

CS/10

25 May 2010

K O'Gara

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

Dear Sir/Madam

Re: Consultation on the Waste and Contaminated Land (Amendment) Bill

Omagh District Council welcomes this opportunity to comment on the Consultation on the Waste and Contaminated Land (Amendment) Bill which makes a number of amendments to the Waste and Contaminated Land (Northern Ireland) Order 1997.

Although the proposal to give Councils a more proactive role in enforcement through new powers under amendments to the Bill would be considered to have some value, Omagh District Council is of the view that a clear demarcation of responsibility is necessary between the Northern Ireland Environment Agency (NIEA) and the Councils prior to the Bill being enacted. The Council has stated this fact several times including in a response to the Consultation on Proposals for a Waste Bill on the 3rd July 2009 and in the Consultation on the Draft Clean Neighbourhoods and Environment Bill (Northern Ireland) on 31st May 2010. However, the NIEA has stated an unwillingness to deal with sites comprising less than 20,000 tonnes of illegal waste. An agreed fly-tipping/illegal waste disposal protocol is required as a matter of urgency to ensure an effective working partnership between NIEA and Councils, and should be agreed before the Bill is enacted.

Should the partnership approach be developed and enhanced then adequate resources, financial and otherwise would also be required to enable Councils to effectively investigate and enforce offences and meet the requirements of the protocol. Councils do not want a situation to develop where the costs of inspection, enforcement and clean-up would be passed onto the ratepayer.

Clause 1 – Fixed penalty notices for offences under Article 4

This clause enables the Department or relevant District Councils to issue a notice to a perceived offender, offering him the opportunity to pay a fixed penalty as an alternative to court action. The powers are intended to be used for less serious waste offences. However they are discretionary, the Department or Councils can choose instead to prosecute any offences under Article 4 through the courts. It is proposed that Councils will be able to use any funds raised through these fixed penalties to cover the costs of enforcement and clean up of illegally deposited waste. The need for provision of adequate funding of the regulations is essential as fines will never cover the additional cost to Councils.

The option of issuing fixed penalties would provide a more flexible and less costly alternative to prosecution for lesser illegal dumping offences. However, the proposal that the relevant Council would be able to decide if the option of issuing a fixed penalty was appropriate in each individual case, raises some concern and would therefore necessitate additional financial support for staffing and training to be allocated to each Council prior to any implementation.

Clause 4 – Powers to require removal of waste unlawfully deposited

Articles 28 and 28A of the 1997 Order give Councils powers to deal with waste unlawfully deposited in their areas. They enable Councils to serve a notice on the occupier or in certain specified circumstances, the owner of land requiring him to remove illegal waste or take remedial action.

- (i) Subject to the development of an affect protocol the Council is prepared to consider the first amendment to Clause 4 which enables both the NIEA and Councils to issue Article 28 Notices, as this would bring parity with the legal position in England and Wales and also provides for continuity of investigation and enforcement by either regulator.
- (ii) Omagh District Council feels it as essential that discussions take place with the new Criminal Justice Minister on issues around prosecution / criminalisation of landowners whose lands were the subject of environmental crimes, for which under current law, they by default have responsibility.
- (iii) The second proposed amendment, where both regulators would have the power to serve an Article 28 Notice on a suspected offender, is supported in principle by the Council subject to meaningful protocol being agreed by both parties in advance of any proposed changes. It is unfortunate that to date there has been no constructive response to NIEA to the development of the protocols that are essential to support an effective partnership between Councils and NIEA. The Council would seek a more constructive partnership approach which would be more beneficial to everyone including the general public.

Omagh District Council would request clarity on the issue of special hazardous wastes, SWaMP2008 constituent Councils have been repeatedly told that 'tanker loads' of laundered diesel would be dealt with by Customs and Excise, this has proven not to be the case, indeed when the NIEA officials were pressed on this they indicated that this material could be dealt with by Councils under the Litter Order. Omagh District Council would once again express an urgent need to have this confusion dealt with as it is totally inappropriate to have Councils dealing with special hazardous wastes.

- (iv) The third proposed amendment is that an Article 28 Notice could require, where appropriate, the cessation of the illegal keeping, treatment and disposal of waste in addition to its removal/remediation. Omagh District Councils believes that this will provide an additional control to those already available under Article 4 and is therefore supported.

- (v) As stated previously in our responses via SWaMP2008 to the Consultation on the Draft Clean Neighbourhoods and Environment Bill (Northern Ireland) the Council would request clarification from the Department as to who is responsible for clearing litter from land which is unregistered and no legal owner can be identified.

Financial Effects of the Bill

The proposed new enforcement powers for Councils and the Department are likely to lead to an increased number of prosecutions and therefore to have cost implications, certainly in the short term.

However, Omagh District Council would stress that guidance will be necessary to ensure the provision of a set of criteria for when the option of fixed penalty notices would be appropriate in order to achieve consistency of enforcement across Northern Ireland. This guidance would be best produced in partnership with Waste Management Groups. The cost of clear up could place unacceptable financial burdens on individual Councils and also affect the Council's ability to meet its waste targets.

Flytipping protocol and data recording

Omagh District Council strongly believe that the Waste Bill should be passed before a protocol is developed to address the grey area in relation to who is responsible for differing scales of deposited waste, e.g. the difference between litter, fly-tipping and illegal dumping. Only then would it be possible to develop any system for recording accurate data on these incidents. The Department's position on a 20,000 tonne threshold for investigating illegal dumping is unacceptable and the fact that the Department cannot provide data on the number of sites over this threshold seriously questions what kind of major role they want in dealing with this issue.

A clearly set out fly-tipping/illegal waste protocol is essential to ensure an effective working partnership between the NIEA and the Councils, and this should be agreed before the proposed amendments would be implemented. The challenge of sorting out fly-tipping/illegal waste disposal/littering is a major one which could bring financial and environmental benefit to Northern Ireland but this can only be achieved by the Department agreeing a sensible approach and protocol on waste so that the Councils and the Department can see improvements into the future.

Yours sincerely

Kevin O'Gara
Chief Client Services Officer