



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Waste and Contaminated Land
(Amendment) Bill**

16 September 2010

NORTHERN IRELAND ASSEMBLY

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ENVIRONMENT**

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Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Roy Beggs
Mr Thomas Buchanan
Mr Trevor Clarke
Mr Willie Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Ms Anne Blacker) NI Environment Agency
Mr Michael Hatch)

The Chairperson (Mr Boylan):

I welcome Michael Hatch and Anne Blacker. You should make a five- or 10-minute presentation, after which I will open the meeting to some brief questions from members.

Ms Anne Blacker (Northern Ireland Environment Agency):

My understanding is that we are here because the Committee wants to find out more about fly-tipping and any possible protocol that may be agreed between the Department and councils. I am the head of the environmental crime unit in the Northern Ireland Environment Agency (NIEA), and Michael works with me and looks after the criminal investigations. I shall outline what my unit does and why it does it, and I will tell the Committee about some of its experience of wider illegal waste and fly-tipping issues. After that, I will be happy to take questions.

The environmental crime unit has been looking at what has been described as serious and persistent waste crime since nearly the start of 2003. At that time, the legislation that regulates the waste management industry passed from councils to NIEA, and, at that stage, it appeared that there was a great deal of commercial-scale breaches of legislation. That is why we started to look at the issue from an enforcement point of view. The team is now a Northern Ireland Environment Agency-wide crime unit, and, because of the seriousness of the issues involved in waste crime, we are focused on that. The reasons for that include, as was discussed in the previous session, the risk of infraction of, and fines from Europe if we do not implement, the waste framework directive and other directives; the high risk of pollution to the environment from illegal waste; the risk to human health; and the economic damage to legitimate business if there is a great deal of legislative breaches and criminality in the industry. For those reasons, we have tended to focus on the more serious end of waste offending. We have focused on those who profit from operating commercially and carrying out illegal activity with waste.

We are moving steadily towards intelligence-based methods of working so that we target our limited resources at the most serious offending, with the aim of creating a deterrent to those who would seek to breach the waste management legislation. We have moved towards using proceeds-of-crime legislation for the more serious cases to attempt to deprive offenders of financial benefit. Essentially that is the aspect in which Michael and I are involved.

We have experienced smaller-scale incidents of illegal dumping, and we tend to find that there is usually little evidential material for such incidents because the dumping is done casually, while commercial-scale dumping is deliberate and planned. The briefing that we have provided to the Committee gives much more detail on those subjects. I am more than happy to take questions now.

The Chairperson:

Around four weeks ago, when I was on holiday, I visited a reserve in my constituency where people go for fishing, recreational walking and so on. There were around 100 tyres and loads of rubbish, and, thankfully, it was cleared by the services. Within a week, a load of building material had been dumped in it. The whole place had been cleaned up, and everybody was saying that that was great, but, within one week, after the press and media had covered it, the illegal dumping happened again. I have requested a barrier, but the problem is that it is on a main road and there are no parking facilities outside it. That is an example of what is happening.

To get back specifically to the Bill, how far has the protocol advanced? There is a debate about the thresholds.

Ms Blacker:

As recently as yesterday and earlier this week, the protocol was discussed between the four departmental officials, the council officers and us, with a view to reaching a position to which we can all happily sign up. That process is ongoing. The threshold between where councils stop looking after incidents and we start may, ultimately, be a decision for the Minister, but positive work is ongoing.

The Chairperson:

That was going to be my next question. I am glad to hear that, because, in the past, there has not been such good work. There should be proper joined-up working between local councils and your agency, although I appreciate that everyone has their own roles and responsibilities.

I do not know whether you are aware of the Banbridge amendment, which relates to the burden of proof and responsibility. To my knowledge, it concerns, for example, someone driving down the road and firing a bottle or something into a field indiscriminately and the subsequent burden of proof. Can you elaborate on that?

Ms Blacker:

I will start, and Michael may wish to comment as well. All the offences in the current legislation and the new legislation are criminal offences. When we take someone to court, we are required to prove the offence beyond all reasonable doubt. The burden of proof is on us to do that. At the moment, and the new proposal is the same, offences connected with illegal dumping require proof

that the material was knowingly dumped or knowingly permitted to be disposed of.

We deal with the serious end of illegal dumping, and, unfortunately, that involves organised criminality in several instances. People who are involved in that sort of activity will find any loophole in any legislation to try to get around it. Defences have been mounted in the past in which defendants have stated that they were not aware that the activity was going on. We have had to go to some lengths to prove that they knew about it and secure guilty verdicts.

I can understand the other side of the coin, as we also get serious cases where elderly people who happen to have land registered in their name have a great deal of material dumped on their land, sometimes by their own family members, and those elderly people are legally responsible. We have never sought to prosecute the landowner on those occasions. It is easy for us to control that as one department that is looking at a serious sector of criminality. It would become much more difficult to control if the clause were removed for 26 different bodies plus our organisation. That could lead to genuine victims of crime, who did not know that their land was being used for that purpose, being convicted and ending up with a criminal record. Therefore, there is a proportionate argument as to how that clause would be used.

The Chairperson:

I understand that there are cases of illegal dumping in which the farmers and landowners genuinely do not know about it. What is the difference between the new Bill and previous legislation? There are minor fines for someone who throws a bottle, for example, but what about a case of a lorry load of material that is dumped on land or a field that has been secured? As regards the burden of proof, Banbridge District Council argued that it should be for landowners to prove that they knew nothing about the dumping. That will be very difficult in some cases, and there is also the cost of removal to consider.

Ms Blacker:

It is important to distinguish between enforcement, which may result in a conviction for the activity, and removal, which is a completely separate process. One is not necessarily dependent on the other. At the moment, article 4 offences relate to illegal disposal of waste without a licence. The Bill will still require proof that the activity occurred with the knowledge of the landowner or the other people involved. I do not think that that has any impact on removal under other powers in the Bill, which enable notices to be served requiring waste to be removed.

The Chairperson:

I would not like to try to argue with your agency in such a situation.

Mr Michael Hatch (Northern Ireland Environment Agency):

Ms Blacker explained it as best she could because it is slightly confusing. From our selfish point of view, we would not mind the phrase “knowingly” disappearing, because that would make taking cases slightly more straightforward. However, apart from the greyer areas in which there is not a commercial scale of lorry after lorry dumping over a period of weeks, it should be relatively straightforward for us to establish that the landowner should have known what was going on. When there is a one-off fly-tip, or even a lorry load dumped once on land, it seems harsh to hold the landowner responsible on those occasions. That may be the sort of case with which the councils could deal. I do not have a fixed opinion, but, from our point of view, getting rid of the word “knowingly” would make our work easier because we deal with the bad guys at the serious end of the scale.

The Chairperson:

I understand that. The point that I am trying to clarify is that I have seen examples of illegal dumping within a period of two weeks. I contacted three different groups: the Forest Service, the local council and the person who develops the area, and the waste was removed. However, people cannot keep removing material week after week. Obviously, there is a cost issue for them. I know that you try to separate the issue of trying to find out who dumped it from the responsibility and how to address that, but, to most people, it the issues are the cost of removal and how to prevent dumping from happening again.

Mr Kinahan:

I congratulate you on all that you do. You have a hell of a lot to cover. I look forward to seeing a protocol; we need that as quickly as possible. You touched on the issue of tyres over the bonfire season. Money is involved in the whole system. Can you see any way of changing how we deal with tyres, whether by stamping or labelling them or finding some way to remove the money issue, so that it does not become a temptation?

Ms Blacker:

You mentioned one issue, which is tyres, and another issue, which concerns bonfires. We are very conscious that there have been a number of serious incidents involving the very large-scale

illegal storage of tyres on sites. I have seen correspondence on a proposal to mark individual tyres and follow them through from cradle to grave. That is probably a policy issue in respect of the proportionality of a system like that for that waste stream and its practicalities. The problem happens because people are able to make money from that activity. They charge a garage £1 to take away the tyres and, instead of dealing with them legally, they stockpile them. They are not too far away from making £500,000 just by doing that. We are pursuing criminal cases with financial investigations against the serious incidents that have happened already, so that is one way of tackling the problem. The hope is that the results of those cases, although they will not be immediate, will act as a deterrent to anybody else who thinks that that is a good idea.

Bonfires are another issue entirely. Clearly, to a lesser extent, there is money involved in that regard as well. It may be convenient for a business to get rid of some waste tyres via a bonfire site. When that happens, it is extremely difficult to take enforcement action against the business that let the tyres go via that route, because there is very rarely evidence to prove it. Once those tyres are on a bonfire, as members will appreciate, there are a range of cultural and land-ownership issues. Potentially, we could prosecute a landowner who may not have permitted the activity to take place. There are a lot of difficulties and a lot of health, safety and security issues for council staff and for us at that time of year. However, we hope that the action that we are taking in the big, illegal, tyre storage cases will raise the profile and, perhaps over time, it will not be such a big problem.

Mr T Clarke:

I appreciate what you say about difficulties, but we all have difficulties in our own areas, as Danny rightly knows. The public will not get a lot of confidence from what you just said, given that bonfires probably have more effect in areas where they are not necessarily wanted. People are imposing themselves on certain areas, and nine times out of 10 that land is owned by the Housing Executive or a council. An enforcement notice against the landowner would be a good thing, because it may make those bodies work harder to try to prevent bonfires from happening, as opposed to just ignoring the problem and hoping that it will go away.

Antrim council, and I declare an interest as a council member, has worked proactively on bonfires in the area and moved them from nine sites, with an incentive for each community to run an alternative way for the people to enjoy their cultural activities. That has worked reasonably well. Unfortunately, one community broke away from that arrangement and made it into the

media in recent years. However, it is disappointing that the Environment Agency — and I choose my words carefully, but I have to say it — has hidden itself away from the fact that that is taking place and has probably ignored the fact that it is in Antrim. It is disappointing to people who have to look at that site for the rest of the year. You have to think more constructively about how to prevent that from continuing, rather than just saying that it is difficult to enforce a notice on a landowner. Given that most bonfire sites are on public property belonging to councils or the Housing Executive, each of those authorities, in conjunction with you, has a role to play to remove the problem.

Ms Blacker:

I will take that on board. It is not something that we have deliberately ignored or not thought through. The potential to take a prosecution against a council or other body for having what is essentially illegal waste deposited on their land would be difficult legally, because under the “knowingly” clause landowners would be genuinely able to say that had not actively given their permission for that activity.

If the matter did go to court, they would also be able to say that they had taken steps to try to deal with it, or that the situation was so sensitive and difficult that they could not do so. Therefore, before we would target any resources to deal with that, we would need to have it thought through to decide that there was some level of potential success and also to estimate the effect that that would have. We have good working relations with a lot of councils, the Fire Service, the police, the Housing Executive and all the other bodies involved. In those areas, the problem is declining through community work. Michael, you have been involved in that.

Mr Hatch:

We have participated in numerous bonfire multi-agency committees. Generally, success comes when the people on the ground decide that they do not want bonfires and make that happen.

Mr T Clarke:

In the instance that I am talking about, the people on the ground do not want it to happen. It is influence from somewhere else, whereby individuals have decided that they are having a bonfire in someone else’s area. So, the people on the ground do not want it, the council does not want it, and the Housing Executive and Fire Service do not want it. We have a multi-agency approach in Antrim, but in one area influence is coming from another area, and illegal tyres are brought and

burned to the misery of the people who live in that immediate area. There is no problem: you can get buy-in in the area. However, if individuals want to transport those tyres from another area into Antrim, people's lives are made a misery.

The Chairperson:

We must be careful. I know that Mr Clarke is making a general point about the Bill. However, the overall issue is about tyres, and we need to look at that. We all pay for the disposal of a tyre. When you buy a tyre, you pay so much for that tyre to be disposed of when you bring it back to where you got it. That is the way it is supposed to be looked at. We have seen instances recently, especially concerning tyres. We need to get to a point where we can address that properly. That is the key element. I know that Mr Clarke is making a point about his area, and I made a point about my area.

Mr T Clarke:

It is a general issue. There are bonfires in more places than Antrim. I use that example because I am familiar with the area.

The Chairperson:

It is the tyres.

Mr T Clarke:

It is the tyres. You touched on the idea of identification markers. People will come up with imaginative ideas about how to get around the problem, but if you put a marker on a tyre, you can sit here today and you can figure out very quickly how it will be taken off: they will just cut that part out. I am not filled with optimism that we are looking at a solution that will rid us of the problem of tyres.

Ms Blacker:

I think that you are right, and that applies to most of what we deal with. There would be a way to get round it, no matter what system or legislation is in place. Part of the key to the bonfires issue is getting the information. Quite often, the issues that you describe in your area make people reluctant to phone and give us the information that might enable us to go back to the garage and trace what happened.

Mr T Clarke:

With regard to that instance, the information was given: the registration of the lorry that made the delivery was given. I did it myself, and I did not get a very good reception from the individual in your organisation who answered the phone. To say that the information had not been given would be a misrepresentation of the truth in this instance.

Ms Blacker:

I am aware of the site that you are referring to and the report. I do not think that this is the venue to discuss it.

Mr T Clarke:

That happened in July, and I have not heard back from your Department since then.

The Chairperson:

Will you please reply to Mr Clarke? I would like to welcome Mr Clarke back to the Committee. The general issue relates to the tyres, and how we address that problem.

Ms Blacker:

Yes. In our discussion with councils and our policy colleagues, I have mentioned bonfires as a protocol issue that we need to address. We are aware of the situation.

Mr McGlone:

On that point, this is a repetitive re-run of events. The reality is that you know where the problems areas will be annually. You know the locations of those bonfires. You know that people are tortured with smoke and dust, and, in some cases, the bonfires are so close to their homes that they melt the window frames of their houses.

I am delighted that Trevor raised that issue, because I had a similar experience in trying to get hold of someone in NIEA with regard to a similar incident. In light of the fact that you know that it is going to happen, and you could set your clock by it —

The Chairperson:

I know that I have allowed some latitude. Can you be brief?

Mr McGlone:

I am going to be brief.

Mr Beggs:

Reference the Bill.

The Chairperson:

I have allowed some latitude.

Mr McGlone:

I want to make a couple of brief points. You know that it is going to happen, and you know the location. I would like to be assured that you will contact the police, the Environmental Health Agency and the Fire Service in advance of those instances happening, so that you will have witnesses and so that you can get the evidence that you require about the people who are bringing tyres illegally to that location. I would have thought that that would not be too big a problem. Once you identify a major location and make a few examples of people, the word will get about.

Ms Blacker:

I agree completely. That set-up is in place for any fires when we know that they are going to take place.

Mr McGlone:

It does not seem to have been working too well.

Ms Blacker:

That goes back to my earlier comment about the information. With regard to your comment and Mr Clarke's comment, quite often the people who bring vehicles to those sites to dump tyres are not arriving with valid vehicle registrations. Sometimes we do not get accurate information. Our other alternative is to set up some sort of surveillance on the sites. To do that legally and safely, we would require an enormous amount of resources for each site over an extended period. That can be considered but, in the wider scheme of waste crime, it may not justify the level of resource involved.

The Chairperson:

We are trying to find out how the Bill can address those issues.

Mr T Clarke:

It can address it by giving NIEA powers to do so.

The Chairperson:

That is the main thing. I have allowed some latitude. In one sentence, can you expand on how the Bill will address that issue?

Ms Blacker:

The bonfire issue has not come up.

The Chairperson:

How will it address the tyres issue?

Ms Blacker:

In general terms, it will give the councils and the Northern Ireland Environment Agency exactly the same powers for enforcement and clean-up, and that will apply to any waste, whether it happens to be tyres in a bonfire or —

Mr T Clarke:

Or tyres at Nutts Corner, and illegal race tracks.

The Chairperson:

I know what Mr Beggs said, but it relates to the Bill. We want to ensure that what is written on paper relates to what will happen on the ground. We must look at the content of the legislation and how it impacts on and addresses the issue. You have seen the examples of that.

Mr W Clarke:

Thanks very much. I am probably going to go back over the issue again. You touched on this point: we want to be able to deal with the issue of tyres now rather than to wait to make provision for it in the Bill. I have spoken to many people about the issue, and I know two or three businesses involved in recycling tyres that are greatly frustrated about the issue. They feel that

the Department is not policing the issue properly. There are licences for stockpiling tyres, and farmers, never mind garages, have to apply for them. The paper trail, therefore, starts at the garages. Garages should be monitored regularly to see how much they are charging people to recycle tyres, and their books and premises should also be checked. Too much of a blind eye is being turned to the problem. We should not make laws if we are not going to enforce them. A responsibility has been placed on the general public to recycle tyres. If they did not do that, we would have no bother taking them to court; that would not be an issue.

Somebody made a point about the statutory agencies. We have all been at inter-agency meetings, but nothing happens at them. Nobody takes responsibility for policing of that issue. Perhaps we should look in the direction of Europe, because large stockpiles of tyres would not just appear and then be burnt elsewhere in Europe. Would that happen in Germany, Holland or Austria? I doubt it very much. We, therefore, need to look in that direction and at directives on tyres. Tyres are a waste stream. However, Chairperson, I am conscious that you do not want to spend too much time on the issue.

The Chairperson:

Before Mr Willie Clarke gets off the point, I remind members that we will receive a departmental response to that issue next week. We can discuss it more then.

Mr W Clarke:

Perhaps we could also invite those who are involved and invest large sums of money in the tyre recycling business to come and give their opinion on how the law could be tightened up. I am new to the Committee, and I would appreciate a list of the major investigations that it is handling at the minute.

In the Mourne area of my constituency, a number of sand pits have been filled with waste. That has affected new occupants such as Ballymartin GAA club, which has been lumbered with a situation where it has bought a field but cannot get grant aid to develop it.

Mr T Clarke:

Hear, hear.

Mr W Clarke:

How are such cases sitting at the minute? There is frustration because the process seems to involve work being done in one border area and then moving to another area. Will you clarify how that will be rolled out and tied up?

Ms Blacker:

That strays away from the Bill again. That is being done under other legislation on the trans-frontier shipment of waste. All the repatriation of waste back to the Republic of Ireland —

Mr W Clarke:

I am not sure where the Ballymartin issue comes in.

Ms Blacker:

There has been comprehensive correspondence with the club to explain what the position is and when its waste will be dealt with. Therefore, that is not an issue.

Mr W Clarke:

Dead on. I am new to the Committee, and I am a bit confused about that.

The Chairperson:

I have allowed members to discuss three parochial issues already. We must now stick to discussing the Bill. If members, as individual MLAs, have questions that they want responses to, I will pass those on.

Mr W Clarke:

As I say, I am new to the Committee, and I am confused about what the Bill is about.

The Chairperson:

You are entitled to ask away.

Mr W Clarke:

There seems to be — perhaps this is not part of the Bill either — *[Laughter.]*

Mr Beggs:

Read the Bill.

Mr W Clarke:

There seems to be an overzealous approach to demolition waste. I am talking about people who recycle stone and brick to build their home or a wall around their home. I am aware of a number of such cases being brought to court. It is fair enough to say that those people need licences to do so. However, is that really where resources should be directed? Should funds and resources not be directed more towards tackling illegal waste and tyres, as mentioned? I am not sure whether that is part of the Bill.

Ms Blacker:

That issue is dealt with by powers under the existing legislation. However, that power will also be extended to the councils once the Bill has been passed.

Mr W Clarke:

I am asking whether there should be priority waste streams towards which resources should be directed.

Ms Blacker:

At the moment, a number of aspects must be considered before enforcement action is taken. The potential for environmental harm is one of those aspects. Therefore, a process of consideration must be undertaken to determine what action is most appropriate in the various cases.

Mr W Clarke:

It seems that demolition-waste cases go to court very easily compared to tyre-dumping cases.

The Chairperson:

Mr Beggs, it would be inappropriate for me to deny you an opportunity to give us a constituency example considering that other members have done so. However, I would prefer you to stick to the Bill, if possible.

Mr Beggs:

First, I declare an interest. My father owns land that is undergoing improvement through inert

waste. I want to link tyres specifically to the Bill. Is there a need for adjustment in the legislation to enable that issue to be dealt with? We have learned that one third of tyres in Northern Ireland are disappearing. Some tyres are being burnt illegally, they are being held in illegal stores, or they are being buried in illegal landfill sites. I am trying to seek clarification on whether there is a need for adjustment in the legislation. In my mind, the way of dealing with it would be to have occasional audits and spot checks on tyre dealers.

Under the current legislation, are there sufficient powers to enable that to happen? We need to be careful that we do not create law that is overly burdensome. However, one third of all tyres are going missing. If everybody knew that audits were coming down the line and individuals could be picked out, you could concentrate on where there is bad practice. Those who employ good practice should be regulated with a light hand because we do not want to create bureaucratic tiers. Can that be done under the existing legislation, or do you need something extra in this legislation?

Ms Blacker:

The existing duty of care regulations would cover that. They require anyone who produces waste, whether it is tyres or cardboard boxes, to keep records of what they produced and who they handed it to, and the person that they handed it to must also keep a record of where it went. Therefore, there should be a cradle-to-grave audit trail for every waste stream.

From my experience of having looked at tyre dealerships and at people who haul waste, I think that, in some cases, the law may not be sufficiently robust to give you a complete handle on a waste stream that consists of a number of small, discreet items such as tyres. Therefore, if legislation needs to be tightened to deal with tyres, it would be the duty of care legislation and not the Bill, which is broader in its scope for enforcement and clean-up powers.

To do an audit of a garage to determine where every single tyre goes and where it goes after that —

Mr Beggs:

We are talking about one third of tyres going missing.

Ms Blacker:

It would be a massive undertaking. Anything could be done if the resources were there. Therefore, again, it is a policy issue and a prioritisation issue.

The Chairperson:

I take it that we are not going to chip tyres or bins. Is it envisaged that the protocol will be out before the Bill is introduced?

Ms Blacker:

My understanding is that the Bill will not be commenced until the protocol is in place.

The Chairperson:

Will the protocol look at prioritisation, as Mr Willie Clarke mentioned?

Ms Blacker:

I think that actual volume of waste is being considered to determine a cut-off point as regards our responsibility for enforcement and below which the councils would look after it.

The Chairperson:

Thank you very much. No doubt, we will see you again.