) As introduced to the Assembly 19 October 2015.

However, the EFM is silent about fee levels. ***It may be of interest to ask the Member if he has engaged with the DOE about this; and if so, what was the outcome of such engagement? It also may be of interest to ask the DOE for its views in this regard.***

In the absence of any other information at this time, below at Table 2 the PFSU presents a cross section of fees charged by local authorities in England, Scotland and Wales for scrap metal licences. Local authorities were chosen to provide a geographic spread across Great Britain. The information provided is for illustrative purposes only, seeking to inform Assembly deliberations in this area. Note that the fees stated in the Table relate to first-time applications: fees for licence renewals may differ; and separate fees may be set for an amendment to a licence.⁷²

Table 2: Fees for Scrap Metal Dealer across England, Scotland and Wales

Country	Local Authority	Site Licence Fee (£)	Collector's Licence (£)
England	East Riding Yorkshire Council ⁷³	400	300
	Eden District Council ⁷⁴	230	175
	Gateshead Council ⁷⁵	346	142
	Wyre Council ⁷⁶	300	300
	Oxford City Council ⁷⁷	1,200	900
	Birmingham City Council ⁷⁸	1,236	298
	Hackney Council ⁷⁹	379	199
Wales	Cardiff County Council ⁸⁰	293	239
	Carmarthenshire County Council ⁸¹	380	260
Scotland	North Ayrshire Council ⁸²	105	105
	West Lothian ⁸³	90	76
	Glasgow City Council ⁸⁴	298	121

In conclusion, the Assembly may wish to seek further information from the Member, using the scrutiny points provided throughout this section. If additional information is

⁷² UK Home Office (2013) *Scrap Metal Dealer Act 2013: guidance on licence fee charges*:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229459/SMDA_2013_Fees_Guidance.pdf

⁷³ <http://www2.eastriding.gov.uk/business/licences-and-registrations/available-licences/commercial-trading/scrap-metal-dealers/> [Accessed 9 September 2015]

⁷⁴ <http://www.eden.gov.uk/licensing/scrap-metal-licence/> [Accessed 9 September 2015]

⁷⁵ <http://www.gateshead.gov.uk/Business/licenses/BusinessLicenses/ScrapMetalLicence.aspx> [Accessed 9 September 2015]

⁷⁶ http://www.wyre.gov.uk/info/200359/licensing/449/scrap_metal_dealers_licence [Accessed 9 September 2015]

⁷⁷ <http://www.oxford.gov.uk/PageRender/decB/ScrapMetalDealersApplyingforaLicence.htm> [Accessed 9 September 2015]

⁷⁸ <http://www.birmingham.gov.uk/scrapmetalchange> [Accessed 9 September 2015]

⁷⁹ <http://www.hackney.gov.uk/eb-licence-scrap-metal-378.htm> [Accessed 9 September 2015]

⁸⁰ <https://www.cardiff.gov.uk/ENG/Business/Licences-and-permits/Entertainment-and-alcohol-licences/Documents/General%20licence%20fees%20and%20charges.pdf> [Accessed 9 September 2015]

⁸¹ <http://www.carmarthenshire.gov.wales/home/business/licensing-permits/scrap-metal-dealers/> [Accessed 9 September 2015]

⁸² <http://www.north-ayrshire.gov.uk/business/licences-and-permits/business-licences/metal-dealers-licences.aspx> [Accessed 9 September 2015]

⁸³ http://www.westlothian.gov.uk/media/1962/Miscellaneous-Licensing-Fees-2015-16/pdf/Miscellaneous_Licensing_Fees_2015-16.pdf [Accessed 9 September 2015]

⁸⁴ <http://www.glasgow.gov.uk/CHttpHandler.ashx?id=8747&p=0> [Accessed 9 September 2015]

sought and secured for each point, it would enable better assessment of the likelihood and extent of potential costs to be incurred if implementing the Bill as introduced. This would allow the Assembly to assure itself that the Member has robustly considered the Bill's financial impact.

9 Conclusions

9.1 Bill analysis

It is clear there is a need for legislation to address the problem of metal theft in Northern Ireland, which would bring it more in line with the rest of the UK and ROI. The overall principles of the Scrap Metal Dealers Bill aim to address this problem and provide a potential avenue for redress. However, there are a number of areas 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, through regulating the conduct of business. However, the Bill identifies DOE as the responsible department, yet there appears to be very little link to DOE's remit. On this basis, the ROI has linked the regulation of scrap metal dealers to the protection of the environment and human health using waste management regulations in 2014 (see section 7.6). There is also uncertainty with regards to where the licensing system would sit within the DOE should it remain the lead. Considerations may be needed with regards to alignment with the environmental permitting system and especially changes to come through the Environmental Better Regulation Bill. Either way, without the introduction of legislation, NI may run the risk of displacement of the problem, both in terms of theft and the movement/storage of stolen metal from the rest of the UK and ROI.

9.2 Financial analysis

It is also anticipated that the absorption of the new licensing scheme into prevailing licensing arrangements would minimise costs. As set out in Section 8, the DFP guidelines state that fees for services generally should 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 therefore currently operates at a loss.

In this regard, the EFM states that expected economies of scale drawn from streamlining and embedding new procedures into existing ones would produce savings. However, there is no detail provided on how these potential economies of scale would be realised. The Assembly may wish to seek further information from the Member, using the scrutiny points provided throughout Section 6. If additional information is sought and secured, it would enable better assessment of the likelihood and extent of potential costs to be incurred if implementing the Bill as introduced. This

would allow the Assembly to assure itself that the Member has robustly considered the Bill's financial impact.