



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Scrap Metal Dealers Bill:
Deliberation on Clauses

9 February 2016

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Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Cathal Boylan
Mr Paul Girvan
Mr Alban Maginness
Mr Barry McElduff
Mr Ian Milne
Mr Alastair Patterson
Mr George Robinson

Witnesses:

Ms Mairead Adams	Department of the Environment
Mr Brendan Forde	Department of the Environment

The Chairperson (Ms Lo): You are very welcome back, Brendan. Also, Mairead Adams is with us. Thank you very much; you have put in an awful lot of effort in a very short time to try to make the best of the Bill and to dovetail into departmental remits and your regulations. We certainly appreciate that.

I take on board your reservations, seriously. I think that is the view of the other members, too. We have just had a meeting with three representatives of the scrap metal dealers industry. They also have a lot of reservations. They say that, in their view, it is a duplication of existing regulations, and it is unnecessary to implement the Bill. They feel that the best way may be to make the voluntary code of conduct, which 48 or 49 companies — a large majority of the sector — have now signed up to, mandatory. To strengthen it and then make it mandatory, through regulation or legislation, will probably be the best approach rather than implementing the Bill. I think members are taking the views on board. We are considering their feelings and input, and I think that it is necessary to hear from them. We are grateful that we have at last met them face to face to hear from people on the ground to see how the Bill may impact on them. That was very useful.

Rather than go through the Bill clause by clause and amendment by amendment, would you just talk us through it in general? Then we can group the amendments ourselves, later on.

Mr Brendan Forde (Department of the Environment): Yes, thanks very much for that, Chair. The main point for us is to make it clear that, as far as the original Bill is concerned, because you are making critical decisions at this point, we do not think it is acceptable operationally. It complicates matters when you have this concept of a scrap metal dealers' licence and so on, and there is a potential burden because licensing is a burden for operators. We want to restate that position.

We have been making efforts; thank you very much for acknowledging that. We have worked with Mr Beggs on removing the licensing elements. If we were to go into individual clauses, particularly clauses 15 and 16, about who would be "caught" by the Bill, what we have are draft clauses, which are a work in progress. We are not 100% happy with them at the moment, and indeed, we even got an iteration of an improvement overnight from our draftsman that is not even on your list. We feel we are moving in the right direction, but we have not had the time to sit down and go through some key elements with our lawyers, never mind the draftsman producing language that is meant to go in the legislation. That is why we indicate a bit of nervousness about it; we would not want the way that it applies to be wrong.

The Chairperson (Ms Lo): So what we see now may not be what you would put forward at Consideration Stage.

Mr B Forde: To be fair, some elements will remain as we have provided them to you, but there are some clauses that you definitely would want put in. There is clause 16 about how you actually exclude people whom you want to exclude in policy terms. We have talked about electricians, plumbers and those sorts of people. There is also the issue of councils. It is all right saying in general terms that we will exclude councils, but, of course, there are a lot of private contractors who do the work for councils, and the clause that we have at the minute is, we feel, inadequate to properly exclude people in a policy context. Indeed, you probably need to give us some policy direction. Do you want people who work for councils to be excluded in that sense? However, the same people probably have private contracts that are nothing to do with the council. Hence, the wording and clarification are needed on all of that to meet the policy intent. We do not have clause 16 nailed at the minute; that is what we are saying.

Mr Boylan: Just on that point, Chair, it has been clearly highlighted to you, Brendan, that we do not have time to scrutinise all that, get involved with councils or find out how many private operators there are or who they are dealing with. That is a part of the problem as well, you see.

Mr B Forde: That would be —

Mr Boylan: Even if we get into the clause disagreed, amended or whatever, we do not have enough information.

Mr B Forde: We do not have a clause that we would be happy to give to our Minister to go to the Executive with and say, "This is an amended Bill. These are clauses that we would like you to support". As I described, this is just a work in progress, so we are diligently trying to improve it and get it right, but it is not right.

The Chairperson (Ms Lo): Will a lot of that have to go for Executive approval?

Mr B Forde: Yes. I discussed this with the legislative programme secretariat. If the Committee is in favour of the Bill progressing, as we said previously, we would be willing to discuss how to take it forward with our Minister. At this stage, he would have to do it under urgent procedures because, as far as we understand it, the Executive meet tomorrow, 10 February, and then on 25 February. There are critical decisions to be taken by the Business Office or the Business Committee, if it is involved in this, in saying when the Consideration Stage would be. That would be prior to the next Executive meeting. In supporting the Bill, our Minister would need to go down the urgent procedure route. It is subject to how he feels about that, and what the Executive and the Office of the First Minister and deputy First Minister think. To us, that is all problematic. That still probably leaves Mr Beggs in a position where, if he wanted to push it forward, he could take his case to the Business Office and so on. He would have the best go that we have had so far, if you like, on the amendments.

The way we see it at the minute, there is no natural Executive meeting that will be available to clear this, if need be. Hence, if you decide that you feel that you have amendments and our Minister decides that he can support those amendments, we would have to go down an urgent procedure route. Again, at this point in time —

The Chairperson (Ms Lo): So there may be some amendments that will need Executive approval, but not all.

Mr B Forde: In broad terms, the Bill impacts on us and the Department of Justice. Under the ministerial code, where you have two or more Departments impacted, the Executive must approve it. This is about crime, joint powers of inspection and all the rest of it, but there has been no clearance given for it by the Executive. Our Minister would be obliged by the ministerial code to go down that route. As I say, because of the condensed timelines for this, there is no natural availability —

The Chairperson (Ms Lo): There is one meeting this week.

Mr B Forde: — so you would have to look at paragraph 2.14 of the ministerial code, which deals with urgent procedures to go down that route. I would not like to speak for our Minister on that. We would have to bring that to him and ask, "Are you prepared to do this by urgent procedure?"

The Chairperson (Ms Lo): So really there are a lot of questions about timing —

Mr B Forde: On that, yes. For our Minister to support the Bill.

The Chairperson (Ms Lo): — and there is a lot of uncertainty.

Mr B Forde: Yes.

I suppose that I should just mention, in the introduction to this conversation, the final point that we had in our letter. If we are going to talk about the clauses, we should discuss clause 8, which is the display aspect of things, and clause 9, which is the ID requirement. We have looked at the powers in waste legislation, and we would have the power to introduce those aspects. If you recall, the South has the ID requirement, so this would bring us in line with the South. In the South, that applies to all waste operators. If the Bill were not to go forward, we would be looking at a consultation, with the powers we have, on bringing in ID requirements for all waste operators and the display of licences as well. However, we would not do that in a partial way, as would be happening through this Bill; it would be for the whole waste industry.

The Chairperson (Ms Lo): What about the exemptions? We talked about the exemptions for scrap metal dealers to be licensed. All scrap metal dealers will be licensed: is that right?

Mr B Forde: Effectively, the terms under which anybody can qualify for exemption are very limited. You have an SL1 in front of you. If those amended regulations are made, the terms under which any scrap metal dealer would be exempt from having a licence will be very limited. The exemption is very specific to a quayside where there is the volume —

The Chairperson (Ms Lo): It really captures the whole industry.

Mr B Forde: Exactly. You are not going to have a scrap metal dealer in that scenario at a quayside for export of metal. We are saying that, if the Bill were not to proceed, there are key elements that we would want to look at for the whole waste industry. To be fair to Mr Beggs' Bill, the amendment to clause 10 that we have proposed would give us powers to look at the type of financial transaction — cash or cashless — because that does not form part of any waste regulations or legislation in any shape or form. We could not pick up that element by any other means.

The Chairperson (Ms Lo): That was supposed to be enabling legislation.

Mr B Forde: That would have been enabling legislation.

The Chairperson (Ms Lo): It is whether you can really amend it at some stage in the future.

Mr B Forde: It would need to come through in this type of Bill, really, because we do not have the power in waste legislation to prescribe how you do business financially.

The Chairperson (Ms Lo): Any other points, Brendan?

Mr B Forde: Those are the main general points.

Ms Mairead Adams (Department of the Environment): I will just reiterate that there were elements that we did not have in place. The key one that we would not be able to carry through under waste legislation is, as Brendan pointed out, the proposed cashless system. As for the display of licences, checking ID and amending waste transfer notes to include all the details and give us a proper audit trail, we can do all those things anyway.

We are still nervous about some of the things contained in schedule 2 at paragraph 7 — we propose an amendment to bring in a new clause 14A — because of the difficulty of dovetailing it, basically. Every time we looked to see whether we could do this or that, there were connotations and complications, and we did not and will not have the time to fully explore it. We would be particularly nervous about that if it were to go ahead.

Mr B Forde: Though it is in powers for down the line, it is not prescribed at this point.

The Chairperson (Ms Lo): We talked about the voluntary code. The sector said that it could perhaps be made mandatory. However, that would not be for DOE; it would be DOJ.

Mr B Forde: Yes. That was one of the points that I made the last time. As you will recall, right back at the beginning, it found its way into the Environment Department and not the Justice Department. However, the voluntary code is a police-controlled matter. If the code was mandatory, DOJ would definitely need to be in the lead, because police involvement would be critical. There are a lot of operational issues in and around it that would not be part of the Department of the Environment.

Mr Boylan: Thank you for your explanation, Brendan. We are moving 10 clauses and introducing four new ones. I want to ask a technical question. It seems to me that we have removed a third or more of the Bill: have you had any discussions about how that would stand up in the context of the legislative process?

Mr B Forde: No. We have been running every week to get improvements in the legislation as is. We have not had the time, and that is why we reflected a bit of nervousness about this, to leave it aside for a day or two and get other lawyers involved to make sure that it sits together — is it a Bill, at the end of the day? All those things are —

Mr Boylan: Open to question.

Mr B Forde: Yes, from our perspective.

Mr Boylan: And even open to challenge. If you have not had time to bring it forward, you are looking at amending —

Mr B Forde: What is there.

Mr Boylan: And you are really amending on the hoof. I mean no disrespect. You are just trying to keep up with the process, like us.

Mr B Forde: That is right.

Mr Boylan: We have not really even had time to suggest an amendment, to get the Chair or the whole Committee to agree an amendment to improve the Bill or to work with Mr Beggs to bring something forward. That is my problem with it.

We have been asking questions, and we received a wee presentation earlier. I am certainly asking where the Bill stands technically, and I was hoping that you might have been able to clarify that. If it was the case, and we were to rush things through —

Mr B Forde: There are other people in the system who are responsible for that sort of thing and, presumably, they will rule on those things in any event. You are right: we would not have started from the point of view that the GB legislation could be brought forward in such a way that it would just be dovetailed in and all the rest of it. Had we brought it in through waste legislation, we would have had more time to explore how it would all work, and it would have been a different type of Bill.

You are absolutely right, Mr Boylan: the way things stand at the minute, we are, as far as we can, fixing the Bill that you have.

Mr Boylan: I recognise the work of the Member.

Mr B Forde: Exactly.

Mr Boylan: He has tried, to be fair.

You can maybe clarify another point that was brought up earlier. If we go down the route of your proposal and tighten the waste management licensing regulations, would there be the possibility of introducing a mandatory code? It is a voluntary code at the minute. If you were working with the industry and it was content, would there be an opportunity, in that licensing system or regime, to introduce a mandatory code of conduct or practice?

Ms Adams: Basically, as it stands, it is a DOJ issue. It introduced the voluntary code and implements and regulates it. It would probably need to be the Department of Justice.

Mr B Forde: I do not think that we could give a fair comment on that. I have to confess that I have not examined the voluntary code in minute detail and do not know where the crossovers are exactly with the waste legislation.

Mr Boylan: Do you know what sort of legislation process it would be? Would it require primary legislation?

Ms Adams: It probably would. You need to look at the purpose of the two separate pieces of legislation. A lot of our waste legislation is brought in to protect the environment and human health and to comply with European waste law. The purpose of the Scrap Metal Dealers Bill is to combat theft in metal etc. That is why it has been so hard to dovetail it. The two purposes initially are different. For us to try to fit it into waste law could leave the Department open to challenge.

We can obviously use primary legislation to introduce elements of what is proposed, such as the verification of ID. We have waste transfer notes that give us an audit trail for waste. We can say that we want to make sure that it is robust, so we want you to produce ID. We can do that under waste legislation because it strengthens what we require for a proper audit trail for waste. We do not have the primary powers for other elements, such as the cashless element that is contained in the voluntary code.

Mr B Forde: To be clear, we have not examined the voluntary code in any shape or form. Mairead is explaining the general rules to you. To be very clear, we have not examined the voluntary code.

Mr Boylan: That is grand. It is just that it came up as part of the debate.

The Chairperson (Ms Lo): If you introduce the need for ID, you could just do it through regulations. You do not need to bring in primary legislation for traceability or proof of ID or address.

Ms Adams: I could bring that one in through article 5(7) of the Waste and Contaminated Land Order 1997.

Mr B Forde: We have looked at both the display of licences and ID requirements specifically. Both can be brought in through powers that are already there. It would be by regulation.

The Chairperson (Ms Lo): OK. There are no more questions from members. Thank you very much for all that effort and for working with us and Mr Beggs and trying to do your best.

Members, we will go through the Bill clause by clause but we will group the clauses into two groups. The first is clauses 1 to 7 with schedules 1 and 2 on licensing, and the second group is clauses 8 to 21 on conduct. Can we go through that procedure now?

Mr A Maginness: How can we do that when we have so little knowledge?

The Chairperson (Ms Lo): We can just say that.

Mr A Maginness: So we just say that.

The Committee Clerk: Is that what members want to reflect in the report? Is that —

Mr A Maginness: Yes.

The Committee Clerk: — agreed in terms of the deliberation on the clauses?

The Chairperson (Ms Lo): Yes.

Mr A Maginness: I understand Alastair's position here. It is difficult with a colleague and so on.

The Chairperson (Ms Lo): Exactly.

Mr A Maginness: The other thing is that I will have to go in 10 minutes' time.

The Chairperson (Ms Lo): There are only two groups, so we will be quick. Would it be OK, members, to go through them now?

Mr A Maginness: Yes.

The Chairperson (Ms Lo): So, members, we are now going through the informal clause-by-clause consideration.

The Committee Clerk: This is informal, so it is an opportunity for members to ask for additional information, suggest amendments or give their views on the clauses.

The Chairperson (Ms Lo): I am grouping clauses 1 to 7 with schedules 1 and 2 as the first group on licensing. Are members content with the Department's amendments?

The Committee Clerk: Do members want other information or have views that they might want to explore? No? OK.

The Chairperson (Ms Lo): OK, members are content, then.

The Committee Clerk: Do members want to reflect in the report —

Mrs Cameron: We are not content.

Mr A Maginness: We are content that the Department is suggesting, as I understand it, that clauses 1 to 7 be removed.

The Chairperson (Ms Lo): Yes.

Mr A Maginness: I think we are in agreement with that.

The Chairperson (Ms Lo): Yes. So members are content with the Department's amendment to oppose clauses 1 to 6 and schedule 1.

Mr A Maginness: Yes.

The Committee Clerk: Also clause 7 and schedule 2.

The Chairperson (Ms Lo): Yes, clause 7 and schedule 2.

Members indicated assent.

The Chairperson (Ms Lo): The next group is clauses 8 to 21, which relate to the conduct of scrap metal dealers, ID, traceability and cashless transactions. Members, do you want to ask the Department or the Bill's sponsor for further information?

The Committee Clerk: Do you think you have sufficient information to decide?

Mr Boylan: No.

Mr A Maginness: As a member of the Committee, I think that there is insufficient information for us to make any decision in relation to clauses 8 to 21.

The Chairperson (Ms Lo): I agree with that.

Mr Boylan: I concur with that, Chair.

Mrs Cameron: I agree with that, and that would be our view.

The Chairperson (Ms Lo): OK, then that is it. That is our informal clause-by-clause over, members. Thank you very much.

Mr A Maginness: Just by way of a point of order, have we addressed schedules 1 and 2?

The Committee Clerk: Yes.

Mr A Maginness: Is that implicit in what we have just done?

The Committee Clerk: Yes, under the group to do with licensing. Schedules 1 and 2 were included with clauses 1 to 7.

Mr A Maginness: Right, OK, so we are complete.

The Committee Clerk: They are both going to be removed as well.

Mr A Maginness: Yes, OK. Thank you, Chair.