

By email to doecommittee@niassembly.gov.uk

27 May 2010

Environment Committee
Room 247
Parliament Buildings
Stormont Estate
BELFAST
BT4 3XX

Dear Sirs

Re: Waste & Contaminated Land (Amendment) Bill

Thank you for the opportunity to provide the views of Banbridge District Council to the Committee on the above matter.

The Council would wish to take this opportunity to further commend to the Committee, the comments of the Chief Environmental Health Officers Group that were submitted to the department in response to consultation on the Bill in 2009.

Whilst Council welcomes the proposals to add to their role in dealing with illegal waste disposal, there must be a clear demarcation of responsibilities between NIEA and Councils and this must be clearly set out in a formal fly tipping/illegal waste disposal protocol. This matter has not yet been satisfactorily resolved and Council would wish this protocol to be agreed *before* the proposed Bill is implemented.

In addition, the enforcement powers available within the bill must be sufficient and effective in deterring illegal waste disposal and as suitable punishment for offenders.

Adequate resources – financial and otherwise – would also need to be provided to allow Councils to effectively investigate and enforce Articles 4 & 5 offences and to meet the requirements of the protocol. It would not be acceptable for a situation to arise where the costs of inspection, enforcement and clean-up of waste would be passed onto the ratepayer.

It is essential that these matters are resolved and procedures agreed between NIEA and the Councils before the proposed amendments are implemented.

In relation to specific clauses, Council wishes to make the following comments:-

1. In the consultation document issued last year, the Department indicated its intention to amend the wording of an offence created under Article 4 of the 1997 Order –

“The Department proposes that the wording of Article 4 should be amended to provide that an offence is committed in instances where an unlawful deposit of waste is made, whether knowingly or otherwise. The Department proposes that the wording of Article 4 should be amended to provide that an offence is committed in instances where an unlawful deposit of waste is made, whether knowingly or otherwise. The Department further proposes that the amended legislation should provide for a possible defence in circumstances where the accused can demonstrate that he exercised all reasonable care to prevent the incident. These changes would effectively shift the burden of proof from the enforcing authority to the accused.”

This proposal was strongly supported at the time by the Chief Environmental Health Officers Group, since it was Councils’ experience over a long number of years of enforcing the legislation that the existing wording of Article 4 made it virtually impossible to secure a conviction under that Article.

The proposed amendment does not appear to have materialised in the new Bill and it is *strongly* contended that this must be rectified to facilitate the effective enforcement of the legislation.

2. The Council requests clarity on the issue of which authority should deal with special hazardous wastes as it is deemed inappropriate to have Councils for example involved with the removal of such waste from land in default. This is particularly relevant as this Council has had to deal with the waste by products of ‘diesel laundering’ and it is considered that all special hazardous waste issues should be dealt with by the Department.

These comments are due to be formally ratified by Council in June. I hope the Committee will find them helpful in its deliberations.

Yours faithfully



David Lindsay
Director of Environmental Services