

Committee for the Environment

Report on the Waste and Contaminated Land (Amendment) Bill (NIA 10/09)

Together with the Minutes of Proceedings, Minutes of Evidence and
Written Submissions Relating to the Report

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Session 2010/2011

First Report

Membership and Powers

The Committee for the Environment is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of the Environment

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5. The membership of the Committee since 9 May 2007 has been as follows:

Mr Cathal Boylan (Chairperson) ⁹
Mr Thomas Buchanan ^{7,8,13}
Mr Trevor Clarke ¹⁵
Mr Willie Clarke ¹⁴
Mr John Dallat ⁵
Mr Danny Kinahan ^{3,4}
Mr Patsy McGlone (Deputy Chairperson) ^{6,9,10,12}
Mr Alastair Ross ¹
Mr George Savage ^{2,16}
Mr Peter Weir
Mr Brian Wilson ¹¹

¹ On 21 January 2008, Alastair Ross was appointed as a Member and Mr Alex Maskey ceased to be a Member

² On 15 September 2008 Mr Roy Beggs replaced Mr Sam Gardiner

³ On 29 September 2008 Mr David McClarty replaced Mr Billy Armstrong

⁴ On 22 June 2009 Mr Danny Kinahan replaced Mr David McClarty

⁵ On 29 June 2009 Mr John Dallat replaced Mr Tommy Gallagher

⁶ On 3 July 2009 Mrs Dolores Kelly replaced Mr Patsy McGlone as Chairperson

⁷ On 14 September 2009 Mr Adrian McQuillan replaced Mr Trevor Clarke

⁸ On 1 February 2010 Jonathan Bell replaced Mr Adrian McQuillan

⁹ On 12 April 2010 Mr Cathal Boylan was appointed as Chairperson and Mrs Dolores Kelly ceased to be a Member

¹⁰ On 12 April 2010 Mr Dominic Bradley was appointed as Deputy Chairperson

¹¹ On 13 April 2010 Mr Brian Wilson was appointed as a Member and Mr David Ford ceased to be a Member

¹² On 21 May 2010 Mr Patsy McGlone replaced Mr Dominic Bradley as Deputy Chairperson

¹³ On 13 September 2010 Mr Thomas Buchanan replaced Mr Jonathan Bell

¹⁴ On 13 September 2010 Mr Willie Clarke replaced Mr Daithi McKay

¹⁵ On 13 September 2010 Mr Trevor Clarke replaced Mr Ian McCrea

¹⁶ On 1 November 2010 Mr George Savage replaced Mr Roy Beggs

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Executive Summary

Purpose

1. This report sets out the Committee for the Environment's consideration of the Waste and Contaminated Land (Amendment) Bill.
2. Members sought a balanced range of views as part of their deliberations on the Waste and Contaminated Land (Amendment) Bill and requested evidence from interested organisations and individuals as well as from the DOE.

Burden of proof (Clause 1)

3. Several respondents informed the Committee that enforcement would be made easier if Clause 1 was strengthened by the inclusion of a provision to shift the burden of proof from the enforcing authority to the accused by including the term 'knowingly or otherwise' in relation to the unlawful deposition of waste. Under current law, the enforcing authority must prove the guilt of the offender.
4. The Department advised the Committee that it had originally consulted on the inclusion of such an amendment and whilst several councils were very supportive of the idea, decided not to proceed when issues of human rights were raised.
5. The Committee appreciated the difficulties faced by the enforcing authorities but did not feel they merited a shift in the burden of proof in this legislation. The Committee was therefore content with the Department's rationale for excluding a provision to this effect in the Bill.

Guidance on the use of fixed penalty notices (Clause 1)

6. Most respondents to the Committee's call for evidence stated that guidance should be provided outlining circumstances for the use of the fixed penalty notices to ensure consistent enforcement across councils.

7. The Department stated that it proposes to prepare guidance in consultation with councils and waste management groups. However it stressed that since the use of these powers would be discretionary, differences might arise between councils but that councils or groups of councils would be free to reach agreement if they felt that inconsistencies were becoming a problem in tackling flytipping offences. Members were content with this approach.

Fixed Penalty Notices (Clause 1)

8. Most respondents to the Committee's call for evidence felt that fixed penalty notices must be set at a level that acts as a deterrent. The Committee agreed that fines must deter offenders and that a cap of £200 was too low.

9. The Department accepted the upper level of the fine range could be increased to £400 and the Committee welcomed its decision to bring forward an amendment raising the upper limit.

10. Furthermore on fixed penalty notices, the Committee felt that the emphasis of the wording of Clause 1(11) should be changed so that instead of implying offenders would receive a 'discount' on prompt payment, they would have to pay an 'enhanced' penalty if paying late.

11. The Department argued that the wording is consistent with the existing provision for fixed penalties and suggested the form of wording could be reflected in the guidance on the use of fixed penalties specifically in relation to the format of the fixed penalty notice itself. The Committee was content with this approach.

Power to alter the amount of a fixed penalty notice (New Clause)

12. The Examiner of Statutory Rules suggested to the Committee that the power to alter the amount of a fixed penalty notice in this Bill (New Article 4A(10) and other powers to alter fixed penalty notices introduced into the 1997 Waste and Contaminated Land Order by the Waste (Amendment) (Northern Ireland) Order 2007 (Articles 5A(10), 22B(5) and 42B(10)) should be subject to draft affirmative procedure rather than negative resolution. This would make it consistent with the powers relating to altering fixed penalty notices in other bills currently before the Assembly.

13. The Department indicated that it was its intention to apply annual inflationary increases to fixed penalties and argued that affirmative procedure would lengthen this process and place an additional burden on the Assembly.

14. The Committee felt it was important that the Assembly had maximum control over powers to increase levels of fines and that there should be consistency in approach with other legislation going through the Assembly. It therefore agreed there should be a Committee amendment to make these powers subject to draft affirmative procedure.

Powers of entry and investigation (Clause 5)

15. Several respondents to the Committee's call for evidence stressed that in order to deliver powers under Articles 4 and 5 councils needed to be given the same powers of entry and investigation as the Department.

16. The Department stated that it intended to propose an amendment to the Bill which would give councils these powers and the Committee was content with this.

Appeals against remediation notices (Clause 8)

17. The Committee was concerned that there was a risk that referring a case to the Planning Appeals Commission would be used to 'buy time' for an offender if there was no charge for an appeal.

18. The Department stated it would be happy to consider an amendment to the Bill introducing an enabling power for the introduction of a fee for an appeal and the Committee agreed with this approach,

Timescale for final disposal (Clause 9)

19. The Committee suggested that there should be a timescale introduced for final disposal of illegally deposited waste.

20. The Department felt that existing legislative provision in this area is satisfactory and that a set timescale could prove counterproductive. The Committee was content with the Department's response on this issue.

Flytipping Protocol

21. Many respondents sought clarity on how the Bill might be implemented with regard to:

- the threshold or demarcation of responsibility between enforcement bodies (i.e. the NIEA and local authorities) to avoid duplication or gaps
- addressing the differences between domestic and commercial waste
- dealing with special hazardous waste
- dealing with waste where land is unregistered or no legal owner can be identified
- landowner liability in relation to clearing up illegally deposited waste

22. The Department indicated that all these issues would be addressed in a flytipping protocol that would be developed in conjunction with the local government sector. The Committee accepted this but agreed it should recommend that the Department develops this flytipping protocol as soon as possible.

Commencement (Clause 12)

23. Although generally supportive of the commencement clause, several respondents to the Committee's call for evidence were keen to see the flytipping protocol identifying the roles and responsibilities of NIEA and local authorities to be in place before the Bill commenced.

24. The Department insisted that the specific clauses which relate to councils' enhanced waste management powers will not be enacted until the flytipping protocol is in place but that it is possible that other clauses may require a different commencement date.

25. The Committee agreed to make a recommendation that the specific clauses which relate to councils' enhanced waste management powers will not be enacted until an agreed protocol defining the respective responsibilities of local authorities and the NIEA in relation to addressing illegally deposited waste is in place.

Quality of recycled waste

26. The Committee was briefed by Departmental officials at its meeting on 16 September on the quality of waste recyclates. Members were concerned that pressures to increase the tonnage of recycled waste emanating from European Directives might lead to deterioration in the quality of recycled product preventing its reuse within Northern Ireland and rendering it fit only for export, or worse, landfill.

27. The Committee considered a potential Committee amendment that would provide enabling powers for the Department to put in place targets for the quality of recycled material to be produced by councils should this become necessary. However members were concerned about the potential cost impacts on councils. Some members were also reluctant to force the use of particular waste management models by legislation rather than letting the market dictate the approach adopted by local authorities.

28. The Committee concluded that the Department's approach of trying to achieve the same goal through voluntary initiatives was acceptable.

Resources

29. There was concern among many respondents about the cost of implementing this Bill and that the funds from fixed penalty notices would not recover costs of larger offences. Councils also drew attention to the need for adequate funding to cover the additional responsibilities, staffing and training costs that would arise for local authorities as a result of this Bill. They were adamant that this should not fall to the ratepayer. The Committee acknowledged financial concerns relating to this Bill.

Recommendations

Fixed Penalty Notices (Clause 1)

1. The Committee recommended that the Department amends the upper fixed penalty limit from £200 to £400.

2. On 21 October 2010 the Committee agreed the Department's amendment to raise the upper fixed penalty limit as follows:

Clause 1, page 2, line 19, leave out '£200' and insert '£400'

3. The Committee also recommended that the emphasis of the wording relating to the payment of fines should be on the increase of a fine for late payment rather than a discount for prompt payment. However it accepted that this could be adequately achieved in the guidance on the

issuing of fixed penalties if altering the Bill would leave it inconsistent with existing provision for fixed penalties.

Power to alter the amount of a fixed penalty notice (New Clause)

4. The Committee recommended that powers to alter the amount of a fixed penalty notice should be subject to the highest level of control available to the Assembly and that there should be consistency in approach with other legislation.

5. It therefore agreed there should be a Committee amendment of Article 82 of the 1997 Order in Schedule 1 to make the new power in this Bill, 4A(10), and the existing powers in the 1997 Order as inserted by the Waste (Amendment) (Northern Ireland) Order, 5A(10), 22B(5), and 42B(10), subject to draft affirmative procedure.

6. On 21 October 2010 the Committee agreed the Committee's amendment to make powers to alter the amount of a fixed penalty notice subject to draft affirmative procedure as follows:

Clause 9, page 9, line 20

At end insert-

'Regulations

9A. -(1) Article 82 of the 1997 Order (Orders, Regulations and Directions) is amended as follows.

(2) In paragraph (1), before "Orders", insert "Subject to paragraph (1A),"

(3) After paragraph (1), insert-

"(1A) Regulations under Articles 4A(10), 5A(10), 22B(5) and 42B(10) shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly."

Powers of entry and investigation (Clause 5)

7. The Committee recommended that in order to deliver their powers under Articles 4 and 5 of the 1997 Waste and Contaminated Land Order, councils should be given the same powers of entry and investigation as the Department under Article 5(7).

8. On 21 October 2010 the Committee agreed the Department's amendment to extend to councils the same powers of entry and investigation as the Department as follows:

Clause 5, page 6, line 37, leave out '(but not regulations under Article 5(7))'

Clause 5, page 6, line 41, leave out '(but not regulations under Article 5(7))'

Clause 5, page 6, line 41, at end insert—

'(2A) In Article 5A of the 1997 Order (fixed penalty notices for certain offences under Article 5(8))—

(a) in paragraph (1) for "the Department" (where it first occurs) substitute "an authorised officer of an enforcing authority" and for "to the Department" substitute "to the enforcing authority";

(b) in paragraph (2) for "Department" substitute "authorised officer" and at the end add "to the enforcing authority";

(c) in paragraph (9) for "the Department" substitute "an enforcing authority";

(d) in paragraph (11) for "The Department may" substitute "An enforcing authority may" and for "by the Department" substitute "by the enforcing authority";

(e) for paragraph (13) substitute—

"(12A) Article 22C (use of fixed penalty receipts by a district council) applies in relation to amounts received by a council under this Article as it applies in relation to amounts received under Article 22A.

(13) In this Article—

"authorised officer" means an officer of the enforcing authority who is authorised in writing by the enforcing authority for the purposes of this Article;

"enforcing authority" means—

(a) the Department; and

(b) in relation to an offence committed within its district, a district council.".'

Appeals against remediation notices (Clause 8)

9. The Committee recommended that a charge should be introduced for the appeals process to avoid offenders using it inappropriately to 'buy time'.

10. On 21 October 2010 the Committee agreed the Department's amendment to introduce an enabling power for the introduction of a fee for an appeal as follows:

Clause 8, page 8, line 38, at end insert—

'(2A) After paragraph (1) insert—

"(1A) Article 127(2)(b) of the Planning (Northern Ireland) Order 1991 (power to prescribe fees for appeals to the planning appeals commission under that Order) shall apply to appeals under this Article as it applies to appeals under that Order; and a notice of appeal to the planning appeals commission under this Article shall be accompanied by such fee (if any) as may be prescribed under Article 127(2)(b) of that Order.".'

Flytipping Protocol

11. The Committee recommended that the Department should develop a flytipping protocol in conjunction with local authorities as soon as possible. The protocol should define the demarcation of responsibilities between councils and NIEA, identify procedures for dealing with

special hazardous waste and waste dumped on land with no identifiable owner and address any differences between domestic and commercial waste.

12. The Committee accepted the Department's commitment that it would not enact the specific clauses of the Bill which relate to councils' enhanced waste management powers until such time as an agreed protocol defining the responsibilities of local authorities and NIEA was in place

Quality of recycled waste

13. The Committee was concerned that ongoing pressure from European Directives to increase the tonnage of waste recycled would lead to a deterioration of recycle quality. On 28 September the Committee agreed it should consider an amendment to the Bill that would provide enabling powers for the Department to put in place quality targets for recycled waste at council level.

14. On 21 October 2010 the Committee considered the following draft Committee amendment to achieve this aim:

Clause 6, page 7, line 17

At end insert-

'Quality of waste to be recycled

6A. After Article 26 of the 1997 Order insert-

"Quality of waste to be recycled

26A. The Department may by regulations provide that in carrying out their duties under Article 20, district councils must meet such requirements as may be prescribed, in relation to the nature and quality of waste which is to be recycled."

15. In conjunction with the amendment the Committee considered written submissions from waste management companies, the Department and the Minister (Appendix 6). These provided conflicting positive and negative views on the impact of, and need for, the amendment.

16. The Committee was concerned about the potential cost impacts on councils and was reluctant to force particular waste management models rather than letting the market dictate the approach adopted by local authorities in conjunction with their waste management groups and material recycling facilities. The Committee concluded that on balance the amendment should not be tabled.

Introduction

17. The Waste and Contaminated Land (Amendment) Bill was referred to the Committee for the Environment for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 13 April 2010.

18. The Minister of the Environment (the Minister) made the following statement under section 9 of the Northern Ireland Act 1998:

'In my view the Waste and Contaminated Land (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly'.

19. The Bill makes a number of amendments to Part 2 of the Waste and Contaminated Land (Northern Ireland) Order 1997 ("the 1997 Order"). They are designed to clarify and strengthen the existing statutory framework for waste on land. They also legislate for a partnership approach between the Department of the Environment and local government in tackling illegal waste activity.

20. During the period covered by this Report, the Committee considered the Bill and related issues at meetings on 15 October 2009, 22 April 2010, 10 June 2010, 24 June 2010, 1 July 2010, 9 September 2010, 16 September 2010, 23 September 2010, 28 September and 21 October 2010. The relevant extract from the Minutes of Proceedings for these meetings are included at Appendix 1.

21. The Committee had before it the Waste and Contaminated Land (Amendment) Bill (NIA 10/09) and the Explanatory and Financial Memorandum that accompanied the Bill.

22. On referral of the Bill to the Committee after Second Stage, the Committee inserted advertisements on 26 April 2010 in the Belfast Telegraph, Belfast Telegraph North West edition, Irish News and News Letter seeking written evidence on the Bill.

23. A total of 8 organisations responded to the request for written evidence and copies of the submissions received by the Committee are included at Appendix 3.

24. The Committee was first briefed by officials about the consultation stages and policy development of the policy areas covered by the Bill on 15 October 2009. The Committee was also briefed by arc21, NILGA, Banbridge District Council and SWaMP 2008.

25. The Committee began its formal clause by clause scrutiny of the Bill on 28 September 2010 and concluded this on 21 October 2010.

Extension of Committee Stage of the Bill

26. On 10 May 2010, the Assembly agreed to extend the Committee Stage of the Bill to 5 November 2010.

Report on the Waste and Contaminated Land (Amendment) Bill

27. At its meeting on 4 November 2010 the Committee agreed its report on the Bill and agreed that it should be printed.

Consideration of the Bill by the Committee

28. The Bill consists of 14 Clauses and 2 Schedules. Clauses 1 to 6 are in relation to waste, Clauses 7 to 9 are in relation to contaminated land, Clause 10 is in relation to producer responsibility obligation regulations and Clauses 11 to 14 are supplementary clauses.

29. Schedule 1 relates to amendments and Schedule 2 to repeals.

Departmental briefing on the synopsis of responses to the consultation on the Bill, 15 October 2009

30. Departmental officials briefed members on 15 October 2009. Officials provided the Committee with an overview of the synopsis of responses to the consultation on the Bill.

31. The officials stated that there were 3 main issues emanating from the consultation:

- proposals to change the legal definition of a waste offence;
- waste management contract provisions;
- the creation of a single waste authority.

32. The officials informed members that the proposal to change the legal definition of a waste offence had been withdrawn, that waste management contract provisions would be dealt with in the Local Government (Miscellaneous Provisions) Bill and that views were mixed on the creation of a single waste authority.

Departmental briefing on the Bill, 10 June 2010

33. Departmental officials briefed members on 10 June 2010. Officials outlined the rationale of each clause and answered members' queries.

34. The main areas of discussion were the level of fixed penalty notices for offences, consistency of approach across all councils, powers to retain a vehicle beyond a prescribed period, failure to pay charges for the subsistence of a licence, proving ownership of land, the need for clear guidelines, the development of a flytipping protocol with local councils and the appeals process.

Arc 21 briefing on the Bill, 10 June 2010

35. Arc 21 briefed the Committee on 10 June 2010.

36. Arc 21 stated they supported the move to give duplication of powers to councils and to the Department as a matter of principle. However the key to the success of the shared powers would be the demarcation lines between councils and the Department on which authority does what and when. Arc 21 also felt that it was important to ensure that there was an effective and efficient policing regime that involves everybody and to ensure that duplication of complete powers is as equal with councils as it is with the Department.

SWaMP 2008/Banbridge District Council briefing on the Bill, 24 June 2010

37. SWaMP 2008 and Banbridge District Council officials jointly briefed the Committee at its meeting on 24 June 2010.

38. Banbridge District Council stated that it had several issues of significant concern about the Bill, particularly in relation to Article 4 of the Waste and Contaminated Land (Northern Ireland) Order 1997 which the Council felt should be amended as it would make it very difficult to follow through on enforcement action if it remained as drafted.

39. The Council also felt strongly about the issue of special or hazardous waste and the proposed amendments to involve local councils in the enforcement of the legislation. They believed that instances of special waste should be the sole preserve of the NIEA and that councils should not be involved in the enforcement or clean-up of illegal special waste deposits regardless of the volumes of material involved.

40. The Council further stated that it would be a 'recipe for disaster' if the legislation was introduced without any clearly defined protocol outlining a clear demarcation of responsibilities and a clear understanding on both sides as to who which authority will tackle what.

41. SWaMP 2008 stated that the option of issuing fixed penalties would provide a more flexible and less costly alternative to prosecution for lesser illegal dumping offences.

42. The organisation viewed it as essential that discussions take place with the Minister of Justice on the prosecution and criminalisation of landowners whose lands are the subject of environmental crimes for which, under current law, they have responsibility by default. SWaMP 2008 also requested clarification as to which authority would be responsible for clearing litter in the case of unregistered land, where no landowner can be identified.

43. SWaMP 2008 also requested clarity on the issue of special hazardous waste, as councils had been told by the Department that such material could be dealt with by councils under the Litter (Northern Ireland) Order 1994. SWAMP 2008 felt there was an urgent need to deal with any confusion relating to hazardous waste and stressed their belief that it was inappropriate for councils to have to deal with it.

44. On the proposal to give councils a more proactive role in enforcement, SWaMP 2008 was of the strong view that a demarcation of responsibility between the NIEA and councils was necessary. On the issue of fly-tipping data, SWaMP 2008's constituent councils were insistent that no legislation should be passed before a protocol is developed to address the grey area of which authority is responsible for the different scales of deposited waste. SAWMP 2008 maintained that until a protocol was agreed it would be impossible to develop any systems for recording accurate data on illegally deposited waste.

NILGA briefing on the Bill, 24 June 2010

45. NILGA officials briefed the Committee on the Bill on 24 June 2010.

46. NILGA stated that the two key issues for councils in the proposals are the sharing of enforcement responsibilities with the NIEA, and the necessary working arrangements and protocols that need to be developed. NILGA is firmly of the view that it is critical to know what responsibilities the councils and DOE each have, and how it will be transferred from one party to the other.

47. The entire local government sector is firmly of the view that the demarcation point, as developed through a protocol in England and Wales, should be around 20 cubic metres (a lorry load equivalent). NILGA emphasised that a clearly set out fly-tipping waste disposal protocol is required to ensure an effective working partnership between local government and the NI Environment Agency which should be done before the proposed amendments to the 1997 Order are implemented.

48. NILGA welcomed the opportunity to dispose of some incidents by use of fixed penalty notices as they provide a cost-effective regulation mechanism which would enable councils to dispose of

a number of small-scale incidents without going through the full rigour of the court process, which can be very time-consuming and costly.

Departmental briefing on waste recyclates, 16 September 2010

49. Departmental officials briefed the Committee in relation to waste recyclates at the meeting on 16 September 2010.

50. The Department stated that waste recycling was a top priority for the Minister who wishes to see higher recycling targets and more progress on the quantity and quality of recycled material.

51. Officials then answered members' questions on co-mingling, source separation, recycling targets, costs, the possibility of introducing legislation for recycling targets, the Rethink Waste Fund, rejection rates, return and deposit schemes for bottles, contamination.

52. The Committee agreed to explore the possibility of introducing an enabling power on waste recyclates to the Bill.

Northern Ireland Environment Agency (NIEA) briefing on the Bill, 16 September 2010

53. NIEA officials briefed the Committee on their role on the Bill on 16 September 2010.

54. The officials stated that the NIEA is involved in discussions with councils to develop a flytipping protocol which would include thresholds.

55. The officials then answered members' questions on the burden of proof, illegal dumping, the disposal of tyres, funding and resources.

Key Issues

56. During its consideration of oral and written evidence from interested individuals and organisations the Committee identified a number of key issues on which further advice was sought from the Department.

Burden of proof (Clause 1)

57. Several respondents informed the Committee that enforcement would be made easier if Clause 1 was strengthened by the inclusion of a provision to shift the burden of proof from the enforcing authority to the accused by including the term 'knowingly or otherwise' in relation to the unlawful deposition of waste. Under current law, the enforcing authority must prove the guilt of the offender.

58. The Department told the Committee that it had originally consulted on the inclusion of such an amendment and whilst several councils were very supportive of the idea, decided not to proceed when issues of human rights were raised.

59. Banbridge Council submitted amendments to the Committee that they felt would achieve the changes they wanted while still protecting responsible landowners (Appendix 6). The

Department stated that, having consulted the Office of the Legislative Council on these amendments, the exclusion of the word 'knowingly' left the Banbridge amendment having no practical effect as the prosecutor would still have to prove the accused 'caused' or 'permitted' the illegal activity.

60. The Committee also received further written information from the Ulster Farmers' Union (UFU) indicating that they had been one of the objectors to the Department's original proposals to introduce a shift in the burden of proof (Appendix 6). UFU was concerned that farmers and landowners could easily be caught inadvertently by factors outside their control and that this approach would do nothing to address the root causes of the problem.

61. When asked by the Committee if its enforcement duties would have been made easier in the past if the burden of proof had been on the accused, NIEA indicated that this might have been the case for a few offences but that it focuses on larger incidents for which there are almost always implications for the landowner. NIEA stressed however, that where the burden of proof lay would have no impact on the actual removal of the illegally dumped waste and this would probably be the more significant issue for the enforcing authority.

62. The Committee requested a research paper looking at comparative legislation elsewhere and was advised that in all other similar legislation reviewed in the UK and the Republic of Ireland the burden of proof lies with the enforcing body (Appendix 5).

63. The Committee appreciated the difficulties faced by the enforcing authorities but did not feel they merited a shift in the burden of proof in this legislation. The Committee was therefore content with the Department's rationale for excluding a provision to this effect in the Bill.

Guidance on the use of fixed penalty notices (Clause 1)

64. Most respondents to the Committee's call for evidence stated that guidance should be provided outlining circumstances for the use of the fixed penalty notices to ensure consistent enforcement across councils.

65. The Committee was also keen to prevent large discrepancies arising between councils that would allow offenders to take advantage of council borders.

66. The Department agreed with this and stated that it proposes to prepare guidance in consultation with councils and waste management groups. However it stressed that since the use of these powers would be discretionary, differences might arise between councils but that councils or groups of councils would be free to reach agreement if they felt that inconsistencies were becoming a problem in tackling flytipping offences. Members were content with this approach.

Fixed Penalty Notices (Clause 1)

67. Most respondents to the Committee's call for evidence were adamant that fixed penalty notices must be set at a level that acts as a deterrent. Some organisations suggested that to ensure consistency between councils there should be set fines while one suggested that there should be two upper fine limits to differentiate between domestic (£200) and minor commercial waste (£500).

68. The Committee agreed that fines must deter offenders and felt that a cap of £200 was too low and that £300-400 would be more appropriate.

69. The Department argued that the range of fines had been set to address the next level of waste crime after littering, which has a fixed fine of £50, and insisted that the minimum fine should remain at £100 accordingly. However it accepted the upper level of the fine range could be increased to £400 but remained adamant the legislation should provide for a range of fines that could be selected from to address the seriousness of the offence, reflect the level of damage caused and punish repeat offenders. Consistency between councils would be addressed in the guidance referred to in the previous section. The Committee was content with the Department's rationale for having a range of fines and welcomed its decision to bring forward an amendment raising the upper limit of the fine range to £400.

70. Furthermore on fixed penalty notices, the Committee felt that the emphasis of the wording of Clause 1(11) should be changed so that instead of implying offenders would receive a 'discount' on prompt payment, they would have to pay an 'enhanced' penalty if paying late.

71. The Department argued that the wording is consistent with the existing provision for fixed penalties and suggested the form of wording could be reflected in the guidance on the use of fixed penalties specifically in relation to the format of the fixed penalty notice itself.

72. The Committee was content with this approach subject to sight of the Departmental amendment.

Power to alter the amount of a fixed penalty notice (New Clause)

73. The Examiner of Statutory Rules suggested to the Committee that the power to alter the amount of a fixed penalty notice in this Bill (New Article 4A(10)) should be subject to draft affirmative procedure rather than negative resolution. This would make it consistent with the powers relating to altering fixed penalty notices in other bills currently before the Assembly.

74. The Department stated that whilst it accepted the need for consistency of approach, having consulted with the Office of the Legislative Council felt that this power does not require affirmative procedure because it sets out parameters for fixed penalty notices rather than setting the actual amount.

75. Based on the advice of the Examiner of Statutory Rules, the Committee also drew the Department's attention to three other powers to alter fixed penalty notices introduced into the 1997 Waste and Contaminated Land Order by the Waste (Amendment) (Northern Ireland) Order 2007 which are subject to negative resolution. These powers to alter these fixed fines in Articles 5A(10), 22B(5) and 42B(10) were introduced with limited scrutiny before restoration of the Assembly and the Committee felt that they too should be subject to draft affirmative procedure.

76. The Department indicated that it was its intention to apply annual inflationary increases to fixed penalties and argued that affirmative procedure would lengthen this process and place an additional burden on the Assembly.

77. Nonetheless the Committee felt it was important that the Assembly had maximum control over powers to increase levels of fines and that there should be consistency in approach with other legislation going through the Assembly. It therefore agreed there should be a Committee amendment of Article 82 of the 1997 Order to make the new power, 4A(10), and the existing powers, 5A(10), 22B(5), and 42B(10) subject to draft affirmative procedure.

Powers of entry and investigation (Clause 5)

78. Several respondents to the Committee's call for evidence stressed that councils needed to be given the same powers of entry and investigation as the Department under Article 5(7) or they will not be able to deliver their powers under articles 4 and 5.

79. The Department agreed and stated that it intended to propose an amendment to the Bill which would give councils these powers so they would be able to take enforcement action in the event of failure to present appropriate waste documents.

80. The Committee agreed that it was content with this response subject to sight of the Departmental amendment.

Appeals against remediation notices (Clause 8)

81. The Committee expressed concern that there was a risk that referring a case to the Planning Appeals Commission would be used to 'buy time' for an offender – especially if there was no charge for the appeal.

82. The Department stated that existing legislation provides for appeals against remediation notices to be made within 21 days and pointed out that no fee can be charged by the Planning Appeals Commission although £100 is chargeable for an appeal heard by a Court of Summary Jurisdiction. There is currently no enabling power for the introduction of a fee of this type of appeal but the Department stated it would be happy to consider an amendment to the Bill to that effect.

83. The Committee agreed that it would like to see a Departmental amendment introducing an enabling power for the introduction of a fee for an appeal.

Timescale for final disposal (Clause 9)

84. The Committee suggested that there should be a timescale introduced for final disposal of illegally deposited waste.

85. The Department stated that it felt that existing legislative provision in this area is satisfactory. Councils can currently serve notices requiring removal of waste and remedial action within a specified time period, which could be as short as 21 days, and the legislation provides for a fine of up to £5,000 for non-compliance and a subsequent daily fine of up to £500. It believes a set timescale could prove counterproductive.

86. The Committee was content with the Department's response on this issue.

Flytipping Protocol

87. Many respondents sought clarity on how the Bill might be implemented with regard to:

- the threshold or demarcation of responsibility between enforcement bodies (i.e. the NIEA and local authorities) to avoid duplication or gaps
- addressing the differences between domestic and commercial waste
- dealing with special hazardous waste
- dealing with waste where land is unregistered or no legal owner can be identified
- landowner liability in relation to clearing up illegally deposited waste

88. The Department indicated that all these issues would be addressed in a flytipping protocol that would be developed in conjunction with the local government sector.

89. The Committee agreed to recommend that the Department should develop this flytipping protocol as soon as possible and that relevant clauses of the Bill should not be commenced until it was in place (see next section on Commencement) .

Commencement (Clause 12)

90. Although generally supportive of the commencement clause, several respondents to the Committee's call for evidence were keen to see the flytipping protocol identifying the roles and responsibilities of NIEA and local authorities to be in place before the Bill commenced.

91. The Department insisted that the specific clauses which relate to councils' enhanced waste management powers will not be enacted until the flytipping protocol is in place. It is possible that other clauses may require a different commencement date.

92. Several respondents also called for a central fund to be established, possibly from landfill taxes, for councils to access for larger clean-ups in the interim between commencement of the Bill and a protocol being in place.

93. The Department stated that landfill taxes could not be used to set up a central fund.

94. The Committee agreed to make a recommendation that the specific clauses which relate to councils' enhanced waste management powers will not be enacted until an agreed protocol defining the respective responsibilities of local authorities and the NIEA in relation to addressing illegally deposited waste is in place.

Quality of recycled waste

95. The Committee was briefed by Departmental officials at its meeting on 16 September on the quality of waste recyclates. Members were concerned that pressures to increase the tonnage of recycled waste emanating from European Directives might lead to deterioration in the quality of recycled product preventing its reuse within Northern Ireland and rendering it fit only for export, or worse, landfill. Members agreed to consider a potential Committee amendment to the Bill that would provide enabling powers for the Department to put in place targets for the quality of recycled material to be produced by councils should this become necessary.

96. The Committee considered the amendment in conjunction with written submissions from waste management companies, the Department and the Minister (Appendix 6). These provided conflicting positive and negative views on the impact of, and need for, such an amendment.

97. Concern was raised about the potential cost impacts on councils and some members were reluctant to force particular waste management models by legislation rather than letting the market dictate the approach adopted by local authorities in conjunction with their waste management groups and material recycling facilities. The Department also indicated that it is trying to achieve the same goal through voluntary initiatives and stressed that no other legislature has legislated for quality and that a balance needed to be struck between quantity and quality. The Department was concerned that a singular focus on quality could compromise Northern Ireland's ability to meet EU recycling targets which are solely quantitative.

98. By majority the Committee concluded that the amendment should not be tabled.

Resources

99. There was concern among many respondents about the cost of implementing this Bill. While councils accepted that they would be able to use funds from fixed penalty notices to recover costs of offences, they felt that these were intended for smaller offences only and that they would be left with the burden of bigger offences.

100. Councils also noted that their staff would need adequate funding to cover the additional responsibilities, staffing and training costs that would arise for local authorities as a result of this Bill. They were adamant that this should not fall to the ratepayer.

101. The Committee also drew attention to the fact that the new enforcement powers emanating from the Bill are likely to lead to increased prosecutions. It was concerned that some defendants will be eligible for legal aid and while the courts may award clean-up costs, councils will have to recover their own legal costs.

Clause by Clause Consideration of The Bill

102. The Committee conducted its clause by clause scrutiny of the Bill on 28 September 2010 and 21 October 2010 – see Appendix 2. The Committee recommended several amendments which are outlined below.

Clause 1 – fixed penalty notices for offences under Article 4

103. At the meeting on 28 September 2010 the Committee agreed to defer a decision on the Clause until it had sight of the Departmental amendment to Clause 1 (9)(b) to increase the upper fine limit. On 21 October 2010 the Committee considered an amendment provided by the Department and agreed Clause 1 subject to this amendment to raise the upper fine limit as follows:

Clause 1, page 2, line 19, leave out '£200' and insert '£400'

Clause 2 – detention of seized property

104. At the meeting on 28 September 2010 the Committee agreed Clause 2 as drafted.

Clause 3 – offence of failing to pay charge for subsistence of licence

105. At the meeting on 28 September 2010 the Committee agreed Clause 3 as drafted.

Clause 4 – powers to require removal of waste unlawfully deposited

106. At the meeting on 28 September 2010 the Committee agreed Clause 4 as drafted.

Clause 5 – Councils to enforce Articles 4 and 5 of 1997 Order

107. At the meeting on 28 September 2010 the Committee agreed to defer a decision on the Clause until it had sight of the Departmental amendment to Article 5(7). On 21 October 2010 the Committee considered an amendment provided by the Department and agreed Clause 5 subject to this amendment to extend to councils the same powers of entry and investigation as the Department as follows:

Clause 5, page 6, line 37, leave out '(but not regulations under Article 5(7))'

Clause 5, page 6, line 41, leave out '(but not regulations under Article 5(7))'

Clause 5, page 6, line 41, at end insert—

'(2A) In Article 5A of the 1997 Order (fixed penalty notices for certain offences under Article 5(8))—

(a) in paragraph (1) for "the Department" (where it first occurs) substitute "an authorised officer of an enforcing authority" and for "to the Department" substitute "to the enforcing authority";

(b) in paragraph (2) for "Department" substitute "authorised officer" and at the end add "to the enforcing authority";

(c) in paragraph (9) for "the Department" substitute "an enforcing authority";

(d) in paragraph (11) for "The Department may" substitute "An enforcing authority may" and for "by the Department" substitute "by the enforcing authority";

(e) for paragraph (13) substitute—

"(12A) Article 22C (use of fixed penalty receipts by a district council) applies in relation to amounts received by a council under this Article as it applies in relation to amounts received under Article 22A.

(13) In this Article—

"authorised officer" means an officer of the enforcing authority who is authorised in writing by the enforcing authority for the purposes of this Article;

"enforcing authority" means—

(a) the Department; and

(b) in relation to an offence committed within its district, a district council.".'

Clause 6 – Right of entry with heavy equipment or to domestic premises

108. At the meeting on 28 September 2010 the Committee agreed Clause 6 as drafted.

Clause 7 – Contaminated Land: pollution of waterways and underground strata

109. At the meeting on 28 September 2010 the Committee agreed Clause 7 as drafted.

Clause 8 – Appeals against remediation notices

110. At the meeting on 28 September 2010 the Committee agreed to defer a decision on the Clause until it had sight of the Departmental amendment to introduce an enabling power for the introduction of a fee for an appeal. On 21 October 2010 the Committee considered an amendment provided by the Department and agreed Clause 8 subject to this amendment to provide a power for the introduction of a fee for an appeal as follows:

Clause 8, page 8, line 38, at end insert—

‘(2A) After paragraph (1) insert—

“(1A) Article 127(2)(b) of the Planning (Northern Ireland) Order 1991 (power to prescribe fees for appeals to the planning appeals commission under that Order) shall apply to appeals under this Article as it applies to appeals under that Order; and a notice of appeal to the planning appeals commission under this Article shall be accompanied by such fee (if any) as may be prescribed under Article 127(2)(b) of that Order.”.’

Clause 9 - Interaction with other provisions

111. At the meeting on 28 September 2010 the Committee agreed Clause 9 as drafted.

New Clause 9A

112. At the meeting on 28 September 2010 the Committee agreed to an amendment to make the new power, 4A(10), and the existing powers, 5A(10), 22B(5), and 42B(10) to alter the amount of a fixed penalty, subject to draft affirmative procedure. On 21 October 2010 the Committee agreed the draft amendment to achieve this objective as follows:

Clause 9, page 9, line 20

At end insert-

‘Regulations

9A. -(1) Article 82 of the 1997 Order (Orders, Regulations and Directions) is amended as follows.

(2) In paragraph (1), before “Orders”, insert “Subject to paragraph (1A),”

(3) After paragraph (1), insert-

“(1A) Regulations under Articles 4A(10), 5A(10), 22B(5) and 42B(10) shall not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”’

Clause 10 – Producer responsibility obligation regulations

113. At the meeting on 28 September 2010 the Committee agreed Clause 10 as drafted.

Clause 11 – minor and consequential amendments and repeals

114. At the meeting on 28 September 2010 the Committee agreed Clause 11 as drafted.

Clause 12 – Commencement

115. At the meeting on 28 September 2010 the Committee agreed Clause 12 subject to a Committee recommendation that the specific clauses which relate to councils’ enhanced waste management powers will not be enacted until an agreed protocol defining the respective responsibilities of local authorities and the NIEA in relation to addressing illegally deposited waste is in place.

Clause 13 – Interpretation

116. At the meeting on 28 September 2010 the Committee agreed Clause 13 as drafted.

Clause 14 – Short title

117. At the meeting on 28 September 2010 the Committee agreed Clause 14 as drafted.

Schedule 1 - amendments

118. At the meeting on 28 September 2010 the Committee agreed Schedule 1 subject to a Committee amendment to make the new power, 4A(10), and the existing powers, 5A(10), 22B(5), and 42B(10) to alter the amount of a fixed penalty, subject to draft affirmative procedure. On 21 October 2010 the Committee agreed an amendment inserting new clause 9A to achieve this objective and subsequently agreed Schedule 1 as drafted on 4 November 2010.

Schedule 2 - repeals

119. At the meeting on 28 September 2010 the Committee agreed Schedule 2 as drafted.

Long Title

120. At the meeting on 28 September 2010 the Committee agreed the Long Title as drafted.

Appendix 1

Minutes of Proceedings

Thursday 15 October 2009 Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Cathal Boylan (Deputy Chairperson)
Mr John Dallat
Mr David Ford
Mrs Dolores Kelly (Chairperson)
Mr Danny Kinahan
Mr Ian McCrea
Mr Adrian McQuillan
Mr Alastair Ross
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Mr Steven Mealey (Clerical Officer)
Dr Kevin Pelan (Assembly Research)

6. Departmental briefing on the Waste Bill – synopsis of responses

The following members declared an interest:

Dolores Kelly – Member of Craigavon Borough Council

Roy Beggs – Member of Carrickfergus Borough Council and small landowner

Danny Kinahan – Member of Antrim Borough Council, substitute of South Antrim council on Arc21

Peter Weir – Member of North Down Borough Council, Vice President NILGA, member of Policy Development Panel A

Ian McCrea – Member of Cookstown Borough Council

David Ford – Member of Antrim Borough Council

Mr Adrian McQuillan – Coleraine Borough Council

Mr John Dallat - Member of Coleraine Borough Council

Departmental officials briefed the Committee and answered members on the synopsis of responses to the Waste Bill consultation.

The main areas of discussion were a single waste disposal authority, appeals, illegal dumping, the timetable for the Bill and waste contracts.

Dolores Kelly

Chairperson, Committee for the Environment
22 October 2009

[EXTRACT]

Thursday 22 April 2010, Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Cathal Boylan (Chairperson)
Mr Alastair Ross
Mr Peter Weir
Mr Jonathan Bell
Mr John Dallat
Mr Daithi McKay

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Ian McCrea
Mr Danny Kinahan
Mr Brian Wilson

7. Waste and Contaminated Land Bill

Members noted receipt of a copy of the Bill and a copy of the delegated powers of the Bill.

The Chairperson informed members that they have been provided at with a copy of the draft Bill timeline and with a draft motion to extend Committee stage to 5 November 2010.

Agreed: That the motion to extend is lodged with the Business Office.

The Chairperson informed members that they have been provided at with a draft public notice calling for submissions to the Bill with a deadline that gives 5 weeks for responses.

Agreed: That the public notice is issued in the 3 main newspapers and the Assembly website.

The Chairperson informed members that they have been provided at with a draft stakeholder list.

Agreed: That letters are sent to all organisations on the list asking for written submissions on the Bill.

Cathal Boylan

Chairperson, Committee for the Environment
29 April 2010

[EXTRACT]

Thursday 10 June 2010, Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Cathal Boylan (Chairperson)
Mr John Dallat
Mr Danny Kinahan
Mr Ian McCrea
Mr Patsy McGlone
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Jonathan Bell

10.16 a.m The meeting began in public session.

5. Departmental briefing on the Waste and Contaminated Land Bill

The following members declared an interest:

Mr Beggs – Carrickfergus Borough Council

Mr McCrea - Cookstown District Council

Mr Weir – North Down Borough Council

Mr Wilson – North Down Borough Council

Departmental officials briefed the Committee and answered members' questions on the Waste and Contaminated Land Bill.

The main areas of discussion were the functions of each clause of the Bill, fixed penalty notices, enforcement, waste licenses and the landowner liability.

11.43a.m Mr Wilson left the meeting.

Agreed: That a letter is sent to the Department expressing members' concerns, in relation to Clause 8, that the appeals process could be abused by offenders if there is no charge for an appeal. The letter is to ask for further information on the operation of the appeals process in other jurisdictions particularly in relation to the timeframes for appeals and also for further information on the proposed timeframe for appeals in this Bill. The letter is also to state, in relation to Clause 9 of the Bill, that the Committee requests clarification on the required period of time for final disposal of controlled waste.

6. arc21 briefing on the Waste and Contaminated Land Bill

The following members declared an interest:

Mr Beggs – Carrickfergus Borough Council

Mr McCrea – Cookstown District Council

Mr Weir – North Down Borough Council

Representatives from arc21 briefed the Committee and answered members' questions on the Waste and Contaminated Land Bill.

The main areas of discussion were possible duplication of powers, fixed penalties, flytipping protocols, the need for guidance and intelligence gathering.

11.59a.m Mr McGlone rejoined the meeting.

12.00a.m Mr Ross left the meeting.

12.04p.m Mr Kinahan left the meeting.

Agreed: That Assembly Research is asked to provide information in relation to the flytipping protocol used in England and Wales.

Cathal Boylan

Chairperson, Committee for the Environment
17 June 2010

[EXTRACT]

Thursday 24 June 2010, Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Cathal Boylan (Chairperson)
Mr John Dallat
Mr Ian McCrea
Mr Danny Kinahan
Mr Patsy McGlone
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

4. Briefing by Banbridge District Council and SWaMP 2008 on the Waste and Contaminated Land Bill

The following members declared an interest:

Mr Beggs – Carrickfergus Borough Council

Mr McCrea – Cookstown District Council

Mr Weir – North Down Borough Council

Mr Wilson – North Down Borough Council

Representatives from Banbridge District Council and SWaMP 2008 briefed the Committee and answered members' questions on the Waste and Contaminated Land Bill.

The main areas of discussion were enforcement, fixed penalty notices, prosecution, cost of cleaning up waste, demarcation of responsibility between the Department and councils and a flytipping protocol.

Agreed: That Bnabridge Council provides the Committee with wording of a proposed amendment to Article 4 of the Bill

5. Briefing by NILGA on the Waste and Contaminated Land Bill

The following members declared an interest:

Mr Beggs – Carrickfergus Borough Council

Mr McCrea – Cookstown District Council

Mr Weir – North Down Borough Council, Vice president of NILGA

Mr Wilson – North Down Borough Council

Representatives from NILGA briefed the Committee and answered members' questions on the Waste and Contaminated Land Bill.

11.34a.m Mr Ross rejoined the meeting.

The main areas of discussion were waste management, enforcement, roles and responsibilities and cost.

11.59a.m Mr Wilson left the meeting.

Agreed: That a letter is sent to the NIEA asking what mechanisms are in place for liaison with local authorities on waste issues, what happens to landfill tax and asking if they started to develop a flytipping protocol, what stage it is at and when it might be completed.

Cathal Boylan

Chairperson, Committee for the Environment
1 July 2010

[EXTRACT]

Thursday 01 July 2010, Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Jonathan Bell
Mr Cathal Boylan (Chairperson)
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Ian McCrea
Mr Daithi McKay

Mr Alastair Ross
Mr Peter Weir

11. Waste and Contaminated Land Bill

Members noted a copy of the Flytipping Protocol in England and Wales for information.

Members noted a proposed amendment to Article 4 of the Waste and Contaminated Land Order from Banbridge District Council and agreed to discuss the amendment at a future meeting when the Waste and Contaminated Land Bill was on the agenda.

Cathal Boylan

Chairperson, Committee for the Environment
2 September 2010

[EXTRACT]

Thursday 09 September 2010, Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Jonathan Bell
Mr Cathal Boylan (Chairperson)
Mr John Dallat
Mr Danny Kinahan
Mr Ian McCrea
Mr Patsy McGlone
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

8. Waste and Contaminated Land Bill

Members noted a Departmental reply to Committee queries on the Bill.

The Chairperson informed members that NIEA will brief the Committee on the Waste and Contaminated Land Bill at the meeting on 16 September.

Members noted a Departmental reply to Committee queries on illegal dumping.

The Chairperson informed members that both replies will be added to the Waste Bill master file.

Members noted an Assembly Research paper identifying possible locations for a Committee visit in respect of the Waste Bill.

Cathal Boylan

Chairperson, Committee for the Environment
23 September 2010

[EXTRACT]

Thursday 16 September 2010, Room 144, Parliament Buildings

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

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr John Dallat

6. Departmental briefing on Waste Recyclates

Mr Beggs declared an interest as his father owns land on which waste practices are carried out.

Departmental officials briefed the Committee and answered members' questions on Waste Recyclates.

The main areas of discussion were waste segregation, the quality of waste recyclates, co-mingling, recycling rates, legislation and EU waste targets.

Agreed: That a letter is sent to the Department asking for figures in relation to the average rejection rates of recyclates and proposals from councils for the Rethink Waste initiative, the cost of recycling in each council area and figures on glass recycling.

Agreed: That a letter is sent to the Department, along with a copy of a paper from Bryson Recycling, asking for the Department's response to issues highlighted in the papers, particularly the information from Huhtamaki who state they have seen a dramatic deterioration in the quality of the co-mingled waste paper sourced in the North West Group.

Agreed: That the Committee explores the possibility of introducing an enabling power on waste recyclates to the Bill.

7. NIEA briefing on Waste and Contaminated Land Bill

Mr Beggs declared an interest as his father owns land on which waste practices are carried out and as a member of Carrickfergus Borough Council

Mr Trevor Clarke declared an interest as a member of Antrim Borough Council.

Mr Wilson declared an interest as a member of North Down Borough Council.

Mr Weir declared an interest as a member of North Down Borough Council.

Mr Willie Clarke declared an interest as a member of Down District Council.

Representatives from NIEA briefed the Committee and answered members' questions on the Waste and Contaminated Land Bill.

The main areas of discussion were illegal waste and fly tipping, the development of a fly tipping protocol, the relationship between NIEA and local councils, enforcement and tyre disposal.

Cathal Boylan
Chairperson, Committee for the Environment
23 September 2010

[EXTRACT]

Thursday 23 September 2010, Room 144, Parliament Buildings

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

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Alastair Ross

10.10 a.m The meeting began in public session.

7. Departmental briefing on Waste and Contaminated Land Bill

The following members declared an interest:

Mr Beggs declared an interest as his father owns land on which waste practices are carried out and as a member of Carrickfergus Borough Council

Mr Trevor Clarke declared an interest as a member of Antrim Borough Council.

Mr Weir declared an interest as a member of North Down Borough Council.

12.15p.m Mr Wilson rejoined the meeting.

Departmental officials briefed the Committee and answered members' questions on the Waste and Contaminated Land Bill.

12.31p.m Mr Wilson left the meeting.

The Departmental officials gave their response to issues raised to date on each clause.

12.30p.m Mr McGlone left the meeting.

12.34p.m Mr Trevor Clarke left the meeting.

Agreed: That Departmental officials provide the Committee with details on the amount of Landfill Tax generated in Northern Ireland.

8. Waste and Contaminated Land Bill - informal Clause by Clause scrutiny

Due to time constraints the Committee was unable to discuss this item at this meeting.

Cathal Boylan

Chairperson, Committee for the Environment
30 September 2010

[Extract]

Tuesday 28 September 2010, Room 29, Parliament Buildings

Present: Mr Roy Beggs
Mr Cathal Boylan (Chairperson)
Mr Thomas Buchanan
Mr Willie Clarke
Mr John Dallat
Mr Patsy McGlone
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)

Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Danny Kinahan

2. Waste and Contaminated Land Bill

Mr Beggs declared an interest as a landowner and his father owns land on which waste practices are carried out.

The Chairperson informed members that they had been provided with an Assembly Research paper on the burden of proof and with a copy of comments on the Bill from the Ulster Farmers' Union (UFU).

Agreed: That the Assembly Research paper and UFU comments are incorporated into the Committee's report on the Bill.

12.53p.m Mr Weir joined the meeting.

12.53p.m Mr Dallat joined the meeting.

12.55p.m Mr Ross joined the meeting.

The Chairperson informed members that they now needed to formally consider each clause of the Bill.

Agreed: That any clauses formally agreed today 'as drafted' are agreed subject to any consequential amendments arising from the substantive issues raised with the Department on other deferred clauses.

Clause 1 – fixed penalty notices for offences under Article 4

1.00p.m Mr Beggs left the meeting.

Agreed: That the Committee will defer a decision on the Clause until it has sight of the Departmental amendment to Clause 1 (9)(b) to increase the upper fine limit.

Clause 2 – detention of seized property

Agreed: That the Committee is content with the Clause as drafted.

Clause 3 – offence of failing to pay charge for subsistence of licence

Agreed: That the Committee is content with the Clause as drafted.

Clause 4 – powers to require removal of waste unlawfully deposited

Agreed: That the Committee is content with the Clause as drafted.

Clause 5 – Councils to enforce Articles 4 and 5 of 1997 Order

Agreed: That the Committee will defer a decision on the Clause until it has sight of the Departmental amendment to Article 5(7).

1.06p.m Mr Willie Clarke joined the meeting.

Clause 6 – Right of entry with heavy equipment or to domestic premises

Agreed: That the Committee is content with the Clause as drafted.

Clause 7 – Contaminated Land: pollution of waterways and underground strata

Agreed: That the Committee is content with the Clause as drafted.

Clause 8 – Appeals against remediation notices

Agreed: That the Committee will defer a decision on the Clause until it has sight of the Departmental amendment to introduce an enabling power for the introduction of a fee for an appeal.

Clause 9 - Interaction with other provisions

Agreed: That the Committee is content with the Clause as drafted.

Clause 10 – Producer responsibility obligation regulations

Agreed: That the Committee is content with the Clause as drafted.

Clause 11 – minor and consequential amendments and repeals

Agreed: That the Committee is content with the Clause as drafted.

Clause 12 – Commencement

1.22p.m Mr Dallat left the meeting.

Agreed: That the Committee is content with the Clause subject to a Committee recommendation that the specific clauses which relate to councils' enhanced waste management powers will not be enacted until an agreed protocol defining the respective responsibilities of local authorities and the NIEA in relation to addressing illegally deposited waste is in place.

Clause 13 – Interpretation

Agreed: That the Committee is content with the Clause as drafted.

Clause 14 – Short title

Agreed: That the Committee is content with the Clause as drafted.

1.25p.m Mr Weir left the meeting.

Schedule 1 - amendments

Agreed: That the Committee is content with Schedule 1 subject to a Committee amendment to make the new power, 4A(10), and the existing powers, 5A(10), 22B(5), and 42B(10) to alter the amount of a fixed penalty, subject to draft affirmative procedure.

Schedule 2 - repeals

Agreed: That the Committee is content with Schedule 2 as drafted.

Long Title

Agreed: That the Committee is content with the Long Title as drafted.

The Chairperson reminded members that, at the meeting on 16 September, members agreed that an amendment should be made to the Bill to provide enabling powers for the Department to put in place targets for the quality of recycled material to be produced by councils.

Agreed: That a Committee amendment is prepared for agreement at a future Committee meeting.

Cathal Boylan

Chairperson, Committee for the Environment
30 September 2010

[EXTRACT]

Thursday 21 October 2010, Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Cathal Boylan (Chairperson)
Mr Trevor Clarke
Mr Willie Clarke
Mr Danny Kinahan
Mr Patsy McGlone
Mr Alastair Ross
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mrs Shauna Mageean (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Thomas Buchanan
Mr John Dallat
Mr Peter Weir

6. Waste and Contaminated Land Bill – formal clause by clause consideration

The Chairperson informed members they had been provided with a Ministerial letter on recycling, a Departmental reply to Committee queries on recycling, a letter from RecyCo on recycle quality, a letter from Glassdon recycling, draft Departmental amendments, draft Committee amendments and the draft Committee report.

Agreed: That the correspondence is included in the Committee's final report on the Bill.

11.59a.m Mr McGlone rejoined the meeting.

The Chairperson informed members they had been provided with the Departmental amendment to Clause 1 which will raise the upper limit of the range of fines for fixed penalties.

Mr Beggs declared an interest as a landowner and his father owns land on which waste practices are carried out.

Agreed: That the Committee is content to agree Clause 1 subject to the Departmental amendment.

The Chairperson informed members they had been provided with the Departmental amendment to Clause 5 to extend enforcement powers to local authorities.

Mr Beggs declared an interest as a member of Carrickfergus Borough Council.

Agreed: That the Committee is content to agree Clause 5 subject to the Departmental amendment.

The Chairperson informed members they had been provided with the Departmental amendment to Clause 8 which will provide for Planning Appeals Commission to charge a fee to hear an appeal.

Agreed: That the Committee is content to agree Clause 8 subject to this Departmental amendment.

The Chairperson informed members that they had also been provided with 2 Committee amendments.

The Chairperson informed members that the second Committee amendment would give the highest level of Assembly scrutiny to secondary legislation altering fixed penalty fines listed on the face of the Bill and existing Order.

Agreed: That the Committee is content to agree new Clause 9A to make Regulations altering fixed penalty fines under Articles 4A(10), 5A(10), 2B(5) and 42B(10) subject to draft affirmative procedure.

Members also agreed the following actions:

Agreed: That a letter is sent to the Department asking for a timeframe for all primary legislation being implemented or brought forward by the Department which should include anticipated dates of the commencement of subordinate legislation.

Agreed: That a letter is sent to the Department stating that the Committee would like the Minister to give a commitment in relation to commencement of the legislation at Consideration Stage of the Bill.

Agreed: That the Department officials forward a copy of the consultation document on the flytipping protocol to the Committee.

12.20p.m Mr McGlone left the meeting.

The Chairperson informed members that they had requested a Committee amendment to provide the Department with powers to introduce standards for the quality of recycled material collected by councils should it prove necessary in future.

12.27p.m Mr McGlone rejoined the meeting.

Mr Ross proposed a motion to withdraw this Committee amendment.

The Committee divided:

AYES

Mr Boylan
Mr Trevor Clarke
Mr Willie Clarke
Mr Alastair Ross

NOES

Mr Beggs
Mr Kinahan

Mr McGlone abstained.

The motion was therefore carried.

Members noted a copy of the draft Committee report on the Bill.

Cathal Boylan
Chairperson, Committee for the Environment
04 November 2010

[EXTRACT]

Thursday 04 November 2010, Room 144, Parliament Buildings

Present: Mr Cathal Boylan (Chairperson)
Mr Thomas Buchanan
Mr Trevor Clarke
Mr Willie Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Alastair Ross
Mr Brian Wilson

8. Waste and Contaminated Land Bill – draft Committee report

The Chairperson informed members that they had been provided with a Departmental reply to Committee queries on commencement of the Bill.

Agreed: That the reply is included in the Committee report on the Bill.

The Chairperson informed members that, at the meeting on 21 October 2010, members agreed the Committee amendment making the four powers to alter fixed penalty fines subject to draft affirmative procedure by inserting a new Clause – clause 9A.

Agreed: That members are content to agreed Schedule 1 as drafted.

The Chairperson informed members that they had been provided with a copy of the draft Committee report on the Bill

Agreed: That members are content for the report to contain the relevant extracts from the minutes from today's meeting.

Agreed: That members are content with the report as drafted and ordered it to be printed.

The Chairperson informed members that they had been provided with a draft press release highlighting the key aspects of the Committee's position on the Waste and Contaminated Land Bill.

Agreed: That the press release is issued week commencing 15 November, when printed versions of the report will be available.

Cathal Boylan
Chairperson, Committee for the Environment
11 November 2010

[EXTRACT]

Appendix 2

Minutes of Evidence

15 October 2009

Members present for all or part of the proceedings:

Ms Dolores Kelly (Chairperson)
Mr Cathal Boylan (Deputy Chairperson)
Mr Roy Beggs
Mr John Dallat
Mr David Ford
Mr Danny Kinahan
Mr Ian McCrea
Mr Adrian McQuillan
Mr Alastair Ross
Mr Peter Weir

Witnesses:

Mr Karl Beattie
Ms Jennifer McCay Department of the Environment
Mr Denis McMahon
Mr Donald Starritt

1. The Chairperson (Mrs D Kelly): We move to the Department's briefing on the proposed waste Bill. Members will note that a synopsis of the responses received is included in the Committee papers. At its meeting on 26 March 2009, the Committee agreed that it was content for the Department to initiate policy consultation proposals for inclusion in a new waste Bill, and asked to receive a synopsis of the responses received during the consultation process. The Bill is currently scheduled for introduction to the Assembly in February 2010.

2. I invite the departmental officials to come forward. With us are Donald Starritt, from the environmental policy division; Denis McMahon, from the environmental policy division; Karl Beattie, a deputy principal in the environmental policy division; and Jennifer McCay, a deputy principal in the environmental policy division. You are all very welcome. If you could brief the Committee within five to 10 minutes, we would be most obliged, and then we can move to questions.

3. Mr Donald Starritt (Department of the Environment): Thank you for the opportunity to speak to the Committee. I do not need to do the introductions again, so I will start by briefly summarising the purpose of the consultation. I will then talk a wee bit about the outcome of the consultation process, summarising the responses that we have received. Finally, I will say something about the way forward.

4. The consultation process started on 6 April, and closed on 3 July. The proposals fell into three main areas. First, there were a number of changes to existing primary legislation on waste management and contaminated land, as provided for under the Waste and Contaminated Land (Northern Ireland) Order 1997. It is that 12-year-old legislation that we are bringing up to date. Secondly, there were a range of proposed provisions that would clarify local government powers to enter into waste management contracts. Finally, enabling legislation was proposed for a single waste authority.

5. Members have been given a fairly detailed synopsis of the responses that we received. I apologise if it is too detailed — 42 questions were asked, and we organised the summary around the responses. At this stage, I do not intend to go through the responses in detail, but I am happy to take questions on them.

6. There are three issues that I will highlight. First, is a proposal that the Minister has decided not to take forward, which is included at question 14 of the table for members' reference. The

proposal was to change the legal definition of a waste offence. Very briefly, the background is that, in current legislation, to secure a conviction, it needs to be proven beyond reasonable doubt that the accused was aware of the illegal deposit. The change that was proposed in the consultation would have removed the requirement to prove knowledge, and shifted the burden of proof to the accused. Some responses were in favour of that proposal, but a significant number expressed concern around the possible impact on innocent landowners. Having looked at that, the Minister has decided not to include that provision in the Bill. That proposal is now withdrawn.

7. The Chairperson: We welcome that.

8. Mr Starritt: Secondly, I want to mention the waste management contract provisions. In the consultation, 13 questions were asked about that; questions 24 to 38 in the document. Those proposals were specific to waste management, and were to clarify local government powers to enter into waste management contracts. The idea behind that was to build on the more generalised contract provisions that are included in the Local Government (Miscellaneous Provisions) Bill. The responses were almost unanimously supportive of the proposals. However, the main element coming out of the consultation was a request that those powers be transferred to the Local Government (Miscellaneous Provisions) Bill, so that all contract provisions are contained together. The Department was content with that, and that has been taken forward and considered by the Committee. Therefore, I do not propose to dwell on that.

9. The Chairperson: That is OK.

10. Mr Starritt: On the outcome of the consultation process, I want to mention the single waste disposal authority. The consultation sought views on the concept of establishing such an authority, and the timing of that. It is fair to say that we received mixed views, which we have tried to summarise in the synopsis at question 39.

11. The Minister is committed to bringing forward enabling legislation. However, final decisions on the policy direction have not been taken just yet. One reason for that is because the consultants who are working on local government reform have been looking at the possibility of shared service delivery across councils. Waste has been part of that analysis. Therefore, the Minister has decided to wait and consider that report in detail before taking a final decision.

12. As for the planned way forward, the Minister intends to write to the Executive to outline his proposals for legislation and to seek approval to introduce the Bill. Obviously, as part of that process, we will build in the Committee's comments. The hope is that a Bill could be introduced to the Assembly in January or February 2010.

13. The Chairperson: A number of respondents called for a technically competent, fully trained and properly resourced appeals body. The Council for Nature Conservation and the Countryside called for a specialist environmental court. What consideration have you given to those responses?

14. Mr Starritt: I am not aware of that.

15. The Chairperson: It is listed in the document. The synopsis states that:

"Several respondents made reference to the need for a technically competent, fully trained and properly resourced appeals body."

16. Mr Karl Beattie (Department of the Environment): I apologise. That has been suggested. The main problem with setting up a specialist body, as opposed to using an existing body, such as the Planning Appeals Commission, is one of resources. Although issues have certainly been raised with regard to technical expertise, setting up an entirely new body has resource implications. We have not ruled that out in the future. However, at present, we are not actively considering it.

17. The Chairperson: Are you, therefore, saying that the Planning Appeals Commission will be the appeals body?

18. Mr Beattie: Yes. It will be for the part 3 regime.

19. Mr Ford: The first point that you highlighted is the, in effect, backtracking on the issue of whether an offence is carried out knowingly. Buried in the report is reference to the Water (Northern Ireland) Order 1999 under which the same provisions that were originally proposed apply. If that is removed, will that not weaken the legislation greatly? In effect, an offence will become vastly more difficult to prove. That runs the risk of further illegal dumping of a variety of materials without any suitable redress.

20. Mr Starritt: That was certainly part of the consideration to put in a proposal in the first place. Having considered the comments, the Minister believed that the other provisions that are in place to deal with illegal waste are sufficient and has decided not to introduce it at this stage. The Minister took that decision after consideration of all of the outcomes of the process.

21. Mr Ford: Presumably, the fact that that was originally proposed suggests that the people who made the proposal believed that it was compliant with human rights obligations. Therefore, it is a political decision on whether it was appropriate, rather than on whether it satisfies human-rights obligations, which is the issue that is mentioned.

22. Mr Starritt: The Minister took that political decision not to introduce it.

23. The Chairperson: Surely, it was not a farming decision. I am sure that many farmers will be pleased. Are there any other questions or comments? The issue will come before the Committee for consideration; today's session is really just to brief members on responses to the consultation.

24. Mr Beggs: On the point that Mr Ford raised, does the Department have a record of how the water legislation has played out? Has that been a particular problem, or has it assisted in protecting the environment?

25. Mr Starritt: I know that changes were made to the water legislation; we did a little bit of research on that, and it was initially a very short provision. We understand from speaking to our colleagues that it is not causing particular problems for water management. That provision is not really used to a great extent.

26. Mr Beggs: Have there been complaints about provision?

27. Mr Starritt: Not that we are aware of.

28. Mr Beggs: If there are no complaints in that regard, why are you not following the same format?

29. Mr Starritt: It was because of the responses that we received, probably mainly in relation to farmers. I do not have the specific comments to hand. Farmers in Northern Ireland often own land that is widely dispersed, and the feeling was that it is quite possible that illegal activity could be taking place without the farmer's knowledge. On balance, and having considered those comments, the Minister decided not to proceed.

30. The Chairperson: There are concerns in local government in relation to the Review of Public Administration. In particular, in some people's view, the single waste disposal authority flies in the face of decentralisation and giving power to local authorities. There were a number of views stating a preference for permissive powers and a preference for more than one authority. Can you say anything in relation to that?

31. Mr Denis McMahon (Department of the Environment): At the moment, there are a number of issues that need to be finally resolved. As Donald said, there is some ongoing work to consider the models. It is fair to say that two different views were expressed. One view was that the waste infrastructure had to be put in place to avoid the risk of major infraction, and that, therefore, there was a need for permissive powers and a fairly centralised organisation, which would be accountable to local government. The other view was that there are three waste management groups that work very well already, and which take into account local needs and concerns, so we should be careful before disrupting those to create a more centralised structure.

32. The key point is that, in moving forward, the proposals that are fleshed out will have to ensure that we have an accountable organisation. If it is a single waste authority, it will be a mandatory joint committee of the councils, and would be accountable to the councils. That is the sort of model that we envisage at the moment.

33. Mr Weir: In relation to the single waste authority, I appreciate that one of the arguments concerned the idea of decentralisation; however, I think it is debatable whether that holds weight. It would be a better argument if waste was presently dealt with on the basis of each of the individual 26 councils doing their own thing, but the argument is about whether there are three regional bodies or just one.

34. There are a lot of concerns in relation to the single waste authority — which I do not necessarily share, but I understand where they are coming from — and there may be some degree of smokescreen in that there are differing attitudes to the types of waste disposal. I know that you spoke about providing a degree of assurance and accountability in relation to models. Has any consideration been given to one potential solution, which is a single waste authority, thus ensuring the synergy of having all the administration in one block, while allowing some degree of autonomy at local level to take account of the differing attitudes towards the different types of waste disposal?

35. I suspect that the issue whom those involved are most concerned about is the attitude, in certain areas, towards incineration. I doubt that there is the same ideological opposition to the administration being carried out by one body. Is consideration being given to a halfway-house style of single body, in which a degree of autonomy is retained around the methodology?

36. Mr McMahon: The simple answer is yes. There is an understanding that a single body cannot and will not be a mechanism for forcing through a particular technology in a particular area. Simply, it will not work if it does not have that level of local accountability built into it.

37. Mr Beggs: Discussions are occurring in local authorities around waste, and I wish to declare an interest as a member of Carrickfergus Borough Council and as a small landowner.

38. You said that the waste legislation will be brought forward in January or February 2010. I thought that that was originally going to happen in January. As I understand it, we are on a very tight schedule, and the draft legislation has to be in place for the bidding process that waste management groups have to move on to meet European directives. You seem to be very flexible. Are you not on a tight schedule? It is important that there is plenty of time to deal with the legislation. We do not want to have to rush it through; we want to have the appropriate consultations when the precise wording has been developed. However, you appeared to indicate that you are on a flexible timetable. Can you tell me why you are now talking about introducing the draft legislation in February?

39. Mr Starritt: We are still hopeful of introducing the Bill in January. I mentioned February because we cannot entirely predict the difficulties that may come up in the drafting of the legislation. That is why I said "January or February". At the moment, I am still very hopeful that it will be ready for January.

40. Mr Beggs: Mention was made of a possible single authority with subdivided waste management plans that take into account certain sensitivities. If such a plan is developed, will you ensure that the local ratepayers in an area pay for what their public representatives wish for? As I understand it, there could be huge implications when it comes to processing waste. People have to be aware of the cost implications of decisions that they make, and that that cost is not simply shared among everyone. There must be accountability and responsibility for decisions.

41. Mr McMahon: Building on the earlier questions, that is absolutely right. That needs to be included. There must be transparency because, as you say, there are massive cost implications around building the infrastructure, and, in the event of delays, around the impact that not building the infrastructure could have.

42. Mr Ford: You referred to the possible inclusion of waste management issues within the Local Government (Miscellaneous Provisions) Bill. As you are aware, we have just completed our clause-by-clause scrutiny of that Bill. Therefore, given the urgency that has been expressed about that Bill, we expect it to come to the House for its Consideration Stage in the relatively near future. Is it still a possibility that waste management issues could be included in the Local Government (Miscellaneous Provisions) Bill?

43. Mr McMahon: My understanding is that that is a possibility. The intention is to have the legislative stages of the Local Government (Miscellaneous Provisions) Bill completed before Christmas, if possible. However, as with the waste Bill, that depends on specific drafting issues. If we can include those additional clauses in the Local Government (Miscellaneous Provisions) Bill, that will assist the procurement process, because we will be getting those provisions in much earlier.

44. Mr Ford: I can appreciate the logic of that. However, does that mean that the Department will be coming back to the Committee with, if nothing else, an informal indication of the clauses that it intends to produce if it is going to seek to amend the Local Government (Miscellaneous Provisions) Bill? Will the clauses simply appear on the Floor of the Assembly?

45. Mr McMahon: I would need to come back to you on that.

46. The Chairperson: We would appreciate it if you could come back to us on that. As there are no further questions or comments, I thank you for your presentation.

47. You said at the outset that the Department will be seeking the Committee's views on the waste Bill. Will that be before or after the Bill goes to the Executive?

48. Mr Starritt: I meant today, as part of the process. Any views expressed by the Committee will be reflected in our paper to the Executive, and we are hoping to complete that paper fairly soon.

49. The Chairperson: Thank you very much. The Committee Clerk has noted the Committee members who are also members of local authorities.

10 June 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Roy Beggs
Mr John Dallat
Mr Danny Kinahan
Mr Ian McCrea
Mr Patsy McGlone
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Mr Karl Beattie	
Ms Jennifer McCay	Department of the Environment
Mr Denis McMahon	
Mr Donald Starritt	
Mr Ricky Burnett	Arc21
Mr John Quinn	

50. The Chairperson (Mr Boylan): I refer members to the departmental briefing on the Waste and Contaminated Land (Amendment) Bill. I remind members that they asked the Examiner of Statutory Rules to comment on the delegated powers in the Bill. His response has been tabled for members' information. In it, he indicated that the level of Assembly scrutiny assigned to the regulation-making powers in the Bill seems to be appropriate. However, he feels that the order-making powers in schedule 1 should be subject to draft affirmative procedure. That information will be added to the Bill master file, and a summary will be incorporated into the clause-by-clause analysis table.

51. Departmental officials will now brief the Committee on the Waste and Contaminated Land (Amendment) Bill. I welcome Mr Denis McMahon, the director of the climate and waste division, and Mr Donald Starritt, Mr Karl Beattie and Ms Jennifer McCay from the environmental policy division.

52. Mr Denis McMahon (Department of the Environment): Thank you for affording us the opportunity to speak about the proposed Bill. You mentioned the overview, the importance of which is worth mentioning. We are making efforts to move waste management up the waste hierarchy, moving away from landfill towards recycling and preventing waste in the first place. In doing so, there is a danger that more and more waste is managed in ways that may be illegal and are not compatible with good environmental practice. Addressing those concerns is a key part of the programme that we are trying to put in place.

53. I will not talk in detail about clauses. Suffice to say that some of them speak for themselves on subjects such as fixed penalties and the retention of seized properties. If you wish, Chairperson, we are happy to talk through each clause. Would you like my colleagues to say a few words about each one in turn, after which you may ask questions?

54. The Chairperson: Please go through the clauses, after which I will open the floor to members for questions.

55. Ms Jennifer McCay (Department of the Environment): I shall address clauses 1 to 4. The main reason for including clause 1, "Fixed penalty notices for offences under Article 4", is to allow for the more proportionate and cost-effective enforcement of illegal waste offences. The Waste and Contaminated Land (Northern Ireland) Order 1997 already allows fixed penalties to be issued for various offences. Clause 1 merely extends their use to offences under article 4, which covers the:

"unauthorised or harmful deposit, treatment or disposal, etc., of waste"

56. At present, however, under article 4 of the 1997 Order, there is no alternative to prosecution through the courts for any of those offences. Prosecutions can be time consuming and costly, and could be considered disproportionate for the smaller scale offences. We believe that the use of fixed penalties is more appropriate and cost effective.

57. There are a few main points to note about the details of clause 1. The Department and councils can issue fixed penalties under this legislation. That is in the interest of harmonising the powers of those bodies, which we will deal with throughout the Bill. Given that clause 1 is intended to tackle less serious waste offences, we anticipate that councils will make most use of the powers in the Bill. Individual councils will have complete discretion in the use of the powers; they will always have the option of prosecuting any particular offence through the courts, as well as the option not to use fixed penalties at all if they do not think that they are appropriate.

58. The Bill sets the amount of a fixed penalty at between £100 and £200. Councils can offer a discount to encourage early payment, which will allow for discretion over the amount of the fine. Councils can retain the receipts from any fixed-penalty notices.

59. Mr Beggs: I declare an interest as a Carrickfergus councillor.

60. Mr Weir: I declare an interest as a North Down councillor.

61. Mr I McCrea: I declare an interest as a Cookstown councillor.

62. Mr Dallat: Is it appropriate to reward people who have been disposing of waste illegally by giving them discounts? Given the past history of councils and the huge variation in how they conduct themselves in relation to the law at present, is there not a danger that that will be replicated, in that some will do it and others will not? How do you define a less serious instance of illegal dumping?

63. Mr Donald Starritt (Department of the Environment): Although clause 1 introduces the option of a fixed penalty, it is entirely up to councils whether they choose to go down that route or opt for prosecution. That decision will hinge on whether the offence is viewed as a serious one or a repeat offence. It is entirely up to councils whether to offer a discount on the fixed penalty. In the past, generally, some councils felt that offering a discount made it easier to bring in the money in the first place. The decision to levy the whole amount, or, indeed, not to levy a fixed

penalty at all and go for a more serious prosecution, is for councils to make. That will vary from council to council.

64. Mr Dallat: Even in this economic depression, £100 is not a lot of money. Surely there is an incentive for people to do whatever they like, because being caught a few times will be a lot less costly than going through the proper channels to dispose of waste in the proper way?

65. Mr Starritt: The feeling was that prosecutions were not being brought because offences were deemed too minor. It is also possible that the Department did not have the resources to bring prosecutions in every instance. We believe that it will be the same for councils; it will be a resource issue. We are giving them an extra tool or an extra option.

66. Mr McMahon: You have made a key point. The wording in the Bill means that councils will be relied upon to take those decisions. That, to some extent, runs through the Bill. It is reasonable to ask how well the powers in the Bill will work. That depends on the ability and willingness of councils to operate it. That is a very valid question. As it is worded, however, it very much relies on the ability of the councils to use it effectively as another tool in their armoury over and above those that they have already.

67. Ms J McCay: You mentioned inconsistency of approach. Given that the powers are discretionary, which we think is appropriate, we are reluctant to impose a uniform framework. We have imposed upper and lower limits to try to ensure that inconsistency does not occur too much. If councils feel that that is becoming a problem, they could decide to work together, perhaps through the Northern Ireland Local Government Association (NILGA), to ensure that that does not happen. Some councils could decide to not issue fixed penalties at all because they feel that it is inappropriate to be too prescriptive.

68. The Chairperson: For clarification, the powers are discretionary, so it is up to councils to —

69. Ms J McCay: Within the limits.

70. The Chairperson: Obviously, there are set limits and guidelines because we do not want a situation in which one council area charges a certain amount and others not charging for the same act.

71. Mr Beggs: I concur with the view that this is enabling legislation. Councils can take the decision of whether to give a discount. Certainly, I am aware that a number of other fixed penalty notices encourage early settlements. I am open to that as a useful mechanism.

72. The upper limit is set at a maximum of £200. How did you come to that figure, particularly if councils wanted to offer some sort of discount? The legislation may need to state that there is a maximum fine of £100, or else the full court system will be brought to bear. How did you pick that as a maximum figure and how easy would it be to change that in the future if, for instance, there was a period of inflation and that became not as significant a sum? What is the process for changing, and do we need a built-in process to enable agreed change?

73. Mr Starritt: In respect of how we arrived at the amount, we were looking at a step up from a litter offence. The fixed penalty for litter is £50. We felt that we needed to step it up a bit from that. However, given that it is a fixed penalty, we felt that the amount should not be too high. Obviously, we are happy to look at any other proposals for the range. The reason for setting the range from £100 to £200 was, to pick up on the point that the Chairperson made, to ensure that there was not too much inconsistency across local government.

74. As regards the future changing of the amounts, the Order provides for it to be done by subordinate legislation. Changes could be made to deal with inflationary changes in the future.

75. Mr Beggs: That is fine.

76. Mr Weir: The cap of £200 is a little bit low. We need to increase that a little bit to £300 or £400. Obviously, there is discretion as to whether councils use the power. I presume that there is also discretion, therefore, in individual cases, so that if they are regarded as being not particularly serious in relation to a fixed penalty but are regarded as being above the threshold, there can be a prosecution. The big problem with any deterrent is the extent to which it is ultimately enforced because anybody who looks to dump will make a decision about whether they are likely to get caught. It is not a question of somebody dumping and taking a £100 fine; they could do it not in the knowledge of getting a particular fine, but in the knowledge of getting a fixed penalty or being taken to court, so there is a degree of deterrent.

77. In respect of the language that we use, perhaps it is about looking at the issue differently. Instead of talking about a penalty and a discount, we could talk about a penalty if the person pays it within a certain time and an enhanced penalty if they fail to pay. That is the way in which a fixed penalty works. Any of us who have been given a parking ticket will know that if it is paid within a certain period of time, it is a certain rate, and, if that is not paid, the rate goes up. That is the nature of fixed penalties. It may just be that the word "discount" is the wrong word to use.

78. Mr Beggs: My understanding is that fixed penalties are £60, but, if people pay them early, they have to pay only £30. It is not an enhanced payment. People are hit with a big payment, and if they pay —

79. Mr Weir: The point that I am making, Roy, is that, presumably, we can use whatever language we want. It is a question of inverting the mind and looking at the matter in a different way. The norm is that the penalty increases if it is not paid within a certain period. Therefore, it is a question of the language that we want to use. I understand people's feeling resentment if they see the word "discount". However, it is not a discount; it is less of a penalty. It is not the same as people looking for a bargain in the January sales.

80. Ms J McCay: It is important to make the point that we recommend that councils do not issue fixed penalties unless they are prepared to take the person to court and they have the evidence to do so. Otherwise, the whole system will be undermined.

81. The Chairperson: It is important to get matters right with enforcement.

82. Mr Dallat: I am not sure whether the Department has asked councils how many millions of pounds they spend every year on recovering waste. I suspect that the area that I live in is no different to other places, in that parts of the rural environment have been absolutely destroyed. The farmers have shown most energy by picking up bottles and so on from their fields. Many roads that are used by those who launder diesel and so forth have a lot of litter.

83. We could, for example, consider a fine of £100 or £200 with a discount and relate that to the problem, or we could even take a wee trip over on the ferry, drive down through Scotland and contrast how the environment is treated there with how it is treated here. I do not want to deride the legislation in any way or the work that has been put into it — I have no problem with that. However, those fines are like the opposite of using a sledgehammer to crack a nut, because they are not even beginning to tackle the problem.

84. Mr Starritt: We are happy to look at any increase in the fixed penalty amount. However, we do not see clause 1 as being relevant to the more serious offences, because those should go to court.

85. The Chairperson: The fine should fit the crime.

86. Mr Dallat: Leaving it to the discretion of the councils and not monitoring what they do or not asking them to provide statistics on how many fixed penalties they issue makes the whole matter not relevant. Everyone knows in their heart of hearts that if Joe Bloggs who lives down the road is caught, he will go to his local council, have a yarn with the people there and be given the easiest option. That is what has happened in the past.

87. The Chairperson: That shows the need for the legislation, Mr Dallat. The scale in ordinary littering and serious offences is quite broad, and we definitely need to look at that.

88. I do not think that there are any other points to discuss before we move on to discuss clauses 2, 3 and 4.

89. Ms J McCay: Clause 2 concerns detention of seized property, and that refers mostly to seized vehicles. It builds on the existing powers that are available to departmental enforcement officers. At the moment, they have powers to seize vehicles, without any warning or a warrant in certain circumstances, that are suspected of being involved in illegal waste activity. We sought legal advice on the extent of those powers in existing primary legislation. We were advised that the existing legislation would not permit what I will term extended retention. That means that a vehicle can be seized but has to be returned to its owner quite quickly once the necessary forensic and other investigations have been carried out. The Environment Agency's enforcement officers made representation for stronger powers to allow them to detain vehicles in some cases. I will outline the situations in which we perceive those powers being most useful.

90. In some cases, the Environment Agency's officers would like to retain the vehicles until the date of the relevant court case. The reason is to allow them to continue to gather evidence and stop those returned vehicles being used in waste crimes in other places. Therefore, a deterrent factor would probably be likely to be created. The Department's powers under the Bill are not unlimited. Clause 2 empowers its enforcement officers to retain a vehicle and seize property for a limited period. Once that time is up, the Department would have to apply to a magistrate for permission to retain the property in question for a further period, and a case for doing so would have to be made. In that case, the vehicle's owner would have to be given the chance to make a case to have their vehicle returned.

91. From a human rights perspective, we recognise that those powers are quite significant, which is why we introduced the magisterial independence element to the decision-making process. It is also important to note that the powers are not intended to tackle small misdemeanours. Vehicles would be retained only in suspected serious waste crime cases, and guidance to that effect would be produced for enforcement officers conducting such operations.

92. The Chairperson: Councils currently put an order on cars that have been abandoned on housing estates instructing the owner to have it removed, either by themselves or by someone else. Does that cut across clause 2, which applies only to waste offences? Abandoned cars are also a problem, but councils currently have powers to deal with them.

93. Mr Starritt: The Pollution Control and Local Government (Northern Ireland) Order 1978 provides powers to deal with abandoned vehicles.

94. Mr Kinahan: That is also addressed in the draft Clean Neighbourhoods and Environment Bill.

95. The Chairperson: Yes.

96. Mr B Wilson: I strongly support clause 2, because we need a suitable deterrent. I am concerned about what happens if the Department applies to retain a vehicle beyond a prescribed period. What is meant by a prescribed period?

97. Ms J McCay: That will not be in this legislation. We will have to introduce subordinate legislation that will include regulations governing how we deal with seized property. The Department would not be allowed to wait months before going before a magistrate. At present, we are thinking about a period of a possible 14 days, but we have not fully decided. Those regulations will be subject to a full public consultation and a human rights assessment, which the Committee would be involved in. Therefore, the prescribed period will not be in the powers in this Bill, which will introduce primary powers.

98. Mr B Wilson: Is 14 days a suitable deterrent? Are you saying that, unless the Department makes a strong case, the vehicle will be returned after 14 days?

99. Ms J McCay: The Department would have to present its case to a magistrate, and the vehicle owner would have the right to go before the magistrate. Ultimately, it would be for the Department to make the strongest case that it can, and it would be for the magistrate to decide in any given set of circumstances.

100. The Chairperson: If there are no further comments on that clause, we will move to clause 3.

101. Ms J McCay: Clause 3 deals with the offence of failing to pay charges for the subsistence of a licence, and it relates to the licensing of waste management facilities. As you know, the Department's system requires waste management facility operators to be licensed by the Northern Ireland Environment Agency. As well as paying the licence fee, all licensees must pay an annual subsistence fee to cover agency expenses, such as those for inspections of the facilities, which must be carried out to check that they are operating safely and within the terms of their licence.

102. The existing sanction for non-payment of subsistence fees is set out in article 15(6) of the Waste and Contaminated Land (Northern Ireland) Order 1997, which empowers the Department to revoke a licence if those subsistence fees are not paid. The problem with that is that, even if the Department revokes the licence, it continues to incur costs, because staff must continue to inspect those sites to check that they are not presenting risks to the environment.

103. Therefore, clause 3 is an attempt to encourage both compliance and the payment of subsistence fees by making non-payment a criminal offence. It would introduce a penalty for the offence, with a further, daily penalty for continued non-payment. It is hoped that the threat of court action will encourage payment of the fees without having to issue proceedings, but the threat to do so will remain. The maximum fine for non-payment will be level 5 on the standard scale, which is £5,000. Any additional fine would not exceed one tenth of level 5 for each day on which the offence continues to be committed. That could seem to be quite high, but the cost of the licences and the subsistence fees can run to thousands of pounds. Therefore, we thought that the fine had to be proportionate to the offence.

104. Mr Dallat: Believe you me, a fine of £5,000 for someone who has not paid for their licence is chicken feed compared with the millions of pounds that they make. One such person, who I will not name here again, was the subject of 46 complaints. Indeed, people from Belfast came down to try to persuade that person to put their house in order. Such activity is liquid gold to people who are in the business. The fact that legislation has to be devised to get people to pay

for the licence is shocking in itself, but at the same time, there is a worry that the fine should not be too high. Again, I do not wish to criticise the Bill, but the proposal totally underestimates what is going on. I cannot believe that some people who are lucky enough to get a licence that allows them to make millions do not pay for it. I am lost that legislation needs to be written to compel those people to pay and that fines of only £5,000 are being suggested.

105. Mr Starritt: It is important to note that clause 3 deals with waste management licence facilities that, in the past, have applied for and successfully obtained a licence. A couple of the Bill's later clauses deal with the power to prosecute for serious offences, to which more serious fines and custodial sentences apply. Clause 3 is a response to a bookkeeping problem in that the Environment Agency is incurring costs in inspecting sites but is not able to recover the cost of the licence. The Bill gives councils the power to prosecute if illegal waste activity is going on, and we will talk about that later. The Department already has the power to take illegal operators to court, and significant fines are available. We will discuss that when we come to discuss clause 5.

106. Ms J McCay: Clause 4 proposes powers to require the removal of waste that has been unlawfully deposited. The clause looks quite complicated, but it simply replaces and changes articles 28 and 28A of the 1997 Order. Article 28 of the 1997 Order gave powers to councils to require occupiers of land to tackle illegal waste on their land. In certain circumstances where an occupier refused to do that, council officials could enter the land and remove the waste or take remedial action to recover costs from the occupier. The Waste (Amendment) (Northern Ireland) Order 2007 extended those powers so that councils could require similar action from landowners in circumstances where, for example, there was no occupier or where an occupier refused to take action.

107. Clause 4 builds on those powers in two main ways. First, it gives the Department the same powers that were granted to councils under articles 28 and 28A. We have talked about fixed penalties, and Donald will talk about that when we come to discuss clause 5. The provision is in the interests of harmonising throughout the Bill the powers to tackle waste offences between the councils and the Department and giving the same broad enforcement powers to both parties. It legislates for a partnership approach in tackling illegal waste activity.

108. Secondly, clause 4 will enable a notice to be served on a person who is believed to have illegally deposited waste, rather than on only the landowner or the occupier. That makes more sense in cases where the enforcing authority, whether that is the Department or the council, is confident that it knows who is responsible. The enforcing authority is currently unable to issue a notice on the person who has illegally deposited waste, and the Bill changes that.

109. Mr Kinahan: As a councillor, I was always concerned about those times that we could not identify who owned a piece of land and who was responsible for it, because that was always the land on which people dumped everything. Can the Bill include provision for councils to clear land even if they cannot establish who owns it or who is responsible for it? This will all work nicely as long as the council knows who owns the land. However, if the council does not know, there is still a problem. Is there any way of writing the Bill that so that, if a council cannot establish who owns the land, it has the power to go on to it?

110. Mr Starritt: My understanding of that clause is that councils have the power to go on to land to clean up waste and to take remedial action. The difficulty is with the recovery of the costs that are incurred in taking such action. However, the power to carry out a clean-up exists already. We are trying to maximise the chances of councils' being reimbursed by enabling them to go after the landowner, the occupier or the offender, if they can be traced after an inspection of the waste.

111. Mr Kinahan: Do you see my point, though? Councils often hold back because of the insurance and legal elements of the issue, and certain areas can become sites for illegal dumping from that point on.

112. Mr I McCrea: My point is on the same issue. I know that councils have held back on removing waste, because they find it difficult to get reimbursed. There is an ongoing debate about who is responsible for the removal of waste. Councils believe that it is the Department's responsibility, whereas the Department says that it is councils' responsibility. I have been writing to the Minister to get some clarity on the issue. One piece of legislation says that it is the Department's responsibility, and another part of the same legislation says that it is the district council's responsibility. The problem is that it can sometimes cost a council more than £100,000 to clear waste from land, and if nobody owns that land, the council has no one from whom it can seek reimbursement. I know about the case of an alcoholic who knew nothing about the waste that had been dumped on his land.

113. Mr Weir: Was that waste empty bottles?

114. Mr I McCrea: I wish that it had been only bottles.

115. That is the difficulty. He had no knowledge of all the stuff that had been dumped on his property, because he never went out of his house, yet the council was supposed to be going after him. Councils should go after the people who actually dump the waste. However, the biggest difficulty is in proving the identity of such people.

116. Mr McMahon: There are two issues in that. First, the fact that the clause allows the Department to go after the offender rather than the landowner will help it to address the problem of recovering costs. Secondly, I agree that we need to sort out the issue of responsibility. On foot of this legislation, we will have to put in place an agreed protocol between local government and the Department that makes it clear that both will have crossover powers in those circumstances. It is important that there be a clear protocol to ensure that we know who is doing what and when and that cases do not fall through the gap between the Department and local government. We will have to work on that, but we will come back to it.

117. Mr I McCrea: It is important that that be done in the early stages. At present, the system is as clear as mud, and the buck is being passed back and forth between the Department and councils. That must be dealt with at the earliest opportunity. If it is not, the situation will continue and nothing will be done.

118. Mr McMahon: I agree.

119. The Chairperson: Following on from that point, clear guidelines must come out of the legislation. As a ratepayer, I know that Armagh City and District Council has had to clear waste on many occasions. Ratepayers do not really understand that councils do that until it happens. I have written to various Ministers seeking reimbursement for councils that have had to take care of such problems. It is important that councils be given guidelines and that they then let the ratepayers know exactly what those guidelines are all about.

120. Mr Starritt: Clause 5 covers councils' powers to enforce articles 4 and 5 of the 1997 Order. As Jennifer said, those articles deal with the illegal deposit and treatment of waste and with the duty of care to apply due diligence in waste management. Under articles 4 and 5 of the 1997 Order, the Department has the powers to investigate and prosecute, and those powers are used for serious waste offences. Clause 5 will extend those powers to councils. Therefore, as Denis said, councils and the Department will have exactly the same powers. We have recognised that clause 5 will give everybody those powers, but we need a protocol to establish what the councils

and the Department will do. The protocol will be important in establishing the cut-off point so that it is clear to the public who does what.

121. The Chairperson: Clause 5 is one of the important clauses of the Bill. Councils will have to have the necessary resources, regardless of whether they are required for the full cost of recovery or something else. Enforcement is the key part of all this. You are saying that clause 5 sets out clear guidelines as to how that will be achieved.

122. Mr Starritt: It is possibly worth saying that, although the articles in question are in the 1997 Order, they were updated three years ago by the Waste (Amendment) (Northern Ireland) Order 2007. One thing that that Order did was to increase the level of fines and custodial sentences. I think that I am right in saying that the Bill will provide for an unlimited fine and up to five years' imprisonment for serious offences. Those are the maximum fines, and those powers, which are with the Department now, will be extended to councils.

123. The Chairperson: How will the gap in NIEA's work with local councils be closed? That will be important with these provisions.

124. Mr Starritt: That is correct. The fly-tipping protocol that we are talking about is an attempt to close that gap and to make sure that there is no limbo between what councils do and what the Department deals with. The protocol will be important. We intended not to commence these clauses until the protocol was in place, because to do otherwise would merely add to the confusion.

125. Mr Weir: You mentioned the extension of power, particularly in cases in which there is an unlimited fine or a five-year imprisonment. Since the transfer of justice powers, have there been discussions with your colleagues in the Department of Justice? There are concerns that it is often the case that somebody is pursued, taken to court and, after a lot of work, found guilty. However, the individual might receive what in many ways is regarded as a slap on the wrists. I am sure that that is frustrating for you as well. There is a feeling that the courts do not take some environmental crimes seriously and that that is reflected in the sanctions. From your point of view, or, in this case, from the council's point of view, there is not a lack of willingness to take action, but the problem is the result when the councils impose sanctions. Is there any intention to have discussions with Department of Justice officials to see whether anything can be done, by way of guidelines or proactive action, to ensure that sanctions can be ratcheted up?

126. Mr Starritt: From discussions that we have had with our colleagues in the NIEA, we know that they feel that the punishments handed out did not fit the crime. However, there is a feeling that, as with more recent cases, the issue is being viewed more seriously and that sentences are higher than they were.

127. Mr McMahon: We must take into account that there may be a whole range of associated problems. Whenever you get one form of criminality, you very often get a number of others. We need to tackle all those matters in a focused way so that we can identify offenders who commit a number of crimes.

128. Mr Kinahan: My point links to the protocol that you talked about. Who ends up getting the money if the council is not getting anything when you fine people? That money drips away, and the councils are not getting anything from it.

129. Mr Starritt: The courts have powers to award the council or the Department any costs that the agency or the council incur in an investigation and in any clean-up that is needed.

130. Mr Weir: There is a case that my council has been involved with that Brian and I know fairly well. It does not relate to contaminated land; it is on the notorious issue of the enforcement of the legislation on smoking. I understand that the courts have the power to award the clean-up cost, but there is also the recovery of legal costs to consider. If the defendant gets legal aid, the Department or the council could be left with a reasonable level of costs. Normal practice is that if someone receives legal aid, the opposing side's costs do not get awarded against them. Therefore, you could be left with a situation in which the council or the Department is left with a legal bill that it cannot recover.

131. I do not know whether that can be looked into. As I said, in North Down Borough Council we had a very unfortunate experience of a case on the enforcement of the smoking ban, and the person involved saw himself as a smoking campaigner and, therefore, saw himself as having been deliberately provoked. I do not think that, in saying that, I am saying anything controversial, because the person would say that himself. He took legal aid, but the council had no other option but to continue with the prosecution, and the case ended up costing ratepayers over £10,000. Therefore, that is an example of such an issue.

132. Mr Dallat: Denis, I would like to encourage you to say a bit more than I think that you were going to say. It is not just individuals who commit crime; it is now real, big business. It involves money laundering, revamped paramilitaries, gangsters operating on a big scale and corruption that, I think, is probably unlimited. It also involves an increasing amount of the Police Service's time. Is this legislation adequate to deal with that, or is more legislation coming?

133. Mr McMahon: The point that I was trying to make is that it is about more than just the legislation. We need to ensure that the agency and the Department of Justice are working closely together, and we need to make sure that we are managing all this with a risk-based approach. If people are committing a range of offences involving not just waste but other areas, that all needs to be taken into account. I was trying to say that the Bill is just one part of an armoury of tools that can be used to address those issues. Therefore, as we talked about earlier, if some of the clauses are seen in isolation, they may not capture the full breadth of what it is possible to do within the legislative programme. However, although the legislation is an important element, there must be close working between NIEA, councils and other enforcement agencies to get the best out of this and other legislation.

134. Mr Dallat: That is most helpful. It is important that we understand that there is a bigger picture and that the issue will have to be confronted sooner rather than later. It is not just about the problems that are being created; the people who are involved in waste disposal and so on have become the victims of all kinds of tricks, and sometimes the wrong people are going to court. It is a vicious problem, and I just hope that the Environment Agency fully appreciates that it is now taking responsibility for an issue that is as big a one as we may ever have to face, given the money that can be available to those who do not dispose of waste correctly.

135. The Chairperson: Following on from your point, Donald, co-operation between the Department, Land Registry and the councils is key to getting everything right; there is no point in putting it on paper unless people understand it. Illegal dumping is a serious issue, particularly in my own area; it is ridiculous the amount of money that people have to pay. We now move on to consider clause 6.

136. Mr Starritt: Clause 6 deals with the right of entry with heavy equipment or to domestic premises. At present, when enforcement officers investigate allegations of illegal activity, they are required to give 24 hours' notice before they can enter residential premises or bring heavy machinery onto premises. The feedback that the Department has received from officers is that sometimes after 24 hours' notice has been given, there is nothing to investigate when they arrive; clause 6 will remove the requirement to give notice. However, the safeguarding

mechanism in the form of a court warrant, which officials will need to obtain from a court before entering premises, remains. Those powers will be available to both the Department and the councils.

137. The Chairperson: Such powers seem to be common sense. The owners of dumps that have operated for some years now find it more difficult to obtain licences because of the new EU regulations. Indeed, some have had to close as a result. Have all the issues on identified sites been sorted out, or will the Bill address them? I am aware of things mysteriously being moved from sites overnight before investigators gained access.

138. Mr McMahon: In compliance with EU regulations, some sites will close, and the Department is working with councils on sites that will require additional work to ensure compliance. That will happen more and more, because, as we move towards more recycling and preventing waste in the first place, there is a danger that illegal dumping will increase or that waste will be dealt with inappropriately. That is why it is important to get it right.

139. The Chairperson: OK. We will move on to clause 7.

140. Mr Beattie: Clauses 7 to 9 relate to part 3 of the Waste and Contaminated Land (Northern Ireland) Order 1997. Clause 7 has two separate but related components: first, the removal of underground strata above the saturation zone from the definition of "contaminated land" in the Order; and the addition of a test of significance to the pollution of waterways and underground strata.

141. To understand the effect of those provisions it may be helpful to consider the provision in article 49 of the 1997 Order. Contaminated land is defined in that Order as:

"any land which appears to a district council in whose district it is situated to be in such a condition, by reason of substances in, on or under the land, that—

(a) significant harm is being caused or there is a significant possibility of such harm being caused; or

(b) pollution of waterways or underground strata is being, or is likely to be, caused".

142. In order to determine whether land is contaminated, a district council must first establish that a pollutant linkage exists, and that must consist of a contaminant, a pathway and a receptor. Receptors can include people, livestock, domestic animals, ecosystems, surface water, ground water, and even buildings.

143. Removing the underground strata above the saturation zone from the definition of contaminated land in no way reduces the environmental protection afforded by the legislation; rather, it corrects an anomaly in the 1997 Order, which, in effect, categorised the underground strata above the saturation zone as a receptor rather than a pathway.

144. Pollution of ground water, which is essentially underground strata within the saturation zone and which is quite properly regarded as a receptor, would still be covered. Pollution in transit through the unsaturated zone would be covered in cases where it would be likely to reach the ground water, where significant harm was being caused or where there was a significant possibility of such harm being caused to other receptors.

145. As a by-product of that amendment, there will be a clarification of the demarcation of responsibilities between district councils and the Department, because the current provisions

could create a situation in which both regulators could be regarded as being responsible for dealing with pollution in that area.

146. The addition of a test of significance to the pollution of waterways and underground strata adds consistency to the regime, allows a similar approach to be taken to all types of contamination and enhances the workability of the regime. The current definition of contaminated land means that pollution on the surface must be significant for there to be any possibility of the land being regarded as contaminated in the legal sense. However, any pollution below the surface, however minor, would be sufficient to satisfy the definition of contaminated land. The costs associated with applying the regime under those provisions could be prohibitive for both regulator and regulated alike.

147. Clause 8 provides for a single appellate body to hear appeals against remediation notices, where they have been issued by a district council or the Department. The existing legislation has appeals against notices issued by district councils heard by a court of summary jurisdiction, while the Planning Appeals Commission (PAC) hears appeals against notices issued by the Department. In the interests of consistency, the Department feels that a single appellate body would be appropriate and that the PAC should assume that role.

148. The capacity of the PAC to deal with the additional case load has been raised; however, the number of cases is likely to be extremely small. For example, in the first five years of the equivalent regime in England and Wales being in operation only four notices were appealed.

149. The Chairperson: Another job for the PAC. We will take your word for it that there will be minimal appeals.

150. Mr Dallat: How much will it cost to submit an appeal?

151. Mr Beattie: There are no provisions in the legislation to charge for submitting an appeal to the PAC.

152. Mr Beggs: If there is no charge, might offenders abuse the system by pulling in the PAC to buy time? It can take two years for PAC decisions to be made, so is there potential for abuse of the system by people who want more time?

153. Mr Beattie: The experience in GB has not shown that to be a problem. As I said, in the five years in which it has been in operation in England and Wales only four appeals have been made.

154. The Chairperson: Could the Committee look at that?

155. Mr Beattie: Yes, certainly.

156. Clause 9 seeks to update article 70 of the 1997 Order to take account of the fact that although the Industrial Pollution Control (Northern Ireland) Order 1997 remains in operation, many of its provisions have been superseded by the introduction of the Pollution, Prevention and Control Regulations (Northern Ireland) 2003.

157. As it was always intended that the contaminated land regime would deal primarily with historic land contamination for which appropriate regulatory controls were not in place, it is appropriate that that exclusion be put in place rather than replace existing control measures.

158. To clarify the meaning of the clause, the preclusion of the part 3 regime applies only where contamination is the result of the final disposal of controlled waste; it also means that

enforcement action can be taken under regulations 24 and 26 of the Pollution, Prevention and Control Regulations (Northern Ireland) 2003. It in no way dilutes the existing provisions; it merely updates them in light of the legislative changes since the 1997 Order was introduced.

159. Mr Dallat: Is there a timescale for final disposals? I know places where material has been in final disposal for the past 30 years but has never actually gone anywhere.

160. Mr McMahon: We will have to consider that issue. It is a fair point; I know of a few instances of material sitting out.

161. Mr Starritt: Clause 10, "Producer responsibility obligation regulations", makes minor changes to the Producer Responsibility Obligations (Northern Ireland) Order 1998, which gives the Department powers to require producers to take certain actions to increase reuse, recovery or recycling.

162. It refers to powers of entry and inspection. However, we have been advised that the powers of entry and inspection are not defined in the Order and, for the sake of completeness, they should be. It is a technical amendment. We have referred to the powers of entry and inspection that are defined in the 1997 Order and made a link to that Order to clarify what the Department can do. It does not change the Department's powers; it merely clarifies the position.

163. Clause 11 covers minor and consequential amendments and appeals. We have discussed the meat of the Bill.

164. Mr McMahon: We are happy to take any views on board, and we will come back to the Committee on the points on which we have been unable to give a full answer.

165. The Chairperson: Thank you.

166. We move to a briefing from Arc21 on the Waste and Contaminated Land (Amendment) Bill. I welcome Ricky Burnett, policy and operations manager, and John Quinn, director.

167. Mr Beggs: I declare an interest as a member of Carrickfergus Borough Council.

168. The Chairperson: We have gone through the Bill clause by clause. Gentlemen, you have five to ten minutes to make a presentation, after which members will ask questions.

169. Mr John Quinn (Arc21): I am here to support my colleague Ricky, who has co-ordinated the response on behalf of Arc21 and comes from a regulatory background in Northern Ireland and Scotland. He is more amenable to today's discussion.

170. Mr Ricky Burnett (Arc21): Thank you, John, and thank you, Chairman and Committee members. There are three main elements to our response. We support the move to give duplication of powers to councils and to the Department as a matter of principle; indeed, we supported that some time ago. As members will be aware, councils undertook that function until 2003 when it transferred to the Department.

171. At that time, councils suggested that duplication of powers made more sense than transferring them to one organisation, given the scale of the problem at that time. Therefore, the principle sits comfortably with Arc21 and Arc21 councils. That said, as you heard from the Department, the key is deciding the demarcation lines between councils and the Department on who does what and when. It is important that that be decided before the Bill is enacted. If the

Bill is enacted before agreement can be reached, it will make the situation worse because there will be more confusion and obfuscation of responsibility.

172. I am sure that members will be aware, and they will hear from other witnesses, that there have been discussions between the Local Government Association and the NIEA, which is the body responsible, to devise agreement on those lines; so far, however, that has not been possible. Indeed, I understand that the gap in the demarcation lines between the Local Government Association and the Department is quite big. That is not unusual. There is a similar situation in Scotland, England and Wales where there is duplication. Indeed, in England, a protocol was agreed in March 2005. It sets a line with which, as I understand it, the Local Government Association is relatively comfortable but with which the NIEA is not. Its line is much higher, and it does not want to come down. I am sure that the NIEA will come before the Committee, so I will let it explain its position, but resources are at the core of it. Demarcation and the protocol are vital to moving forward.

173. The second main thrust in our response is resources, and that is looking at the quantum of the problem and ensuring that there is an effective and efficient policing regime that involves everybody. The third thrust of our response is to ensure that duplication of complete powers — the tools in the box given in the Bill, if you like — is as equal with councils as it is with the Department. However, I am not sure that the Bill ensures that, particularly clause 5, which provides for the power to serve notice on someone requiring the submission of transfer notes. That is an important tool and investigatory box for officers; however, it is not exclusive to that, as powers of seizure and the power to enter premises also come into it. It is important that there is parity of powers. If you have duplication of powers, parity of tools seems rational. There is no point in giving an organisation powers only to tie one hand behind its back. Those are the three elements of our response.

174. The Chairperson: Thank you very much for your presentation. Will you comment on fixed penalties? Defining responsibility clearly is vital as is better co-operation and setting out guidelines from the start. Resources are a major issue. Should the fines that councils impose be set in stone? Given the amount of illegal dumping, will councils have the powers and the enforcement sections to impose fines?

175. Mr Burnett: Fixed penalties have a role in enforcement; however, they should not be seen as a panacea, as they have flaws. For instance, there are difficulties for councils administering the Litter Act 1983. Fixed penalties are not a panacea, but they have a role to play, and it is right and proper that they are an available option for minor transgressions.

176. However fixed penalties are no longer an option for significant or repeated transgressions by individuals; in such cases it is better to pursue court action. There should be guidance for practitioners that sets out in detail when certain penalties should be applied. The fines in the Bill are sensible. It is important to be able to decide when to apply the fixed penalty and when to take the more serious action of going to court.

177. Councils need those powers. It is not unknown for unscrupulous operators, as has happened in England, to know how councils operate. They will dump in one area and pay the fixed penalty because they know that their actions will be treated as a single event. There needs to be a network of intelligence among councils, the policing agencies and the NIEA to combat those who work the system to their advantage.

178. The Chairperson: Are the enforcement powers sufficient? That will be a key element.

179. Mr Burnett: The powers are sufficient; who applies them and how is important. I cannot underestimate the value of having a protocol in the agreement. The template for that is the one

in England and Wales. If an organisation wants to move away from it, it must provide evidence for doing so. Resources should not be the basis of that evidence. It is about deciding on the most appropriate organisation to deal with the incident, not who has the resources. Resources should be dealt with separately.

180. Mr Dallat: You talked about penalties. If I get four fixed penalties for speeding, I am off the road. How do we decide when someone has received enough serious fixed penalties to put them inside for a while?

181. Mr Burnett: That is a valid question. The way to deal with that should be included in the guidance. It also means that there will be consistency of approach throughout Northern Ireland; no area will adopt a slightly different approach from another. People will know that that is the case at present and will use it. Guidance will assure consistency of approach throughout Northern Ireland by NIEA and the councils.

182. Mr Dallat: I live in the Coleraine District Council area, within half a mile of Ballymoney and Magherafelt, and I can see problems where someone wants to exploit differences between councils. If Magherafelt takes a soft approach, an individual can go half a mile away and dump waste in Coleraine or Ballymoney. That goes back to the point about uniformity. Do we need better guidance so that all council areas are the same and one area does not become a happy dumping ground?

183. You heard the discussion about whether the proposed penalties reflect the cost of recovering waste or the damage that it is doing to the environment. A person can be fined £100 for dropping a cigarette butt.

184. Mr Burnett: First, we must differentiate between littering and fly-tipping. The English protocol defines anything less than one bag of material as litter and anything more than that as fly-tipping. It is right and proper that the penalty for fly-tipping is seen to be bigger than the penalty for litter. A penalty of the magnitude that is contained in the Bill sends out that signal. The maximum penalty for the worst cases could be an unlimited fine and up to five years' imprisonment.

185. There is quite a spectrum between a fixed-penalty notice and a prison term. The application is important.

186. Mr Beggs: You mentioned the importance of intelligence gathering, particularly if fixed-penalty notices are used. I can see some advantages of that being an efficient method for smaller transgressions. However, does the intelligence gathering in the model used elsewhere include fixed-penalty notices so that someone does not regularly abuse the system to make money and to establish whether there is a wider picture of regular infringements by individuals? Such information could tie in with new vehicle operator licences that are being introduced. If that information was being fed through, and someone cannot even operate an HGV vehicle, that could have a major impact. Who gathers the intelligence and how is the information collated?

187. Mr Burnett: A mechanism needs to be devised for all policing agencies to feed into. The main matter of discussion among those agencies is where it sits. The ability of policing agencies to access the system is more important than who deals with it. Having an accessible system is the important point. The application of penalties is the important issue. At the moment, certainly at the lower level, there is no effective deterrent for fly-tipping.

188. Mr Beggs: You mentioned the gap between local government and NIEA in where the protocol should sit and who should be responsible for what. Can you give an example of where

responsibility was applied outside local government elsewhere? Is NIEA suggesting that that level should apply to councils?

189. Mr Burnett: I am happy to give an example with the caveat that I am not directly involved with the latter end of the discussions between NIEA and the Local Government Association, which, I am sure, could confirm the figures. My understanding is that the English protocol, which is the one that local government will suggest using, states that councils should deal with anything less than 20 cubic metres, and the Environment Agency would deal with any amount over that. The protocol also contains an ability to set local agreements, and that happens. We have a slightly different local agreement. The NIEA mentions 20,000 cubic metres; that is a significant gap.

190. The protocol in England was developed over many years. A great deal of discussion, debate and energy went into it, and it seems to me to be a very good starting point. Let those who want to deviate from that protocol provide evidence for wanting to do so, although resources should not be a pertinent element of that evidence. The main point is who the most appropriate agency is and who is best designed to deal with it in those particular cases. England and Wales have been through the process. Unless there is a good local reason, why reinvent the wheel?

191. The Chairperson: Mr McCrea mentioned a problem about landowner liability.

192. Mr Burnett: To some extent, that extends to the application aspect. Some members of Arc21 were a wee bit concerned that unwitting landowners are left with large bills through no fault of their own. There are checks and balances in the Bill that may help to address that, but there was a concern that landowners would be left with big bills.

193. The next stage is that, once the regulators — the policing agencies — can agree on the lines of demarcation, the landowners become involved because they have a part to play in developing the protocol on who does what.

194. That is a stage that can only happen when the policing agencies have agreed. There is no point involving landowners unless the policing agencies agree on how to take that forward. That is what happened in England and Scotland; the major landowners became involved in a forum to speak and debate. Some of the information that came out of that forum is in the protocols.

195. The Chairperson: Thank you very much, gentlemen.

24 June 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)

Mr Patsy McGlone (Deputy Chairperson)

Mr Roy Beggs

Mr John Dallat

Mr Ian McCrea

Mr Alastair Ross

Mr Peter Weir

Mr Brian Wilson

Witnesses:

Mr David Lindsay Banbridge District Council

Mr Jason Patterson SWaMP2008
Mr Shaun Gallagher
Mr Mark Kelso Northern Ireland Local Government Association
Ms Karen Smyth
Mr Tim Walker

196. The Chairperson (Mr Boylan): Banbridge District Council and SWaMP2008 — the Southern Waste Management Partnership —will brief the Committee on the Waste and Contaminated Land Bill.

197. I welcome David Lindsay, who is the director of environmental services for Banbridge District Council, and Jason Patterson, who is SWaMP2008's technical officer. Gentlemen, you have five or 10 minutes in which to make your presentations, after which I will open the meeting up for Committee members' questions.

198. Mr David Lindsay (Banbridge District Council): Thank you, Chairman, for the opportunity to appear before the Committee. Banbridge District Council, in consultation with local government partners, submitted a written response to the consultation on the Bill that highlighted several issues of significant concern. The first is the offence specified in article 4 of the Waste and Contaminated Land (Northern Ireland) Order 1997. We understand from the initial consultation document that there was a proposal to change the wording through the Waste and Contaminated Land (Amendment) Bill so that the offence would be

"to deposit or permit or cause a deposit on land",

199. and that the defence of someone who was being taken to task over the issue to argue that they did not knowingly permit or knowingly cause a deposit on land. From the perspective of enforcing the legislation, the council was strongly in favour of the suggested change, and we note that that suggested change has not been carried through. The council feels strongly that that will make it very difficult to follow through on enforcement action.

200. Members will be aware that councils, historically, played a significant role in the enforcement of offences relating to the illegal deposit of waste on land. Going back a number of years, my experience as an officer is that that was a significant impediment to enforcement. A landowner could argue quite easily in court that they had not knowingly caused or knowingly permitted a deposit, and that was a significant impediment to securing a conviction against a landowner. As enforcers of the legislation, we felt strongly that there was guilt but that the burden of proof was on the council, as enforcer, to prove beyond all reasonable doubt that the landowner had knowingly permitted or had knowingly caused a deposit.

201. I draw the Committee's attention to the proposed change to shift the burden of proof. There are many precedents for it. Legislation is littered with instances in which there is an offence and there is then a defence on the part of defendants to prove that they did not do something or other, or that they did do something or other to prevent the commission of the offence. One significant example of that is in the Water (Northern Ireland) Order 1999, where the offence is to pollute water and where there is a defence to say that the person did not do so knowingly do so or took steps to prevent that from occurring. We feel strongly that the effectiveness of the legislation will be significantly impaired if the original proposed change to the offence under article 4 does not proceed.

202. The council also felt strongly about the issue of special waste and the proposed amendments to involve local councils in the enforcement of the legislation. We feel strongly that instances of special waste should be the sole preserve of the Northern Ireland Environment

Agency (NIEA) and that councils should not be involved in issues of enforcement regarding illegal special waste deposits. There is a significant body of expertise in the NIEA that does not necessarily exist to the same degree in local councils. A particular knack and expertise is required in dealing with special waste deposits, and we feel that the Department should be responsible for taking forward such issues.

203. The other main issue that Banbridge District Council brought to the Committee's attention concerned the division of responsibility for enforcement. The council, and, I think, the local government sector in general, wholeheartedly supports council involvement in the local enforcement of local issues regarding illegal waste disposal.

204. We feel that it would greatly improve the whole situation to take offenders to task in local settings around the various council areas, where NIEA resource is simply not there to deal with smaller-scale incidents. Incidents may have small-scale pollution impact, and all the rest, but in relation to local and environmental amenity they are very important to local ratepayers and local councils, and we feel that councils would play a very significant role there.

205. We urge the Committee to consider seriously the issue of the division of responsibility. I know that the Department and the local government sector have been trying for some time to develop a protocol, but it is my understanding that that has yet to be tied down. It is a recipe for disaster if the legislation is introduced without any clearly defined protocol that outlines a clear demarcation of responsibilities and a clear understanding on both sides as to who will tackle what. Those are the main issues. I know that Jason from SWaMP2008 has a couple of issues that he wants to raise.

206. Mr Jason Patterson (SWaMP2008): I have prepared a handout for members that outlines the main points. SWaMP 2008 welcomes the opportunity to build on the response that it submitted to the consultation on the Waste and Contaminated Land (Amendment) Bill. The response has been prepared on behalf of the eight member councils of SWaMP 2008, including Banbridge. Our member councils have agreed the following on the Bill's clauses.

207. Clause 1 deals with the fixed penalty notices under article 4 of the 1997 Order. 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 should be able to decide whether the option of issuing a fixed penalty is appropriate in each individual case raises some concern and would, therefore, necessitate additional training for each council before any implementation. Guidance would be necessary to ensure the provision of a set of criteria for when the option of issuing a fixed penalty notice would be appropriate in order to achieve consistency of enforcement across Northern Ireland. That guidance would be best produced in partnership with the waste management groups.

208. Clause 4 deals with the powers to require the removal of waste unlawfully deposited. SWaMP2008 views it as essential that discussions take place with the Minister of Justice on the prosecution and criminalisation of landowners whose lands are the subject of environmental crimes for which, under current law, they have responsibility by default. SWaMP2008 also requests clarification as to who is responsible for clearing litter in the case of unregistered land, where no landowner can be identified.

209. The proposed amendment to article 28 of the 1997 Order makes provision for both regulators to have the power to serve a notice on a suspected offender is supported by SWaMP2008. However, it requests clarity on the issue of special hazardous waste, as David highlighted earlier. Our councils have been told that such material could be dealt with by councils under the Litter (Northern Ireland) Order 1994. There is an urgent need to deal with that confusion, as it is inappropriate for councils to deal with special hazardous waste.

210. Although the proposal to give councils a more proactive role in enforcement is welcome, SWaMP2008 is of the view that a demarcation of responsibility between the NIEA and councils is necessary. On the issue of fly-tipping data, SWaMP2008's constituent councils are insistent that no legislation should be passed before a protocol is developed to address the grey area of who is responsible for the different scales of deposited waste. Only then will it be possible to develop any system for recording accurate data on those incidents.

211. The Chairperson: Thank you very much for your presentations. I am a former councillor, and I know that we suffered a lot in the Armagh area with illegal dumping. Much of the time the councils had to foot the bill, and sometimes the landowners had to as well. That is an issue for them, so we need to get the legislation right.

212. We will take on board your issue around article 4 and will ask the question of the departmental officials on your behalf when they come before the Committee.

213. To follow on from your presentation, have you looked at the potential costs? Have you tried to draft something to see what you could realistically deal with and what would be value for money for the ratepayer? You mentioned demarcation, division and separation of responsibilities. There need to be clear guidelines on who is responsible for what and what is achievable for local councils.

214. Mr Lindsay: It is fair to say that there is a history. Councils have environmental health officers and other enforcement officers in place. There is undoubtedly value for money to be had by integrating the investigation of local, smaller-scale dumping incidents with the role of officers who are located where the problems arise. That will be a significant benefit to the cost of enforcement.

215. Councils are happy to support local districts to improve local environmental quality. An exercise has been ongoing to quantify the scale of incidents of dumping, including smaller-scale dumping, and the impact that that is likely to have on the ability to allocate officer time and goals within council budgets. Subject to the outcome of the review and the intelligence-gathering exercise, councils are adamant that they should receive resource allocation for that enforcement work. In the past, our council has always taken the view that responsibility for dealing with waste that is deposited on private property should rest with the person who perpetrated the offence and/or the landowner. However, there are discretionary powers in the legislation for councils to carry out clean-up acts in default.

216. In the past, Banbridge District Council has not taken up those discretionary powers. We have not exercised those discretionary powers except in really exceptional circumstances, in which there is an imminent risk to public health. We have dealt with deposits in public areas, and so on. We agree that the powers proposed in the Bill continue to be discretionary powers for the council to carry out works in default, and we strongly advocate that that should continue to be discretionary. It would be a significant imposition on councils to have to carry out that work and do clean-up operations with no prospect of ever recouping money from the perpetrators.

217. There is strong support in our council and, I feel, among our partners that we want to be involved. In fact, we lobbied for it after the legislation was changed to remove the powers completely from councils. Experience over the past few years has shown that this legislation is badly needed, and councils need to be brought back into the arena to provide a solution to the problems. However, as you rightly mentioned, Chairman, there is a resource issue, and it needs to be quantified. An exercise is being undertaken at the moment that will help to quantify the scale of the role on both sides, and the likely financial implications for that.

218. The Chairperson: Jason, you mentioned the fly-tipping protocol and data recording. Will you expand on your views on that?

219. Mr Patterson: The issue with the fly-tipping protocol arose from the way in which the Department went about implementing the capture of data. It was put through the environmental health section, but, as David said, various sections of councils deal with fly-tipping material, be it technical services or environmental health.

220. On the scale of the incidents, I sent a report to the Minister on fly-tipping incidents in our region between 2007 and 2009. I can circulate that report to the Committee. There were three separate incidents of fly-tipping of cat litter, which is used in diesel laundering, and the clean-up came to £11,000 for the council involved. The costs are not associated with collecting the material, but with its disposal and treatment. There is a higher disposal cost for special hazardous waste materials, if councils are in a position to have to deal with those incidents.

221. The Chairperson: Have you looked at any protocols in England, Scotland and Wales that are working? Have you any ideas?

222. Mr Patterson: In our response, we said that the capture of the data would work, but it is necessary to have a protocol in place to see who deals with what scale of incidence. As David said, we are not concerned about what scale is set — obviously, the councils have to deal with anything under the current limit of 20,000 tons. The establishment of a protocol as to who deals with what size of a load, be it a trailer load or a lorry load, is key. If that is established, the authorities will be able to record the data more successfully, because we will know who is dealing with the case.

223. At the minute, no one knows who is dealing with each incident. They are done on a case-by-case basis. In the worst-case scenario, three or four statutory organisations are brought into the loop for cases in some of our bordering councils. HM Revenue and Customs gets involved when material is brought across the border and deposited. The buck is being shifted all around the place, and it is not effective.

224. Mr McGlone: Thank you for your presentation. Those of us who have been on local authorities are aware of such cases. I heard some of the figures that you quoted about cat litter, and I would not be surprised if they were from Cookstown District Council. I am aware of at least three such cases, and the problem usually relates to where the responsibility lies; it is like pass the parcel. We hear that it is not the responsibility of the NIEA but the responsibility of the council. Meanwhile, some critter is crying because there is a pile of stuff dumped beside a stream.

225. I agree that there needs to be some definition as to where the responsibility lies, Mr Lindsay, because the dumping of hazardous waste needs to be dealt with promptly. I have had experience of several illegal dumps, including one big one that was difficult to deal with. It takes time to establish who is responsible. How do you define "hazardous waste"?

226. Mr Lindsay: The legislation contains definitions of special or hazardous waste. The type of material that you refer to, which is used in diesel laundering, and so on, falls into the category of special hazardous waste. There are value-for-money issues, because that is one of the most common types of illegal special waste disposal. Invariably, it appears on a public road or a lay-by, and the finger will point to the council as the body whose duty it is to remove litter and any material or debris that is on the roadway.

227. Each council is being left to try to deal with each deposit, and that is not cost-effective. If the NIEA had central responsibility for dealing with any illegal waste deposit that was classified

as special or hazardous, which would include that type of thing, it could have one big contract with one large provider. The unit cost of treating or disposing of that material might be a fraction of what each council has to pay to deal with it on an ad hoc, one-off basis. It makes sense to centralise and co-ordinate how that material is dealt with. That is aside from the expertise issue — councils do not possess as much expertise as our NIEA colleagues.

228. Mr McGlone: Did I detect a difference of emphasis between the two of you on the question of the land on which the waste is disposed? Mr Lindsay was very clear on it, but perhaps I did not pick up on what Mr Patterson said.

229. Did I pick up a slightly different tone in what you were saying on that? You talked about contacting the Department of Justice. I will explain where I am coming from. I can see that there are cases in which people, perhaps for £70 a ton, open up the bottom of their field, which may be up a long lane, and I understand that. Equally, I have had cases in which access to people's private land was achieved just by opening up a gap, and they had a volume of stuff dumped on their property. They did what was proper, which was to contact the statutory agencies and tell them that a pile of stuff had landed on their property. What happened? As a consequence of NIEA enforcement, in one case, the landowner was charged £16,000. I met NIEA officials about that incident: they were reasonable enough about it, but that was the situation. On one side, I can hear the just defence from the chancer and, equally, on the other side, I can hear the defence of the genuine person who had that stuff lumbered on him. Have you given any consideration as to whether there is a reasonable path to be trod?

230. Mr Lindsay: Jason and I discussed that earlier. The tone that Jason was setting had a slightly different slant, with which I totally agree. However, they are not contradictory views. Council officers and members feel strongly about the fact that they do not want people to be labelled inappropriately as criminals. Nevertheless, the proposed amendment to existing legislation gives a clear defence to landowners that they did not knowingly permit or cause that deposit. The burden of proof to the court is less on that side of the fence than it is for the enforcement authority to prove that they did knowingly cause or permit deposits. That must be proved beyond all reasonable doubt. Case law has shown that that burden of proof and the evidence that has to be presented are very significant.

231. I understand from NIEA colleagues, and they can speak for themselves, that they have found the existing wording to be a significant impediment. They may relate some of the cases in which they have failed to bring someone to justice: someone whom they were fairly confident was guilty but they were not able to prove that beyond all reasonable doubt, which is what they were required to do. The defence is there, and we feel that there is enough of a defence to the landowner in the originally proposed amendment. It does not necessarily give a blank cheque to the councils or to the NIEA to prosecute any landowner willy-nilly where a bit of waste appears on unlicensed land. We would use proper enforcement protocols.

232. When I was dealing with the enforcement issues from the council's perspective under the previous legislation, I would have been looking to see whether the deposit was fresh, whether it had been going on for weeks and months and years, or whether it was, quite evidently, a one-off deposit that had happened quite recently in the middle of the night and was something that the landowner could not have foreseen. In those circumstances, good enforcement practice would dictate that we would not be trying to pillory an innocent landowner.

233. However, there is the other extreme, where it is evident that there has been co-operation, at the very least, over a piece of land, and where the landowner has allowed an illegal deposit. If we have to prove beyond all reasonable doubt, before we ever get past the starting point, that that landowner knowingly permitted or knowingly caused the illegal deposit, it is a significant impediment, which our experience of enforcement has shown.

234. The Chairperson: Is that in relation to your amendment to article 4?

235. Mr Lindsay: The article 4 amendment.

236. The Chairperson: Following on from that example, I know where something exactly the same happened. The landowner had asked for hard fill and, either by accident or design, was given an illegal deposit. As a result, buildings were contaminated and had to be closed off. Even when I acted to ask questions of the NIEA, because there was ongoing enforcement, I could not get anywhere near it or ask any questions. Co-operation needs to be much better. I do agree with you that we clearly need to look at some instances and get an understanding of who is perpetrating the crime.

237. Mr Lindsay: In a case such as that, the defence is quite clearly there. Any landowner could explain those circumstances to the magistrate. There is a lesser burden of proof for the landowner to prove that he took the actions necessary to avoid knowingly depositing or knowingly causing. I argue that the original proposed change, which has not been included in the Bill, was a good balance. It made it much easier to enforce against the really guilty people, but it also provided a defence for the landowner who is genuinely innocent.

238. Mr McGlone: On that point, do you accept that most of those chancers dump it on someone else's land anyway?

239. Mr Lindsay: Yes. I would say that there are very few landowners taking money for waste and depositing it on their own land. In most circumstances, the landowner is probably co-operating with someone who is taking the money for the waste.

240. Mr McGlone: The point that I am making is that the last place that people who are engaged in the activity are going to dump the cat litter or diesel waste is on their property. They will dump it and leave somebody else with it.

241. Mr Lindsay: It may well be that they just do not have land of their own on which to deposit the waste.

242. Mr McGlone: I see our chief environmental health officer sitting behind you. He knows exactly what I am talking about, because he has been to Ardboe air drum many times for that very reason. My problem is that the innocent landowners are the people who were lumbered with the grief.

243. Mr Patterson: That point emphasises the need for guidance for council staff as to when to issue a fixed penalty notice if they have to make a call on a site or a landowner.

244. Mr Beggs: I declare an interest as a member of Carrickfergus Borough Council but also as a homeowner. I own 25 acres of land, and that illegal stuff could be dumped on my home or agricultural land. I can see both points of view. It is important that there be an appropriate balance. You referred to the original proposed amendment. Do we have a copy of that? It is important that it is clear that the entirely innocent property owner is not being hammered, and there must be clear guidance to ensure that that does not happen. However, there must also be appropriate regulatory powers to enforce against those who may not be as innocent.

245. I see that the powers to remove the unlawful deposit will apply to the landowner. The landowner will have to be responsible if there is no tenant or anyone else responsible. There has to be a method of tidying things up, so I can understand that, but there is an issue about whether other penalties should fall on someone who is entirely innocent. What makes you so

sure that the balance will not go too far the other way? We want to catch the guilty and ensure that the innocent are protected.

246. Mr Lindsay: The offence outlined in the Water (Northern Ireland) Order 1999 is there, and it has been tried and tested through courts. I know from an environmental health perspective, as I have been dealing with NIEA water-quality inspectors taking cases from water pollution offences, that sometimes, to their frustration, the defence available is successfully made. Yes, there was a pollution incident, but the person against whom enforcement action was proposed was quite able to avail himself of the defence that he did not knowingly permit, or took reasonable steps to prevent, that pollution incident.

247. There is precedent. It has been couched and balanced in that way, and the law has worked in that respect. Enforcement practice and protocols are important, because enforcers must not be permitted to try to take to court innocent landowners who will have to avail themselves of the defence. That is where the expertise and professionalism of the enforcement agencies come into play. They carry out the relevant pre-investigation work, decide whether a landowner is liable to be able to avail himself of a defence of knowingly permitting or causing an offence and, in that situation, not proceed against the landowner.

248. The Chairperson: I want to read something for clarification. The consultation document that was issued last year stated: "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."

249. You sent us that.

250. Mr Lindsay: In the original proposal, the Department went on to say that mention of whether the offence was knowingly permitted should be made. I do not necessarily agree that the Department needs to say that. I would argue that the offence should be the deposit or the causing or the permitting of the deposit on land for which there is no licence for that purpose. One of the possible defences of an individual against whom the Department proposes to take action would be that he did not knowingly cause or permit waste to be dumped. I do not necessarily agree with the Department that article 4 needs to contain the words "whether knowingly or otherwise", because that seems to almost contradict the defence. There is a subtle difference there, but it may be important.

251. Mr I McCrea: I declare an interest as a member of Cookstown District Council, which is represented by SWaMP2008. There will always be cowboys whose intention it is to dump waste anywhere that they can to try to save money. They get away with it many times, and, depending on how much waste has been dumped, councils are left to carry out the clean-up and to try to get their money back. There is a grey area as to who is responsible for the clean-up. The Department says that it is the council, and the council says that it is the Department. I have been involved in a few cases in which the argument between the Department and the council went back and forward.

252. You mention the defence of individuals not knowingly permitting someone to dump waste on their land. I know of a case in which an alcoholic who never left his house did not knowingly permit anyone to dump waste on his property. The logic is that the council will do the clean-up,

because that is what the Department will say should happen. How will the council get its money back? At a cost to the ratepayer, the councils have to clean up what are, in some cases, large amounts of material. In some circumstances, there is no opportunity for councils to get their money back. Do you foresee any changes that would, in effect, force the Department to have to do it, or the introduction of a mechanism that will allow finances to be easily reimbursed if the landowner is not responsible?

253. Mr Lindsay: The powers for the council to do clean-up works in default must continue to be discretionary. There must be no obligation on councils to go in in default and try to clean up private land.

254. Mr I McCrea: Is that the case no matter what the amount of waste? Sometimes the deposits can be small.

255. Mr Lindsay: That is certainly the case with private land, regardless of the amount. Otherwise, it would bring us to a nightmare scenario. If perpetrators got to know that they could deposit waste and avoid paying a £100 or £120 landfill fee — or a lot more in the case of special waste — they would dump the material and not worry about the circumstances of the landowner, because, if the landowner could not be found or could not pay for the removal of the waste, the local authority or the NIEA would go in and clean it up. That is a nightmare scenario, and one that must not happen. However, the authorities, either the NIEA or the councils, may intervene in exceptional circumstances in which there is an immediate threat to public health or an immediate serious risk of significant pollution, if it is in the greater public interest to intervene.

256. It is a matter for debate as to what sort of slush fund should be set up to pay for that, and as to who should pay into it, in the event of an authority not being able to recoup the money. It is an interesting area. It may be that some sort of fund could be set up — for example, through tax credits — to draw down money in situations such as that, in which it has not been possible for the relevant landowner to expedite a clean up, either quickly enough or at all, and in which there is a real imperative to get it sorted. It is important that that cost is not borne by, for example, the ratepayers of a particular district.

257. Mr Patterson: Under clause 1, proposed new article 4A of the 1997 Order states that councils will be permitted to use the funds from the fixed penalty notices to recover the cost of offences. However, those powers are intended to be used for less serious offences. Therefore, councils would still be left with the burden of the bigger offences.

258. Mr Dallat: I do not understand why criminals who dump stuff illegally are always described as cowboys. John Wayne was my favourite cowboy, and he never did anything like that. [Laughter.]

259. Mr I McCrea: He is also a fictional character.

260. Mr Dallat: Perhaps the odd butt on the ground, but that would be it.

261. On a serious note, following the Minister's announcement last week that the 26 councils are to remain, I thought that there would be a renewed enthusiasm among local councils to make their worth felt in a real and practical way. I am probably picking up the wrong message that this should be the overall responsibility of the Environment Agency, which is cocooned in the Gasworks, seldom seen and grossly understaffed. However, is there an opportunity for collaboration among councils to seriously take on board the wishes of the public? Our environment is a mess, largely through criminality, but also through a culture of untidiness.

262. There is not a person out there who does not use the term buck-passing. This morning, I passed three dead badgers, and I know that people will want to know whose responsibility it is to remove them from the road. They cause a serious stink and are a health hazard. Councils do not like to remove a dead badger, particularly if it is on a border between two council areas. Staff will practically go out with a foot ruler to show that it is not in their area.

263. The issue we are here to discuss is a very serious one. It is good that councils come and give evidence, and we certainly want to make best use of your presence. However, there is a horrendous problem over who is responsible. People can spend a whole day, as you know, ringing organisations such as the Rivers Agency and Waterways Ireland. Something that we have not discussed is the fact that much of the pollution in our rivers and lakes. Who is responsible for cleaning them up? That should be covered in legislation and should be addressed. The practice of buck-passing all over the place among Departments must end, and we need the legislation.

264. I have a great deal of sympathy for landowners, but, from experience, I know that, when a landowner erects a clearly defined fence, by and large that stops the problem. Perhaps landowners should define their land, because fly-tipping occurs when slats are left open. I would like to hear your response to those points.

265. Mr Lindsay: From Banbridge District Council's point of view and based on my collaborations with other councils through the chief environmental health officers' group and with SWaMP2008, I know that councils are wholeheartedly in favour of getting stuck in and dealing with the blight that is illegal waste disposal, and associated issues. We see that as a key role for councils and local government officers who, as I said earlier, have local presence, local knowledge, local contacts and local intelligence. We are well placed to carry out that role, and we are wholeheartedly up for making a significant contribution to tackling the problem. That is a given; there is no argument about that. As I said before, collaboration and working together among central government, the NIEA and local councils is absolutely essential. Local government officers want to do that.

266. Mr Dallat talked about buck-passing. If the legislation gives a dual role to councils and NIEA on those issues, that will be a 110% guaranteed recipe for buck-passing, the like of which you have never seen before, Chairman, unless we get a clearly identified, mutually agreed demarcation of roles and responsibilities in an enforcement protocol. That is paramount. Local government officers have been making that point for at least the past two or three years, when it was on the cards that councils were going to be given back the enforcement role. We need that to happen, and it needs to be mutually agreed and clearly communicated. Then, anyone who tries to pass the buck will fall foul of the clear protocol.

267. Mr Dallat: That is good. I agree with all that.

268. The Chairperson: There were some good and some bad cowboys, Mr Dallat.

269. We will have more questions to ask about article 4. Will you provide us with your preferred exact wording? The Committee would like to look at that. Thank you.

270. Mr Lindsay: Thank you very much, Chairman.

271. The Chairperson: We will now receive a briefing from representatives of the Northern Ireland Local Government Association (NILGA) on the Waste and Contaminated Land (Amendment) Bill. I welcome Mr Shaun Gallagher from Derry City Council, who is the chairman of NILGA and vice-chairman of the Strategic Waste Board (SWB); Mr Tim Walker, from Belfast City Council, who is the UK president of the Technical Advisors Group (TAG); Mr Mark Kelso, who

is Cookstown District Council's chief environmental health officer; and Ms Karen Smyth, who is NILGA's head of policy.

272. Mr Weir: I declare an interest as a vice-president of NILGA.

273. Mr Beggs: I declare an interest as a member of Carrickfergus Borough Council and as a landowner.

274. Mr B Wilson: I declare an interest as a councillor and as a member of NILGA.

275. The Chairperson: Here we go with all the dual mandates. I ask Mr Gallagher to open up the discussion.

276. Mr Shaun Gallagher (Northern Ireland Local Government Association): I thank the Committee for the opportunity to talk to you today. Much of what you will hear will follow on from what the previous set of witnesses talked about. My colleagues and I will take a few minutes to highlight the key issues for local government that have arisen from the Waste and Contaminated Land (Amendment) Bill, after which we will be happy to answer any questions that Committee members may have about local government's waste management role.

277. Waste management is a key issue for local government because of the huge impact that it has on local communities, the economy, the environment and council budgets.

278. The Bill marks an opportunity to amend and make small additions to current legislation. We welcome that. Local government asks the Committee to take note of the fact that we are encouraging the Department to work on a longer-term, more creative strategic approach to developing appropriate legislation for Northern Ireland on environmental issues, including climate change and waste management. In addition, we would value the Committee's support in ensuring that the relevant units of the Department are adequately resourced to do that important work. Furthermore, we request that the Committee considers the potential for the Department of the Environment (DOE) to establish a working forum in which the Department, the NIEA and councils can meet regularly to consider and discuss enforcement matters.

279. Members will have received our written submission on the Bill and will be aware of the issues that it highlights. The key issues for councils in the proposals are the sharing of enforcement responsibilities with the NIEA, and the necessary working arrangements and protocols that need to be developed. That is what we shall focus on today.

280. Before handing over to Mr Walker, I want to highlight one simple fact: the NIEA's responsibility for a site kicks in when 20,000 tons of waste has been deposited on it. A council's responsibility kicks in when 20 tons of waste — around two bin lorry loads — are involved. Consequently, responsibility for the 19,980 tons in between is a grey area. As the previous witnesses said, things could be tightened up a lot.

281. Mr Tim Walker (Northern Ireland Local Government Association): Good morning, Chairman and members. I shall cover the proposed amendments to articles 4 and 5 of the Waste and Contaminated Land (Northern Ireland) Order 1997, how to set rules and responsibilities, and the establishment of a protocol. I shall then hand over to Mark Kelso, my colleague from the Northern Ireland Chief Environmental Health Officers Group (CEHOG).

282. At present, the issue for councils is that our enforcement options on the legal disposal of waste are limited merely to issuing article 28 notices, which relate to the removal of waste from land but do not include a facility to recover costs. Therefore, we are pleased to see the

legislative proposals and amendments to allow councils to prosecute offences for breaches under articles 4 and 5. However, we are also of the view that the proposals need to go further in order to give council officers the same comprehensive set of powers of entry and investigation that the NIEA has under article 72 of the 1997 Order, including regulations under article 5(7), which are to do with the recovery of data and the storage of and access to information. Otherwise, the powers under articles 4 and 5 will not be sufficiently deliverable.

283. For a number of years, NILGA, TAG, CEHOG, the Society of Local Authority Chief Executives and Senior Managers (SOLACE) and the Department have been working on an agreed approach to on-the-ground enforcement and delivery. It has come to bear that the NIEA — formerly the Environment and Heritage Service — does not have the resources to tackle breaches at the lower level that you heard about a few minutes ago. The almost arbitrary figure of 20,000 cubic metres — 20,000 tons — of waste has become the cut-off point. Therefore, we believe that a large number of illegal sites in Northern Ireland are not being actively or rigorously pursued. In addition, a multiplicity of smaller incidents is also being overlooked. If that situation is allowed to continue, given the legislative changes that are coming from the framework directive and increasing landfill charges, it is likely that that level of dumping and illegal fly-tipping will increase, leading to quite a significant problem. You heard from our colleagues in SWaMP2008 of the potential for a fly-tipper's charter. Fly-tipping is likely to become more of a problem as the departmental focus shifts increasingly to commercial-, industrial-, construction- and demolition-type wastes, which, as I said, are a result of the increased cost of landfill — rapidly approaching £100 a ton.

284. How do we come up with a solution? As I said a minute ago, for a number of years, we have been discussing with the DOE how to establish a working protocol. You heard that councils would like to play a more proactive role and that the amendments under articles 4 and 5 would provide them with that. However, we are also firmly of the view that it is critical that we know what the councils and the DOE will do, and how we will transfer the responsibility from one party to the other.

285. Currently, local government is only responsible for the Litter (Northern Ireland) Order 1994, and, as you heard, the NIEA has informed us informally through various conversations that it is not really interested in dealing with any waste volumes or events of less than 20,000 tons. The entire local government sector is firmly of the view that the demarcation point, as developed through a protocol in England and Wales, should be around 20 cubic metres, which is of the order of a single, large skip lorry full of waste. That is the established protocol that was developed in England and Wales, and the phraseology is:

"fly-tipping of quantities of waste up to and including a single tipper load of waste deposited at one time (i.e. up to approximately 20 m³ in a single deposit)".

286. Our recommendation from the consultation document is that that should be applied in Northern Ireland.

287. The protocol developed a number of years ago in England and Wales was based on the most appropriate organisation, or tier of government, dealing with incidents. Our colleagues in SWaMP2008 told you about local knowledge and ability to respond. The protocol is not based on the quantity or number of incidents but on volume. Therefore, a clearly set out fly-tipping waste disposal protocol is required to ensure an effective working partnership between us and the Environment Agency. That should be done before the proposed amendments to the 1997 Order are implemented.

288. Given the relative size of councils here, we recognise that a demarcation point of 20 cubic metres would be a much more extensive commitment on behalf of Northern Ireland councils

compared with their English and Welsh counterparts. As you heard, adequate resources will also be needed to allow councils to investigate and enforce articles 4 and 5 and to deliver any requirements arising from such a protocol. We feel strongly that, at this point in time, it is unacceptable simply to pass on inspection, enforcement and clean-up costs directly to ratepayers. Even with the identified delineation between councils and the NIEA, they will both need to seek additional resources to discharge those duties.

289. I shall now pass over to Mark Kelso, who will look at some research and data issues, after which I am sure that there will be questions about the best mechanism with which to go forward.

290. Mr Mark Kelso (Northern Ireland Local Government Association): Before I talk about data, I must say that, until December 2003, councils did the work. They were the sole regulators for illegal waste disposal in Northern Ireland. There was no such thing as the Northern Ireland Environment Agency's environmental crime unit. The work was delivered by a small body of officers in local government. With the introduction of this legislation, hopefully, we will come full circle, and councils will have a statutory role to play.

291. With respect to research and data collection, I want to highlight the fact that discussions have been ongoing with the DOE to develop an evidence base of the level of illegal activity across the 26 council areas. That has been difficult to achieve, for the obvious reason that councils do not have the statutory remit to undertake such a body of work. Nevertheless, we have been trying to collate information. At this point, I should emphasise that councils already populate an information base on waste data-flow information for the Department, and that is provided quarterly. It should also be noted that two of the questions to which councils respond relate specifically to illegal waste disposal. Therefore, there is already a data set in the Department, although there may need to be more cross-sectoral working.

292. Taking forward a new data information system will involve a new body of work, so it must be realised that, in doing so, councils will incur considerable costs. Some research has been carried out into the matter, and the estimated cost for Northern Ireland ranges from £350,000 to £500,000. Would that be a good use of ratepayers' money? Although at government level it would not be, we argue that there is a sufficient evidence base to move forward on the basis of adopting the level of waste for which councils will be responsible — up to 20 cubic metres or 20 tons — that Tim Walker identified. Anything above that level would be the responsibility of the Department or the Northern Ireland Environment Agency.

293. Of the statistics that have been gathered, I draw members' attention to the work that was carried out in 2006-07 and 2007-08. In 2006-07, 17 councils participated in a short, snapshot survey, in which a total of 3,243 incidents of fly-tipping in their localities were identified. That is not a full picture, but one can safely say that the figure for the whole of Northern Ireland would be in the region of 4,500 to 5,000. In 2007-08, 250 formal referrals were made to the Northern Ireland Environment Agency, using its formal referral process, which involves completing a very detailed form by setting out the nature of the incident, its geographical location and the potential volume and type of material that needs to be dealt with. My understanding is that the feedback on referrals made to the NIEA is very poor. Of the 250 formal referrals, councils received feedback on any action that was taken in only 1% of cases. I also understand that the level of referrals has not decreased. A snapshot survey carried out last week indicates that the number of incidents per council is of the same order. Any additional workload that might be placed on councils in order to gather statistical information would have to be treated as a new burden. As such, any cost element would have to be allocated to councils.

294. We welcome the opportunity to dispose of some incidents by use of fixed penalty notices. It has already been said that the relevant agencies need to produce a clear enforcement guide that

identifies the parameters for using the fixed penalty process. Fixed penalties provide a cost-effective regulation mechanism, and they would enable councils to dispose of a number of small-scale incidents without going through the full rigour of the court process, which can be very time-consuming and costly. However, there are instances in which rogue traders must be dealt with, and the fixed penalty process would not be a suitable measure with which to do so. In such cases, the legal process would be the option to choose.

295. It has been suggested that, for domestic incidents, a fixed penalty fine of £200 should be levied. CEHOG, which is my professional group, identified a fixed penalty of £500 for a small commercial-type incident; for instance, a hot-food vendor who decides to throw his accumulated waste from a day's trading over a hedge rather than deal with it himself. Therefore, we are suggesting a £200 fixed penalty fine for domestic waste and a £500 fine for minor commercial-type incidents. The moneys accrued from those fines would be used to pay for the service and the clean-up costs that councils might incur as a result of undertaking their responsibility. Obviously, there needs to be some communication between the regulators. NIEA also has the option to levy a fixed penalty fine, and its guidance would need to be taken into consideration on that matter.

296. We need a very clear protocol to determine who does what in Northern Ireland. It is evident that such a protocol must be finalised, agreed and put in place before the legislation comes into effect, or we will be faced with a situation in which one body will point the finger of responsibility at another. The agencies need to engage in clear partnership-working. For instance, I work in the west of the Province, and I cannot tell you who in the Environment Agency has responsibility for my region. That person has never made himself or herself known to me or my council. That is an indictment of the way in which the service is delivered. There must be clearer and more robust mechanisms for the way in which we do our business.

297. There have been situations in the west of the Province in which we have had to bear the costs of the clean-up of contaminated waste from fuel-launders processes. We need a fund to be set aside to deal with that issue so that councils can bid for the costs of those activities. The protocol would sort out who has the responsibility for cleaning up material that is dumped in watercourses and waterways.

298. Mr S Gallagher: That completes our submission, Chairperson.

299. The Chairperson: You said that, before 2003, councils had responsibility for waste management.

300. Mr Kelso: Yes.

301. The Chairperson: Did they have responsibility for all types and amounts of waste management? Was there a threshold?

302. Mr Kelso: No. Through the councils, local authorities were, before 2003, under the Pollution Control and Local Government (Northern Ireland) Order 1978, fully responsible for dealing with all waste licensing and enforcement against illegal waste dumping activities in Northern Ireland.

303. The Chairperson: Do you want to set a threshold for councils? How would such a threshold be set? You said that councils in England were bigger, which is fair enough. They may have the ability to facilitate a higher threshold. However, there are bound to be examples where the protocol is working better — in Scotland, perhaps. Can you expand on the protocol and on the threshold?

304. Mr Walker: The threshold that we are suggesting is borrowed specifically from the English and Welsh protocol, which, I think, was developed and finalised between 2004 and 2005. It very clearly involves a variety and range of partners. It is not just about a relationship between the councils and the Environment Agency; it also brings in the National Farmers' Union, the Forestry Commission, National Rail and a whole range of landowners on whose land waste might be dumped. The protocol looks at roles and responsibilities, and at who is best placed to respond. Councils recognised that they could respond to and deal with 20 tons of waste quite quickly. Any larger amounts could be referred to the Environment Agency, which could take appropriate measures. A series of hotlines and freephone reporting lines were put in place.

305. The protocol allows individual counties to work specifically with the Environment Agency in their area. It provides an overall framework for the whole of the UK, in which individual Environment Agency officers put in place. The partnership in the locality, in places such as Leeds or Bristol, was supplemented with the likes of Flycapture to record and report the number of incidents nationally.

306. Where it has worked, it has done so very well. In many instances, there have been successful prosecutions, and partnerships been very successful in reducing the amount of fly-tipping. There are other areas in which it has worked less well, because partnerships do not always work.

307. The protocol is not a very large document. Nevertheless, it has been produced, and there is a separate version specifically for Wales. It runs to only something in the order of 35 to 40 pages, but our contention is that it could act as an effective starting point for discussions with the DOE or the NIEA. We could use it as a framework document from which to work up a local edition.

308. The Chairperson: It is common sense to set out responsibilities and guidelines, and we need to achieve those through the legislation.

309. Mr S Gallagher: In fairness, the NIEA, which was formed in 2003, took on responsibilities that, I believe, it did not have the resources for or the expertise to deal with. The difficulty is that communication between the NIEA and local government is, as most representatives will agree, very poor. I get the impression that it does not feel obliged to engage with local government, politicians or elected Members, and that is a serious difficulty. For example, as the vice-chairperson of the SWP, Fermanagh District Council approached me concerning an illegal trailer of waste that had been dumped on the main road into Enniskillen. It was over the 20-ton limit, so it sat there for a week because nobody could agree on who should dispose of it. It was supposed to be the NIEA, but it said that it did not have the expertise. Eventually, Fermanagh District Council processed the waste. The NIEA then, for want of a better word, summonsed the council to court for illegally processing illegal waste. I had to speak to Minister Poots to get the case withdrawn. That is the kind of nonsense that sometimes happens. Local government does waste very well; the expertise and history are there. We must restore the balance.

310. Economic pressures and the growing list of materials that are not allowed to go to landfill mean fly-tipping will increase. Therefore, measures to tackle it will have to be resourced. At this moment, in Craigavon Borough Council's area, there is a trailer of waste that has obviously come from the illegal fuel industry. It is parked up and will have to be dealt with. Again, it will be the council that will have to move in to process the illegal waste, because acids and all sorts of chemicals are involved. I commend the NIEA for its work on the big, high-profile cases, with which it has had success, but it needs to learn to engage at lower levels so that, as elected members, we get fewer and fewer such incidents.

311. The Chairperson: I totally agree. Down through the years as a local councillor, I had similar difficulties. A gap clearly exists, and it must be closed. We will go back to the NIEA to find out exactly what the problems have been. Sometimes the NIEA gives the impression that it is operating in a silo. To be fair, it is not about individuals, but that is the impression that the agency gives. Nevertheless, it is opening up a wee bit.

312. Ms Karen Smyth (Northern Ireland Local Government Association): Fly-tipping is such a big problem, so finding adequate resources to tackle it has been the main issue for the NIEA. In recent months and years, NILGA has begun to ask itself about the future of landfill tax. At the moment, landfill tax is collected from councils, goes into the Exchequer and comes back through the Northern Ireland block grant. However, if landfill tax money were to be ring-fenced in order to deal with environmental issues, we would be ahead of the game in dealing with and resourcing the solutions to the problem.

313. The Chairperson: It is very hard to get money out of Sammy Wilson.

314. Ms Smyth: Yes, I know.

315. The Chairperson: Nevertheless, it is a resource issue. I would like you to talk about actual costs. You have data on fly-tipping incidents, and, presumably, you have projected costs. How will councils cope? We must ensure that we get value for money, and anyone who has been a councillor will know that when someone sees something dumped on the road, whether it be a crisp bag or a lorry load of stuff, the council is the first port of call.

316. Mr S Gallagher: To give you an idea of costs, Craigavon Borough Council, for example, has to deal with that trailer full of materials from the illegal fuel business. That will cost the council around £10,000 to process. That money will come out of the council's engineering department's budget or some other budget. We have all been there and we all know what happens. Something else will have to do without, because 10 grand will have to be allocated to process the waste. If we get tighter control and co-operation, it is important that a resource fund is in place that councils can dip into so that their budgets do not go haywire during the year. Unfortunately, such illegal activities continue.

317. The Chairperson: You talked about bidding for funds to tackle the collection of waste. It is obvious that you will want to set a threshold for that. The other issue that I want to raise concerns fuel laundering. It seems that there is one threshold for one type of activity, but you are talking about bidding for funds to deal with diesel laundering, and so on. Can you expand on that?

318. Mr Kelso: I will deal with the laundered product to start with. The best way to describe that product is as a hazardous waste. On that basis, it should not even be discussed at this table, because it falls into a different category altogether. It should be dealt with by the Department of the Environment through the Northern Ireland Environment Agency as a hazardous waste. Obviously, the Department can respond to the issue of whether it should deal with complaints when it gets them. To date, however, councils have been identifying issues in their area and formally notifying the Department that there is potentially hazardous waste that needs to be dealt with, yet nothing has happened. It has fallen to local councils, in the best interests of public safety, to address the issue and deal with it to the cost of the ratepayer. As Shaun Gallagher said, some of those illegal activities, which are happening regularly in Northern Ireland, have cost more than £10,000 each to deal with. If councils are going to have to keep doing that work, a fund should be set aside for it. Some sort of cost-recovery mechanism is needed for councils that are doing work that the Department should be doing.

319. You asked about the data collection situation. We collected data in 2006-07 and 2007-08. We have had discussions with the Department since then about the need to put in place a data collection system to provide an evidence base to identify where the cut-off point for responsibility lies between councils and the Northern Ireland Environment Agency. At present, we are saying that we do not really need that level of detailed information to agree the protocol. If we are to replicate the protocol in England, Wales and Scotland, a demarcation level will be set at 20 tons. A load of less than 20 tons will be dealt with by councils, but any load greater than 20 tons will be dealt with by the NIEA. There is a need to gather information, but that information can be gathered further down the track. We can put measures in place to do that, but we need to agree the protocol first, after which we can look at the potential for gathering information as we start doing the business.

320. At present, we estimate the costs to Northern Ireland local government of data recovery, based on 2008 figures, to be between £350,000 and £500,000. That alone, if we have to go down that route, will be a new burden on councils. We will have to bid for that money to be made available to councils to put in place a robust data collection system.

321. The Chairperson: Do members have any questions? They are very quiet today.

322. Mr Beggs: You say that you want a fund to enable local government to recover significant costs that may be incurred. Will that be on a percentage basis, so an incentive remains for ratepayers to report incidents? Will councils be able to recover 100% of their costs, or perhaps 50% or 90%?

323. Mr S Gallagher: Do you mean for the recovery of more than 20 tons of waste?

324. Mr Beggs: For whatever the council is bidding for. You are bidding for a fund.

325. Mr S Gallagher: If the Department provides a fund, improving the situation will prove very simple. As I said, councils do waste well, so if something is dumped illegally, the NIEA will have the facility to approach the relevant council to ask for the problem to be cleaned up and sorted out. It will be able to authorise the council to deal with the incident. Subsequently, the council will submit a bill to the NIEA, and, hopefully, funds will be available. That is how I envisage the problem being resolved. If there is still a grey area, there will be a fight for different budgets, and it will be very difficult for councils and the NIEA to allocate parts of budgets that they may not have.

326. Mr Beggs: What happens if less than 20 tons of waste is dumped?

327. Mr S Gallagher: If it is less than 20 tons, the local authority will deal with it. Twenty tons is a substantial amount of waste, equating to the average 40-foot lorry full to capacity. I would class anything more than that as a major waste incident, which the NIEA would probably need to deal with.

328. Ms Smyth: In the current economic environment, we must be realistic, because bidding for resources will be very difficult. Nevertheless, we have to keep to the forefront of our minds in local government that we want to minimise the impact on ratepayers. We are willing to sit down with the Department and the NIEA to work out a system that is realistic and will have a minimum impact on ratepayers.

329. Mr Kelso: Any fund would be for situations in which we are unable to identify the offender and, consequently, cannot follow through with legal action. If a council is following through with a formal process for under 20 tons of waste, hopefully it has identified the offender and is taking legal action. A cost-recovery mechanism should already be built into that process. In that

situation, there would be no need to bid for funding. We are talking about funding in situations that involve laundered fuel waste, where we cannot trace ownership because the waste has been abandoned on vacant ground, and dealing with it is a real problem involving a lot of cost.

330. Mr Walker: We are also talking about the fund being available for a limited time — until the protocol is established and the roles and responsibilities are enshrined. It will not be in perpetuity, but just until we establish a working relationship. Thereafter, we will look at how best to apportion costs to or recover costs from the two parties involved.

331. Mr Dallat: You said that local councils are good at disposing of waste, Shaun, and that is absolutely true. However, they are not so good at preventing waste being dumped. NILGA put years of effort into trying to bring about new council areas. That will not be happening. We now have this big problem that affects the environment. Should the issue be tackled in collaboration with neighbouring councils?

332. Mr S Gallagher: As you know, there are currently three waste management groups: SWaMP2008, the North West Region Waste Management Group and Arc21. Those groups are focusing minds in local government on waste. Recycling rates have gone up. They are at almost 37%, which, if you think back five years, is a massive increase. In fairness, it is a credit to local authorities, and very much a matter of co-operation. The problem with fly-tipping and illegal dumping is that it is done by people who do not give two damns about the environment. As Patsy McGlone said, it is usually done in somebody else's backyard. People never dump near their own yard. Therefore, there will always be clean-up and environmental costs. Better co-operation between the NIEA and local authorities is needed, because there is a gap, and while that gap exists, these boys can have a field day.

333. Mr Walker: We need to take legal advice on how collaboration between councils should be conducted and discharged. Nevertheless, the prospect exists.

334. Mr Dallat: We spend a lot of time seeking legal advice, while those who commit the crimes do not seek any.

335. Mr S Gallagher: Good point.

336. Mr McGlone: If there is expanded collaboration among clusters of councils, a communication issue with the NIEA will arise. Mark's comments surprised me.

337. It seems amazing that an enforcement body that is responsible for the environment has not communicated with an essential wing of local government, which is responsible for enforcement and waste. One of the lessons that we can learn and have learnt — indeed, I heard it very acutely from Mark — is that enhanced and increased communication is needed. It is amazing that officers with a responsibility for an area have not reached out to that area to touch base, or even to send their business card or an e-mail. That is astounding in this day and age. Further lessons need to be learned on the basic rules of communication.

338. Mr S Gallagher: Many councils would welcome that, particularly council officers.

339. The Chairperson: The Committee will contact the NIEA. I would like to think that over the past 12 or 18 months that some liaising has taken place, but the Committee will find out if that has been the case.

340. Finally, having listened to the previous evidence session, does NILGA agree with the wording of the proposed amendment to article 4 of the 1997 Order? The proposal is to withdraw the original amendment —

341. Mr Kelso: The professional officer group agreed with the proposal put forward by the Department. However, the officer's comments have been well made, and NILGA is happy to consider any further amendment that the Department puts forward.

342. The Chairperson: Thank you.

343. Mr S Gallagher: I thank you, Chairman, and Committee members for the opportunity to speak with the Committee today. Keep up the good work.

16 September 2010

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
Mr Michael Hatch NI Environment Agency

344. 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.

345. 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.

346. 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.

347. 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.

348. 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.

349. 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.

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

351. 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.

352. 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.

353. 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?

354. 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.

355. 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.

356. 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.

357. 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.

358. 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.

359. The Chairperson: I would not like to try to argue with your agency in such a situation.

360. 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 greayer 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.

361. 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, the issues are the cost of removal and how to prevent dumping from happening again.

362. 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?

363. 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.

364. 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.

365. 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.

366. 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.

367. 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.

368. 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.

369. 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.

370. 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.

371. 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.

372. 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.

373. The Chairperson: It is the tyres.

374. 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.

375. 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.

376. 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.

377. 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.

378. Mr T Clarke: That happened in July, and I have not heard back from your Department since then.

379. 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.

380. 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.

381. 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.

382. 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 —

383. The Chairperson: I know that I have allowed some latitude. Can you be brief?

384. Mr McGlone: I am going to be brief.

385. Mr Beggs: Reference the Bill.

386. The Chairperson: I have allowed some latitude.

387. 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.

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

389. Mr McGlone: It does not seem to have been working too well.

390. 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.

391. The Chairperson: We are trying to find out how the Bill can address those issues.

392. Mr T Clarke: It can address it by giving NIEA powers to do so.

393. 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?

394. Ms Blacker: The bonfire issue has not come up.

395. The Chairperson: How will it address the tyres issue?

396. 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 —

397. Mr T Clarke: Or tyres at Nutts Corner, and illegal race tracks.

398. 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.

399. 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.

400. 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.

401. 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.

402. 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.

403. 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.

404. Mr T Clarke: Hear, hear.

405. 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?

406. 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 —

407. Mr W Clarke: I am not sure where the Ballymartin issue comes in.

408. 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.

409. Mr W Clarke: Dead on. I am new to the Committee, and I am a bit confused about that.

410. 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.

411. Mr W Clarke: As I say, I am new to the Committee, and I am confused about what the Bill is about.

412. The Chairperson: You are entitled to ask away.

413. Mr W Clarke: There seems to be — perhaps this is not part of the Bill either — [Laughter.]

414. Mr Beggs: Read the Bill.

415. 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.

416. 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.

417. Mr W Clarke: I am asking whether there should be priority waste streams towards which resources should be directed.

418. 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.

419. Mr W Clarke: It seems that demolition-waste cases go to court very easily compared to tyre-dumping cases.

420. 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.

421. 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.

422. 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?

423. 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.

424. 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.

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

426. Mr Beggs: We are talking about one third of tyres going missing.

427. 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.

428. 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?

429. Ms Blacker: My understanding is that the Bill will not be commenced until the protocol is in place.

430. The Chairperson: Will the protocol look at prioritisation, as Mr Willie Clarke mentioned?

431. 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.

432. The Chairperson: Thank you very much. No doubt, we will see you again.

23 September 2010

Members present for all or part of the proceedings:

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

Witnesses:

Karl Beattie
Jennifer McCay
Denis McMahon Department of the Environment
Donald Starritt

433. The Chairperson (Mr Boylan): I welcome Denis McMahon, Donald Starritt, Jennifer McCay and Karl Beattie.

434. Mr T Clarke: Forgive my ignorance, because I am new to the Committee. Does the Bill deal with new contamination or land that was filled in the past, either legally or illegally?

435. Mr Denis McMahon (Department of the Environment): The Bill refers to all contaminated land.

436. Mr T Clarke: Does it apply to land that was filled when councils were in control of it? I declare an interest as a member of Antrim Borough Council, because there are implications for some councils from changes to legislation on contaminated land. Is the Bill part of that legislation?

437. Mr McMahon: There is a different piece of legislation to deal with that. You are talking about closed landfill sites and whether they complied with the European directive?

438. Mr T Clarke: That is one point. The other point is about individuals who filled land and, in their opinion, did so lawfully. If that land turns out to be contaminated, does this Bill cover such land?

439. Mr Karl Beattie (Department of the Environment): Yes, if it meets certain criteria.

440. The Chairperson: Are there any interests to declare?

441. Mr Beggs: I declare an interest as a member of Carrickfergus Borough Council. My father owns a legal landfill site.

442. Mr Weir: I declare an interest as a councillor in North Down Borough Council.

443. Mr McMahon: With your permission, we will comment briefly on the key issues in each clause. We have tried to address the Committee's key concerns, and we are keen to work through them. We are happy to deal with any questions on any aspect of the Bill as we go through it.

444. Mr Donald Starritt (Department of the Environment): Clause 1 deals with fixed penalty notices, but an issue about burden of proof was raised. The Committee suggested an additional clause to deal with that. The Committee suggested that we should amend article 4 of the Waste and Contaminated Land (Northern Ireland) Order 1997 to shift the burden of proof from the enforcing authority to the accused. The objective of that is to make it easier to prosecute waste offences. The amendment that the Committee proposed was quite similar to the original policy proposal in the consultation document. As members know, the Minister decided to not proceed with that.

445. After receiving the Committee's suggestion, we went to the Office of the Legislative Counsel (OLC). It suggested that removing the word "knowingly" from the clause, which was the gist of the Committee's proposal, would still mean that the prosecution would have to prove that the accused caused or permitted the offence. Essentially, the OLC was suggesting that the change would not make a great deal of difference to the legislation.

446. Mr T Clarke: Is the person liable the landowner or the person who deposited the waste into the ground?

447. Mr Starritt: As things stand, the legislation would allow us to pursue either the occupier or the landowner. When we make the changes to the Bill, we will be allowed to pursue the person who is perceived to have committed the offence, and that could be a third person entirely.

448. Mr T Clarke: Under the current regime, is the person liable not the person who deposited the waste, even where permission had been sought and it had been done legally, as opposed to the landowner? I just want clarity on that issue.

449. Mr Starritt: Leaving aside the Bill, the current legislation allows either the occupier or the owner to be liable. Initially, it will be the occupier, and if there is no occupier, it will be the owner of the land. The Bill proposes a change to say that the Department and councils may know that neither the occupier nor the owner is at fault and that someone has accessed the land and dumped the waste.

450. Mr T Clarke: I disagree with that. Under the current legislation, I thought that, if proof could be given about who had deposited the waste, that person was responsible.

451. I am trying to tease out the fact that there are cases — not in my council, but in others — where contamination has been caused knowingly. This is going back to the issue of historic sites. What we are saying is that local authorities could have used an individual's land to make a landfill site, and we are now shifting the blame from the local authority that deposited waste on that land to the landowner who owned the land and who received the waste in good faith.

452. Mr McMahon: This legislation applies very much a different scenario in that it is about going after people who have knowingly broken the law by deliberately —

453. Mr T Clarke: Sorry; that is why I asked the question at the outset. We are talking about contaminated land; we are not talking about new cases. That is why I wanted clarification at the start. There are historic cases, where people gave permission for their sites to be filled, and, at that time, the sites were legally filled, but that has caused contamination. I want to tie down, today, before I agree to anything, whether the Department is going after the landowner or the person who carried out the activity.

454. Mr Beattie: I can perhaps provide some clarification. This particular clause relates to the deposit of waste on land; it does not refer to contaminated land. Contaminated land is detailed in part 3 of the 1997 Order. Only clauses 7 to 9 of this Bill are directly related to contaminated

land. The legislation for contaminated land has not yet been commenced, but when it is, there will be a hierarchy of offenders. The initial action will be taken against the person who originally deposited the waste if they can be found and made amenable.

455. The Chairperson: I just want a clear understanding for my own benefit; if I owned land and illegal waste was dumped on it, I am responsible for its removal. Is it my responsibility to prove either way that it was not my fault, irrespective of its removal? Is that what the Bill is saying at the minute? Can you explain that clearly, please?

456. Mr Starritt: First, we have to make the distinction. As Karl said, there are three clauses in the Bill that deal with contaminated land, and what we are talking about are the provisions relating to waste. Basically, current legislation requires that, where the Department becomes aware that there is illegal waste activity, it can pursue either the occupier or the landowner. Sometimes it is difficult to know who is responsible. Equally, if it is known who deposited the waste and there is evidence to prove that, the Department can pursue the offender who may be a third party entirely under article 4 of the 1997 Order.

457. The Chairperson: OK, to follow on from that, let us say that I am the landowner, the waste is on my ground, and I hold my hands up and say that is nothing to do with me. What impact does that have? What responsibility is there?

458. Mr Starritt: On the landowner?

459. The Chairperson: Yes.

460. Mr Starritt: First, if the Department accepts that argument, it would try to pursue the person responsible. The other issue that would come into play is whether the landowner may in some way be deemed to be responsible for it. The landowner may not have committed the offence, but the ground may not have been controlled or fenced off properly.

461. The Chairperson: Ultimately, what we are talking about is the cost of removal of waste, which most people address. I am trying to tease that out.

462. Mr W Clarke: To continue in that vein, if a person bought land in good faith and had no knowledge of any contamination or waste on the land, who is responsible if a new case is discovered and the farmer or landowner has no idea?

463. Mr Starritt: Do you mean if there is a historic deposit of waste on the land?

464. Mr W Clarke: Even if it happened six months or a year before that person bought the land.

465. Mr McMahon: That comes back to the issue of burden of proof. If someone buys a piece of land in good faith, and there is evidence that they have gone through a process, and there is no evidence that they had any sense that the land was contaminated beforehand, it comes down to the burden of proof. The authorities would have to prove that the person had knowingly bought a piece of contaminated land. That is why the use of word "knowingly" is so important.

466. The Chairperson: I was just going to bring that up. That is why the issue of the use of "knowingly" has arisen. The person could have bought the land in good faith, and the waste could have been hidden.

467. Mr Kinahan: The witnesses indicated that if someone has not fenced their land properly, they could be deemed to be at fault. One can never fence land completely.

468. Mr Starritt: There is currently a defence in the legislation for someone to say that they neither knowingly caused nor permitted the offence. That defence may not apply in a scenario in which a break in fencing was drawn to someone's attention and they did not take action to address that. However, I do take your point that it will be difficult.

469. Mr McMahon: One of the challenges is trying to tease the issue out on a case-by-case basis, and it will depend on the actual circumstances of the case. It is one thing if there is a natural break in the fencing, but it is another thing if someone said that they did not know about illegal dumping on their property yet lorries came on to their site every day. There are also a whole range of scenarios in between. It is about the burden of proof.

470. Mr Kinahan: I have a slight difficulty with the concept of throwing a burden on to the accused. I know that we have to do that to control illegal dumping, but we are basically now changing our whole legal system from the basis that someone is innocent until proven guilty. We must be careful.

471. Mr McMahon: The Department agrees.

472. Mr Starritt: The point that was made by the Office of the Legislative Counsel was that even if the word "knowingly" was removed, you would still have to prove that someone caused or permitted the offence. That begs the question whether someone could cause or permit without knowing about it. That was the crux of the comments from the OLC.

473. The Chairperson: OK.

474. Mr Starritt: I will move on to address the issue of the fixed penalties in the Bill and summarise my comments under four main areas: the levels of fine and provision for their future amendment; the issue of guidance on the use of fixed penalties; the number of funding issues; and the whole question of a fly-tipping protocol.

475. Some of the witnesses who came to the Committee suggested that a higher level of fixed penalties would be appropriate. The Department looked at that issue again and spoke to the Minister, and it is now happy to support an increase in the upper limit of the fixed penalty range. However, it feels that the lower limit should stay at £100 and fairly close to the fine for the offence of littering. That approach will provide a good range of fixed penalty fine amounts. Therefore, in summary, the Department proposes that the legislation should provide for a scale of fines that range from £100 to £400. The Department accepts that there is a need for consistency and proposes that that is addressed through departmental guidance.

476. The Chairperson: Before the summer recess, the Committee spoke about setting the range of fines from £200 upwards, yet the Department has decided that the range of fines should be between £100 and £400.

477. Mr Starritt: As it stands, the Bill says that that range should be between £100 and £200. Different levels of fines have been suggested, and £400 and £500 were both suggested as upper limits.

478. Mr T Clarke: I was not a member of the Committee before the summer recess, so I apologise for these questions. Given the lengths to which the agencies must go in order to find out who has dumped waste, is £100 a big deterrent to someone who wants to tip a lorry load of waste? Would someone not be better off paying a £100 fine to dump that waste, rather than hundreds of pounds to take it to a proper landfill site? It does not seem to be a deterrent.

479. Mr Starritt: The fixed penalties would only be for low-level or minor offences.

480. Mr T Clarke: Such as?

481. Mr Starritt: I suppose they would be one step up from littering, such as, perhaps, dumping two or three bin bags full of waste. The legislation already provides for significant fines with up to five years imprisonment and an unlimited fine for very serious offences.

482. Mr T Clarke: Who is going to enforce that limit of three bags of litter?

483. Mr Starritt: We will address that issue when we come to discuss the fly-tipping protocol. It will be a matter of deciding at what level councils enforce the legislation, but I would say that the lower level would be the responsibility of councils.

484. Mr Beggs: Why do you state in your evidence that a £400 upper limit would be better than a £500 limit? Why do you not want to go for a higher amount and avoid court action? Fixed penalties may be a possible method of dealing with minor issues over which there may be a grey area about whether to go to court. Why not give yourself that flexibility?

485. Mr Starritt: We are content to go back to the Minister again on this point. We were considering the range of fines. If the range is too great, it may make it a wee bit more difficult to achieve consistency across the board. However, we are happy to bring that back to the Minister if the Committee feels that a higher level of fines is appropriate.

486. Mr Beggs: I am looking for an explanation. I do not have a particular view on it, but I can see the benefits of having a choice.

487. Mr Starritt: It is really just to keep the range fairly tight.

488. Mr W Clarke: I agree with what you are doing in having different levels of fines. Can you outline what the different levels are for; why choose the amount of £200 or £400? Would a different level be applied if someone dumped additional bags or a different type of waste? Is there a guide to what that is about? I understand that major incidents will not be subject to fixed penalty; they will go directly to court. Is the high-level fine for a repeat offender?

489. Mr Starritt: Yes; it could be for a repeat offender, or it could be that someone has committed a more significant offence either because of the nature or the volume of the waste.

490. Mr W Clarke: Or where it is dumped; for example in a nature reserve or something like that? I am just trying to get an idea of what we are talking about.

491. Mr McMahon: The overall seriousness of the offence is the distinguishing factor. Guidance needs to be drawn up. The Committee raised that issue previously, and we accept that, but it is really about defining the seriousness of the offence and trying to ensure that the fine reflects that.

492. Mr W Clarke: Sorry, I am new to the Committee, so I am just catching up.

493. Mr Starritt: I will speak about the provision for the future amendment of the level of fines later, as it comes up again under schedule 1.

494. The Chairperson: OK.

495. Mr Starritt: I will deal fairly quickly with the guidance on the use of fixed penalties. We fully accept the need to produce guidance, and we will be doing so in consultation with the local government sector.

496. Funding was another issue that was raised, and we note that concern. Funding is likely to be an issue for the Northern Ireland Environment Agency (NIEA) and for councils. We recognise that it is likely that the councils and NIEA will have to prioritise their activity. The Minister feels that the best way forward is for councils and the Department to act together to tackle illegal waste activity. A partnership approach is key to the Bill, and that brings me nicely on to my next issue, which is the fly-tipping protocol.

497. As we have said previously, if one was to summarise this Bill, one could say that its key function is to give councils and the Department pretty much identical powers to tackle illegal waste activity. The protocol is needed to decide who does what. The legislation will allow everybody — both councils and the agency — to investigate and to enforce it. However, there is a need for a quantitative threshold; a cut-off point, if you like, to say that councils will deal with an issue up to a certain level, beyond which it will be up to the agency.

498. We recognise that there have been widely differing views on the level at which the threshold should be set. The Minister has signalled that he is very keen to work with local government on the issue, and, just last week, he met with a number of council technical staff to discuss the way forward. The Minister has now committed to consulting with the key stakeholders — the councils and waste groups — to develop a fly-tipping framework to establish the principles on which we move forward and to use that as the basis for developing a firm protocol.

499. The other important issue is that, under clause 12 of the Bill, the Department is required to make a commencement order to bring various bits of the Bill into operation. The Minister has signalled that he does not intend to commence the provisions that deal with fly-tipping until a protocol is in place. It is not possible to operate the new arrangements until there is a protocol, and, essentially, the Department would not be making a commencement order in that area.

500. Mr W Clarke: Will the fly-tipping protocol include materials used for bonfires and any types of waste streams that are fly-tipped? Leading on from that, who will prosecute the Housing Executive, housing associations or councils for knowingly allowing waste to be dumped on their properties? Will the fly-tipping protocol cover bonfires or will there be a separate protocol for them?

501. Mr McMahon: The protocol will set out roles and responsibilities and look at different types of land, such as public land and public sector land as a subset of that. Clearly, if an organisation owns and is responsible for land, it is up to it to ensure that fly-tipping is dealt with. The protocol is really about ensuring that nothing falls between organisations. Until now, there has been some confusion as to who is responsible for what, and everyone was unhappy. The protocol will also establish which organisations should deal with fly-tipping incidents of a certain scale, and councils could be responsible for some smaller-scale incidents. It is about getting the balance right. Donald made the point about partnership, and the protocol will only work if all the organisations co-operate. I do not know if that is any help to you.

502. Mr W Clarke: Yes; sort of. Just to tease it out a little, the Department will obviously be the guardian of the protocol. If there are clear breaches of the fly-tipping protocol and how it is managed, the Department will have the power to enforce it.

503. The Chairperson: It is about whether we set thresholds and whose responsibility it is if the waste that is fly-tipped is under a certain tonnage etc. That is Mr Clarke's point. There could be a gap in responsibility, and we need to close that gap.

504. Mr McMahon: There are two issues. First, you are absolutely right to say that a threshold needs to be set. One of the reasons why the Minister spoke to our technical colleagues was to get a sense of the scale of those incidents, so that the Department can set the threshold at an appropriate level or, at least, consult on it at an appropriate level. The second issue is that the legislation provides a level of flexibility. The last thing the Department wants is for a certain number of bags or amount of waste to be dumped on a site and an argument to ensue about whether it is over or below the threshold and for no one to deal with it. The protocol must ensure that someone deals with incidents of fly-tipping. The fact that its powers will be equal powers means that, no matter what side of the threshold the offence comes under, either organisation can deal with it. That will mean that people will not be able to say that they have been prosecuted by one organisation when it should have been the other or that an organisation did not have the powers to prosecute because it picked the wrong threshold.

505. Mr T Clarke: What Denis just said demonstrates the problem with the Bill. Should the Department not have the protocol sorted out before the Committee even discusses the clause? We will then know who is responsible for what and what levels of fines apply to the different levels of offence.

506. Some of the responses from Arc21 and the Southern Waste Management Partnership (SWaMP) raise questions on that issue. Indeed, the summary of responses states that they:

"need clarity on who is responsible for clearing litter on land where no legal owner can be identified."

Yet the Department says that that issue must be discussed between the councils and the Northern Ireland Environment Agency with respect to resources. Those arguments should have been teased out before the Committee began to discuss them.

507. The Chairperson: I agree, but what we are actually looking at is the commencement of that provision. The protocol needs to be in place before that provision can be implemented.

508. Mr T Clarke: Yes, but we need the detail of what is going to happen before we can discuss the substance of the commencement.

509. Mr Starritt: The main change that this clause will make is that it will give councils the same powers that the Department has.

510. Mr T Clarke: The Department has done nothing with those powers and is now trying to pass the matter on to local councils.

511. Mr Starritt: It is not fair to say that it has done nothing.

512. The Chairperson: It is an important issue. Obviously, we rely on the protocol being set, but Trevor raises a valid point: we need to know the thresholds and who is responsible. If that can be dealt with outside this clause, that is fine.

513. Mr McGlone: I, like a few others, was not here when all this was going on. In many ways, Mr McMahon answered Trevor's question about different organisations prosecuting wrongly. I presume that the protocol will add clarity and ensure that that does not happen. It could be a

case of putting the cart before the horse. If the protocol is not in place, the situation that you outlined and defined as the problem will continue.

514. Mr McMahon: I will talk about where we are at the moment. Councils deal with a lot of cases. We know, for example, that one council was dealing with something like 9,000 cases. We also know that the Northern Ireland Environment Agency (NIEA) has a register of around 1,200 cases. So, there is activity. It is absolutely right that we should have a protocol. Ideally, we would like to be able to say today that we have a protocol. We probably have a lot of the fundamentals of a protocol, but the threshold is the one thing that we need to agree finally and do some consultation on.

515. We have tried to push the issue in a number of ways. We have had quite a lot of intensive engagement. Donald mentioned meetings with technical officers, and we have also had intensive engagement with NIEA. We are close to putting the threshold out for consultation. Once that key issue is resolved, a lot of the roles and responsibilities will be clarified.

516. The Chairperson: That will indicate whether the responsibility lies with a council or central government.

517. Mr McMahon: People are dealing with the issue as we sit here today, but the powers are unequal between councils and the Department. We are trying to ensure that there is an equal set of powers so that both sets of organisations have the power to deal with it. The idea is to have a protocol to ensure that the right organisation uses those powers in each case.

518. Mr McGlone: Is the threshold the issue then?

519. Mr McMahon: There are others, but the threshold is the key issue.

520. Mr McGlone: If the threshold is the issue, why do you not establish a protocol in principle and work out the threshold afterwards? There is bound to be a series of key principles that formulate any protocol. Why do you not develop a protocol and then insert, by legislative or other means, the threshold when it is agreed? That would enable people to see the areas and remits of responsibility and the threshold kick-in point. I presume that that is the way that it works. Forgive me if I am wrong; perhaps I am taking a simple view. Normally, there is a protocol with details and measures around it. Is there some problem with that line of thinking? Am I skewed in my thinking? I am sure that it is not beyond the realm of possibility to do that.

521. Mr Starritt: A lot of that work has been done. The Department and, indeed, the Minister have spoken with council staff and teased out — for want of a better phrase — the general principles that need to be established. As Denis said, the threshold is the sticking point. However, we are hopeful that we can put the principles out for consultation very soon and establish the thresholds at that stage.

522. Mr McGlone: I find that a bit odd to be honest.

523. Mr Dallat: Maybe I am going off the subject, but should there be something in the legislation to compel NIEA or the councils to provide resources to enforce the legislation? What I am seeing is some fairly fancy footwork by the Department, which is all very constructive and useful but does not tell me who will enforce the legislation.

524. We have heard about 20% cuts from the Finance Minister. Could we end up with legislation that is not worth the paper that it is written on? NIEA, based somewhere in Belfast, will send the odd helicopter out over the country, and, let us face it, that will be all. Councils will increasingly

say that they do not have the resources because they have cut their overtime costs and do not have the manpower to find the people who are polluting the countryside. The people dumping cat litter are out at night when everybody is away home with their lunchboxes. Should there be something in the legislation to compel whoever is responsible to enforce it?

525. Mr McMahon: The Bill will not be able to deal with the full resource issue. My understanding is that the debate about a fly-tipping protocol has been going on for some years, and a key issue has been resources. For a while, there was a situation where some organisations were saying that they could not sign up to any threshold.

526. Some of the points that are being made are absolutely valid, but there may be a slightly different way of looking at the situation: the legislation is forcing the issue. People are well aware that the legislation is going through and that organisations, including NIEA and the councils, will all be given powers. People will be looking at those organisations and asking whether they are going to use the powers. That is why we think that we have made a lot of progress in getting to the point on the threshold issue and on the roles and responsibilities.

527. Given that the Minister is committed to not commencing certain measures until the fly-tipping protocol has been dealt with, people are saying that they now know that there is a very clear set of powers and that it is a matter of organisations using those powers. That will ensure that a fly-tipping protocol is finalised before commencement.

528. Mr Dallat: When the legislation is passed, will Joe Bloggs have the power to take his local council to court for its failure to carry out its responsibilities?

529. Mr Starritt: I am not sure about that, to be honest. I would have thought that it would always be possible for a civil case to be brought by an individual, but I would need to check that.

530. Mr McMahon: Whatever measure you take to try to ensure that an organisation is dealing with something, a lack of clarity will not be an acceptable defence once the threshold is agreed.

531. Mr Dallat: What about a lack of resources?

532. The Chairperson: To clarify, we have a situation where there are fixed penalties to address fly-tipping from single bottles to the three or four bags of waste. That is as matter of cost recovery. Then, there is a point between dumping a lorry load of material and 20-tons of material. That is where we want to set a threshold on who is responsible for enforcing the legislation. That is what the protocol is about.

533. You are having ongoing discussions with local councils on who will be responsible for what. The key for us is that, when the protocol is drawn-up, we are able to hold it up to see exactly what the protocol is and what the responsibilities are before the commencement of the Bill itself.

534. Mr McMahon: That is correct.

535. The Chairperson: That is the crucial part of what we are trying to do. We can get into who is responsible, but that is what we are trying to work out in the protocol. That is the important part for us.

536. Are members aware that that is what we need to thinking about? It is important that members understand that. We then need to look at who pays and what is council responsibility. Is that clear?

537. Mr Beggs: The evidence given to us was that there are protocols between local government and central government elsewhere that appear to be working and where there is a consensus. I suggest that that is the direction in which we should go. You talked about not proceeding with the commencement order until there is clarity on the issue.

538. As regards the commencement order, will you clarify whether that means that there would be a statutory rule so that that the Committee or the Assembly could block commencement if there was no agreed protocol? I appreciate that if you wait until everything is agreed, perhaps nothing will be agreed. If the commencement order can proceed to a certain extent while some remaining checks are made, something reasonable could come forward that would give a degree of protection.

539. When will the guidance go out for consultation? That is important. I encourage you to do that sooner rather than later, because then I would have greater confidence in accepting what is being said here.

540. Mr Starritt: We would approach the Committee about bringing a commencement order. To be honest, that is common sense. The legislation cannot work unless there is a protocol.

541. Mr Beggs: It is about getting the appropriate level.

542. Mr McMahon: I agree. However, the point is that the commencement order would go to the Committee.

543. Mr T Clarke: That has not answered the other question about stopping it at a later stage.

544. Mr Beggs: That is the commencement order.

545. Mr T Clarke: Are you bringing it?

546. Mr Starritt: We would bring a commencement order to commence those clauses once we felt that that would work.

547. Mr Kinahan: I am reasonably happy. However, we must scrutinise the Bill in two meetings and find a way of agreeing the principles to make it happen, as Patsy McGlone said.

548. Mr Starritt: Clause 2 deals with the retention of seized property, which I will quickly summarise. Not a lot of issues were raised about the clause. Under existing waste management legislation, the Department can already seize vehicles and other property that are suspected of being used in illegal waste activity. There is subordinate legislation in place to exercise those powers. The new clause will allow the Department to make provision in that subordinate legislation to retain property for a certain period after seizure. The clause, therefore, needs to specify a number of days, be it 14 or 21 days. The only issue, which is a separate issue, was about the responsibility for dealing with hazardous waste. Again, we propose that that should be addressed in the protocol.

549. The Chairperson: Are members happy with that?

Members indicated assent.

550. Mr Starritt: Clause 3 deals with the offence of failing to pay a charge for subsistence of the licence. The clause creates two new offences: failure to pay subsistence fees in the first instance

and continued non-payment after a conviction for failure to pay. The feedback was generally supportive of that. Therefore, there are no real issues to discuss.

551. Mr W Clarke: I wish to expand the point about failure to pay. What happens if somebody goes to court and has no income and cannot pay the fine? If someone's disposable income were less than the fine, there would be a never-ending scenario. How would that be dealt with? Would that individual go to jail? If people dump waste and cannot pay the fine, do they go to jail for life?

552. Mr Starritt: That scenario would be addressed by looking to the waste management licence. Everyone who operates a facility is required to have a waste management licence. Therefore, if someone is unable to pay a fine, his or her licence would, ultimately, be suspended or revoked.

553. The point is that, even if the licence is suspended or revoked, the Department would still incur costs in leasing and inspecting the site and ensuring that the waste does not cause any damage to the environment.

554. Mr W Clarke: Sorry to go back to this, but that is probably more relevant to the payment of fixed penalties. If people just keep refusing to pay fixed penalties, how would that be resolved?

555. Mr Starritt: The fixed penalty fine is an option for the council or the Department. If someone did not pay it, they would be taken to court.

556. The Chairperson: OK; let us move on to clause 4.

557. Ms McCay (Department of the Environment): Clause 4 refers to the powers to require the removal of waste that has been unlawfully deposited. It makes two main changes to the existing article 28. Some of this has been covered already, so I will just cover it briefly, but, basically, the Department will have powers to issue notices requiring the removal of waste or the clean-up of land. Only councils have those powers at present. It will be possible to serve notices under article 28 on the person responsible for the illegal deposit as well as the occupier or the landowner.

558. Comments from stakeholders on that clause focused on three areas: the potential liability of landowners for waste on their land; who is responsible for cleaning up waste on unregistered land; and who is responsible for cleaning up hazardous waste. Really, we are back to the protocol here. The common theme running through the comments is the need for clarity over who will be responsible for what, once the waste enforcement powers between the Department and councils have been harmonised. The need to avoid duplication and confusion was also mentioned.

559. We accept that, and I will come back to those issues as they will be addressed in discussions on the protocol, as will the quantitative threshold. As we have said, the protocol will deal clearly with who does what and the need to deal with the issue of the clearance of waste from private land. We have already discussed that, and I will not go over the same ground. The relevant aspects of the legislation will not be commenced until the fly-tipping protocol is in place. I have one word of caution; despite the protocol setting out who is responsible for this, realistically, we are back to the subject of resources. Resource constraints on councils and on the Department are likely to limit what action can be taken to clean up unregistered and private land.

560. Clause 5 states that councils are to enforce articles 4 and 5 of the 1997 Order. Again, we have covered some of this ground. As members know, this clause extends the Department's enforcement and investigation powers to councils under the 1997 Order. Several of the issues

raised by stakeholders here have already been covered, particularly the issue of resources and the need for a clear demarcation of responsibilities.

561. I will focus on two main issues that have not already been covered. First, as it is currently drafted, the Bill excludes councils from the enforcement of article 5(7) of the 1997 Order, which means that council officials would not be able to take enforcement action against anyone who failed to present appropriate documents relating to the transfer of waste. The main reason for that was because the Department, at the start, did not think that councils would require those powers. However, we have considered the points made by stakeholders, and the Minister has no objection to extending the powers. Therefore, we will propose an appropriate amendment to the Bill so that councils and the Department would effectively have the same investigation and enforcement powers in all aspects.

562. Secondly, and again we have discussed some of this already, there is the quantitative threshold. Several stakeholders mentioned, and I heard it suggested this morning, that the quantitative threshold should be written in to legislation rather than being in the fly-tipping protocol. Our preference would be for the legislation to have only the broad enabling powers, leaving the specific quantitative threshold to be set out in the protocol rather than written into the Bill. That is based mainly on the fact that there are very few definitive statistics on smaller scale fly-tipping in Northern Ireland. Also, there are differing views on where the threshold should be set. On that basis, our view is that specifying the threshold in the protocol will allow more flexibility if that needs to be adjusted in the light of experience of operating it and the statistics gained through monitoring the use of the protocol.

563. Mr W Clarke: Why do we not have comprehensive data on fly-tipping?

564. Mr McMahon: One reason has been the associated costs. Going back to a point that I made earlier, because the issue is being forced by the Waste Bill, there is now much greater emphasis because everybody realises that it will have a huge impact on resources. Until now, resources have been an issue, but it is becoming clear to all concerned that we are going to have to get better information, and we are certainly looking at ways of doing that.

565. Ms McCay: That would have to be addressed in the protocol. The need for monitoring and for statistics would be a key issue.

566. The Chairperson: Clearly, we have information from some councils.

567. Mr McMahon: Yes; it would be wrong to say that we do not have any information. The key point about setting the quantitative threshold in the Bill is about having a certain amount of flexibility. It is not even so much about the existing statistics; the situation could change over time. Hopefully, there will be a big drop in certain types of fly-tipping.

568. Ms McCay: Clause 6 removes a requirement for enforcement officers that are investigating waste offences to give 24 hours' notice before they can go into residential premises or bring heavy machinery onto premises. They will still need a warrant or the permission of the occupier. The only change is the notice requirement. There were no real issues with that clause, and the feedback was generally supportive. I am happy to hand over the Karl Beattie, who will deal with contaminated land clauses.

569. Mr Beattie: Clause 7, entitled "Contaminated land: pollution of waterways and underground strata", amends the definition of "Contaminated land" for the purposes of part 3 of the 1997 Order by revising the definition of "underground strata" and introducing a test of significance to the pollution of waterways and underground strata.

570. The Department has worked very closely with a number of the Committee's respondents through the contaminated land liaison group. The comments that we have received in response have been generally supportive.

571. Clause 8, entitled "Appeals against remediation notices", provides for all appeals against remediation notices to be heard by the Planning Appeals Commission (PAC), rather than responsibility being split between PAC and the courts according to which regulator issued the notice.

572. The Department notes the generally supportive comments from stakeholders and that the Committee has raised concerns that unscrupulous operators may seek to use the appeals process to extend the time available to them to fulfil their obligations, especially if there is no charge. There has to be some form of appeals process, and there is always the possibility that that may be used to gain additional time. The question is whether a fee should be attached to the process to discourage the most vexatious appeals.

573. Although a fee would lead to disparity with the equivalent legislation in GB, we already have a similar situation with the environmental liability regulations, which provide for an appeal fee of £126 to be charged by the PAC. Although experience in GB suggests that that is not a major issue, with only two appeals having been brought since a similar amendment was made there in 2006, the Department has no objection to amending the clause to provide for the charging of a fee similar to that chargeable for a planning appeal.

574. Clause 9 precludes the use of the contaminated land regime where land has been contaminated by the final disposal of controlled waste, and enforcement action can be taken under the Pollution Prevention and Control Regulations (Northern Ireland) 2003.

575. The Committee raised the issue of whether there should be a timescale for the final disposal of controlled waste. Although that was raised in respect of this clause, it is not a specific contaminated land issue, so I will hand back to Donald.

576. Mr Starritt: The timescale issue is something that we had previously responded to the Committee about in detail. Essentially, the Department believes that the existing legislation is satisfactory, because waste management notices can be served under article 28 of the 1997 Order. Those can specify that the waste must be removed and remedial action taken within a specified time period. They also include fines for non-compliance. The Bill provides for the Department to serve those notices as well as councils.

577. The most serious offences will be dealt with through prosecution. As we said earlier, the Bill makes provision for unlimited fines and up to five years in prison. Given the severity of those penalties, it can take quite a long time to gather the information that is needed to secure a successful prosecution. The Department feels that existing legislation is appropriate, and it is committed to ensuring that illegal waste activities are tackled as quickly as possible.

578. Clause 10 will simply amend existing legislation on producer responsibility to provide a more precise definition of the Department's powers of entry and inspection. It is really a clarity clause, and no issues have been raised with it. Clause 11 deals with minor and consequential amendments and repeals. No issues were raised with that clause.

579. Clause 12 deals with commencement. We referred to that clause earlier and the fact that the fly-tipping provisions would not be commenced until a fly-tipping protocol is in place. Clause 13 and 14 deal with the interpretation of the Bill and its short title respectively

580. I now move on to the proposed amendments of schedule 1, which refers back to the earlier point on fixed penalties. The clause-by-clause analysis suggested that the Committee may want to consider changing a number of provisions in the Waste and Contaminated Land (Northern Ireland) Order 1997, to require that any changes to fixed penalties would be subject to draft affirmative procedure.

581. It may be helpful if I summarise the current position. The Waste and Contaminated Land (Northern Ireland) Order 1997, which will be amended by the Bill, provides for three separate fixed penalties for the misuse of waste bins, the transfer of waste and the transportation of waste. As we heard earlier the Bill will introduce a fourth fixed penalty for fly-tipping. Currently, the three existing fixed penalties can be amended by negative resolution, which does not require debate in the Assembly. The reason for that is that the provisions are not considered to be especially sensitive or controversial. For consistency the Department proposed that the new fourth fixed penalty would be the same. The Examiner of Statutory Rules recommended that the process for amending all the fixed penalties should be changed to draft affirmative procedure. The Department discussed that with OLC, and the OLC pointed out that there are quite a few precedents for negative resolution, and, on that basis, the Minister felt that negative resolution remains justified. However, we are happy to go back to the Minister on that, subject to the views of the Committee.

582. The Chairperson: OK.

583. Mr Beggs: There may be precedent. However, is it not good practice for everything to be agreed in advance, rather than going through negative resolution and potentially having to change the penalties if the Assembly does not agree?

584. Mr Starritt: I take the point that that is a control mechanism, but it will mean that, for example, inflationary increases would need to be brought to the Assembly and undergo draft affirmative resolution. It is a judgement call as to whether that is deemed to be appropriate, but the Minister is content to look at it again if the Committee wishes him to do so.

585. The Chairperson: I will put that to the Committee.

586. Mr Starritt: There are no issues with schedule 2 to the Bill. That concludes our comments.

587. Mr McMahon: There is one other issue.

588. The Chairperson: Will you cover the quality of recycling?

589. Mr McMahon: We probably need to touch on a couple of other issues.

590. We responded to the issue about the quality of recyclates and talked about what we are trying to do in that regard. We also talked about the fact that, at this point in time, none of the other jurisdictions is going down the route of setting quality targets in legislation. However, it is worth saying that the Welsh Assembly is looking at powers to set a range of targets. That could ultimately include quantitative and qualitative targets and some specifications, such as segregated collection. We just wanted to ensure that the Committee was aware of that. We will obviously need to look at a number of practical issues, and we are happy to do that if the Committee feels that we should.

591. We identified three issues. The first issue was about the types of powers set in statutory guidance or subordinate legislation. The second issue was about the types of targets. As I said before, it is up to the Committee whether it wants us to look specifically at the quality of outputs

or at broader powers that are along the lines of the Welsh model. The third issue was about consultation. To date, there has been no consultation. However, we will look at that should the Committee feel that that is required.

592. The Chairperson: Are there any other points?

593. Ms McCay: The vast majority of issues from the general comments have already been covered. However, I wish to mention quickly two points. The first is the ring-fencing of landfill tax to deal with environmental issues. Our point is that that is not the Department's responsibility; that is a reserved matter. On that basis, the landfill allocation is a matter for the Executive. We are, therefore, not able to control that through the Bill.

594. My second point is about the suggestion that the Department, NIEA and councils should meet regularly to discuss enforcement matters in a working forum. We already work with councils on waste management issues through the waste programme board, and there has been ongoing dialogue on the development of the protocol. We are happy to work with the councils to explore further options as part of that work. However, we will obviously need to discuss the remit and authority of the group.

595. Mr Kinahan: I have two questions about the obligations relating to private land. On Monday night, I was with a farmer who has had tyres — not a big amount — dumped on his land, and I can see from the Department's response to the clause-by-clause analysis that the council concerned will not want to pick up those tyres. However, given that there is money involved in tyres, can that issue be taken into account in the protocol? How do we get councils to deal with the small issues that matter to farmers, because the farmers have to pay to get rid of what has been dumped on their land? That farmer has to pay to get rid of two piles of tyres that are nothing to do with him.

596. Mr Starritt: As regards private land, that is always going to be difficult. That will have to be addressed through the protocol. However, if we are realistic, it will always come back to resources and whether the councils or the agency will be in a position to deal with that. The protocol will certainly encourage either councils or the agency to deal with private land. However, it is unlikely that they will realistically be able to do that in every instance.

597. Mr W Clarke: I wish to make a point about the landfill tax. I appreciate what you said about the British Treasury being in control of that. However, do you have any figures for the amount of money that is generated from landfill tax in the North? What kind of money are we talking about? What receipts come from landfill tax?

598. Mr McMahon: We do not have that information to hand, but we will certainly see whether we can get it.

599. Mr Dallat: Private operators have to pay landfill tax as well. What safety measures are in place to ensure that landfill tax is not used to buy off, for example, objectors to a particular facility or to exploit or encourage activity that is the very opposite of environmentally friendly.

600. For example, if I was running a particularly objectionable project to which there was fierce opposition from a community group, the obvious thing to do would be to pay out the landfill tax in large quantity to buy that group off.

601. Mr McMahon: Basically, what happens with the landfill tax is that the operator has to pay it. It goes to the Treasury and, inasmuch as it comes back, it comes back through the Northern Ireland block.

602. Mr Beggs: Is it in the Northern Ireland block grant?

603. Mr McMahon: It is in the Northern Ireland block grant; it is not something that we can identify separately. It cannot be used for any purpose like that.

604. Mr Dallat: So, are you saying that the operator who collects the landfill tax has no influence whatsoever in how it is awarded?

605. Mr McMahon: No, the operator pays the landfill tax.

606. Mr Dallat: I know, but when that landfill tax goes back to the community, are you telling me he has no influence on who gets it?

607. Mr McMahon: We never actually see landfill tax. Once it goes, it goes to the Treasury. Again, I am happy to look at any specific cases.

608. Mr Dallat: That would probably be the best way to handle that.

609. The Chairperson: I am conscious of the time.

610. Mr Dallat: So am I; I have another Committee meeting at 2.00 pm.

611. The Chairperson: That is why I asked for patience. I just want to go through the Bill informally clause by clause. Can members indicate if they have any questions or need to suggest amendments or think that we should come back to or park the issue —

612. Mr W Clarke: I do not have time. I have another meeting; I am sorry.

613. Mr Weir: A number of us are under pressure, and I am not sure at this stage what the benefit of going through an informal clause-by-clause scrutiny would be. We will have to come back to it.

614. The Chairperson: We will have to defer. We may need to set up another meeting. We have a big programme of work, as members are aware. We will defer the informal clause-by-clause scrutiny until next week. We will continue with business. Thank you.

28 September 2010

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 Willie Clarke

Mr John Dallat

Mr Alastair Ross

Mr Peter Weir

Mr Brian Wilson

Witnesses:

Mr Karl Beattie
Ms Jennifer McCay
Mr Denis McMahon
Mr Donald Starritt

Department of the Environment

615. The Chairperson (Mr Boylan): We will conduct our clause-by-clause scrutiny of the Waste and Contaminated Land (Amendment) Bill. As we do, I will remind members of the key issues that were raised by stakeholders and the Department's response to those issues. After each clause is considered, I will ask members to agree a formal Committee position on that clause. An updated version of the clause-by-clause table is included in members' papers.

616. Any clauses that are agreed today, as drafted, will be agreed subject to any consequential amendments arising from substantive issues raised by the Department or from other clauses deferred today. The Committee will park and revisit any clause about which members cannot reach agreement today, but I would like to complete as much work on the Bill as possible.

Clause 1 (Fixed penalty notices for offences under Article 4)

617. The Chairperson: There are five key issues in respect of clause 1, the first of which concerns the shift in the burden of proof from the enforcing authority to the accused. The Department of the Environment (DOE) originally consulted on the inclusion of such an amendment but decided not to proceed when human rights issues were raised.

618. Banbridge District Council suggested amendments to achieve to changes that it wanted while still protecting responsible landowners. The NIEA (Northern Ireland Environment Agency) agreed that a shifted burden of proof might have made some of its enforcement duties easy in the past, but, for it, the issue was one of proportionality: that is, they focus on large cases, which, by their nature, almost always have implications for the landowner. The NIEA also noted that such an amendment would have no impact on the removal of illegally dumped waste, which may be the more significant issue.

619. Following last week's discussion, the Ulster Farmers' Union (UFU) submitted an e-mail reminding the Committee of its position on the shift in the burden of proof. The union argues that it is impossible for landowners to fully prevent fly-tipping because such incidents are often unknown to them. The submission argues that simply prosecuting the landowner just because they own the land does little to prevent future incidents, and a landowner could potentially become a repeat offender without committing a criminal act.

620. The Assembly Research Services has provided members with a comparison of legislation in other jurisdictions. That report indicates that, in all other similar legislation in the UK and the South, the burden of proof lies with the enforcing body.

621. Having consulted the Office of the Legislative Counsel, DOE pointed out that excluding the word "knowingly" would mean that Banbridge District Council's suggested amendment would have no practical effect. DOE concluded that it would maintain its position of not amending the Bill to include that provision.

622. Are members content to include the Assembly Research Services' paper on the comparative legislation and the UFU update on its position in the Committee's report on the Bill?

623. Mr Beggs: I declare an interest: my father owns a legal landfill site. Looking carefully at some of the detail, it is safer for me to also declare that I own 25 acres of agricultural land.

624. The Chairperson: That is fine.

625. Are members happy to include the paper from Assembly Research Services and the UFU paper in Bill report?

Members indicated assent.

626. The Chairperson: Will the departmental witnesses come forward as we need some guidance? The Committee's position, therefore, is that establishing the burden of proof is to remain with the enforcing body. Is that correct?

627. Mr Donald Starritt (Department of the Environment): That is correct.

628. The Chairperson: Banbridge District Council formed wording for a proposed amendment. The inclusion of the word "knowingly" would shift the burden of proof onto the landowner. Do members accept the DOE's rationale for excluding that provision or do they require more clarification?

629. Mr Buchanan: It is important that the burden of proof is not put on the landowner. From what you said, Chairperson, I understand that that burden of proof will stay with the Department.

630. The Chairperson: Yes. The Banbridge amendment calls for the opposite. Are you clear on that, gentlemen? Do you need any further explanation or have you any other comments to make?

631. Are members, therefore, content with DOE's rationale for excluding that provision? For clarification: you do not want to pursue Banbridge District Council's proposed amendment. Is that agreed?

Members indicated assent.

632. The Chairperson: We will move on from the burden of proof to the second issue that was raised under clause 1. Most respondents told the Committee that guidance should be provided outlining circumstances for the use of fixed penalty notices to ensure consistent enforcement across councils. The Department agreed. It indicated that it proposes to prepare guidance in consultation with councils and waste management groups. That is not the protocol, gentlemen; it is guidance. Are members content?

Members indicated assent.

633. The Chairperson: We will move on to the third issue that was raised under clause 1. I remind members that most respondents told the Committee that fixed penalty notices should be set at a level that acts as a deterrent. One also suggested that two upper limits might be set to differentiate between domestic offences and minor commercial offences, such as £200 and £500. Prior to recess, the Committee agreed that a cap of £200 was too low and that £300 to £400 would be more appropriate. DOE has accepted that the upper level could be increased to £400. However, it remains adamant that the legislation should provide for a range of fines of between £100 and £400, and that consistency between councils should be addressed in the guidance.

634. Will the Committee will have an opportunity to see its proposed amendment to clause 1(9)(b) to increase the upper fine limit from £200 to £400 while the Bill is still at Committee Stage?

635. Mr Starritt: Yes. That is fine.

636. The Chairperson: Are members, therefore, content with the Department's decision? Alternatively, we could prepare amendments to set different maximum and minimum fines and/or to set separate fine ranges for domestic and minor commercial offences. Are member's content with the Department's decision?

Members indicated assent.

637. The Chairperson: We will move on to the fourth issue that was raised under clause 1. I remind members that the Committee felt that the emphasis of the wording of clause 1(11) should be changed so that instead of implying that offenders would receive a "discount" on prompt payment, they would have to pay an "enhanced" penalty if late.

638. The Department argues that the wording is consistent with the existing provision for fixed penalties and suggests that the form of wording could be reflected in the guidance on the use of fixed penalties specifically in relation to the format of the fixed penalty notice itself.

639. Our options are to accept the Department's proposal or to propose an amendment. Are members content with the Department's proposal?

Members indicated assent.

640. The Chairperson: We will move on to the fifth issue that was raised under clause 1. I remind members that the Examiner of Statutory Rules suggested to the Committee that the power to alter the amount of a fixed penalty notice under new article 4A(10) should be subject to draft affirmative procedure rather than to negative resolution. The Examiner argues that that would be consistent with other Bills that are before the Assembly.

641. DOE's response indicates that, having consulted the Office of the Legislative Counsel, it believes that that power does not require affirmative procedure because it sets out parameters rather than setting the actual amount.

642. The actual amendment to make that power subject to draft affirmative procedure would be made by an amendment to article 82 of the Waste and Contaminated Land (Northern Ireland) Order 1997 in schedule 1 to the Bill. I will come back to that particular issue when we deal with schedule 1.

643. Mr McGlone: Maybe I am just blind to some of this stuff, but I honestly do not know what is attempted to be explained in the Department's submission when it states:

"The Department accepts the need for consistency of approach. However OLC — "

644. Who or what is OLC?

645. Mr Weir: It is the Office of Law Reform.

646. Mr McGlone: No, OLC.

647. Ms Jennifer McCay (Department of the Environment): It is the Office of the Legislative Counsel.

648. Mr McGlone: All right, some bigwig somewhere. Sorry, right, but to read on there:

"In addition, OLC states that while there may be cases – eg in particularly sensitive or politically controversial areas - where this type of power is subject to affirmative resolution, the majority of precedents are for negative resolution."

649. To be honest with you, I just have not one clue what that is attempting to explain, and I do not think that I am entirely thick.

650. Mr Starritt: We were trying to say that, under existing legislation, the existing fixed penalties can be changed by negative resolution. In other words, the legislation can be brought forward, and unless some prays against it, it would go through.

651. Mr McGlone: As I said, the submission says that:

"OLC states that while there may be cases – eg in particularly sensitive or politically controversial areas - where this type of power is subject to affirmative resolution, — "

652. What does that mean?

653. Mr Denis McMahon (Department of the Environment): When we have a proposal to change some piece of legislation, we would tend to go to the Office of the Legislative Counsel to get advice on how well the change would work with regard to the law and how well it would fit in. I suppose the advice it was coming back to us with was that, if it is something that is particularly sensitive or an issue that will clearly require detailed political consideration and input on every situation, it should be done by affirmative resolution. However, in cases in which there may be political input, in which case people can pray against it in the Assembly, although it may be a more routine issue, the precedent has been to use the negative resolution.

654. Mr McGlone: It all seems very complicated simply to alter the amount of a fixed penalty.

655. Mr McMahon: The point was that, because it is not complicated or necessarily contentious, it is better to use the negative resolution procedure.

656. Mr McGlone: Maybe it is just to me — coming from up the country — that that paragraph was a bit convoluted.

657. Mr McMahon: Sorry, that is our drafting more than the —

658. Mr McGlone: Sorry about that, Chairperson. It is maybe a wee bit clearer now.

659. Mr Weir: That paragraph explains the process of tackling the general situation, rather than its specifics.

660. Mr McMahon: That is it exactly.

661. The Chairperson: We will come back to that matter when considering schedule 1. We will wait to see the amendment before formally agreeing to clause 1.

Clause 1 referred for further consideration.

Clauses 2 to 4 agreed to.

Clause 5 (Councils to enforce Articles 4 and 5 of 1997 Order)

662. The Chairperson: I remind members that several respondents stressed that councils must be given the same powers of entry and investigation as the Department under article 5(7) or powers under articles 4 and 5 will not be deliverable. DOE's response indicates that it intends to propose an amendment that would give councils those powers, so that they would be able to take enforcement action in the event of a failure to present appropriate waste documents.

663. Mr McGlone: I may be just having one of those days, but it says in the scrutiny table: "which would give councils powers"; it does not say "those powers". Can we assume that it is, in fact, those powers?

664. Mr Starritt: Yes.

665. The Chairperson: Are members content with the Department's response?

Members indicated assent.

666. The Chairperson: Will the Committee have an opportunity to see the Department's proposed amendment to give councils powers under article 5(7) of the 1997 Order during Committee Stage?

667. Mr Starritt: Yes.

668. The Chairperson: Well, gentlemen, we will wait to see the amendment before formally agreeing the clause.

Clause 5 referred for further consideration.

669. Mr Dallat: Clause 6 refers to heavy equipment. Does that mean a Centurion tank or a sledgehammer?

670. A Member: This is being recorded by Hansard. [Laughter.]

671. The Chairperson: Maybe that happens only in the north-west.

Clauses 6 and 7 agreed to.

Clause 8 (Appeals against remediation notices)

672. The Chairperson: I remind members that the Committee was concerned that there was a risk that the Planning Appeals Commission would be used to buy time for an offender being given a penalty, especially if there was no charge. The Department's response indicates that existing legislation provides for appeals against remediation notices to be made within 21 days. The Department points out that no fee can be charged by the Planning Appeals Commission, although £100 is chargeable for an appeal heard by a court of summary jurisdiction. There is currently no enabling power for the introduction of a fee for this type of appeal, but the Department would be happy to consider an amendment to the Bill to that effect.

673. Do members want to recommend that the Department amends the Bill accordingly?

Members indicated assent.

674. The Chairperson: We will wait for that amendment. Again, could we see sight of it while the Bill is still at Committee Stage?

675. Mr Starritt: Yes.

Clause 8 referred for further consideration.

Clause 9 (Interaction with other provisions)

676. The Chairperson: I remind members that the Committee suggested that a timescale should be introduced for the final disposal of illegally deposited waste. The Department's response indicated that it feels that existing legislative provision in this area is satisfactory. Councils can currently serve notices requiring the removal of waste and remedial action within a specified time period, which could be as short as 21 days, and the legislation provides for a fine of up to £5,000 for non-compliance and a subsequent daily fine of up to £500. The Department believes that a set timescale could prove counterproductive.

677. Our options are to accept the Department's response or to pursue the introduction of a time frame through recommendation or proposing an amendment. Are members content with the Department's response?

Members indicated assent.

Question, That the Committee is content with the clause, put and agreed to.

Clause 9 agreed to.

Clauses 10 and 11 agreed to.

Clause 12 (Commencement)

678. The Chairperson: I remind members that, although generally supportive of the commencement clause, several respondents were keen to see a requirement for the protocol to be in place before the Bill commences and for a slush fund to be established that councils can access for larger clean-ups in the interim. The Department response indicates that the specific clauses that relate to councils' enhanced waste management powers will not be enacted until a fly-tipping protocol is in place. It is possible that other clauses may require a different commencement date. Also, DOE suggests that the issue of a slush fund cannot be addressed because of resource constraints.

679. Are Members content with the Department's response or do they wish to look at options to ensure that the commencement of the Bill does not take place until a protocol is in place?

680. Mr McGlone: Why can a slush fund not be set up?

681. The Chairperson: Obviously, it is a resource issue.

682. Mr McGlone: I thought that it was just a dosh issue.

683. Mr Starritt: It is partly to do with the context of use. I think that the question was about whether receipts from landfill tax may be used. However, that is ring-fenced by the Treasury, so we do not have access to those funds.

684. Mr McMahon: That comes back as part of the Northern Ireland block grant.

685. Mr McGlone: Sorry, I am coming to this issue a wee bit late and lack a general grasp of it, so, please, bear with me. As regards the slush fund, I thought that seized assets were the kind of direction in which we were going as opposed to taxes or other stuff that is ring-fenced by the Treasury.

686. Mr Starritt: I think that I am right to say that the issue was raised in the context of using landfill tax. Other than that, I suppose that it is a resource issue.

687. Mr McMahon: You are talking about fines and property being seized.

688. Mr McGlone: Yes, I am talking about assets or something like that being seized.

689. Mr Starritt: Any fines or fixed penalties levied by councils, fixed penalties, for example, —

690. Mr McGlone: We will take an example. Say an unidentified car — runabouts and the sorts of things that we see lying round the countryside — with a notional value is disposed of at auction and realises perhaps £100 or £200 or even £1,000. That is the sort of thinking that I have around the issue.

691. Mr McMahon: I think that we are confusing a number of issues. Money from fines for cars or property would go back to the council, if it successfully prosecutes someone in a case. There is, therefore, no issue with that coming back to the council in question.

692. I think that we confused matters by talking about the issue of landfill tax, which was raised previously. We were saying that landfill tax does not come back to us as a separate source of money that we can then use to set up an additional central fund. Therefore, if we were going to set up a central fund, it would have to come out of the resources that the Department already has. The question is, therefore, about what we would not do to fund that. There are two separate issues there. However, you are quite right about the fines.

693. Mr McGlone: Is the second issue, therefore, addressable by making provision for a slush fund elsewhere in what is being proposed here?

694. Mr McMahon: All that we are saying is that we currently do not have a budget to set up a fund in addition to what is there already. We are saying that the money that councils make from fines, for example, will come back to them. However, we do not have a pot of money in addition to that that is ready to diverge into a central fund.

695. Mr McGlone: I was not even thinking about diverting money to a central fund at all. Maybe we are reading off two separate hymn sheets. I was talking about cases where councils may identify and scoop up realisable assets that they then dispose of to create a slush fund, just in the same way as assets from crime are seized and then sold off. Is that the sort of thinking that could be adopted? Say a Mercedes were left on council property and nobody claimed it and the council then disposed off it at public auction, what would happen to the moneys realised from that?

696. Mr McMahon: The moneys would go to the council.

697. Mr McGlone: I would see that as a slush fund. I am sorry for labouring the point, but I wanted clarity on that.

698. Mr Weir: I suspect that slush fund is perhaps not the ideal terminology. I appreciate that there are constraints and that there is confusion as people are talking at cross purposes, so I

want to make sure that we are all singing from the same hymn sheet. From a legislative point of view, the issue that has been raised here could not be an amendment to the Bill, whatever attitude is taken. Under certain circumstances, the council can retain certain things, but there are restrictions regarding landfill tax, for example. It is out of the picture.

699. Mr McMahon: Yes.

700. Mr Weir: I want to try to bridge the gap. Given that there seems to be confusion about the issue, could the Department provide a letter of clarification and assurance to the councils and copy it to the Committee? That could clarify some of the points that Mr McGlone raised about what can be retained. I am not sure whether setting aside a specific fund would be the best way of doing things, but councils do not want to be put in a position where something major has to be done before the protocol is agreed. Could some words of comfort and assurances be given on that? I wonder whether that could be a way forward.

701. The Chairperson: I want to tease this out. The Committee could proceed through the Bill and propose an amendment to say that the Bill will not commence until the protocol is in place, but that could take 12 or 24 months; it could happen at any point in time. How do we nail it down so that the protocol is in place within a reasonable period to allow us to commence the Bill?

702. Mr McMahon: We touched on that at the previous evidence session. One of the problems has been that the matter has never had the urgency that the Bill has now given it, but we are confident that we will have the threshold issue and the key elements of the protocol ready to go out for consultation at the end of October. I think that that is the date that we are aiming for.

703. Mr Starritt: It may take a little longer than that, but we certainly hope that it will be this side of Christmas.

704. Mr McMahon: The idea is to have it ready to go out for consultation. However, I am not sure whether there is a way of putting that into legislation in advance, because, ultimately, it will come down to a decision following consultation.

705. The Chairperson: I understand that. If the Committee agrees the Bill as drafted and we know where we want to take it, that is fine, but that still leaves us open to questions about when it will commence. We can only say that we are moving forward together and want it to work. Even if the Committee proposed an amendment to say that the Bill could not be commenced without the protocol in place, we would not know the time period involved.

706. Mr McMahon: The only thing that I can say is that the Bill has, helpfully, put a lot of pressure on the issue. If the Department were unable to commence the Bill because there was an extended period when the protocol was not in place, it would be in a very difficult position. Therefore, there is a natural incentive for the Department to ensure, with colleagues, that the protocol is in place. That is the best that I can say.

707. The Chairperson: It is key that the protocol is in place and that the Bill is commenced as soon as possible. Do members have any other comments on that? We can agree the issue today, park it or attach an amendment from the Committee. Basically, it is important that the commencement of the Bill takes place in tandem with the protocol. That could take any length of time. However, the Department has said that it is hopeful that that will come through very quickly.

708. Mr McGlone: If the protocol is going to come through very quickly, it would make sense to wait and see what it is.

709. The Chairperson: We need to know what the period of consultation will be.

710. Mr Weir: It is one of those things that are difficult to legislate for. However, the Committee should send a very clear message that we, and, I am sure, the Department, want to see a robust and agreed protocol in place. Councils are concerned and do not want to get, for want of a better word, dumped on. However, we appreciate that the Department is doing all that it can to make sure that the issue is brought to a swift conclusion.

711. The Chairperson: Are members happy that the Committee recommends that the Bill is not commenced until the protocol is in place?

Members indicated assent.

712. Mr Starritt: I want to make a point of clarification. It will be possible to commence certain provisions in the Bill that have nothing to do with fly-tipping. However, we would undertake not to commence the fly-tipping provisions.

713. The Chairperson: Are members happy with that?

Members indicated assent.

714. Mr McGlone: As long as it is not a reason for prevarication.

Clauses 13 to 14 agreed to.

Schedule 1 (Amendments)

715. The Chairperson: I remind members that they agreed in clause 1 to look at the level of Assembly control over a new power in the Bill to alter the amount of a fixed penalty by Order, which, as drafted, is subject to negative resolution. Before deciding, I also remind members that the Examiner of Statutory Rules has drawn to their attention further powers to alter fixed fees by negative resolution. Those powers can be found in the Waste (Amendment) (NI) Order 2007. Unlike the powers in new article 4A(10), which involve a range of fees, those powers refers to specific fees. He also notes that the Order was made with very limited scrutiny, before the restoration of the Assembly.

716. I advise members that the Examiner of Statutory Rules has also recently drawn the Committee's attention to a similar issue in relation to fixed penalties in the Clean Neighbourhoods and Environment Bill. His report on the Clean Neighbourhoods and Environment Bill has been included for information in the Committee papers. We want to avoid being inconsistent. Therefore, are members content to agree schedule 1, subject to an amendment to make some or all of the powers to alter fees subject to draft affirmative procedure? That gives the Committee an opportunity to scrutinise the matter. I think that that is how we should proceed, but the decision is for the Committee to take. Do members have any comments? If not, are we content with schedule 1, subject to our Committee amendment? The amendment proposes:

"to make the new power, 4A(10), and the existing powers, 5A(10), 22B(5) and 42B(10) to alter the amount of fixed penalty, subject to draft affirmative procedure."

Schedule 1, subject to the Committee's proposed amendment, agreed to.

Schedule 2 agreed to.

Long title agreed to.

717. The Chairperson: That concludes scrutiny of the clauses of the Bill. I remind members that, after the briefing from the Department two weeks ago, the Committee agreed that an amendment should be proposed to provide enabling powers to allow the Department to put in place targets for the quality of recycled material to be produced by councils. The Department argued that it was trying to achieve the same goal through voluntary initiatives and stressed that no other legislature legislated for quality. The Department informed the Committee that there was a balance to be struck between quantity and quality and was concerned that a singular focus on quality could compromise the North's ability to meet EU recycling targets, which are quantitative.

718. Do members wish that a Committee amendment be prepared that will introduce powers into the Bill to enable the Department to put in place recycling quality targets at local authority level?

Members indicated assent.

719. The Chairperson: That concludes the Committee's analysis of the clauses of the Waste and Contaminated Land (Amendment) Bill.

21 October 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Roy Beggs
Mr Trevor Clarke
Mr Willie Clarke
Mr Danny Kinahan
Mr Alastair Ross

Witnesses:

Mr Karl Beattie
Mr Denis McMahon
Mr Donal Starritt
Ms Ann Tohill

Department of the Environment

720. The Chairperson (Mr Boylan): At its meeting on 28 September the Committee decided to defer consideration of three clauses until they had had sight of the amendments that the Department agreed to propose at the Bill's Consideration Stage. Those departmental amendments have now been included in the members' information pack. I advise members that the Department stresses that those amendments have still to receive the Executive's approval. We will go through each clause that the Department has agreed to amend, and I invite members to comment as we go through those.

Clause 1 (Fixed penalty notices for offences under Article 4)

721. The Chairperson: The departmental amendment to clause 1 would raise the upper limit of the range of fines for fixed penalties from £200 to £400. That information is included in the first

page of the letter dated 15 October. The Committee recommended the amendment. Are there any questions?

722. Mr Beggs: I declare an interest. My dad owns land that is used as a legal inert landfill site.

723. The Chairperson: As there are no other comments, I will put the Question.

724. Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

725. Clause 1 agreed to.

Clause 5 (Councils to enforce Articles 4 and 5 of 1997 Order)

726. The Chairperson: I refer members to the departmental amendment to clause 5, which would extend enforcement powers to local authorities. I advise members that the amendment would allow councils to take enforcement action in the event of a failure to present appropriate waste documents. The amendment was recommended by the Committee. Do members have any comments?

727. Mr Beggs: I declare an interest as a member of Carrickfergus Borough Council.

728. The Chairperson: We are going to be here all day, Mr Beggs.

729. Mr T Clarke: I declare an interest as a member of Antrim Borough Council.

730. Could you repeat what you said about the amendment?

731. The Chairperson: The amendment gives enforcement powers to local authorities.

732. Mr Donal Starritt (Department of the Environment): The Committee requested that councils have powers to issue fixed penalty notices in the event of failure to produce appropriate waste management documentation. At the moment, only the Department can do that.

733. The Chairperson: It would bring council powers up to the level of the Department's powers.

734. Mr Starritt: It would also allow councils to retain receipts.

735. The Chairperson: As there are no other comments, I will put the Question.

736. Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

737. Clause 5 agreed to.

Clause 8 (Appeals against remediation notices)

738. The Chairperson: I refer members to the departmental amendment to clause 8, which would provide for the Planning Appeals Commission (PAC) to charge a fee to hear an appeal. I remind members that the Committee recommended the amendment to avoid the appeals mechanism being used to delay a fine being imposed. The Department advised that, under current law, there is no mechanism for the Planning Appeals Commission to charge a fee and that it would require an amendment to the Bill to introduce that power.

739. Could you clarify that for the new Committee members?

740. Mr Karl Beattie (Department of the Environment): Clause 8, as originally drafted, amended article 58 of the Waste and Contaminated Land (Northern Ireland) Order 1997 to provide for all appeals against remediation notices, regardless of which regulator issued those, to be heard by the PAC. However, no appeal fee was provided for in the original clause. The Committee expressed concern that, by not doing so, there was a danger that unscrupulous operators may seek to delay meeting their obligations. The amendment simply provides for the Department to prescribe a fee for such an appeal. That fee would be at the same level as a planning appeal, which is currently £126.

741. The Chairperson: As there are no other comments, I will put the Question.

742. Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

743. Clause 8 agreed to.

New Clause

744. The Chairperson: I remind Committee members that they also sought to propose two amendments in the absence of the Department's agreement to do so. Members have copies of the draft Committee amendments. The second of those amendments gives the highest level of Assembly scrutiny to secondary legislation that alters fixed penalty fines listed in the Bill and the existing Order.

745. On the advice of the Examiner of Statutory Rules, the Committee asked the Department to make sure that any alteration to fixed penalty fines will be subject to draft affirmative procedure in the Assembly. Higher and lower levels of fixed penalty fines are provided in the Bill — £100 to £400, as we discussed earlier — and three other fixed penalty fines were included in the Waste and Contaminated Land Order 1997 by an amendment in 2007 that, by default of the existing Order, were subject to negative resolution.

746. The amendment will ensure that the four fine levels cannot be altered without Assembly approval. That would be consistent with other legislation relating to fixed penalty notices that is currently being considered by the Assembly. It is to give us an extra bit of scrutiny.

747. Mr Ross: In light of the letters from the Minister and from Glassdon, we might need to give our first proposed amendment more consideration.

748. The Chairperson: We are coming to that.

749. Mr McGlone: I apologise if this has already been discussed, but what kind of time frame do we have for the Bill?

750. Mr Starritt: Do you mean the time frame for the Bill's commencement?

751. Mr McGlone: Yes.

752. Mr Starritt: We spoke before about the fly-tipping protocol, which is a key feature of the Bill and will need to be in place before the relevant clauses could be commenced and take any effect.

753. Mr McGlone: I will rewind a bit there. What is the time frame for the protocol's implementation?

754. Mr Starritt: We are hoping to consult on the protocol within the next six weeks.

755. Mr McGlone: How long will the consultation last? Will you outline what will happen from that consultation to the decision-making point and the Bill becoming law? There is a bit of a problem with Acts being implemented.

756. Mr Starritt: Subject to the Assembly process, we hope that the Bill will receive Royal Assent by February or March. At that stage, many of its provisions could be brought into operation straight away. The fly-tipping provisions would need to wait until the protocol is in place, but we hope that that would happen as soon as possible.

757. Mr Denis McMahon (Department of the Environment): Obviously, we cannot pre-empt what will come out of the consultation process. However, we are hopeful that by the time that the Bill receives Royal Assent, we will have the protocol in place.

758. Mr McGlone: So, you think that the protocol should be in place by February?

759. Mr McMahon: That is the intention. It could be commenced at that point.

760. Mr McGlone: Do you have a particular date in mind for the whole thing being in place, subject to Assembly approval?

761. Mr McMahon: The intention is to have it all in place by the spring.

762. The Chairperson: We had agreed that everything, including the protocol, would be set. I know that we are dealing with different circumstances, but our previous experience of the passage of Bills is a warning to all of us. The Taxis Act has commenced, but three years later some of its provisions have still not been implemented. We need to make sure that that does not happen with this Bill. That is what the Committee talking about.

763. Mr T Clarke: Could a further clause be put in that would kill the Bill off completely if it is not enacted by a certain date? That would make the Department move a bit more swiftly.

764. The Clerk of Bills: We would have to consider that, Chairperson, and come back to it.

765. Mr T Clarke: I say that because the Department might take it more seriously if it realised that all its work could be lost. If we set a time frame for the legislation to be implemented, and if, after that, it is not implemented, all the Department's work would be lost. As you, rightly, said, and as we identified last week, the Taxis Act has been a fiasco. There is no point in us going through this whole process again with other Bills if they will not be enacted.

766. The Committee Clerk: The Committee and the councils agreed that they wanted a lot of the Bill to go ahead now. To kill the whole Bill would be detrimental. However, the Committee sought from the Department a commitment that the clauses relating specifically to the agreement on waste management will not be enacted until an agreed protocol is put in place.

767. Mr T Clarke: You have, perhaps, taken me up wrongly. I do not want to kill the Bill. The Bill is an improvement. However, my problem is that we are going through this process, and if the Department does not get its act together, we will have wasted our time again.

768. The Chairperson: For clarity, I agree with Trevor Clarke on that point. We have been through this process, and there is no point in this Bill sitting on the shelf. Mr Clarke is asking that we look at the inclusion of a clause that will set a time frame, and if the legislation is not enacted within that, it will be gone. We want to go forward and make the Bill work, but we are going on what has happened —

769. Mr Kinahan: That is terribly dangerous.

770. The Chairperson: I agree, but I will give it every consideration; it is a request from a Committee member. I will let the Clerk of Bills come in on that.

771. The Clerk of Bills: On a procedural point, the Committee is up against the wire in its efforts to complete its report and meet its reporting deadline. It is, however, open to individual members, as MLAs, to approach the Bill Office and seek an amendment. There is time to explore that option. However, for the Committee to start to explore additional amendments at this point, when it is in the middle of its formal clause-by-clause scrutiny — in fact most of the clause-by-clause scrutiny has been done — and is about to report, is not feasible.

772. Mr McGlone: Following on from Trevor Clarke's point, on the wider front there seem to be management or delivery issues on the part of the Department; I do not know which. Trevor and I went through that Taxis Bill consideration, as did you, Chairperson, and as regards this and other legislation, we do not come here day after day to sit and go through this stuff for there to be no delivery. Whatever other legislation there may be, we should get clear guideline delivery dates as to when, in fact, the legislation will be in place. I know that that will be subject to other factors. However, I would like to think that there is, at least, someone there who can say that the anticipated date of enactment of this provision is such and such, so that the legislation can come into operation. Having a Bill or Act sitting on the shelf gathering dust is not a response. We, as a Committee and as elected Members, need to be assured that someone, somewhere, is driving this on.

773. The Chairperson: I totally agree.

774. Mr Beggs: I think that it is a strange and crazy proposal to booby-trap the Bill so that it will be killed off. There is already a date after which it will be killed off if it is not through the legislative process, so why would we want to add another date? There is a clear date, which everybody is aware of, and unless the Bill is through the Assembly and enacted by that date, it will be killed off anyway. Why do you want to add an earlier date?

775. Mr T Clarke: Maybe you are not hearing very well over there.

776. Mr Beggs: Maybe I am not.

777. Mr T Clarke: We have waited three years for a previous Act to be implemented. Had it had a date on which it had to be implemented — within a year after it received Royal Assent, for example — we would not be sitting here, three years down the line, with it still not having been implemented.

778. All that work has been done. In no way am I suggesting that we kill off the Bill. I am suggesting that we can make the Department move a wee bit more swiftly if we can make it see that all its work will be lost if, by a certain date after its commencement, it does not have certain things in place. It is to make the Department move more swiftly.

779. Mr Beggs: I do not think that the Committee should do that. Individuals can pursue that option if they wish.

780. The Chairperson: I understand. However, the key issue for this Committee is that it does not waste its time. The Bill needs to be enacted as soon as it receives Royal Assent. We are talking about less than a year. We are not talking about three years. The first part of the Taxis Act 2008 will be enacted three years after Royal Assent, in March 2011, hopefully.

781. Mr McGlone: We hope.

782. The Chairperson: Denis, I know that you want to come in, but do you understand the Committee's view? We have taken advice on the clauses, and Mr Clarke wants this moved forward, as do the rest of us. We do not want to kill the Bill. Would you like to respond?

783. Mr McMahon: Only to add a little extra context. We have listened to all the points that have been made and we accept those. A key issue has been agreeing a threshold between local government and the Department. That has been a major sticking point for some years. Some local government organisations — it is important to say "some" — proposed using a 20 cu m threshold, and the Minister is minded to put the consultation out on that basis. However, we need to formalise that and put it into a consultation document. The point that I am trying to make is that there has been progress on that issue. We are very much of the view that that now needs to go out to consultation, with a view to having the protocol in place by the time of Royal Assent. Obviously, I cannot comment on the other Bills mentioned. However, I reassure the Committee that there has been movement on the issue.

784. The Chairperson: Could you clarify the time frame for the consultation?

785. Mr McMahon: We see the consultation going out in six weeks.

786. The Chairperson: Will the Minister make a commitment during Consideration Stage to pull it all together? We want to see the Bill enacted. It is a good piece of work and a good Bill, and it will have an impact on the ground in helping constituents. It would be helpful if you would come back to us to tell us what the Minister says about making a commitment in the Chamber. You should also keep us updated on the consultation. You said that that would go out in six weeks and run for, perhaps, 12 weeks. Sorting out the threshold protocol is what could hold the whole process up.

787. Mr McMahon: One of the issues has been that we have heard two very different views. The local government organisations' view is that there are already severe pressures on them around fly-tipping. The Northern Ireland Environment Agency's (NIEA) view concerns the practicality of having a 20 cu m threshold, because it may not be feasible for it to manage anything more than that. There has been movement across that gulf, which has been a big cause of the hold-up around the protocol. That being resolved, it is a matter of setting down the roles and responsibilities. We do not envisage any problems with that going out.

788. The Chairperson: The threshold needs to be resolved through the consultation, which, hopefully, will happen, even though there are differences between the NIEA and the councils. Do you think that that will happen? In the absence of that being resolved, is there a plan B?

789. Mr McMahon: I think that we can reach agreement. This is a significant movement from the position that the NIEA held previously, and moves towards what the councils want. The only caveat is that we cannot predict whether, during the consultation, the councils that are not signed off on a 20 cu m threshold will want to discuss it. It has not been formally signed off that all 26 councils would be prepared to accept the 20 cu m threshold.

790. Mr T Clarke: The process to decide the distance seems like a Mexican stand-off between the councils and the Environment Agency. That could continue forever. If that happens, when would it be reasonable for the Department to come along and say what the threshold protocol will be?

791. Mr McMahon: I have not made myself clear. The Mexican stand-off is over. The Minister is minded to move to 20 cu m. Inasmuch as we have been getting feedback from local government, the line that we have received from them is that they want the threshold to be 20 cu m. The Minister has moved in that direction. That is the intention.

792. The Chairperson: That is what we are saying. We need acceptance. We need to move on and have the matter to go to consultation.

793. Mr T Clarke: You mentioned a further caveat, Denis. You said that when you get to that stage, some councils still might not buy into it. Surely, it would then be a case of saying, "Tough". You will say that the threshold is 20 cu m or whatever you say it is. If you do not say, "Tough" at that stage, your Mexican stand-off continues.

794. Mr McGlone: How do you suppose that you would get to that stage?

795. Mr McMahon: I am not saying that I expect that to happen. I would not necessarily use such terminology. One way or another, we have to get the consultation over and out of the way. All that I am saying is that it would be inappropriate of me to pre-empt the views of local government before the consultation. But yes: your point is correct in the sense that we must come to a view. There has been a great deal of movement on the issue. We have reached the point at which the Minister is minded to go with a particular threshold. Subject to the consultation taking place, the issue should be resolved.

796. The Chairperson: To be honest, Denis, we will continue to press you on that. We need that matter to be resolved.

797. Mr McGlone: I am seeking a wee bit of clarity that my point was picked up on. I asked for a commitment or details from the Department on its legislative time frame for all the legislation that is coming before us, not just on this item, that item or another item. We can pump all the Bills that we like through the Committee but if they are not delivered, what is the point? We need to know that someone, somewhere, in authority can actually say that the Department has a time frame and is working to a particular date. We need that assurance. If we do not get it, the Committee will start to reprioritise.

798. The Chairperson: Obviously, that is a separate discussion. However, we will, certainly, take that on board and ask the Department for an update on all Bills.

799. We must get back to the original discussion on the new clause regarding the setting of fines, which will give the Committee the opportunity to scrutinise the level of fines.

800. Question, That the Committee is content with the amendment, put and agreed to.

801. New clause agreed to.

New clause

802. The Chairperson: The Committee has also requested an amendment to provide the Department with powers to introduce standards for quality of recycled material that is collected

by councils, should that prove necessary in the future. I advise members that before they agree the amendment, they may wish to consider additional information that has been provided to the Committee by RecyCo, Glassdon and the Minister. The Department has also answered the Committee's queries on rejection rates from recycling plants, the cost of recycling to each council and glass recycling levels, as well as responding to the letter from Bryson Recycling.

803. I refer members to the Committee's draft amendment, which is included in members' packs.

804. Mr Ross: I understand the rationale behind the draft amendment. The Committee was well-intentioned in what it tried to do through the amendment. However, in light of new information that has been provided, it may actually be a pretty bad amendment to put forward, given that it would tie the hands of councils in an area in which they have authority. It may also severely disadvantage some businesses. The Committee may need to reconsider the amendment and not put it forward.

805. The Chairperson: Yes, we should reconsider.

806. Mr Beggs: We have been given a lot of information, including rejection rates, from various recycling and waste management areas in Northern Ireland. I am unclear about the percentage of foreign material that ends up being shipped out among material that is supposedly recycled. I assume that those figures refer to material that has come out of material recovery facilities (MRFs) to go to landfill sites. However, it has been highlighted that some MRFs are poor at recycling and that the quality of material that is meant to be recycled might not be as high as it should be and might, subsequently, limit others' ability to reprocess it.

807. I view this amendment as enabling the Department to bring in regulations should it need to. Therefore, I consider it appropriate that we should propose it. It is pointless to put material through MRFs and pretending that it is recycled and then shipping it off to Third World countries to go through another process of recycling or putting it in a landfill somewhere else. It is appropriate that this amendment be included.

808. The Chairperson: I will give my view and then I will ask Denis to step in. This amendment was well intentioned, but am I correct in thinking that 23 out of the 26 councils are operating a co-mingled system?

809. Ms Ann Tohill (Department of the Environment): That is correct.

810. The Chairperson: We have to consider the impact that that will have on councils. I know that this is an enabling amendment, Roy, and I take on board what you said. However, making the amendment would give the power to enact the new clause. If, for instance, a council comes along to a recycling facility with material, the manager of that facility could turn that material away because he deems it to be contaminated. We visited a recycling centre. We know that there is a model out there that is working, and the co-mingled system is also working. Those facilities are reaching their targets.

811. I am concerned about the impact that this would have on councils. Ultimately, if this new clause were implemented, it would have serious consequences for councils, and the Committee would be saying that there is a better model. This is about competition, doing the thing right, value for money and meeting targets. In the light of some of the information we have received, I do not support this amendment. Co-mingling seems to be working because 23 councils are meeting their targets. Having said all that, however, we need to look at the quality issue.

812. Would other members like to comment?

813. Mr Ross: I am happy to propose that we do not put this amendment forward in the Committee's name.

814. Mr W Clarke: I second that proposal.

815. Mr Beggs: Before we vote on this, I would like to ask a question. How can the Department impact on the quality of current MRF schemes to prevent market forces and the cost element driving down the quality of recycling, leaving it as poor as possible, and to ensure that there is an incentive to have high-quality recycling from MRFs?

816. If we allow low-quality recycling, market forces will drive councils to whoever is producing the lowest quality recycling, because they are putting as little effort as possible into it. What method is there to govern the quality of material coming out of MRFs? I am not talking about the amount of material that is rejected; that is a separate issue. This is about how the material that comes out of MRFs can be recycled, rather than being shipped off to Third World countries.

817. Mr McMahon: Ann can talk about this in a bit more detail. However, I will make a general point. One of the useful things that has come out of this debate is that it encourages us to look again at the whole issue of how MRFs operate. We have looked at some of the councils across the water that have achieved 40% recycling rates. Places such as Cardiff, Nottingham and Leicester achieve 40% recycling rates and are similar in most respects to Belfast; they are similar in size and have similar characteristics. Having talked to some of the MRF operators there and having seen what they are doing, it is clear that they are constantly working on improving those operations and that the market is driving it. Much of what they sell is sold locally and that is how they do business. Some of the material is being transferred to Europe and some further afield, but the majority of the business and the improvements that they are making to the MRFs are clearly driven by the market. That is encouraging in a sense, but, over and above that, we accept that there is a need for standards. Ann, would you like to say a bit about MRF standards and quality protocols?

818. Ms Tohill: I want to make a couple of points. The waste and resources action programme, which is the independent and expert body on recycling and reuse, has undertaken a number of studies to test the quality line of MRFs, including one last year where it tested 20% of MRFs across the UK. The findings were that some MRFs are producing very high-quality recyclables. As a result of that work, proposals were made to set up a discussion group. In fact, the operators and reproprocessors met to discuss what the standards should look like. There was a consensus that there should not be a quality standard as such. The UK reproprocessors set out very clear standards for MRF operators, and those are well understood. They considered weight-based standards, where the material would be sampled, and that work is still under way. However, the findings are very important because they demonstrate that MRFs produce quality material if they are set up correctly.

819. The technology for sorting waste materials is changing rapidly, and, over the next five to 10 years, we anticipate that a lot of materials that currently cannot be recycled will be recyclable. We are also aware that some MRFs in Northern Ireland are taking materials from councils that cannot be reprocessed by local companies, because they are not yet at that stage, but there are markets in the UK where that material can be sold and is being reprocessed. If those MRFs were not taking that material, it would end up going to landfill. Therefore, we are conscious that we do not want to do anything that will be detrimental to the amount and quality of materials that we recycle.

820. There is a perception that a lot of the material that is exported is highly contaminated. However, we do not have evidence of that. We do not have the hard facts from the NIEA or anywhere else that a lot of the material that is being exported contains high levels of

contamination. If that is the case, we understand that it is returned to Northern Ireland, but the checks that the NIEA carries out at the border indicate that the material does not contain high levels of contamination. Therefore, we are trying to ensure that we take all that information on board. Where there are gaps as we develop our policy, we will take a balanced view, and any policy that we take forward will not be detrimental to one part of the market and prejudiced towards another.

821. Mr Kinahan: I get the impression that the key word in the new clause is "may", but the word "must" is used for councils. Your argument is that this would only be relevant if there were really a case for legislating for this, but you are saying that, at the moment, there is not a case.

822. Ms Tohill: We do not have the hard evidence for that.

823. Mr Kinahan: But there might be hard evidence one day, in which case the new clause should be included.

824. Mr Ross: It could be inserted at a future date.

825. The Chairperson: There are 23 councils operating co-mingling systems, and they are reaching a certain percentage. However, if this clause were included and became law, it would only take one phone call to the council for it to be enacted, if there is a case of contamination or anything else.

826. Mr McMahon: One of the issues that has come out of this is that it is a private sector operation. You can see through accounts in various letters — I am not going to comment on the detail of those — that there are different views, in which commercial interests are being reflected. One scenario is that a private sector operator, using a co-mingling system or otherwise; a MRF operator; or another type of operator could push and make the case, and if the power were in place, we would be expected to make regulations. However, given the potential impact on the market, we would have to consult on any regulations that we would make. That is how it could influence the market in the future.

827. Mr Beggs: Presumably, this new clause would enable you to make regulations. However, in deciding whether to make regulations you would have to determine whether a strong argument was made, what is practically feasible and what methods would be used. One of the issues that I picked up during the evidence was that textiles caused problems when they are co-mingled.

828. There may be things that you can do, but they can only be done after careful consideration of everything. Currently, there are no controls, and MRF operators and councils dump everything in their so-called recycling bins, with no regard to what comes out at the other end of the process.

829. Ms Tohill: If the operators were producing material of very poor quality, they would not continue in business. We heard anecdotal evidence that MRF operators have gone out of business because they were not producing the quality required. The market will sort it out, because if operators do not produce quality materials they will not get the price for it and will not have a market to supply to. It is the same with markets abroad. A few years ago the market collapsed and stockpiles of paper were built up, but the quality in Northern Ireland was of a high enough standard that it was protected. As a result of the lack of evidence at the moment, we are not clear that a policy intervention is required.

830. Mr Beggs: It has been said that that could be introduced subsequently, but that would require primary legislation. The proposed new clause would only be enabling legislation that

could sit dormant and never be enacted if there is no requirement or decision by the Minister or the Department to do so.

831. Ms Tohill: We would be concerned that that would send out a signal that the Department was actively thinking about imposing it. The waste framework directive is very clear that that collection method which is the most beneficial technically, economically and environmentally should be the preferred option, so the amendment could be perceived as removing the economic argument for councils, because there will be a cost associated with it. In a way, you would be moving the costs up the chain so that the ratepayer would bear costs, whereas, if the market is left to sort itself out, the reprocessor would bear its share of those costs.

832. The Chairperson: OK. We have a proposer and a seconder for the Committee's proposal not to table the amendment. I will need to take a vote. Mr Beggs, are you of the opinion that that amendment should remain?

833. Mr Beggs: I have not heard an argument as to why a judgment cannot be made by the Minister and the Department at a subsequent stage, having taken all the circumstances into consideration such as the directives and the economic aspect. That is a decision that the Minister could take. I am concerned that we could potentially ship low-grade material to Third World countries, with everyone feeling happy that we have recycled when we may not have done so properly.

834. Ms Tohill: The statistics show that the UK market for recyclables exports a huge amount of paper. Of the 8.8 million tonnes that are recovered, 3.8 million tonnes are reprocessed in the UK and 4.4 million tonnes must be exported, because there is no market for it here. If we did not have those marketplaces, the reprocessors and operators —

835. Mr Beggs: Sorry, I have no objections to going through legitimate recycling processes and exporting —

836. The Chairperson: We need to move this on. I will take a quick point from Mr McGlone, and I will put it to the vote.

837. Mr McGlone: Is there not a market for it because there is too much of it, or is it, as Mr Beggs suggested, because the quality is slightly inferior and the marketplace here is taking the best recyclables? In other words, where is the quality control? Does anyone keep tabs on the exported stuff, or are we comfortable enough with just getting it out of these islands?

838. Ms Tohill: Every country has its own standards. Under the Transfrontier Shipment of Waste Regulations 2007, the NIEA checks the loads as they cross the borders, and if there are high levels of contamination, those loads are returned. From what we have heard from the agency, six loads were returned in the past few years and, of those, only three contained municipal waste. Quality checks are carried out at the borders. The waste is also checked when it arrives in the destination country, and, depending on what processes that country has, it can also be returned to Northern Ireland from there.

839. Mr McGlone: That all depends on the quality of the checking on both sides.

840. Ms Tohill: It does. However, if you take the paper market, different grades of paper get different prices. That is just part of the market operating and does not mean that the paper is still contaminated and cannot be recycled; it just means that it is of a lower grade and will have a different end use.

841. Mr McGlone: Do you mean that it is not contaminated according to the standard that we would use?

842. Ms Tohill: No. There are the highest quality materials, which get the highest prices, but there are still markets for lower-quality materials, which will be recycled into lower-quality products. We need those markets.

843. The Chairperson: We have been through the issue. At the time of the amendment being drafted, most of us thought that it was a reasonable suggestion. We have found out more information. The proposal is to not table the amendment, so I will ask for a show of hands from those in favour of withdrawing it.

844. Mr McGlone: Sorry, I was called out when you were going through all of this. Could somebody review it for me?

845. The Chairperson: There was a suggested amendment from the Committee about the quality of the recycling. We have discussed the issue, and I feel that it is not appropriate to table the amendment. We have 23 councils using co-mingling and three councils using source separation, which was the basis of the suggestion. The councils are reaching targets. We have received three letters from three different groups, and it is not appropriate that for the Committee to support one viewpoint. The impact of the amendment could be to support one business model over another.

846. The amendment says "may", but if it is made, its provisions could be enacted fairly quickly. The Committee should not be dealing with that issue; we should be talking about value for money and proper separation. Certainly, quality is a major issue and should be looked at, but it is up to the Department to keep checks on that and ensure that it is carried out properly. The question is whether Committee members support the amendment's inclusion or its removal.

847. The amendment is for the insertion of a new clause after clause 6, to be entitled "Quality of waste to be recycled". The amendment was brought forward by the Committee. However, we have reviewed the situation and received letters with other information. There is a proposal from Mr Ross, supported by Mr Clarke, to not move the amendment.

848. Mr Kinahan: You are being a little one-sided. The amendment was suggested so that if, in the future, things are found to be wrong in the system, we can change it.

849. The Chairperson: I totally agree. However, there is a possible impact of that. Some members sit on councils and know that councils sign up to contracts. Be under no illusion that the whole issue came from a visit and a discussion about the co-mingling system and the source separation. The amendment came from the whole issue of equality. You have to look at the impact that the amendment would have on councils. I am not saying whether it would or would not have an impact.

850. Mr T Clarke: Patsy is clever enough to make up his own mind, but, given that he has not heard the whole debate, perhaps Ann Tohill should explain how we could be interfering with the markets. She has a very good grasp of the arguments, so perhaps she could go over them again.

851. Mr McGlone: Thank you very much for your kind comments, Trevor. The amendment states:

"The Department may by regulations provide that in carrying out their duties under Article 20, district councils must meet such requirements as may be prescribed, in relation to the nature and quality of waste which is to be recycled."

852. What is the current process for determining the quality of waste? How are the requirements on the quality of waste to be recycled enforced at the moment? In other words, what does the amendment add to or subtract from what is already there?

853. Mr McMahon: There are two forms of regulation. First, as we said, the marketplace is regulating. Factors are in play to encourage MRF operators here and across the water to improve the quality of recyclates that they produce, and there is evidence that some local operators are investing to do that. The second level of checking, which Ann Tohill mentioned, applies to the Transfrontier Shipment of Waste Regulations 2007. Any recyclates shipped out of Northern Ireland have to be checked by the Environment Agency. In addition, Ann may wish to say something about MRF standards and quality protocols.

854. Mr McGlone: I was not talking about spot checks as a means of enforcement; I was asking what regulations are in place. In other words, the Bill proposes regulations for x, y and z, but what exists at the moment?

855. Mr McMahon: We do not have any regulations that tell councils how to collect waste, which is what I understand the amendment would do. We have no powers over that; as I understand it, the amendment would move us into that territory.

856. Mr Beggs: That needs to be clarified.

857. The Chairperson: That is fine. I know that Mr McGlone was out of the room at the time, but we are rehashing arguments. This is a Committee amendment, and the proposal is to either support or remove it, so I will put it to a vote.

858. Mr McGlone: I have to say that I could not vote on it, because I am not satisfied about the types of controls that exist now.

859. Mr Beggs: The market —

860. Mr McGlone: We know where the market goes, which is why we are in the banking crisis that we are in.

861. Ms Tohill: There are two standards. The MRF operator has a standard and when council waste arrives at its gates, it is checked and if the load is contaminated, it is returned. Furthermore, if waste is not accepted, the MRF operator imposes a hefty fine on the council. When waste goes through the MRF operator, the operator tests the waste and rejects any contaminated waste. The reprocessor specifies a standard for the MRF operator. Therefore, as waste passes through the system, there is a series of checks, and if the operator does not meet that standard, it is up to the reprocessor to reject the material and either tender a new contract or look elsewhere.

862. As we said, we have anecdotal evidence of MRF operators having been closed down because they did not produce material of high enough quality to meet market demand. However, there are buyers in the UK for material produced by our operators, and those buyers are saying that it is of a high quality. Not all material can go to the local reprocessing sector because, in some cases, reprocessors do not accept materials because, as yet, they do not have the technology to turn them into a product. However, elsewhere in the UK, it is taken and turned into quality

products. We also have in place and are working on quality protocols and standards for certain waste streams, all of which means that if that waste is treated in a certain way, it is no longer considered as waste because it has been turned into a quality product. Those standards are being worked on by the Department and the Environment Agency.

863. The Chairperson: I remind members that, if they wish to do so, they can bring an amendment to the Chamber as a private Member. I shall put the matter to a vote. I, Trevor Clarke, Willie Clarke and Alastair Ross voted against tabling the amendment; Roy Beggs and Danny Kinahan voted for tabling the amendment. Therefore, the Committee will not table the amendment.

864. New clause disagreed to.

Appendix 3

Written Submissions Relating to the Report

SWaMP2008 Written Submission to the Waste and Contaminated Land (Amendment) Bill



SWaMP2008

Southern Waste Management Partnership

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Environment Committee
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BELFAST
BT4 3XX

28 May 2010

Dear Sir/Madam,

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

1. INTRODUCTION

- 1.1** This response has been prepared on behalf of the eight constituent Councils of the Southern Waste Management Partnership (SWaMP2008) Listed below; following your request for comments on the proposals contained in the Waste and Contaminated Land (Amendment) Bill.

Armagh City & District Council
Banbridge District Council
Cookstown District Council
Craigavon Borough Council
Dungannon & South Tyrone Borough Council
Fermanagh District Council
Newry & Mourne District Council
Omagh District Council

Individual member councils within SWaMP2008 may also make their own separate responses.

- 1.2** SWaMP2008 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 (N.I.) Order 1997.
- 1.3** More specific comments relating to the full range of issues highlighted for consideration are detailed in section 2.

2. ISSUES FOR CONSIDERATION

- 2.1** SWaMP2008 agrees with the requirement for a partnership approach between the Department of the Environment (DOE) and local government in tackling illegal waste activity.
- 2.2** Although the proposal to give Councils a more proactive role in enforcement through the most appropriate powers under amendments to the Bill is welcomed, SWaMP2008 is of the view that a demarcation of responsibility is necessary between NIEA and Councils. This has been stated several times by SWaMP2008 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 inability to deal with sites comprising less than 20,000 tonnes of illegal waste. A clearly set out flytipping/illegal waste disposal protocol is required to ensure an effective working partnership between NIEA and Councils, and agreed before the proposed amendments would be implemented. Adequate resources, financial and otherwise would also be needed 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.
- 2.3** **Clause 1 – Fixed penalty notices for offences under Article 4**
This clause enables the Department or relevant district council 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 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 training to be allocated to each Council prior to any implementation.
- 2.4** **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.
- 2.4.1** SWaMP2008 supports 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.
- 2.4.2** SWaMP2008 view 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.

- 2.4.3** The second proposed amendment, where both regulators would have the power to serve an Article 28 notice on a suspected offender, is supported by SWaMP2008. This option is considered to be an additional potential deterrent and one which clearly follows the 'polluter pays' principle.

However, SWaMP2008 again 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. Again SWaMP2008 would express an urgent need to have this confusion dealt with as it is totally inappropriate to have Councils dealing with special hazardous wastes.

- 2.4.4** 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. SWaMP2008 believes that this will provide an additional control to those already available under Article 4 and is therefore supported.

- 2.4.5** As stated previously in our response to the Consultation on the Draft Clean Neighbourhoods and Environment Bill (Northern Ireland) SWaMP2008 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.

2.5 Financial Effects of the Bill

The 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, many of these powers are discretionary and some have the potential for cost recovery, for example Councils issuing fixed penalties for illegal waste offences will be able to offset receipts against their enforcement costs.

However, SWaMP2008 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.

2.6 Flytipping protocol and data recording

SWaMP2008 constituent Councils are insistent that no legislation should be passed before a protocol is developed to address the gray area in relation to who is responsible for differing scales of deposited waste, e.g. the difference between litter, flytipping and illegal dumping. Only then would it be possible to develop any system for recording accurate data on these incidents.

A clearly set out flytipping/illegal waste disposal protocol is essential to ensure an effective working partnership between NIEA and Councils, and agreed before the proposed amendments would be implemented.

If we can be of any further assistance please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'G Byrne'.

Graham Byrne, Chief Officer, SWaMP2008

**arc21 Written Submission to the Waste and
Contaminated Land (Amendment) Bill**



FAO Mr Sean McCann
Northern Ireland Assembly
Committee for the Environment
Environment Committee Office
Room 247
Parliament Buildings
Belfast
BT4 3XX

28th May 2010

Dear Mr McCann

Re Waste and Contaminated Land (Amendment) Bill

I refer to your letter of 27th April 2010 which, on behalf of the Committee invites views from arc21 in connection with the above.

As requested, our submission is structured to address the specific clauses of the Bill:

Waste

Clause 1 – Fixed penalty notices for offences under Article 4.

arc21 is supportive of the introduction of fixed penalties as an alternative to prosecution with Councils being able to use any funds raised through these fixed penalties to help cover the costs of enforcement and clean up of illegally deposited waste. In the interests of consistency of approach throughout Northern Ireland, there may be merit in developing guidance outlining the circumstances upon which greater consideration should be given to the use of fixed penalty notices.

Clause 2 – Detention of seized property.

arc21 is supportive of the powers introduced in this clause.

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Clause 3 – Offence of failing to pay charge for subsistence of licence.

arc21 have no objection to this clause.

Clause 4 – Powers to require removal of waste unlawfully deposited.

arc21 is supportive of this clause in principle. However given the duplication of powers it will be necessary for agreement to be reached on the appropriate organisation to use the powers in any given circumstances.

arc21 would have some concern in relation to landowner liability particularly that unwitting landowners should not suffer financially to clean up waste illegally deposited on their land.

Clause 5 – Councils to enforce Articles 4 and 5 of 1997 Order.

The problem of fly-tipping has been well documented and one of the main ways of addressing this is the existence of an effective and efficient "policing" regime. Giving Councils powers to carry out prosecutions under articles 4 & 5 of the 1997 Order may not in itself be sufficient to ensure the provision of an effective and efficient policing regime. We would be fully supportive of the proposal subject to:

- 1) The development of a protocol, the contents of which all "policing" agencies are in agreement with; and
- 2) Councils are given an adequate level of resource from central government to enable them to properly implement any new "policing" powers in this regard.

In addition and subject to the above, it will be necessary to ensure that Councils have similar powers as the Department in connection with enforcement of the articles and in particular parity with regards to subsequent enforcement powers under the Article 5(7) pertaining to the regulations made thereunder, with particular reference to the furnishing of documents or copies of documents.

Clause 6 – Right of entry with heavy equipment or to domestic premises.

arc21 is supportive of the powers introduced in this clause.

Contaminated Land

Clause 7 – Contaminated land: pollution of waterways and underground strata.

arc21 is supportive of the powers introduced in this clause.

Clause 8 – Appeals against remediation notices.

arc21 is supportive of the powers introduced in this clause.

Clause 9 – Interaction with other provisions.

arc21 is supportive of the powers introduced in this clause.

Producer Responsibility Obligations

Clause 10 – Producer responsibility obligation regulations.

arc21 is supportive of the powers introduced in this clause.

Financial Effects of the Bill

The new enforcement powers for Councils, although discretionary, will inevitably have costs implications for councils which is unlikely to be fully absorbed by the potential for some cost recovery. Councils should be given an adequate level of resource from central government to enable them to properly implement any new policing powers.

The Joint Committee considered the issue at its meeting on the 25th May 2010 and reaffirmed the position articulated above.

I trust this is of assistance.

Yours sincerely



R BURNETT
Policy & Operations Director

Banbridge District Council Written Submission to the Waste and Contaminated Land (Amendment) Bill

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."

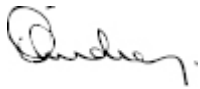
This proposal was strongly supported at the time by the Chief Environmental Health Officers Group, since it was Councils' experience over a long number of years of enforcing the legislation that the existing wording of Article 4 made it virtually impossible to secure a conviction under that Article.

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

A handwritten signature in black ink, appearing to read 'David Lindsay', with a stylized flourish at the end.

David Lindsay
Director of Environmental Services

**Southern Group Environmental Health Committee
Written Submission to the Waste and Contaminated
Land (Amendment) Bill**



28th May 2010

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

Dear Sirs and Madams,

**RE: WASTE AND CONTAMINATED LAND (AMENDMENT) BILL – COMMITTEE
STAGE**

I refer to your letter to councils dated 27th April 2010 inviting views on the proposed Waste and Contaminated Land (Amendment) Bill and welcome the opportunity to make comment.

It is welcomed that councils will be given powers to address some illegal waste disposal issues within their localities and it is hoped that by working with the Department on these matters we can control illegal activity and deliver the high level of environmental protection we all desire. However, it is imperative that the scope and scale of illegal deposit to be addressed by each organisation is clearly laid out in an agreed enforcement protocol well in advance of the commencement of these powers. This will enable efficient working within councils and the Department as well as avoiding the public gaining the perception that neither organisation is willing to respond or worse still that both organisations are unclear in their role.

I wish to draw your attention to the substantial comments provided by The Chief Environmental Health Officers Group to the Department's 2009 consultation on the Bill. In summary these comments request that along with an enforcement protocol, adequate resources and guidance are provided to allow councils to take on this challenge.

Additionally, I note that the consultation proposal to amend the "knowingly permit" element of Article 4 offences has not been carried through to the draft Bill. I would still be in support of the burden of proof in such cases resting with the accused which would assist in the effective operation of the legislation and I would ask that the Committee give due consideration to re-introducing this proposal.

As the Committee is aware illegal waste disposal is an issue of major public concern due to environmental damage and loss of amenity and in addition we must not forget that legitimate waste business operations are threatened by such illegal activity. Therefore whilst the Bill is welcomed I would ask that the Committee consider these comments in order to aid the application of the proposed provisions.

Yours faithfully

Sam Knox
Group Chief Environmental Health Officer



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Employer: Councils: Armagh City and District Council

Lisburn City Council Written Submission to the Waste and Contaminated Land (Amendment) Bill



LISBURN
CITY COUNCIL

Island Civic Centre, The Island, Lisburn, BT27 4RL Tel: 028 9250 9250

www.lisburncity.gov.uk

Norman Davidson Chief Executive
normand@lisburn.gov.uk

BP/jc

26 May 2010

Mr Sean McCann
Assistant Clerk
Environment Committee
Room 247 Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Dear Mr McCann

Re: Waste and Contaminated Land (Amendment) Bill

I refer to your letter dated 27 April 2010, regarding the above.

The Councils within arc21 have discussed this proposed legislation and arc21 are preparing a response.

Lisburn City Council would therefore support the arc21 response to the consultation.

Please do not hesitate to contact me should you require further clarification of this matter.

Yours sincerely

Brian Porter
Assistant Director of Environmental Services/Technical



Lisburn, a City for everyone

David Briggs
Director of Community Services
davidb@lisburn.gov.uk

Colin McCluskey
Director of Environmental Services
colinm@lisburn.gov.uk

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Northern Ireland Local Government Association (NILGA) Written Submission to the Waste and Contaminated Land (Amendment) Bill

The following is a response to the request for views on the Waste and Contaminated Land (Amendment) Bill, currently at Committee Stage. This builds on the response to the consultation document published by the Department in April 2009. This paper has been drafted in liaison

with the NILGA Waste Working Group, the local government Waste Management Groups, the Technical Advisers Group, SOLACE and the Chief Environmental Health Officers Group.

This consultation considers vital proposals for legislation for which local government has been pressing, for a number of years, including better provisions to deal with fly-tipping, including an operating protocol

Introduction

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is also supported by all the main political parties. Waste management is a key issue for local government due to the huge impact it can have on local communities, the economy, sustainability, climate change and council budgets. NILGA is pleased to be able to have an opportunity to comment on the proposals for the Waste Bill and we trust that our comments will be taken into account when developing the final proposals. This response was developed in liaison with the NILGA Waste Working Group, the local government Waste Management Groups, the Technical Advisers Group and the Chief Environmental Health Officers Group.

This draft response follows the format of the Bill, and is arranged into sections, designed to address specific clauses, following a section giving general comments.

Waste

1. Fixed penalty notices for offences under Article 4
2. Detention of seized property
3. Offence of failing to pay charge for subsistence of licence
4. Powers to require removal of waste unlawfully deposited
5. Councils to enforce Articles 4 and 5 of 1997 Order
6. Right of entry with heavy equipment or to domestic premises

Contaminated land

7. Contaminated land: pollution of waterways and underground strata
8. Appeals against remediation notices
9. Interaction with other provisions

Producer responsibility obligations

10. Producer responsibility obligation regulations

Supplementary

11. Minor and consequential amendments and repeals

12. Commencement

General Comments

NILGA is pleased to be able to give views to the Environment Committee on the proposals contained within this Bill, which marks an opportunity to amend current legislation and to make some small additions. We would ask the Committee to note our view that we are encouraging the Department to work on a longer term, more creative strategic approach to developing appropriate legislation for Northern Ireland on environmental issues, including climate change and waste management. Whilst working within the framework of EU legislation, Northern Ireland now has the ability to form and frame its own legislation and it will be vital as we move forward with a legislative assembly, to create what an appropriate legislative base for the region.

NILGA notes the current need to work within the legislative timetables available and to prioritise heavily, but the earlier a strategic approach is embarked upon, the sooner it will become more viable to deliver appropriate and innovative legislation to deal with the waste management and other issues Northern Ireland has to face.

There is a need to properly resource Planning and Environmental Policy Group to provide the necessary research and scoping exercises to ensure the timely development of legislation and guidelines that are necessary and appropriate to the Northern Ireland situation.

NILGA would also request that Committee consider the potential for the DOE to establish a working forum where the Department, NIEA and councils can meet regularly to consider and discuss matters of enforcement.

Waste

1. Fixed penalty notices for offences under Article 4

NILGA would support the proposal to give NIEA and councils the power to issue fixed penalty notices as an alternative to prosecutions to the courts, in relation to breaches of Article 4 of the 1997 Order. NILGA believes that this would provide for more cost-effective regulation in appropriate cases, i.e. cases of small scale dumping of domestic waste, which is more likely to be dealt with by councils.

NILGA believes that Fixed Penalty Notices should be set at a level that acts as a deterrent, although there are many aspects of fly-tipping that require further consideration, and consultation with stakeholders, such as domestic rubbish versus illegal commercial dumping. One such issue is that of known repeat offenders, who may be small scale commercial operators, and whom it may be more effective to deal with by taking straight to court.

NILGA is of the view that a fixed penalty of £200 would provide a reasonable deterrent for non-commercial small scale offenders. These figures should be reviewed regularly to ensure that the legislation keeps up with economic circumstances. The fixed penalty fines should be payable to councils and sufficient to cover council enforcement and clean-up costs, whilst remaining below the level of court fines.

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 councils.

2. Detention of seized property

- Power to retain seized vehicles

This proposal is supported.

3. Offence of failing to pay charge for subsistence of licence

- Creation of a new offence of a failure to pay subsistence fees with respect to a waste management license

NILGA would agree to this proposal.

4. Powers to require removal of waste unlawfully deposited

NILGA is supportive of this clause in principle. However given the duplication of powers it will be necessary for agreement to be reached on the appropriate organisation to use the powers in any given circumstances.

5. Councils to enforce Articles 4 and 5 of 1997 Order

The proposal to provide council officers with the same comprehensive set of powers of entry and investigation as those provided to departmental enforcement officers for this purpose under Article 72 of the 1997 Order, including regulations under Article 5(7) is absolutely essential if councils are to be given the powers proposed under Articles 4 and 5.

Amendments to Articles 4 & 5 of the Waste & Contaminated Land (NI) Order 1997

Currently, the enforcement options open to district councils in respect of illegal disposal of waste (rather than littering) is limited to the service of Article 28 notices. It is proposed that the Waste and Contaminated Land (NI) Order 1997 is amended to allow councils in NI to prosecute for offences related to breaches of Articles 4 and 5.

NILGA has been working with TAG, CEHOG, SOLACE and the Department to seek to develop an agreed approach on this issue, to which councils have been requesting a better solution for some years. Experience since the implementation of the legislation is that NIEA (formerly EHSNI) has not had sufficient resources to pursue all breaches of Article 4 and has prioritized heavily, focusing on what it believes to be the most serious cases. Accordingly, a large number of illegal sites are not being pursued, despite having a serious detrimental impact on local amenity. In addition, a multiplicity of small incidents has no chance of being dealt with by NIEA, given the resource-based approach to enforcement.

NILGA believes that to allow this situation to continue, would develop an increased confidence in offenders in their ability to get away with such behaviour and thus lead to an escalation of the problem. This situation will only be exacerbated with increased departmental focus on commercial industrial and construction and demolition waste, coupled with increasing landfill costs and the development of more stringent EU legislation.

Demarcation of responsibilities and development of a protocol

Although the proposal to give district councils a more proactive role in enforcement through the appropriate powers under Articles 4 and 5 is welcomed, NILGA is of the view that a demarcation of responsibility is necessary between NIEA and councils. The working group has been trying to reach agreement on where this demarcation should lie.

Currently local government is only responsible for the enforcement of the Litter Order, and NIEA will not deal with incidents of less than 20000 tonnes of waste.

The entire local government sector is firmly of the view that the demarcation point, specified in the protocol in existence in England and Wales, where the agreed basis for council action is "fly-tipping of quantities of waste up to and including a single tipper load of waste up to and including a single tipper load of waste deposited at one time (i.e. up to approximately 20m³) in a single deposit, should be applied in Northern Ireland.

<http://www.environment-agency.gov.uk/homeandleisure/waste/flytipping/37853.aspx>

In England and Wales this protocol was developed based on which was the most appropriate organization to deal with the incident, not on quantity or number of incidents. A clearly set out fly-tipping/illegal waste disposal protocol is required to ensure an effective working partnership between NIEA and councils, and agreed before the proposed amendments would be implemented. Adequate resources, financial and otherwise would also be needed to enable councils to effectively investigate and enforce Articles 4 and 5 offences and meet the requirements of the protocol. Councils feel that it is unacceptable to pass the costs of inspection, enforcement and clean-up onto the ratepayer.

NILGA believes that the existence of a working protocol in England and Wales has greatly assisted in the enforcement of illegal waste disposal, and that such a protocol should be developed in Northern Ireland, to also involve liaison with major landowners such as DARD, Translink and the National Trust. The proposed amendments to the legislation cannot work until an appropriate demarcation and division in working is set between NIEA and councils, and would be keen that this demarcation is the same as that in the English protocol.

Even with this line of demarcation, both councils and the NIEA will need to seek additional resources to discharge their duties but NILGA will be stating that the detail can follow using a suitably agreed methodology

Research and Data Collection

Although it would be preferable to have a research base in order to assist councils to bid for resources, given that councils do not currently enforce illegal dumping activity, at present it is difficult to quantify the scale of the work involved. NILGA and the Department have been working together to attempt to develop proposals for a data capture system suitable for local government use, but it has become clear that councils do not have the resources available to populate a detailed data capture system (a particular issue for the larger urban councils).

NILGA has done some research with councils to estimate how much a data capture and research programme, that would satisfy the requirements of the Department and NISRA, would cost local government to populate satisfactorily. This research has shown that to gather information on fly-tipping and illegal dumping incidents would cost the ratepayer at least £300,000 pa, and potentially up to £500,000. Local government does not view this as a good use of resources.

NILGA will be encouraging the department to liaise with the data collection staff in NIEA to examine what might be possible through other data streams already being collected from

councils. In the interim, NILGA would encourage the Committee to ensure the Department views this legislation as a 'new burden' for councils, and to provide associated resources to assist in councils taking on new enforcement responsibilities.

Facts and Figures:

Following a Freedom of Information request to NIEA, NILGA was informed that NIEA do not have information on the number of Article 28 notices they issued between April 2007 and March 2008 and although 250 incidents of fly-tipping were referred to NIEA by Councils during the period April 2007 to March 2008, information about the quantity of waste for each referral is apparently not held by NIEA. Thus research is also required within government on this issue.

From internal local government research we are aware that in the year 2006/7, the 17 councils participating in the study reported 3243 incidents of fly tipping and illegal dumping in their areas that would fall outside the remit of the Litter Order. Research of this nature is continuing.

6. Right of entry with heavy equipment or to domestic premises

NILGA would support this proposal.

Contaminated land

7. Contaminated land: pollution of waterways and underground strata

8. Appeals against remediation notices

9. Interaction with other provisions

Part 3 of the 1997 Order makes provision with respect to land contaminated by pollution. This part of the Order has not yet been commenced, and the proposed Bill includes a number of amendments to the existing legislative framework, mainly to reflect lessons learned through operational experience in England and Wales.

These amendments include:

- All appeals now to be heard by Planning Appeals Commission
- Definition of contaminated land to be made more accurate with regard to waterways
- Improved interaction with the pollution prevention and control regime

NILGA is supportive of these proposals given that they have arisen from experience of operating the contaminated land regime in GB.

Producer responsibility obligations

10. Producer responsibility obligation regulations

Proposals are made in the Bill to improve the department's powers of entry and inspection, to bring the powers available in the producer Responsibility Obligations (NI) Order 1998 into line

with Article 72 and Schedule 4 of the Waste and Contaminated Land (NI) Order 1997. This will include powers to:

- Take photographs and make recordings, where these are deemed necessary for the purposes of any examination or investigation under the Order
- Take samples of anything found on the premises
- Require appropriate persons to answer questions relevant to the examination or investigation and to sign a declaration of the truth of his answers

It will also allow a Magistrate's Court to authorise entry to premises in circumstances where an entry has been refused or is likely to be refused.

NILGA notes these proposals and agrees that they are necessary.

Supplementary

11. Minor and consequential amendments and repeals

The proposal to review the references to 'waste in or on land' in Part 2 of the Order and to amend these where necessary to cover the illegal deposit of waste in, or over, or under land is supported in view of the Department's experience of difficulties with existing wording/definitions.

12. Commencement

NILGA largely agrees with the proposals as outlined, but is of the view that a carefully choreographed approach is required with regard to fly-tipping and the development of a protocol. There is no point enacting this legislation before a suitable protocol is in place.

Financial Implications

The new enforcement powers for Councils, although discretionary, will inevitably have cost implications for councils which is unlikely to be fully absorbed by the potential for some cost recovery. Councils should be given an adequate level of resource from central government to enable them to properly implement any new policing powers.

For further information regarding this response, please contact Karen Smyth, Head of Policy at NILGA on (028) 9079 8972 or at k.smyth@nilga.org

Omagh District Council Written Submission to the Waste and Contaminated Land (Amendment) Bill

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

North Down Borough Council Written Submission to the Waste and Contaminated Land (Amendment) Bill

Arising from: Item 10

Report

Environmental & Amenities Committee

1st June 2010 Meeting Date

File Ref: 163 Dated: 25th May 2010

Signed:

Subject: Comments on Waste and Contaminated Land (Amendment) Bill

Source:

Method of Funding:

Responsible Officer: Director of Environmental Services

Section 75 Compliant: Yes No Not Applicable

Relevant Act/Bye-Law: Waste and Contaminated Land (Amendment) Bill

Previous Council Policy: Minute Ref:

Document(S) Annexed/Circulated:

The Waste and Contaminated Land (Amendment) Bill has reached the Committee stage for consideration by the NI Assembly Committee for the Environment. Comments are invited by 28th May 2010.

In summary, the proposed legislation amends the current legislation as follows -

Amendments to Articles 4 & 5 of the Waste & Contaminated Land (NI) Order 1997

Currently, the enforcement options open to district councils in respect of illegal disposal of waste (rather than littering) is limited to the service of Article 28 notices (power to enforce removal of unlicensed waste). It is proposed that the Waste and Contaminated Land (NI) Order 1997 is amended to allow councils in Northern Ireland to prosecute for offences related to breaches of Articles 4 and 5, unlicensed waste disposal.

Although the proposal to give district councils a more proactive role in enforcement through Articles 4 and 5 is welcomed, a demarcation of responsibility is necessary between NIEA and councils. NIEA is currently refusing to deal with unlicensed waste disposal incidents involving quantities less than 20,000 tons and they argue that the protocol currently being drafted should include that cut off point. This would place a high workload on councils without any additional resources. SOLACE and TAG have already expressed the view that this cut off point is unrealistically high and should be no more than 20 tons, as is the case in England and Wales. CEHOG (Chief Environmental Health Officers' Group) is currently considering its position but it is likely that NILGA will aim to produce an agreed Local Government view based around the SOLACE/TAG position.

Council may consider that there is merit in having such a cut off point specified in the legislation, rather than having to rely on a protocol, which has no statutory basis.

It should be noted that DOE is pressurising Local Government to provide statistical evidence to develop a cut-off point for inclusion within the protocol. They believe that a quantification of the problem will assist in bidding for resources. DOENI will not accept the evidence already provided BY local Government, as they say it is not detailed enough. Obtaining more detailed statistical evidence presents a significant resource issue for Council Departments already under pressure, particularly in urban councils. TAG would query the benefit of providing this information, given that statistics are being sought on an issue for which we currently have no legal authority to enforce.

Comments –

That councils accept additional powers under Articles 4 and 5 to deal with unlicensed waste disposal up to quantities of 20 tons and that this is included within the body of the legislation. This is on the understanding that adequate resources, financial and otherwise, would also be needed to enable councils to effectively investigate and enforce Articles 4 and 5 offences. Council believes that it is unacceptable to pass the costs of inspection, enforcement and clean up onto the ratepayer.

Amendments to Article 28 of the Waste & Contaminated Land (NI) Order 1997

Several amendments are proposed to Article 28.

The first of these is that both the NIEA and councils can issue Article 28 notices, which would bring parity with the legal position in GB and that it provides for continuity of investigation and enforcement by either regulator.

The second proposed amendment, would give both regulators the power to serve an Article 28 Notice on a suspected offender, which would act as an additional deterrent and one, which clearly follows the 'polluter pays' principle.

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. This could provide an additional control to those already available under Article 4.

Comments –

The above changes to Article 28 are to be welcomed as it provides for a wider range of powers able to be delivered by more than one enforcement body.

Fixed penalties for fly-tipping offences

It is proposed to give NIEA and councils the power to issue fixed penalty notices as an alternative to prosecution in the courts, in relation to breaches of Article 4 of the 1997 Order. It is proposed that the level of fixed penalty be set at a figure between £100 and £200.

Comments –

This measure should be welcomed, as it will provide for more cost-effective regulation in appropriate cases, i.e. cases of small scale dumping of domestic waste, which is more likely to be dealt with by councils.

A fixed penalty of £200 would provide a reasonable deterrent for non-commercial small-scale offenders, potentially with a level of £500 for commercially active offenders. These figures should be reviewed regularly to ensure that the legislation keeps up with economic circumstances. The fixed penalty fines should be payable to councils and sufficient to cover council enforcement and clean-up costs, whilst remaining below the level of court fines.

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 councils.

Revised definition of offences under Article 4 of the 1997 Order

It is proposed 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, effectively shifting the burden of proof from the enforcing authority to the accused.

Comments –

This proposal is to be welcomed although it could be controversial as it could be difficult for a council to prove that the accused knew about a smaller scale dumping incident than would be the case for larger deposits which are more likely to be dealt with by NIEA.

Proposals regarding contaminated land

Part 3 of the 1997 Order makes provision with respect to land contaminated by pollution. This part of the Order has not yet been commenced, and the consultation document proposes a number of amendments to the existing legislative framework, mainly to reflect lessons learned through operational experience in England and Wales.

These amendments include:

- All appeals now to be heard by Planning Appeals Commission
- Definition of contaminated land to be made more accurate with regard to waterways
- Improved interaction with the pollution prevention and control regime

Comments –

Council supports these proposals, given that they have arisen from experience of operating the contaminated land regime in GB.

Miscellaneous

Review of references to land in the 1997 Order

The proposal to review the references to 'waste in or on land' in Part 2 of the Order and to amend these where necessary to cover the illegal deposit of waste in, or over, or under land is supported in view of the Department's experience of difficulties with existing wording/definitions.

Creation of a new offence of a failure to pay subsistence fees with respect to a waste management license

Council would agree to the proposal to create a new offence of a failure to pay subsistence fees. It is considered that the level of penalty imposed should be double the appropriate subsistence fee.

Power to retain seized vehicle

Council would support the extended retention of seized vehicles, provided an application is made to the court in the first place.

Recommendation

That the above comments be submitted on behalf of this Council.

Appendix 4

List of Witnesses

List of witnesses who gave evidence to the Committee

Mr Karl Beattie, Department of the Environment

Ms Jennifer McCay, Department of the Environment

Mr Denis McMahon, Department of the Environment

Mr Donald Starritt, Department of the Environment

Ms Anne Tohill, Department of the Environment

Ms Helen Anderson, Department of the Environment

Mr Ricky Burnett, Arc21

Mr John Quinn, Arc21

Mr David Lindsay, Banbridge District Council

Mr Jason Patterson, SWaMP2008

Mr Shaun Gallagher, Northern Ireland Local Government Association

Mr Mark Kelso, Northern Ireland Local Government Association

Ms Karen Smyth, Northern Ireland Local Government Association

Mr Tim Walker, Northern Ireland Local Government Association

Ms Anne Blacker, NI Environment Agency

Mr Michael Hatch, NI Environment Agency

Appendix 5

Research Papers Requested by the Committee

Northern Ireland Assembly Research and Library Service Briefing Paper

26th August 2010

Suzie Cave

**Waste Visits:
Best Practice Examples**

Background

There has been growing concerns in the recycling sector about the systems being used to collect materials for recycling and the effect they are having on the quality of recyclables. There are two different systems available to local authorities:

1. Source separation –are separated at the kerb-side, usually into a specially designed lorry with different compartments for different materials.
2. Co-mingled - consumers place all recyclable materials into a common bin for pick up and delivery to a Materials Recovery Facility (MRF). The MRF subsequently separates the containers and prepares the materials for sale to a recycling firm.^[1] Materials rejected due to contamination are taken to landfill or incinerated.

Over the years there has been continued disagreement over which of the two systems is most beneficial in terms of operation costs and effectiveness in relation to contamination of materials.

There is ample evidence which suggests that source separation is the best method, in fact DEFRA have expressed their support for source separation by advising local authorities that "source separation of materials is the first step to maximizing the value of recycling", and states that "the earlier in the collection chain a recyclate is separated the lower the likely cost and environmental impact of the collection scheme"^[2]

One of the UK's largest waste management companies, Biffa, is an advocate of source separation as it argues that the earlier materials are separated, the better the overall system and the lower the likely environmental impact and cost. In its report "Future Perfect", Biffa states that,

"The householder is ideally placed to act in a way in which dry recyclables (and organic materials) are kept out of the waste, reducing both contamination and the quantity of residual waste for final disposal. This can capture a high level of the available materials in a form which would be welcomed by many processors, circumventing any need for MRFs, which tend to be both labour and capital intensive."^[3]

Despite the ongoing support for source separated collections, many councils in England are moving away from source separation to co-mingled systems.

Source Separated versus Comingled

Research from environmental experts WYG Environment^[4] has established information about the claimed pros and cons of different recycling collection systems, challenging 'heavyweight' support for source separation collection and associated claims that it equals, or outperforms single stream co-mingled collection, is cheaper, and produces higher quality materials.

The Research consisted of a four month study conducted by WYG Environment, and establishes what has been described as 'important evidence for co-mingled recycling that must be allowed to restore a level playing field of information'^[5] Some of the findings are presented below.

Pros and Cons of Source separated collection and Commingled collection

Source Separated/kerb-side sorted Collection1	Co-mingled Collection2
Source separation results in less contamination of recyclables and so a higher proportion of them can be recycled resulting in less to landfill.	26 of the top 30 English local authorities practicing dry recycling use co-mingled collection
Stillage vehicles used for kerb-side separation have lower fuel use than compactor vehicles used for co-mingled systems	Waste Data Flow information for 2008/2009 showed local councils using co-mingled collection performed significantly better than those using source separated collections, diverting on average 25% more tonnage away from landfill, even after allowing for MRF rejections.
Local bulking of sorted materials means lower mileages	Using alternate week collections of residual waste and co-mingled dry recyclables from wheeled bins, plus weekly food waste collections and chargeable garden waste collections, can produce recycling and composting rates of 70%-far higher than selected trials by the Somerset Waste Partnership which uses source separated/kerb-side sort.3
Increased revenue from sale of materials, due to higher level of quality and higher percentage of materials available for recycling.	According to the WYG report, there is evidence that co-mingling can improve operational health and safety, public ease of use, and street cleanliness.
Lower capital costs and more local jobs due to the manual sorting and separation of materials at their source of collection.	MRFs produce recyclates from co-mingled collections that meet the specifications of re-processors in the UK and abroad.
Staff separating materials at the kerbside can give immediate feedback to householders by leaving material which can not be accepted for recycling with a note, while still taking Recycling collections4	According to the Managing Director of Verdant5, co-mingled collections will become increasingly cheaper compared to kerbside-sort as disposal costs rise in the future. In his opinion, co-mingling can help stimulate even more recycling.
Source separation of materials can easily cope with additional items – such as batteries, textiles – by adding extra compartments into the vehicle. These would be difficult or impossible to separate adequately at a MRF.	WYG study indicates that it is not possible to claim one system as being cheaper than the other due to variable factors such as recyclate sales, cost of containers and collections, MRF gate fees and locations, tonnage diverted etc.6 However, WYG's research found that where kerbside-sorted collection is considered to be cheaper than co-mingled, the difference narrows if the ability of co-mingling to divert more tonnage from landfill and therefore reduce associated operational and tax costs is taken into account.7
The total cost of collection and processing together are lower in source separated systems than in co-mingled systems8	WYG's investigation of contamination rates at MRFs said official (Environment Agency) estimates of 10.85% average rejection rates were overstated. The study found an average rejection rate of around 4% and said modern plants that accept a wider range of dry recyclables and use newer technology achieve even lower rates.9

Source Separated/kerb-side sorted Collection¹	Co-mingled Collection²
Less of the material collected gets recycled (typically 12 – 15 per cent is wasted in English MRFs ¹⁰ , compared to less than 1 per cent for source separated systems)	In the study, MRF operators told WYG that there are sometimes 'unrealistic expectations' regarding recyclate quality, and that contamination rates for modern MRFs are much lower, including those that accept a large range of materials such as mixed plastics and glass. ¹¹
The risk of contamination makes it unsuitable to co-mingle some materials, for example glass should not be mixed with textiles or paper	
Compaction can make it impossible to recycle some materials, particularly aluminium, plastic and glass ¹²	
The trend in recyclate markets is likely to be towards requiring higher quality materials. Lower quality co-mingled recyclables are currently being bought by re-processors in China. But in the future these processors will demand higher quality materials.	
Increasing energy prices are likely to result in increased prices for recycled materials, particularly those with high embodied energy – e.g. aluminium, steel, glass, paper, plastic – which will shift the balance towards separate collection to maintain quality.	

Notes:

1 Source of these points is Friends of the Earth, Recycling Collections-Source Separated or Commingled? http://www.foe.co.uk/resource/briefings/recycling_collections.pdf

2 Source of these points is the WYG (2010) Review of Kerbside Recycling Schemes [http://www.wyg.com/recyclingreview/WYG_Report-Review of Kerbside Recycling Collection Schemes Operated by Local Authorities \(April 2010\).pdf](http://www.wyg.com/recyclingreview/WYG_Report-Review_of_Kerbside_Recycling_Collection_Schemes_Operated_by_Local_Authorities_(April_2010).pdf)

3 http://www.somersetwaste.gov.uk/pdf/Sort_It.pdf

4 WRAP (2008), "Kerbside recycling: indicative costs and performance", www.wrap.org.uk/downloads/Kerbside_collection_report_160608.41243a68.5504.pdf

5 Verdant is a municipal services provider which handles recycling and refuse collections for over 20 local authorities in England

6 The WYG report claims that WRAP has consistently argued that commingled collections are more expensive than kerbside sort methodology, in its study "Kerbside recycling: indicative costs and performance" www.wrap.org.uk/downloads/Kerbside_collection_report_160608.41243a68.5504.pdf

7 WRAP (2008), "Kerbside recycling: indicative costs and performance", www.wrap.org.uk/downloads/Kerbside_collection_report_160608.41243a68.5504.pdf p5

8 ibid

9 WRAP (2008), "Kerbside recycling: indicative costs and performance", www.wrap.org.uk/downloads/Kerbside_collection_report_160608.41243a68.5504.pdf p4

10 Dougherty Group LLC for WRAP (2006), "Materials Recovery Facilities", p43, www.wrap.org.uk/document.rm?id=3528

11 WRAP (2008), "Kerbside recycling: indicative costs and performance", www.wrap.org.uk/downloads/Kerbside_collection_report_160608.41243a68.5504.pdf p4

12 ENTEC Consulting for WRAP (2006), "MRF Costing Model", Bob Graham, p21, www.wrap.org.uk/document.rm?id=3529

Best Practice Examples of Co-mingled Waste Collection in the UK

Behind any successful co-mingled scheme is an efficient MRF. With that in mind this paper looks at a number of working examples of MRF's located in England, and a few examples of companies responsible for collecting and transferring the waste to these facilities.

According to the WYG report^[6], in their table which lists the top recycling authorities in relation to their recycling rate and composting rate combined Staffordshire Moorlands tops the WYG table with a combined rate of 61.58%. Of this percentage, 20.74% is due to recycling and 40.81% composting. Suggesting that the Council's composting rate contributes significantly to such a high combined rate.

Looking solely at recycling levels, out of the seven councils with the highest recycling rates of over 26%, 6 who practice co-mingled collection are:

- Mole Valley with 33.73%
- Uttlesford with 33.41%
- North Kesteven with 27.49%
- Waveney with 26.9%
- Rushcliffe with 26.83 %
- Huntingdonshire with 26.31%

The following section will look at a number of councils in UK that have been using co-mingled waste collection methods. Some of these examples have increased their recycle rates, reduced the amount of waste going to landfill, and received awards for their improvement in the area of recycling, since introducing a co-mingled scheme.

1. South Oxfordshire District Council

Oxfordshire launched its new recycling and collection scheme in 2009 and has seen huge beneficial results to the areas of recycling and production of waste in just one year. According to Greenstar,^[7] Oxfordshire has achieved a 73% recycling and composting rate, which is considered to be the highest percentage in England to date.

The table below shows that due to the new service, the amount of dry recycling between 2008/09 to 2009/10 has increased from 14,998 tonnes to 18,531 tonnes, the amount of food waste collected increased from zero to 6,115 tonnes. The percentage of Recycling and composting increased from 44% to 73%

	Dry recycling (tonnes)	Food waste (tonnes)	Garden waste (tonnes)	Refuse (tonnes)	Recycling & composting %
2008/09	14,998	0	6,755	27,964	44%
2009/10	18,531	6,115	7,434	11,739	73% (68% allowing for processing rejection)

(Source: Greenstar website accessed 23/07/10^[8])

The new service has increased dry recycling tonnage by around 24%, and total recycling and composting tonnage by 48%. Waste going to landfill has fallen by nearly 60%.

The Scheme

The scheme began in June 2009 and was implemented by Verdant^[9] who designed the service for 56,000 urban, village and rural properties.

The scheme featured alternate week collection of single stream co-mingled dry recyclables and residual waste from wheeled bins, weekly collection of food waste (a first for the country), and an already established subscription-based garden waste collection service. The range of collectable recyclables was extended to include glass, food and drinks cartons, aerosols and foil for the first time. According to the scheme, co-mingling was chosen as a proven easy way for residents to recycle more materials.

Verdant delivered over 200,000 wheeled bins and kitchen caddies in the run up to the launch, and also took on the customer help line service which had previously been run by the council.

Investment was made by Verdant in customer relationship management software, which links with data captured by microchips in the wheeled bins. The data is transmitted to a central database by Verdant's collection vehicles to produce up to date accurate information that helps

to answer resident queries and service complaints. Since the scheme began, calls made to the call centre have dropped 50%, and the numbers of missed bins are running at a lower rate of 25 per 100,000 collections per week.^[10]

It is estimated that the service has saved taxpayers around £350,000 annually and generated up to £850,000 in recycling credits.

The communications programme, informing local residents of collection changes and encouraging support of the new scheme, won a prestigious Green Award for best direct mail campaign. The Council was also highly commended at the 2010 Municipal Journal Awards for its entry in the Environmental Innovation Achievement of the Year category^[11].

According to an article by Click Green^[12], published 7th July 2010, the Council can be considered to be top of the UK Green League with its 73% recycling level^[13].

2. Surrey Heath

With Verdant being the municipal contractor, Surrey Heath has more than doubled recycling, decreased landfill waste and increased collection efficiency, which has all contributed to cutting the Council's carbon impact.

The scheme began in 2009 with new weekly food collections, and alternate weekly collections of recycling and refuse from wheeled bins. The main aim of the scheme is to reduce the amount of waste going to landfill by increasing the diversion rate and the range of materials that residents can recycle^[14].

Verdant carried out analysis of the scheme by comparing the first five months (September 2009 to January 2010) with the same five months of the previous year. The analysis found:

- significant increases in recycling tonnages
- decrease in overall waste tonnages
- waste to landfill fell by over 4,000 tonnes
- recycling increased by nearly 3,800 tonnes.

	Sept 08-Jan 09	Sept 09-Jan 10	Change
Total Waste	8,097.64 tonnes	3,557.85 tonnes	- 4,539.79 tonnes
Total Recycling	2,684.60 tonnes	6,421.57 tonnes	+ 3,736.97 tonnes
Average Recycling Rate	24.58%	64.75%	+ 40.17%

(Source: Greenstar News: Surrey Heath's Waste Service Cuts Carbon Footprint^[15])

Verdant used government guidelines for calculating carbon emissions, waste tonnage and fuel use data, and waste and recyclable composition data, to find that the new service had cut collection mileage by a quarter and collection carbon emissions by a fifth^[16].

Comparative analysis for the period October to December for 2008/09 and 2009/10 showed:

- Collection mileage in 2009/10 was 18,799 km less than in 2008/09 – a reduction of 26.2%;
- CO2 emissions from household collections were 29.6 tonnes less (from 141.5 tonnes to 111.9 tonnes) – a fall of 20.9%.

To finalise the analysis, Verdant took into account the reduced tonnage of waste going to landfill and the increased recycling, to calculate that Surrey Heath's net emissions for treatment of all waste collected by Verdant was 1,941 tonnes less in 2009/10 compared to 2008/09.

3. Greenstar and Verdant's Collection of Data from Councils

Data was collected from 5 different councils: Walsall Council, Stratford upon Avon District Council, Blackburn with Daren Borough Council, South Oxfordshire District Council (already discussed in the section above), and the London Borough of Waltham Forest.

Apart from Waltham Forest, all of the above mentioned authorities use Verdant (refer to footnote 21) to collect mixed dry recyclables (card, paper, and metal, plastic and glass containers) in single wheeled bins that are collected on a fortnightly basis from resident's kerbsides. Waltham Forest has only finished a three month pilot service, based on weekly collections of single stream co-mingled dry recyclables from around 12,000 households, using either sacks or wheeled bins.^[17]

Borough/Council	Scheme Started	Details
Walsall ¹	February 2009 Introduced kerbside single stream co-mingled collections, using wheeled bins.	Up to Jan 2009 a total of 2,306 tonnes (769/month) of recyclables were collected under the old system. In Six months under the new scheme, 13,344 tonnes (2,224/month) of dry recyclables (including cardboard and plastic) were collected, an improvement of 189%. Walsall sends dry recyclables for processing to Greenstar's 'super MRF' at Aldridge ² .
Stratford upon Avon District Council ³	August 2008 introduced fortnightly kerbside single stream co-mingled collections of dry recyclables	In April 2007 to March 2008, the old system collected 7,772 tonnes of dry recyclables. Between August 2008 and March 2009, the new collection system collected an annual total of 14,055 tonnes, an improvement of almost 81% ⁴ .
Blackburn with Darwen ⁵	October 2008, changed from weekly dual stream co-mingled collections, to fortnightly single stream co-mingled collections.	The old system collected 9,170 tonnes of recyclables from September 2006 to August 2007, and under the new single stream system an annual total of 12,443 tonnes were collected from October 2008 to March 2009, a gain of nearly 36% ⁶
South Oxfordshire ⁷	June 2009	See Oxfordshire section above for details
London Borough of Waltham Forest ⁸	Verdant ran a 3 month pilot from April to June 2009 to evaluate the impact of single stream	Around 12,000 houses used either a sack or a wheeled bin to collect co-mingled dry materials for weekly collection. In comparison to the same period in 2008, tonnage to the

Borough/Council	Scheme Started	Details
	co-mingled collections, compared to its source separated collection.	wheeled bins increased by an average of 42%, while sacks appeared to make little impact. ⁹

Notes:

1 See the Rubbish Waste and Recycling section of the Walsall Council website for more details http://www.walsall.gov.uk/index/environment/rubbish_waste_and_recycling.htm

2 Processingtalk,(Aug 2009) [online] Greenstar UK supports co-mingled recycling method <http://www.processingtalk.com/news/grn/grn119.html> (accessed 13/08/09)

3 For more information on their schemes, visit the Council's waste and recycling section: <http://www.stratford.gov.uk/community/community-400.cfm>

4 Processingtalk,(Aug 2009) [online] Greenstar UK supports co-mingled recycling method <http://www.processingtalk.com/news/grn/grn119.html> (accessed 13/08/09)

5 For more information visit the Council's Environment and Waste section: <http://www.blackburn.gov.uk/server.php?show=nav.186>

6 Processingtalk,(Aug 2009) [online] Greenstar UK supports co-mingled recycling method <http://www.processingtalk.com/news/grn/grn119.html> (accessed 13/08/09)

7 For more information visit the Council's 'Recycling Rubbish and Waste' section: <http://www.southoxon.gov.uk/ccm/navigation/environment/recycling--rubbish-and-waste/>

8 For more information visit the Council's 'Mixed Dry Recycling Pilot' under 'Environment': <http://www.walthamforest.gov.uk/index/environment/rubbish-recycling/recycling/mixed-recycling.htm>

9 Processingtalk,(Aug 2009) [online] Greenstar UK supports co-mingled recycling method <http://www.processingtalk.com/news/grn/grn119.html> (accessed 13/08/09)

4. Key contributors to UK single stream commingled collection schemes

Municipal Waste Collectors: Verdant

Verdant is a member of Greenstar^[18] UK group and according to their website^[19], is one of Britain's fastest- growing municipal service specialists. It currently works with 23 local authorities in England, Scotland and Wales providing them with waste collection, recycling, cleansing and ground maintenance services.

Verdant has over 1,500 trained staff making over 1,300,000 domestic waste and recycling collections each week, working out at over 55 million recycling and refuse collections annually from nearly 1.1 million households. With over 500 vehicles on the road, the materials collected by Verdant are then transferred to the local Material Recovery Facility (MRF) for processing.

Verdant helps South Oxfordshire win Green Award:

On the 4th December 2009, South Oxfordshire was presented with a highly rated Green Award. This was in recognition of the Council's communications campaign which was implemented to support the introduction of the new recycling and refuse collection service by Verdant, involving the single stream co-mingled collection system (as described earlier in the paper). Consequently, South Oxfordshire moved from being 124th on the UK Local Authority recycling register, to amongst the best in England with its increase of recycling and composting rate to over 70%.^[20]

Contact details:

Verdant Group Plc
Lakeside Pavilion
Chaucer Business Park
Watery Lane
Kemsing
Sevenoaks
Kent, TN15 6QY
01732 765 222
info@verdant-group.co.uk

Another example includes Viridor, details of which are provided later in the paper under: Crayford MRF, Kent

Materials Recovery Facilities (MRFs)

MRFs are used to separate co-mingled materials into their individual material streams so that they can be sold on into the commodity markets. They can handle materials collected from single kerbside collection systems, or from a number of kerbside collection programmes, as well as recyclables from commercial and industrial sources. Understandably, MRFs are only really required when the collection system uses some form of co-mingled collection of dry recyclables.

The two most common methods of commingled collection are:

1. Single stream co-mingled (or fully commingled) – all dry recyclables are co-mingled and collected in a single compartment of a collection vehicle. The recyclables are collected from wheeled bins, boxes or sacks.
2. Two stream- fibre can be collected separately from other co-mingled materials (such as glass, plastics, and cans etc) or glass is collected separately from the other materials. Consequently, collection vehicles have two compartments to keep materials separate.

Most MRFs receive materials from a variety of different kerb-side collection programmes, and therefore need to be capable of dealing with a range of different materials collected in a variety of ways. For instance, a MRF designed for single stream co-mingled materials can receive and sort materials from two stream, and even source separated collection schemes.

Due to the ongoing argument surrounding the quality, in relation to contamination, of co-mingled materials in comparison to source separated materials, it is important for MRFs to produce their sorted materials to meet or exceed the market specifications, in order to receive optimum value for them (more detail on this can be found in the briefing note 'Ensuring Recyclate Quality')

Examples in England:

According to WRAP, in 2006 there were 82 facilities across the UK. A study by WRAP suggests that an increase in co-mingled collections has brought rise to an increasing number of MRFs in England. [21]

1. London's Greenstar Atlas MRF:

Installation began in February 2010 in Edmonton and commenced operation in spring. It has the capacity to process domestic and commercial dry recyclables such as paper, cardboard, plastic, metal and glass containers, textiles and other materials. It also features the capability to deal with co-mingled or source-separated collections. In fact, it has been described in a news report from Letsrecycle.com as being one of Europe's largest MRFs[22]

Not all MRFs are capable of dealing with glass and it is only recently that some MRFs have the features to deal with the material, making the Atlas one of the most technologically advanced MRFs in the UK. It is licensed to process up to 250,00 tonnes of recyclables annually, as well as handling a further 250,00 tonnes through its waste transfer station each year.[23]

Contact details: Greenstar Head Office
Third floor
The Gate House
Gate House Way
Aylesbury
HP19 8DB

Tel: 0844 800 1 800

1. Crayford MRF, Kent

This MRF is operated by Viridor[24] and processes over 500,000 tonnes of materials every year making it one of the largest and most technologically advanced recycling facilities in Europe.

Viridor also operate other MRFs across the UK, including sites in Ipswich, Bristol, Plymouth, Manchester, Glasgow, Edinburgh, Sheffield, Petersborough, London, Taunton and Ford in West Sussex. The Ipswich MRF, known as Masons in Suffolk, has been awarded 'Beacon Status,' for excellence in recycling services, by the government[25].

Contact details:

Viridor's South East Regional Office
42 Kings Hill Avenue
Kings Hill
West Malling
Kent
ME19 4AJ

Tel: 01732 229 200

For other offices located throughout the UK, visit <http://www.viridor.co.uk/our-offices>

Germany

Some of the countries with the highest recycling rates in Europe do not rely on co-mingled or single stream collection methods for their success. For example, Germany has a high recycling and compost rate of 64% in 2009 and sends just 1% of municipal solid waste to landfill[26]. To achieve such impressive rates, Germany uses the following:

- Efficient waste disposal systems using source separation methods, with chutes provided in almost every house separated into compartments for paper, plastic and glass.
- Deposit refund machines are found in supermarkets for customers to return used plastic bottles and receive a refund per bottle, which can be used to offset subsequent grocery purchases, or donate the amount to charity.
- Schemes to reduce the amount of packaging waste e.g. the Duales System Deutschland:[27]

In response to Germany's Packaging Ordinance under the Waste Act, the non-profit organisation Duales System Deutschland AG (DSD) was founded to share the take-back burden throughout the industry. The Packaging Ordinance is based on the producer responsibility principle, and Germany was the first country to introduce binding requirements on producers for the recycling and recovery of sales packaging.

The Ordinance puts full financial responsibility on manufacturers and distributors to be responsible for the packaging they create. It requires retailers and producers to take back a fixed and yearly increasing percentage of packaging materials, and to recycle them in accordance with the principles laid down in the Ordinance. The overall goals of the Ordinance are to reduce packaging waste requiring disposal and to stimulate new recycling technologies.

With it being difficult to identify and return packaging to individual producers, the German Ordinance provides for the introduction of a non-profit Producer Responsibility Organisation (PRO) to manage the collection, sorting, and recycling of packaging waste. The PRO in Germany is known as the Duales System Deutschland (DSD), which began operation in 1993.

Products licensed by DSD carry a green dot[28]. To achieve this green dot, producers and distributors pay an annual licence fee to DSD, which is determined by the amount and type of packaging introduced to the market. The dot makes identification by the PRO easier which collects all marked packaging.

Consumers pay an increased price for the packaging, based on the type of material it is made from, to cover the cost of recycling. Such an incentive encourages manufacturers to reduce the price of their products by using more favourable materials with a lower disposal fee, or reduce the amount of packaging.

For more information refer to the Clean Production Action document Summary of Germany's Packaging Take-back Law (Sept 2003)[29]

Contact details:

The Green Dot – Duales System Deutschland GmbH
Frankfurter Strasse 720-726
D-51145 Cologne/Porz-Eil

<http://www.gruener-punkt.de/en/corporate/company.html>

Flanders, Belgium

Another area in Europe with good recycling levels is Flanders. A study conducted by the Green Alliance^[30] has uncovered a number of countries and areas worldwide which display successful recycling schemes. While such successful recycling results can not be attributed to one particular method such as co-mingled, it is useful to see that a well structured scheme utilising a range of different approaches, seems to be the main contributing factor. According to the Green Alliance, Flanders has one of the highest recycling rates for municipal waste in Europe.

A brief account of some of the methods used, include:

- Rewarding Municipalities for signing agreements with the government to go beyond what they are required by legislation. These rewards include help with the costs of home-composting schemes, subsidies for re-usable nappies, and help with other recycling infrastructure.
- Charging householders for residual (non-recycled) waste. Half of the municipalities do this by charging for bags (around €1.5 per bag). The other half do it by providing bins with electronic chips – these charge either by volume (around €2.5 for a 60l bin), or by weight of waste (around €0.16 per kilo).
- Producer Responsibility that allocates full costs back to the producer, but is coordinated through the public sector. Collection of waste streams such as waste electric and electronic equipment and tyres, are organised through civic amenity sites, where the costs are put onto producers through collectives of companies. The Flemish Government uses a cost model which works out the cost of all the civic amenity sites in Flanders, the costs of recovering particular waste streams, and then calculates a lump sum per inhabitant per year for dealing with those streams, which producers have to pay. Companies were given the option of organising collection themselves, and found that it would work out 200% more expensive, therefore they decided against it.
- Contact details:
- The public Flemish waste company (OVAM)
Stationsstraat 110
B-2800 Mechelen
Tel 015/284284
Fax 015/203275
info@ovam.be
<http://www.ovam.be>

Other areas covered by the study include:

- Bath and North East Somerset, UK
- Canberra, Australia
- Eden Project, Cornwall, UK
- Kamikatsu, Japan
- New Zealand
- Philippines
- San Francisco, USA
- Vienna, Austria

For more information on the other areas, visit the Green Alliance International Survey of Zero Waste Initiatives website: <http://www.green-alliance.org.uk/grea1.aspx?id=106>

- [1] FOE http://www.foe.co.uk/resource/briefings/recycling_collections.pdf
- [2] DEFRA (2005), "Guidance for Waste Collection Authorities on the Household Waste Recycling Act 2003", www.defra.gov.uk/ENVIRONMENT/waste/legislation/hwra/hwra-guidance.pdf (pp8&20)
- [3] Biffa (2002), "Future Perfect", p63., www.biffa.co.uk/content.php?name=publications/futureperfect.html
- [4] An established international consultant working in over 40 countries worldwide. For more information
Visit their website: <http://www.wyg.com/indexcom.php>
- [5] WYG Report [http://www.wyg.com/recyclingreview/WYG_Report-Review_of_Kerbside_Recycling_Collection_Schemes_Operated_by_Local_Authorities_\(April_2010\).pdf](http://www.wyg.com/recyclingreview/WYG_Report-Review_of_Kerbside_Recycling_Collection_Schemes_Operated_by_Local_Authorities_(April_2010).pdf)
- [6] WRAP (2008), "Kerbside recycling: indicative costs and performance", www.wrap.org.uk/downloads/Kerbside_collection_report_160608.41243a68.5504.pdf (p.10/11)
- [7] Greenstar is one of the largest recycling-led waste management service provider in the UK and Ireland, and offers total commercial waste management and recycling solutions to large business and industry. For more information visit: <http://www.greenstar.co.uk/>
- [8] Greenstar News, One Year On:70 Recycling Rate and Everyday Reality for South Oxfordshire http://www.greenstar.co.uk/news.aspx?item=One_Year_On%3a_70%25_Recycling_Rate_an_Everyday_Reality_for_South_Oxfordshire&newsid=63[accessed 12/08/10]
- [9] Acquired by Greenstar UK group in 2007, and one of Britain's fastest-growing municipal service specialists, Verdant helps 24 local authorities in England, Scotland and Wales deal with their environmental challenges such as waste collection, recycling, cleansing and grounds maintenance services. For more information visit: <http://www.verdant-group.co.uk/index.html>
- [10] Greenstar News, One Year On:70 Recycling Rate and Everyday Reality for South Oxfordshire http://www.greenstar.co.uk/news.aspx?item=One_Year_On%3a_70%25_Recycling_Rate_an_Everyday_Reality_for_South_Oxfordshire&newsid=63 [accessed 12/08/10]
- [11]http://www.greenstar.co.uk/news.aspx?item=One_Year_On%3a_70%25_Recycling_Rate_a_n_Everyday_Reality_for_South_Oxfordshire&newsid=63
- [12] Provides environmental and eco news, green opinions and industry and political views. For more information visit: <http://www.clickgreen.org.uk/>
- [13] Green Click, 'Council posts 73% recycling rate to top the Uk Green League', <http://www.clickgreen.org.uk/analysis/general-analysis/121431-council-posts-73-recycling-rate-to-top-the-uk-green-league.html> (last accessed 26/07/10).
- [14] Greenstar News, 'Surrey Heath's Waste Service Cuts Carbon Footprint' http://www.greenstar.co.uk/news.aspx?item=Surrey_Heath%e2%80%99s_Waste_Service_Cuts_Carbon_Footprint&newsid=57 (accessed 26/07/10)
- [15] *ibid*

[16] Due to all recyclables being handled in the same lorry, each lorry only needs to visit each street once a week. Residents own journeys are also reduced with a wider range of materials being collected reducing the need for travelling to bottle bank site etc.

[17] Processingtalk,(Aug 2009) [online] Greenstar UK supports co-mingled recycling method <http://www.processingtalk.com/news/grn/grn119.html> (accessed 13/08/09)

[18] Greenstar UK offers its waste management and recycling services for commercial waste, and recycling for business and industry, and is used by some of the biggest corporate names in the UK. <http://www.greenstar.co.uk/>

[19]<http://www.verdant-group.co.uk/index.html>

[20] Verdant Press article, Verdant Helps South Oxfordshire Win Green Award, <http://www.verdant-group.co.uk/press/soxon.html> (accessed 27/07/09)

[21] WRAP (2007), An Analysis of MSW MRF Capacity in the UK. http://www.wrap.org.uk/downloads/MSW_MRF_Summary_Report_-_7th_version.8b220780.4449.pdf (p.5/6)

[22]http://www.letsrecycle.com/do/ecco.py/view_item?listid=37&listcatid=330&listitemid=10304

[23]http://www.greenstar.co.uk/news.aspx?item=Work_Starts_on_Greenstar_Atlas%2c_London%e2%80%99s_Largest_MRF&newsid=53

[24] Viridor is a UK recycling, renewable energy and waste management companies, and works with more than 90 local authorities and thousands of private customers across the country. It offers services from recycling and waste collections, skips and bins through to fully integrated contracts for both private and public sectors. For more information visit <http://www.viridor.co.uk/>

[25]<http://www.viridor.co.uk/recycling-materials-recycling-facilities.html>

[26] News article from letsrecycle.com,(March 2009) UK Receives Ninth Best Recycling Rate in Europe [accessed online 10/08/10)
http://www.letsrecycle.com/do/ecco.py/view_item?listid=37&listcatid=217&listitemid=31212 (letsrecycle.com provides news and information for recyclers and everyone involved in sustainable waste management in the UK)

[27] Clean Production Action (2003) Summary of Germany's Packaging Take-back Law http://www.cleanproduction.org/library/EPR_dvd/DualesSystemDeutsch_REVISIOverview.pdf

[28] See the website for more information <http://www.gruener-punkt.de/en/corporate/company.html>

[29] Clean Production Action (2003) Summary of Germany's Packaging Take-back Law http://www.cleanproduction.org/library/EPR_dvd/DualesSystemDeutsch_REVISIOverview.pdf

[30] Green Alliance, International Survey of Zero Waste Initiatives <http://www.green-alliance.org.uk/grea1.aspx?id=106>



Northern Ireland
Assembly

Research and Library Service
Briefing Paper

Paper 000/00 13th September 2010 NIAR 359-10

Mark Allen

**Draft Waste and Contaminated Land (Amendment) Bill –
burden of proof and means of defence – comparative
legislation**

1. Context

The Draft Waste and Contaminated Land (Amendment) Bill originally contained proposals for the definition of offences under Article 4 that would have seen the burden of proof for the illegal deposit of waste shifting from the enforcing authority to the landowner. In addition the proposals would have meant that an offence was committed where an illegal deposit of waste was made whether knowingly or otherwise. The proposed amendments also contained provision for a possible defence where the accused could demonstrate that they had exercised all reasonable care to prevent the incident.

The majority of respondents to the public consultation on the Amended Bill supported these proposals but the Department of the Environment decided not to incorporate them into the draft Bill due to concerns raised by a number of consultees around the shift in the burden of proof and the subsequent human rights implications of such a move.

As things currently stand a number of respondents have asked the Environment Committee to consider the Department's decision to ditch these proposals with a view to incorporating new proposals in the draft Bill that would both benefit those seeking to enforce the legislation whilst also providing adequate and reasonable opportunity for defence by those who may be accused of breaches.

This briefing note provides a brief overview of other pieces of legislation developed in neighbouring legislatures and how they either have or haven't dealt with this issue.

2. Summary of findings

Having reviewed legislation relating to both Environmental Protection and Waste and Contaminated Land across the UK and Ireland, and whilst recognising the provisions within the

Water Order here, there appear to be no other specific references or measures that explicitly take into account the issue of human rights in either implementation or enforcement.

In addition, in all of the legislation reviewed there was a clear indication that the burden of proof lay with the enforcing body when seeking to enforce legislation and secure convictions, fines or penalties for either environmental degradation or contamination of land.

2.1 Environmental Protection Act provisions

There are a number of provisions within the Environmental Protection Act^[1] that could be indirectly considered as taking account of human rights issues in relation to appeals against the imposition of remediation notices as a result of land contamination. Appendix 1 details these specific measures which include the ability for an appellant to oppose the implementation of a remediation notice on the grounds that the imposition will cause hardship to the person tasked with remedial action.

In addition the Environmental Protection Act offers some guidance to the identification of 'appropriate' persons in relation to the imposition of remediation notices. In a broad sense the principle exhibited in these measures is that of the polluter pays. There are protections for citizens through the need for the enforcing authority, upon the decision to issue a remediation notice, to detail how the person on whom the notice is to be served is the 'appropriate' person in terms of them having caused or knowingly permitted the contaminating substances to be in, on or under the land.

The challenge here revolves around the actual meaning of 'caused' or 'knowingly permitted'. The Scottish Executive which has responsibility for implementing the Environmental Protection Act in Scotland takes the view that the test of causing, "...will require that the person concerned was involved in some active operation, or series of operations, to which the presence of the pollutant is attributable. Such involvement may also take the form of a failure to act in certain circumstances^[2]."

In relation to the definition of 'knowingly permitting', during the passage of Amendments to the Environment Bill in the House of Lords in July 1995, the Government Position put forward for the definition of this term by the then Environment Minister Earl Ferrers was as follows. "The test of 'knowingly permitting' would require both knowledge that the substances in question were in, on or under the land and the possession of the power to prevent such a substance being there."^[3]

It should be noted that both of these definitions would need to be tested in terms of their rigour by a court of law.

2.2 Nitrates Action Programme Northern Ireland

The enforcement of the Nitrates Action Programme and Action Plan in Northern Ireland requires Northern Ireland Environment Agency staff (formerly Environment and Heritage Service) to conduct inspections of farms for cross compliance. In instances of a breach of conditions NIEA can impose statutory notices requiring farmers to take remedial action.

A Guidance Booklet^[4] produced for farmers in 2006 by the Department of Agriculture and Rural Development and Environment and Heritage Service sets out how the scheme would operate and what would constitute an offence or penalty. Pages 38 and 39 of the booklet set out the broad grounds for exceptional circumstances under which farmers found to be in breach of regulations can appeal against the imposition of offences. The key words here are "beyond the control and not foreseeable by the farmer" but no further definition is provided save for the

inclusion of an example in the form of disease control restrictions. The onus is on the farmer to these exceptional circumstances and by so doing prove that he/she displayed 'no negligence or intent'

There are no also currently no figures on the number of cases where farmers have appealed against conviction on the grounds of exceptional circumstances and cases are dealt with and heard by NIEA on an individual basis.

Appendix 1

Legislation	Jurisdiction	Burden of proof issues	Grounds for defence
Nitrates Action Programme (Northern Ireland) Regulations 2006 – Northern Ireland's response to meeting the requirements of the EU Nitrates Directive.	Northern Ireland	<p>Inspections are conducted by Environment and Heritage (EHS) (now undertaken by NIEA) staff to establish farmers' compliance with conditions within the Nitrates Action Plan. EHS staff can issue statutory notices in light of non compliance or can initiate prosecution procedures. Offences under the Nitrates Action Plan are recognised as being</p> <ul style="list-style-type: none"> • Obstructing, refusing or failing to assist Environment and Heritage Service(EHS) staff or staff carrying out duties on behalf of EHS in relation to the inspection and enforcement of the Regulations; • Failing to comply with the measures under the Nitrates Action Plan and Phosphorus Regulations; • Compiling and providing false or misleading records; • Failing to comply with a statutory notice. <p>Burden of proof for lack of compliance lies with EHS (now NIEA)</p>	<p>In the guidance booklet used by farmers and under exceptional circumstances 'beyond the control and not foreseeable' by the farmer a defence can be made to some of the previously identified offences. All cases here are reviewed on an individual basis. The onus here is on the farmer to prove these exceptional circumstances and by so doing prove that he/she displayed 'no negligence or intent'</p>

Legislation	Jurisdiction	Burden of proof issues	Grounds for defence
Environmental Protection Act 1990, Sections 78F and 78K – Liability in respect of contaminating substances which escape to other land.	UK (sections identified here do not apply in Northern Ireland)	<p>Linked to imposition of remediation notices in lieu of contamination of land. Remediation notices must contain detail around whether the enforcing authority considers the person on whom the notice is served to be the 'appropriate person' in terms of them having caused or knowingly permitted the contaminating substances to be in, on or under the land. Section 78F of the Environmental Protection Act sets out the means by which an appropriate person is determined to bear responsibility for remediation of contaminated land. In instances where a person or persons who caused or knowingly permitted the contamination of land cannot be found after reasonable enquiry the current occupier or owner of the land becomes responsible for remediation. Section 78K of the Environmental Protection Act also sets out that a person who has caused or knowingly permitted any substances to be in, on or under any land shall also be taken for the purposes of Section 78K to have caused or, as the case may be, knowingly permitted those substances to be in, on or under any other land to which they have appeared to escape. Significance is that this section recognises the damage that can be caused to another person's land by a polluter Burden of proof lies with the enforcing authority</p>	<p>A person can appeal the imposition of a remediation notice in circumstances where</p> <ul style="list-style-type: none"> • The enforcing authority unreasonably determined the appellant to be the appropriate person who is to bear responsibility for anything required by the notice to be done by way of remediation; • The enforcing authority unreasonably failed to determine that some person in addition to the appellant is an appropriate person in relation to anything required by the notice to be done by way of remediation; • The enforcing authority failed to have regard to any hardship which the recovery may cause to the person from whom the cost is recoverable. <p>In instances where an individual's (person A) land is contaminated by someone else's actions, person A 'who has not caused or knowingly permitted the substances in question to be in, on or under that land,... In these instances (Person A) Shall not be required to do anything by way of remediation to any land or waters (other than land or waters of which he is the</p>

Legislation	Jurisdiction	Burden of proof issues	Grounds for defence
			owner of occupier) in consequence of land A appearing to be in such a condition...

[1] [Environmental Protection Act, 1990.](#)

[2] [Environmental Protection Act 1990: Part IIA Contaminated Land Statutory Guidance: Edition 2, Natural Scotland, Scottish Executive, May 2006, page 45.](#)

[3] [Commons Amendment to the Environment Bill, House of lords Hansard, 11th July 1995, column 1497](#)

[4] [Guidance Booklet for Northern Ireland Farmers on the requirements of the Nitrates Action Programme \(Northern Ireland\) Regulations 2006 and Phosphorus \(Use in Agriculture\) \(Northern Ireland\) Regulations 2006, Department of Agriculture and Rural Development and Environment and Heritage Service, 2007, pages 38-39](#)

Types of Kerb-side Recycling Operated by the Councils

Council	Collection Type	Method
Antrim Borough Council	Co-mingled	Blue bin- dry recyclables Black/grey bin- refuse Brown bin- compost and food ¹ (alternate weekly collection)
Ards Borough Council	Co-mingled	As above ²
Armagh City and District Council	Source separated Residents place all recyclables into kerbie box, which are separated at the kerb-side by the collectors	Bryson house 'kerbie' box-dry recyclables (collected weekly) Black/grey bin-refuse Brown bin- compost and food ³ (both alternate weekly collection)
Ballymena Borough Council	Source separated. Residents place all recyclables into kerbie box, which are separated at the kerb-side by the collectors	Blue bin-paper ⁴ Kerbie box- all recyclables except paper ⁵ (collected weekly) Brown bin- garden waste ⁶
Ballymoney Borough Council	Co-mingled	Blue bin-dry recyclables Black/grey bin- refuse Brown bin- organic Alternate weekly collection for all ⁷
Banbridge District Council	Source Separated Separated at Kerb side by collectors	Kerbie box- dry recyclables (weekly collection Brown bin- organic material (alternate weekly collection) ⁸
Belfast City Council	Some areas are co-mingled (those with blue and black bins) Some areas are source	Some areas have: black bins- refuse blue bins- dry recyclables brown bins- organic/compost (all alternate weekly

Council	Collection Type	Method
	separated (those with kerbside boxes) Materials are separated at the kerbside by the collectors.	collections)9 Some areas have: Kerbside box (instead of blue bin)-for recyclables10 (weekly collection) Food waste caddies – where food can then be placed in brown bins11
Carrickfergus Borough Council	Source separated Separated at kerbside by collectors	Black/grey bins- refuse Brown bin-compost (alternate weekly collection)12 Red and Black kerbside boxes – recyclables13 (weekly collection)
Castlereagh Borough Council	Some areas are co-mingled (blue bins) Some areas are source separated at the kerbside(kerbie box)	Blue bin-recyclables Black bin-refuse Brown bin-compost (alternate weekly collection) Black bin-refuse Kerbie- recyclables (weekly collection) Brown bin-compost14
Coleraine Borough Council	Co- mingled	Black bin-refuse Blue bin-recyclables (alternate weekly collection) Home composting (can buy a home composting bin)15
Cookstown District Council	Co-mingled	Black bin-refuse Blue bin- recyclables16 Brown bins – organic waste17 (alternate weekly collection)
Craigavon Borough Council	Co-mingled	Blue bins- refuse Green bins-recyclables Brown bins-organic waste (alternate weekly collections)18
Derry City Council	Co-mingled	Black/grey bin-refuse Blue bin-recyclables (alternate weekly collections)19
Down District Council	Co-mingled	Black bin-refuse Blue bin- recyclables Brown bin-compost20
Dungannon and South Tyrone Borough Council	Co-mingled	Black bin- refuse Blue bin- recyclables Brown bin-compost (alternate weekly collections)21
Fermanagh District Council	Co-mingled	Blue bin- recyclables Green bin- refuse22
Larne Borough Council	Co-mingled	Grey/black bin-refuse Blue bin- recyclables Brown bin-garden waste, food waste and shredded paper (alternate weekly collections)23
Limavady Borough Council	Co-mingled	Black/grey bin-refuse Blue bin-recyclables Brown bin-compost (alternate weekly collection)24
Lisburn City Council	Co-mingled	Black/grey bin-refuse Green bin-recyclables Brown bin- compost (alternate weekly collections)25
Magherafelt District Council	Co-mingled	Black/grey bin- refuse Blue bin- recyclables Brown bin- compost (alternate weekly collection)26

Council	Collection Type	Method
Moyle District Council	Co-mingled	Black/grey bin-refuse Blue bin-recyclables (alternate weekly collection) ²⁷
Newry and Mourne Council	Co-mingled	Black/grey bin –refuse Blue bin-recyclables Brown bin – compost (alternate weekly collection) ²⁸
Newtownabbey Borough Council	Source separated Paper bin and kerbie box-separation at kerbside by collectors	Black bin-refuse Blue bin-paper Kerbie box-recyclables Brown bin and food caddie-compost and food ²⁹
North Down Borough Council	Co-mingled	Black/grey bin-refuse Blue bin-recyclables Green bin- organic garden waste (alternate weekly collection) ³⁰
Omagh District Council	Co-mingled	Black/grey bin-refuse Blue bin- recyclables Brown bin-garden/organic waste (alternate weekly collections) ³¹
Strabane District Council	Co-mingled	Black/grey bin-refuse Blue bin-recyclables (alternate weekly collections) ³²

In summary:

- 5 Councils practice source separated collection
- 19 councils practice co-mingled collection
- 2 councils practice both:
- Some areas use source separated through the 'kerbie box' system, which is operated by Bryson House
- Some areas use co-mingled through the usual blue bin system.

1 http://www.antrim.gov.uk/userfiles/file/WHAT_CAN_I_RECYCLE.pdf

2 <http://www.ards-council.gov.uk/services/recycling.php>

3 http://www.armagh.gov.uk/sub_resservices_details.php?subresident_id=34&resident_id=36&show_sub=2

4 List of blue bin paper types <http://www.ballymena.gov.uk/bluebin.asp>

5 Additional bags of recyclables can be left out alongside the box, ensuring that bags contain just one type of material, e.g. one bag for plastic bottles, another for cans etc. <http://www.ballymena.gov.uk/kerbie.asp>

6 Brown bin <http://www.ballymena.gov.uk/brownbin.asp>

7 http://www.ballymoney.gov.uk/Three_Bins.aspx

8 <http://www.banbridge.com/template1.asp?parent=110&parent2=114&pid=114&area=1>

9 Bin collections <http://www.belfastcity.gov.uk/bins/types.asp>

- 10 Depending on where you live, the colour and exact content of the box may change
<http://www.belfastcity.gov.uk/bins/kerbsideboxes.asp>
- 11 <http://www.belfastcity.gov.uk/bins/foodwaste.asp>
- 12 Waste collection <http://www.carrickfergus.org/environment/waste-collection/>
- 13 <http://www.carrickfergus.org/environment/recycling/>
- 14 <http://www.castlereagh.gov.uk/Waste.asp>
- 15 <http://www.colerainebc.gov.uk/content/file/2010/BlueBins2010.pdf>
- 16 <http://www.cookstown.gov.uk/resident/wastemanagement/recyclingdisposal/kerbsiderecyclin gscheme/>
- 17 <http://www.cookstown.gov.uk/resident/wastemanagement/refusecollection/>
- 18 <http://www.craigavon.gov.uk/environment/waste-services/166-household-bin-collections.html>
- 19 <http://www.derrycity.gov.uk/recycle/bluebins.htm>
- 20 <http://www.downdc.gov.uk/Environment---Planning/Waste---Recycling-Services.aspx>
- 21 <http://www.dungannon.gov.uk/index.cfm/area/page/pagekey/564>
- 22 http://www.fermanagh.gov.uk/index.cfm?website_Key=47&Category_key=133&Page_Key=313
- 23 <http://www.larne.gov.uk/template1.asp?parent=553&pid=554&area=1&aName=Environment &text=1>
- 24 <http://www.limavady.gov.uk/living/waste-and-recycling/wheeled-bin-instruction/>
- 25 <http://www.lisburncity.gov.uk/your-city-council/council-departments/environmental-services/new-wheeled-bin-collection-service/>
- 26 <http://www.magherafelt.gov.uk/technical-services/recycling-waste/blue-bins/index.php>
- 27 <http://www.moyle-council.org/content/?id=44&l1id=24&l2id=25>
- 28 <http://www.newryandmourne.gov.uk/environment/services/brownbin.asp>
- 29 <http://www.newtownabbey.gov.uk/waste/default.asp>
- 30 <http://www.northdown.gov.uk/template1.asp?parent=413&pid=592&parent2=592&area=4>
- 31 http://www.omagh.gov.uk/environment/waste_management/
- 32 <http://www.strabanedc.org.uk/council/services/blue-bins/>



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Assembly

Research and Library Service
Briefing Note

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Ensuring Recyclate Quality

Introduction

The following paper explores the issue of recyclate quality. It examines the situation in the UK, where the lack of a specific piece of legislation means that quality standards are dictated by re-processors and materials recovery facilities (MRFs), resulting in a large variation of standards. It also considers how the issue is dealt with in Europe and North America, using a WRAP study conducted in 2006. Although the situation is similar to the UK, the production of quality specifications by the recycling industries in Europe and North America appear to be more structured and detailed. The paper also considers the EU Directive on Waste Shipment which is only concerned with the quality of waste being exported.

The situation in the UK

There is currently no direct legislation relating to the quality of recyclates. What is apparent is that MRFs in England appear to be guided by a wide range of specifications. In the European Commission's reply to the DEFRA and Welsh Assembly Government's (WAG) response to the draft Waste Framework Directive, the Commission made particular reference to the quality of recyclates. It stated that whether collected using source separation methods, or co-mingled methods, the recyclates produced should meet the quality standards for the relevant recycling sectors. Therefore highlighting that recyclate quality specifications are controlled by the recycling industry, and not by government regulations.^[1]

WRAP (Waste and Resources Action Programme)^[2] published a report at the end of 2009 entitled 'MRF Outputs Quality Threshold Report', which found that material quality standards are heavily dictated by re-processors and, despite some written guidelines, there is no standard test for MRF output quality.

The study called for a standard approach to assessing output material quality thresholds in a bid to help increase operator and re-processor confidence in the material outputs.

This was after the research uncovered a major disparity between the way in which MRFs are assessing the quality of their output (predominantly through visual assessment) and how re-processors are conducting it (where weight-based sorting is the most common method)[3].

In a bid to bring some uniformity, the report claimed that WRAP would investigate the possibility of creating a publicly available specification (PAS), for weight-based sampling and testing of material, and that this would provide an incentive to improve product quality.

In most cases, MRF operators had been issued with a written specification by re-processors, but anecdotal evidence pointed to the fact that re-processors would move the goal posts on quality in relation to demand. This meant that there was seemingly a lower quality of material accepted when demand for that material was higher, but this would be replaced by stricter quality controls when demand was low.[4]

This lack of a level playing field where material quality might be assessed and compared is a potential impediment to smooth functioning of materials markets and sustainable recycling.

Comparing the situation in the UK with Europe and North America

A study written by the Dougherty Group LLC on behalf of WRAP in 2006[5], made a comparison of sorting operations based on site visits to selected facilities in England[6], Europe[7] and North America.[8] It found that the situation in all three regions regarding the quality of recyclates was similar, in that quality relied on the production of specifications made by MRFs and re-processors. Understanding that the situation in both Europe and North America may have changed since the study was conducted in 2006, the Local Government Association's European and International Unit confirmed via communication, that after conducting a search, they were unable to find any introduction of legislation for recycle quality in both regions since 2006.

While the absence of legislation suggests a similarity between the three regions, evidence from the WRAP study implies that the difference lies in the quality and structure of specifications. According to this study, while there appeared to be a fairly high degree of clarity on specifications in the other countries visited, it materialised that the MRFs visited in England were guided by broader specifications. Unlike the MRFs in the other countries, the team making the visits did not detect a well defined set of specifications for supplying the materials' industry.

Comparison of Specifications

In North America and Europe, paper specifications are publicised and made available on paper mill web sites for all potential suppliers.

Objective testing procedures are implemented to determine the quality of materials received, which involves random sample testing of materials shipped from MRFs and received at mills. According to the WRAP (2006) report, this has been adopted at several Mills in the UK e.g. Aylesford, however, there is no standardised testing procedure.

Most re-processors purchasing recovered materials prefer that materials are sorted at the kerb-side, as this minimises the potential for cross contamination and generally produces higher quality materials. Therefore, the main challenge for two-stream[9], and more so single stream[10] MRFs, is to meet the specifications required by the materials markets/re-processors.

According to the WRAP study^[11], the following techniques are used by MRFs to control the quality of the materials shipped from them, so as to build market confidence that their sorted materials meet or exceed the market specifications:

- Quality control or inspection stations at the end of each sorting line;
- Visual inspection of the materials at various levels in the storage bunkers;
- Random sampling of bales prior to shipment; and
- Quality control feedback systems between the market and the supplier.

(For more detail on each of the above techniques, refer to the report p.21^[12])

Under the study, WRAP made comparisons between the specifications stated by the MRFs visited in the UK, Europe and North America, which have been summarised in the table over leaf.

Europe	North America	UK
Market specifications are established by the producer responsibility organisations. The specifications do not offer any flexibility, and according to WRAP, MRFs are acutely aware of the acceptable levels of contamination. Each of the facilities visited had established inspection and testing procedures.	Specifications provided by the MRF staff were fairly detailed. Inspection and testing procedures were in place to monitor the quality of sorted materials in relation to the market specifications.	The staff interviewed at the MRFs in England presented more general specifications than their counterparts in other countries. Quality inspection systems and quality testing of sorted materials was less prevalent.

Market specifications from selected European MRFs

The following information is taken from Appendix 2 of the WRAP (2006) study^[13], which is a compilation of specifications provided by the MRFs' managers during interviews conducted during visits to selected the MRFs.

The MRF sites that were visited in Lille and Renne, must adhere to the specifications set by Eco-Emballage, the French producer responsibility organisation. Some of the specifications include:

Deliveries of liquid food packaging e.g. tetra pak and assimilated materials have to:

- contain less than 5% in inappropriate materials;
- have a humidity rate of less than 12%;
- be packaged in bales between 400 and 1200 kg
- be in 20 tonne consignments

Deliveries of mixed paper and card must:

- Contain around 90% of useful material, which includes more than 50% of tangled papers and cards, less than or equal to 40% newspapers, magazines, brochures and leaflets.
- Contain less than 10% of inappropriate materials e.g. dirty papers and non pulvable materials.
- Have a humidity rate of less than 12%

- Be packaged in bales between 400 and 1000kg
- Be delivered in consignments of 20 tonnes if on a trailer, around 9 tonnes from an unsorted dumpster, around 20 tonnes for bales on maritime containers.

For more specifications in Europe, see Appendix 2 of the WRAP report "Material Recycling Facilities"^[14]

Market Specifications from selected North American MRFs

E.g. SP Recycling MRF in Atlanta, Georgia:

- Contains sorted, fresh, dry sunburn free newspapers
- Contains no more than the normal percentage of inserts, with samples removed
- May contain over-issue news (polyethylene bags must be removed)
- May contain pressroom scrap without heavy ink sheets or over-issue inserts
- Maximum age 3 months
- Moisture content 10% (air dry)
- Total contamination: 0.5%
- Prohibitives: None
- Provide supplier with feedback reports.

Prohibitives are any materials and contaminants other than paper; including:

- Plastic bags, flexible film
- Adhesive tapes
- Carbon papers
- Plastic window envelopes
- Glued magazines
- Waxed paper
- Pressure sensitive tapes and labels
- Ropes, strings, twines, strapping
- Metal, glass, dirt, cloth
- Wood, floor sweepings, beverage cartons

Out-throws are papers (fibre) other than old newspaper.

- Aged newspapers, sunburned newspapers
- Shredded papers,
- Corrugated boxes, kraft bags, folding cartons, junk mail,
- Office, computer, coated or treated papers

Other specifications:

- Bales should be dense and solid and be uniform in size within a load
- Bales and loads must be tare free
- Container should be swept clean before loading

UK Market specifications

The following examples from UK MRFs show a considerable lack of detail in comparison to the specifications shown from the examples taken from Europe and North America.

Norwich MRF

- Fibre: typically 1% contamination, however, the market has less tolerance for cardboard.
- Containers: 1% contamination. Plastics are sorted into individual polymers and exported to Asia.

East Riding MRF

The recycled paper must meet the following general specification:

- All paper must be not more than 6 months old
- Maximum of 1% of contraries such as metal, plastic string.
- Maximum of 12.5% moisture
- Maximum of 2.5% coloured newsprint
- Maximum 1% telephone directories/envelopes
- Maximum 10% catalogues

Luton MRF

- Typically the markets accept about 1% contamination in the various sorted materials.

Huddersfield MRF

- Most markets accept 1% contamination in the materials

Hampshire MRF

- Generally 1% contamination for most materials
- Specific criteria have been agreed with a UK paper mill

Darwen MRF

- Mixed papers are sent direct to Aylesford (not sorted at the MRF)
- Plastics sorted by resin and colour must have less than 1% contamination

UK Development on specifications

Since this study was conducted in 2006, Resource Futures was contracted by WRAP in 2009 to carry out a project to investigate the quality requirements of UK re-processors and their relationship to the output from UK MRFs.

The study found:[\[15\]](#)

- There is a major disparity between the way in which MRFs are assessing the quality of their output (predominantly through visual assessment) and how re-processors are doing it (where weight-based sorting is the most common method).
- There is a lack of consistency in assessment methodologies even within these two broad types of assessment.
- Many sampling and testing approaches are not formally written down and available for inspection
- MRFs and re-processors are carrying out materials quality analysis that, while perhaps useful for internal monitoring or decision making, is not standardised enough to be comparable with data from other MRFs or re-processors.

Recommendations

The major recommendation to emerge from the analysis of material testing methodologies is the need for a standardised approach that can be applied by both MRFs and re-processors. According to WRAP, such a system would have to be practical for both MRFs and re-processors, and should be as similar as possible across material streams in order to make implementation at the MRF more straightforward. This would enable MRFs to produce clear descriptions of product quality, and re-processors would be able to test the material they receive using the same method and compare the results. Consequently this would help to prevent and resolve disputes; in addition, the information produced by both MRFs and re-processors could be shared, reducing the overall testing workload.[\[16\]](#)

Waste Protocols Project

The Waste Protocols Project is a joint Environment Agency and WRAP initiative in collaboration with industry. It is funded by the Department for the Environment, Food and Rural Affairs (Defra), the Welsh Assembly Government (WAG), and the Northern Ireland Environment Agency (NIEA), as a business resource efficiency activity.

According to the Environment Agency, waste management regulations, which fall under the EU Waste Framework Directive, are designed to protect human health and the environment. However, the Agency states that this can impose administrative and legislative burdens on business. It also highlights that due to the complexity of the legislation, difficulties can be experienced by businesses when trying to differentiate when the wastes they produce are fully recovered (and are no longer classed as 'waste') and the legislation no longer applies[\[17\]](#).

To address these issues, the project aims to produce a quality protocol for each waste material, explaining what has to be done to produce a fully-recovered, non-waste, quality product.

Objectives of the project:

- The production of a quality protocol[\[18\]](#) which presents the procedures that need to be followed for the successful transition of waste to a non-waste product or material that can be reused by business or industry, or supplied into other markets. According to

WRAP, this enables recovered products to be used without the need for waste regulation controls.

- The production of a regulatory position statement, which gives the business community regulatory obligations they must comply with.

Examples of protocols

The Quality Protocol for the manufacture of secondary raw materials from waste non-packaging plastics^[19]

This was launched in May 2009 and was produced in consultation with key stakeholders from the plastics industry. It establishes end-of-waste criteria for the production of secondary raw materials from waste non-packaging plastics.

The advantage is, that plastic converters or manufacturers who buy 'Quality Protocol' compliant material may benefit from a reduction in their material costs; and will have the assurance they are purchasing a fit-for-purpose and consistent non-waste product^[20].

To see the Non-Packaging Plastics Quality Protocol visit: http://www.environment-agency.gov.uk/static/documents/Business/Quality_protocol_for_non-packaging_plastics_.pdf

For extra information visit the Environment Agency: <http://www.environment-agency.gov.uk/business/topics/waste/114437.aspx>

Current state of progress

According to the Environment Agency, they have published final quality protocols for the following waste materials:^[21]

- Biodegradable waste (source-segregated) for compost
- Biodegradable waste (source segregated) for anaerobic digestate
- Cooking oil and rendered animal fat
- Glass – flat
- Plastics (non-packaging)
- Tyres – tyre-derived rubber material
- Plasterboard
- Lubricating oil

Protocols for other materials e.g. ash, wood tyre bales etc are currently at draft stage, or their development in being considered by the project.

To see the protocols for the rest of the materials listed above, visit the WRAP website: http://www.wrap.org.uk/recycling_industry/quality_protocols/

According to the Environment Agency, it is expected that protocols for the first 12 materials will create around £1 billion in business savings and increased sales of waste derived products by the year 2020 (through strengthening existing markets and generating new ones). The protocols aim to give end users confidence in the sustainable resources they purchase.

It has also been estimated that the quality protocols will divert around 17 million tonnes of waste from landfill, preserve 14 million tonnes of raw materials and avert at least 2.1 million tonnes of carbon dioxide equivalent emissions (CO₂).

In 2009 the project won the "better regulation" category of the UK's premier cross-industry accolades of the National Business Awards.^[22]

Shipment of Waste Directive

The issue of the quality of materials produced for export is addressed under the Shipment of Waste Directive^[23], and also works in combination with the Environmental Services Association's Recycling Registration Service. This scheme is independent and externally audited, which focuses on MRF export standards

How the Recycling Registration Scheme (RRS) Works^[24]

- It offers application to MRFs operating in the UK and handling or processing Green List^[25] waste materials to be exported for recovery by a re-processor.
- The scheme is operated in accordance with a Code of Practice and Terms and Conditions, which applies to all Members and their registered MRFs.
- To become a member, an applicant must submit its MRF for audit to confirm compliance with the Code of Practice.
- Upon application, and successful audit, the facility becomes a Registered MRF.
- Annual re-audit is needed for continued registration.

Under the RSS Code of Practice, registered MRFs are required to^[26]:

- operate in accordance with good industry practice in the UK and in compliance with all applicable EHS legislation;
- have documented control systems for assessing and accepting/rejecting waste inputs;
- have documented control systems to ensure waste outputs meet applicable commercial specifications and accord with Green List guidance issued by the Environment Agency;
- ensure a written agreement has been entered into with a broker or dealer prior to supplying waste;
- affix an RRS certificate to export documentation relating to each export consignment; and
- complete export and import documentation/information as required under applicable law.

The European Environment Agency

According to information provided by the Sustainable Production and Consumption and Waste Unit of the European Environment Agency (EEA), there is ongoing work in the EU to define when a recyclate is no longer classed as waste in legal terms, but a product that can enter the national materials market. This means that it is not covered by the EU Waste Shipment Regulation which is concerned with exports to other member states.

For more information on the status of this work, visit the website of the European Commission (http://ec.europa.eu/environment/waste/framework/end_of_waste.htm) and the Joint Research

Centre (<http://susproc.jrc.ec.europa.eu/activities/waste/index.html>), both of which intend to develop end-of-waste criteria for materials such as ferrous scrap metal, aluminium scrap metal, copper scrap metal, paper and glass.

Secondly, standardisation organisations such as CEN (European Committee for Standardisation) develop standards for industry for the classification of recycled materials. Examples include:

- EN 13427- Packaging. Requirements for the use of European Standards in the field of packaging and packaging waste[27]
- EN 13430 - Packaging. Requirements for packaging recoverable by material recycling[28]
- EN 13437 - Packaging and material recycling. Criteria for recycling methods. Description of recycling processes and flow chart.[29]

Also, should a producer of materials or products want to use waste as an input for processing, in many countries they will need a license to keep, treat, or dispose of the waste. This is known as an IPPC permit which comes under the Integrated Pollution Prevention and Control Directive (IPPC)[30].

In the UK, the Waste Management Licensing Regulation requires businesses to apply to the Environment Agency for an IPPC permit, or a waste management licence.[31]

According to the information provided by the EEA, in Germany, any facility that uses waste as input for production needs a permit to do so. The permit will also specify the type of waste allowed to be used.

[1] DEFRA and WAG (2009) Stage One: Consultation on the Transposition of the Revised Waste Framework Directive, Waste Framework Directive Unit DEFRA. (p26/27)

[2] The Waste and Resources Action Programme (WRAP) is a Defra funded agency which provides support for local authorities on recycling, including funding and training. Visit WRAP's website at: <http://www.wrap.org.uk/>

[3] WRAP, (2009), MRF Output Material Quality Thresholds Report http://www.wrap.org.uk/downloads/MRF_Output_Material_Quality_Thresholds_Report.bb15b7c2.8210.pdf (section 4.2)

[4] Ibid (p.4)

[5] Wrap (2006), Materials Recovery Facilities http://www.wastexchange.co.uk/documenti/MRF/MRF_v6_19Dec06_LC.605a7565.pdf

[6] Site visits were made to: the Onyx MRF in Hampshire, RU Recycling MRF in Darwen, WRG MRF in East Riding of Yorkshire, SITA MRF in Huddersfield, WRG MRF in Luton, NEWS MRF in Norwich, and the Grundon MRF in Slough.

[7] Visits in Europe were made to: Triselec MRF in Lille, France, Onyx MRF in Renne, France, LIPOR MRF in Porto, Portugal

[8] Visits in North America were made to: Eureka Recycling MRF in St. Paul, Minnesota, Waste Management MRF in Minneapolis, Minnesota, Waste Management MRF in Seattle Washington.

[9] Fibre can be collected separately from other co-mingled materials (such as glass, plastics, and cans etc) or glass is collected separately from the other materials. Consequently, collection vehicles have two compartments to keep materials separate.

[10] All dry recyclables are co-mingled and collected in a single compartment of a collection vehicle

[11] Wrap (2006), Materials Recovery

Facilities http://www.wastexchange.co.uk/documenti/MRF/MRF_v6_19Dec06_LC.605a7565.pdf

[12] *ibid*

[13] *Ibid* (Appendix 2)

[14] http://www.wrap.org.uk/downloads/MRF_v6_19Dec06_LC.52a1549b.3528.pdf

[15] WRAP (2009), MRF Output Material Quality Thresholds

Report, http://www.wrap.org.uk/downloads/MRF_Output_Material_Quality_Thresholds_Report.b15b7c2.8210.pdf (section 4.2)

[16] *Ibid*

[17] <http://www.environment-agency.gov.uk/business/topics/waste/32154.aspx>

[18] According to the WRAP website, a Quality Protocol gives guidance on how to recover waste, remove it from the regulatory regime and unnecessary regulations.

[19] According to the good practice guide, non-packaging plastics are process scrap such as polymers left from the production of non-packaging plastics, off cuts etc; and post-consumer non-packaging plastics - drainpipes, guttering, broken children's toys etc. http://www.wrap.org.uk/downloads/Good_Practice_Guide_for_non-packaging_plastics.73caa55.6943.pdf

[20] WRAP, Quality Protocols

[online] http://www.wrap.org.uk/recycling_industry/quality_protocols/

[21] Environment Agency, State of progress for each material [online]

<http://www.environment-agency.gov.uk/business/topics/waste/114460.aspx>

[22] Environment Agency, Waste Protocols [online], <http://www.environment-agency.gov.uk/business/topics/waste/32154.aspx>

[23] European Commission, [online] Waste

Shipments <http://ec.europa.eu/environment/waste/shipments/legis.htm>

[24] Environmental Services Association (ESA), Recycling Registration Service: Demonstrating Compliance with TFS http://www.wrap.org.uk/downloads/Justin_French-Brooks_-_Recycling_Registration_Service.170f6e44.6072.pdf

[25] Some waste shipments are subject to lower level controls, known as 'green list'. For more information, visit: <http://www.environment-agency.gov.uk/business/sectors/37182.aspx>

[26] Environmental Services Association (ESA), Recycling Registration Service: Demonstrating Compliance with TFS http://www.wrap.org.uk/downloads/Justin_French-Brooks_-_Recycling_Registration_Service.170f6e44.6072.pdf

[27]http://standards.mackido.com/en/en-standards24_view_2512.html

[28]http://standards.mackido.com/en/en-standards24_view_2516.html

[29]http://standards.mackido.com/en/en-standards24_view_2520.html

[30]<http://ec.europa.eu/environment/air/pollutants/stationary/ippc/legis.htm>

[31] Waste Management Resources Limited

[online] <http://www.wastemanagementconsultant.co.uk/legislation.php>

Appendix 6

Other Papers Submitted to the Committee

Departmental reply to Committee queries on waste recyclates

Annex A



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Your reference:

Our reference: CQ/101/10

Date: 7 July 2010

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
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Dear Alex

Follow-Up Query from the Committee on Plans to Reassess the Demand for Landfill Sites and Various Recycling Issues

At the Environment Committee meeting of 15 June, the Committee considered the Department's response of 8 June on the potential to include recycling provisions in the Waste and Contaminated Land (Amendment) Bill. The Committee has subsequently requested information on:

- (a) the Department's plans to reassess the demand for landfill sites;
- (b) the outlets/markets for recyclates prepared by local recycling plants;
- (c) recycling standards in Scotland; and:
- (d) the merits of different ways to recycle, including the quality of product produced.

Each of these issues is addressed in turn below.

Where the specific information is not available this has been highlighted and, where appropriate, other relevant information has been referenced which it is hoped will assist the Committee in its deliberations on these matters.

1. Reassessing the Demand for Landfill Sites

The Committee has requested information on the Department's plans to reassess the demand for landfill sites. Waste management planning is a function of local government and District Councils are responsible for deciding what arrangements are appropriate for dealing with waste within their area. Waste Management Plans, prepared by the three District Council Waste Management Groups, must consider the need for, the capacity and location of landfill sites. These plans, which are subject to full public consultation and Departmental approval, were last approved in 2006. New plans are due to be submitted in 2011 and this will provide a further opportunity to consider proposed arrangements.

2. Outlets / Markets For Recyclates Prepared by Local Recycling Plants

The Committee has requested information on the outlets / markets for recyclates prepared by local recycling plants. The Department works closely with the Waste and Resources Action Programme (WRAP) which collects and reports on markets for recyclates for the United Kingdom (UK) as a whole. Given the global nature of the market for recyclates and in particular the level of interaction between businesses in UK regions, this information is of importance to local reprocessors. Specifically, it is important for reprocessors to understand key global trends in the demand and supply of recyclates. The sections below, therefore, set out relevant data, at UK level,^[1] on markets for paper and plastic recycling as these are the key waste streams currently being recycled / reprocessed in Northern Ireland.

Markets for Recycled Paper

In 2009 there was 8.2 million tonnes of paper recycled in the UK. Of this 3.8 million tonnes was reprocessed within the UK whilst the remaining 4.4 million tonnes was exported.

China/Hong Kong is the key export market destination for UK recovered paper and accounts for over 60% of UK recovered paper exports. The EU, Indonesia and India are also important markets for this material as set out in Table 1 below.

Table 1

Country	% of UK Paper Exports (2009)
China/Hong Kong	63%
EU	14%
Indonesia	10%
India	9%
Other Asia	3%
Other	1%

In the UK the consumption of paper is declining (possibly as people are becoming increasingly aware of the environmental impacts of paper production/consumption), which in turn reduces the supply of paper for recycling/recovery. Consequently WRAP suggest that the UK may be close to reaching the limit of what is viable to recover. In contrast, the consumption of paper is growing in emerging countries where recovery rates for paper in (ie. for future recycling / reprocessing) are generally lower than in developed economies.

On the demand side whilst there is rapidly growing demand for recycled paper in emerging countries, UK exports of this material stream were lower in 2009 than in 2008. The UK's exports of recovered paper, however, displays various trends depending on the grade (quality) of paper recycled. WRAP note that there is a risk that overcapacity (in advanced economies) and high utilisation rates may limit the scope for further UK export growth in paper recycling / reprocessing (although as noted there are variations based on the grade/standard of recovered paper).

Whilst global prices for recovered paper collapsed during 2009 the latest data indicates that prices have increased steadily and, in early 2010, were close to £55 per tonne ie similar to the price levels recorded in early 2008.

Markets for Plastic

In terms of UK recovered plastics (recovered plastics include both packaging and non-packaging plastics) 711,000 tonnes of these materials were exported in 2009. The key export markets for UK recovered plastics are Hong Kong and China which together account for almost 90% of UK exports of this material.

Table 2: UK Market Destination for Recovered Plastics

Country	% Of UK Recovered Plastics Exports (2009)
Hong Kong	65%
China	24%
Other Asia	6%
EU	5%
Other	Negligible

The vast majority of the post-use plastics recovered from the UK waste stream are packaging plastics over 70% of which is exported for recycling overseas. In the 12 months to September 2009 550,000 tonnes of UK plastic packaging was recycled of which 165,000 tonnes per annum was reprocessed within the UK and 390,000 tonnes per annum exported.

On the supply side 40% of plastic bottles collected within the UK are recycled, however, in contrast only 2% of mixed plastics are currently recycled. At present not all types of plastic can be recycled as it may not be technologically possible or economically/environmentally advantageous to do so.

Whilst WRAP note that domestic reprocessing capacity for plastics is growing some 70% of recycled plastic is exported. New technology to enable recycling of more streams of waste plastic is developing, however, it is often perceived by investors as higher risk which may restrict investment in such technologies.

In terms of demand there is strong overseas demand for plastics which, in turn, is pushing up prices of materials. In particular, there is strong demand for recycled food grade plastics from retailers but supply within the UK is insufficient to meet this. The prices of recovered plastic bottles fell dramatically in 2009 (as for paper) but has now recovered (price in early 2010 of approximately £110 per tonne) to close to the levels experienced in early 2008.

Future Forecasts – Paper and Plastics Recycling

WRAP's forecast suggest that looking forward, on the supply side, there is likely to be changes in the composition and sources of recovered paper and plastics as technology develops to enable reprocessing of some types of plastic, for example, which cannot currently be reprocessed.

In terms of domestic demand WRAP note that there may be a need to stimulate investment in domestic reprocessing capacity. The forecast also indicates that overseas demand will continue to grow in particular from emerging economies and this is likely to underpin the prices of recovered materials.

Local Market Intelligence

Minister Poots recently visited two locally based waste reprocessors ie Huhtamaki and Cherry Polymers which receive material for reprocessing from Bryson Recycling.

The Department consequently has some information on the end markets for materials reprocessed by these companies which has been included for information. Bryson Recycling has

advised that it supplies 35% of its recyclables, (amounting to 20,000 tonnes annually), to NI recycling businesses such as Cherry Polymers, Huhtamaki and Quinn Glass for reprocessing. Bryson Recycling estimate that the materials that are then produced fetch around £14m per year.

Huhtamaki (Lurgan) Ltd. manufactures moulded pulp products (eg egg cartons/trays) and processes approximately 20 thousand tonnes of recycled paper per year at the Dollingstown site. There are 196 employees working at this site with an annual turnover of approx £20 million. The Company supplies all the leading egg producers and grocery multiples and produces cup carriers for fast food takeaway outlets such as McDonalds. Overall Huhtamaki (Lurgan) supply 50% of the UK and Ireland egg box market, 66% of the egg tray market in the UK and Ireland and are the sole supplier of cup carriers to the food service industry.

Around 8,000 tonnes of the paper which Bryson Recycling collect is sent to Huhtamaki in Lurgan where it is used to make moulded fibre products such as egg cartons.

Cherry Polymers is part of a multi-million pound investment in the plastics recycling industry by the Cherry Plastics Group. It is one of Ireland's leading plastic recycling companies and operates Ireland's largest plastic bottle sorting plant. It receives plastic bottles collected by Bryson Recycling for reprocessing. The company has recently expanded and it is understood that approximately 50% of its sales will be for export markets.

Departmental Actions to Develop Knowledge of Markets for Recyclates:

The Department is seeking to develop its knowledge base on markets for recyclates produced by locally based companies. Consequently, an All Island Plastics Recycling Study is currently being undertaken by SKM Enviro on the generation and fate of recycled plastic waste across the island of Ireland on behalf of rx3, the Department of Environment, Heritage and Local Government (DEHLG), the Department of Environment Northern Ireland (DOE NI) and WRAP NI. The primary objective of the study is to establish baseline information in respect of the quantity, quality, type, origin, flow and end-use of plastics across the island of Ireland. The project has started and it is anticipated that the final report will be published towards the end of this year. As part of the data gathering stage SKM Enviro plan to undertake a survey of materials recycling facilities (MRFs), waste handlers, plastic reprocessors and plastic manufacturers across Ireland to identify in detail the quantity, quality, type, origin and flow of plastics through facilities.

The Committee may also be interested in the work of the North South Market Development Steering Group (NSMDSG). Within the terms of reference, the NSMDSG is to identify areas of mutual concern, exploring market development opportunities for target priority waste streams and to develop proposals for a joint market development action programme. During the NSMC(E) meeting on 5 March 2010, Ministers agreed to a short to medium work programme being taking forward by the NSMDSG in the 3 areas of:

1. Mutual recognition of Quality Protocols (QP);
2. Bulky Waste;
3. Case studies on recycling best practice.

These are to be part of a rolling programme from which other joint projects may emerge for consideration such as the all island plastics recycling survey (referenced above) This work will

provide important information on developing the recycling sector in Northern Ireland and help identify key end-markets for recyclates.

DOE is also engaging with the Department of Enterprise, Trade and Investment (DETI) and Invest NI which provide financial assistance and support to a number of recycling businesses (including Cherry Polymers) and therefore may hold information which would be of relevance. The Committee may wish to contact DETI directly to request any additional information which may be available through this route.

3. Recycling Standards in Scotland (MRFs)

The Department, in its earlier reply to the Committee's query on the quality of recyclates, provided information on the approach adopted by other UK regions/the Republic of Ireland to address this issue. In particular, the Department noted that Scotland will develop standards for recyclates from Material Recycling Facilities (MRFs).^[2]

In its Zero Waste Plan for Scotland the Scottish Executive includes a specific action to improve recycle quality, namely:

"the Scottish Environment Protection Agency in partnership with the Scottish Government will develop further and implement the Better Waste Regulation Action Programme to support the delivery of the Zero Waste Plan, including the development of a "waste to resource" toolkit for resource managers. This will introduce minimum standards for recycled materials, which will be periodically reviewed in order to progressively improve the quality of recycle. This work will directly inform the development of new and existing resources recovery infrastructure."

Colleagues in the Scottish Executive have advised, however, that whilst this is included as a headline action in their waste strategy/action plan there are no plans to make such standards mandatory at this stage.

Scotland is also seeking to drive improvements in the quality of recyclates through the waste collection/treatment system. The quality protocols/standards such as PAS100/110 are part of this work. As specific standards will need to be met for materials to count as having been recycled Scotland hope that this will help drive the early adoption of such standards. It is important to note that in Northern Ireland a similar approach has been adopted through the Quality Protocols Programme.

The programme is a partnership between the Northern Ireland Environment Agency, the Environment Agency and WRAP and is examining a variety of waste materials with the intention of ensuring that high quality raw materials are provided for businesses. By looking closely at each waste stream it will be possible to establish if and how it can be fully recovered and turned into one or more alternative, quality products through quality protocols. These materials can lose the stigma of being classified as "waste" and can present benefits for the producer, the recycler and the end user with resulting market opportunities. DOE, through NIEA, will publish 6 Quality Protocols for NI over 2010-11. The first three quality protocols (compost, anaerobic digestate and processed fuel oil) are scheduled to be published in early July 10.

4. Merits of Different Ways to Recycle (including quality of product produced)

The quality of recyclates is of critical importance to the sustainable development of the local recycling sector. In general the greatest environmental benefits (and highest quality recyclates) are achieved through "closed loop" recycling. Under closed loop recycling materials are recycled

into the same material (eg glass which is remelted) in contrast to "open loop" recycling where materials are converted into a new product involving a change in the inherent properties of the material eg glass which is crushed for use in aggregates or recycling plastic bottles into plastic drainage pipes.

The benefits of closed loop recycling, however, can only be achieved if the collection system put in place by councils delivers recyclates of a high quality.

Recyclate quality can be improved through two key methods – source segregated waste collection or through high performing Material Recovery Facilities (MRFs) characterised by low rejection rates. In general, source segregated waste collection methods, which allow contamination to be filtered out as waste is collected, are considered to be the most effective method for the production of high quality recyclates.

A key issue for district councils, however, when seeking to boost the quality and quantity of recyclates are the potential cost implications and the effectiveness of new or enhanced collection facilities.

WRAP Research

WRAP has conducted a considerable body of research which considers various recycling collection methods and their effectiveness in qualitative and quantitative terms. WRAP note that co-mingled collections,[3] can lead to higher levels of contamination than single or two-stream waste collection systems, however, recent research by WRAP - based on input, output and residual material testing at 20% of UK Material Recovery Facilities - demonstrates that modern state of the art MRFs can produce material to a very high quality. Some of Northern Ireland's MRF's (particularly in the arc21 area) are currently producing high quality recyclates combined with low rejection rates.

WRAP's report (targeted at district councils which are seeking to design an appropriate and effective waste recycling collection scheme) "Choosing the Right Recycling Collection Scheme" is of particular relevance (and is available at the following website:

http://www.wrap.org.uk/downloads/Choosing_the_right_recycling_collection_system.6603e537.7179.pdf.)

Key points highlighted in the document are as follows:

- Kerbside collection systems can be based on full kerbside sort, single stream co-mingled or two stream co-mingled collections.
- There is no single solution/one-size-fits-all approach for district councils in seeking to recycle more waste and produce higher quality recyclates.
- The choice of collection system should be based on:
 - quality of material;
 - cost efficiency;
 - cost effectiveness; and:
 - public acceptability.
- In terms of quality generally the greatest benefit is achieved through closed loop recycling.

- Kerbside sort collections can appear more expensive but have lower net costs than co-mingled systems (reflecting MRF gate fees and the potential to sell materials direct to reprocessors).
- Two stream co-mingled systems have lower net costs than single stream systems (due to lower MRF requirements and the potential to sell materials direct to reprocessors).

WRAP conclude, however, that whilst the choice of collection system is a matter for local councils, their research demonstrates that kerbside sort systems offer reliable material quality and lower net costs (than other collection methods) for taxpayers and capture the same volume of material as co-mingled schemes. Consequently, WRAP recommends that kerbside sort collections should be preferred where they are practical.

A range of interventions are necessary to improve recyclate quality including:

- informing and educating householders, businesses etc on the need to segregate waste into appropriate containers to facilitate high volume and high quality recyclates.
- ensuring adequate and appropriate waste collection and treatment facilities are in place
- the introduction of "quality protocols" (see above) for various waste streams will also assist in boosting recyclate quality
- training and guidance to Councils and MRF operators on improving recyclate quality (WRAP NI currently provide this function in Northern Ireland).

The Department will be giving further consideration to this matter in coming months in line with the Minister's wishes.

I trust this information is of assistance, however, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO

[by email]

[1] All data/information quoted is from the Waste and Resources Action Programme and is available on WRAP's website at: www.wrap.org.uk

[2] The development of standards for MRFs is a headline action in "Zero Waste Scotland" – the Scottish Executive's recently launched waste strategy.

[3] Single stream co-mingled relates to where materials are collected together with the sorting of these materials occurring at a MRF. Two stream co-mingled relates to where two recycling containers are provided for different materials – the materials are kept separate but collected on one vehicle with two compartments. Kerbside sort occurs where materials are sorted at the kerbside into different compartments of a specialist collection vehicle.

Departmental reply to Committee queries on recyclate quality



Central Management Branch
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BELFAST

BT2 8GB

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Your reference:
Our reference:

Date: 8 June 2010

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast BT4 3XX

Dear Alex

Re: Waste and Contaminated Land (Amendment) Bill ("The Waste Bill")

I refer to Committee's recent request for the Department's views on the feasibility of amending the Waste Bill (currently in Committee stage) to ensure councils take steps to improve the quality and quantity of recycled materials.

The Minister shares Committee's desire to improve both the quantity and quality of recyclates in NI. The Department is currently reviewing its approach to recycling with a particular focus on the potential to deliver real and sustained improvements in this regard.

Great Britain/Republic of Ireland Initiatives to Improve Recyclate Quality

The Committee may find of interest the approach adopted by other regions of the United Kingdom (UK), the Republic of Ireland (RoI) to improve recyclate quality. England, Scotland and Wales have adopted a variety of measures for this purpose, though, to date, none have sought to introduce legislation. In the Republic of Ireland whilst regulations will come into effect on 1 July 2010 which will require commercial producers of food waste (eg restaurants/hotels) to separate food waste for collection the regulations do not apply to householders.

Wales, in particular, is notable for the specific steps taken to improve recyclate quality and for some waste streams funding is only available for schemes which are consistent with this approach. This includes the provision by the Welsh Assembly Government (WAG) of annual revenue funding to councils for source segregated food waste collection.

Scotland has developed a carbon metric which will give greater prominence to recycling of materials that deliver the best environmental performance and has also developed quality standards for Material Recovery Facilities (MRFs).

In England, the Waste and Resources Action Programme (WRAP) has undertaken several important studies for Defra to assess the merits of various collection schemes and on the performance of MRFs (ie in terms of reject rates and quality of recyclates produced). Recent studies covering 20% of UK MRFs have demonstrated that modern state of the art MRFs can produce material to a very high quality.

All UK regions rely on the services of WRAP to provide advice and support to councils, businesses and householders on how to improve recyclate quality whether through collection schemes or through improvements to MRFs.

Further information on the initiatives introduced elsewhere in the UK/RoI is set out in Tab A.

Departmental Initiatives to Improve Recyclate Quality

The Department has also proactively sought to develop and implement measures to facilitate improvements in the quality of recyclates and specific examples include:

WRAP Annual Funding - the provision of £1m annual funding from the Department to WRAP to enable WRAP to work with and advise local councils, businesses and householders on methods to improve the quantity and quality of recyclates. An element of this funding was allocated to Natural World Products to develop the in-vessel composting facility in Dunmurry and a key funding requirement was that compost produced at the facility must be produced to PAS 100 standard (hence ensuring the production of a high quality recyclate.)

Rethink Waste Fund – the £3.13m funding made available by the Department through the Rethink Waste Fund will also assist in boosting recyclate quality (the Minister's letter of 25 May 2010 to the Chair of the Environment Committee refers). All councils in Northern Ireland can apply for funding for proposals which will deliver real improvements in the quality and quantity of recyclates. This will enable councils to improve or expand existing or introduce new recycling/re-use infrastructure. The assessment criteria for the Fund includes a strong weighting towards schemes/projects which, in addition to increasing the tonnages recycled, will produce higher quality recyclates.

Quality Protocols - The Department is working with the Quality Protocols Programme in order to publish Quality Protocols for recyclates for Northern Ireland. The Programme is a joint venture involving NIEA, Environment Agency, Welsh Assembly Government and WRAP. Quality protocols are agreed standards which clearly describe how certain low-risk, well-managed waste materials can be turned into quality products and thus removed from the waste regulatory controls. They provide confidence in the integrity of the resulting recycled products and therefore stimulate recycling markets. The Department plans to publish six quality protocols in 2010 / 2011.

Quality Standards for Councils - The Department is preparing draft quality standards for waste collection/treatment systems for councils and will engage with councils in the near future on the proposed standards. However, it is hoped that the standards will assist councils in benchmarking and evaluating their performance against key criteria and encourage councils to take steps to improve performance where weaknesses are identified eg reducing the rejection rate from MRFs.

Current Work with WMGs on potential to improve Recycling Quantity and Quality - the Department is engaged in discussions with the Waste Management Groups to identify where

there may be further potential to improve the quantity and quality of recyclates. This work is still underway and will help inform and shape the development of the Department's policy on recycling.

The outcome of the recycling policy development process may highlight the need for additional primary legislation – although it is not yet clear whether this will be resolved in the timescale required to progress the current Waste Bill.

However, the Department would welcome the opportunity to attend Committee to brief members on the work that is being done to deliver improvements in recycling levels and in the quality of recyclates in Northern Ireland. We would recommend that this is taken forward as a separate exercise from the Waste Bill scrutiny, so that the officials specifically engaged in recycling have an opportunity to attend.

I trust this information is of assistance; however should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO

[by email]

Tab A

Approach Adopted in Scotland, Wales, England and the Republic of Ireland to Improve Recyclate Quality

The Devolved Administrations (DAs) have sought to improve the quality of recyclates through a variety of measures, however, none have sought to introduce legislation for this purpose. Wales in particular is notable for the specific steps taken to improve recyclate quality and in some cases funding is only available for schemes which are consistent with this approach eg annual revenue funding to councils for source segregated food waste collection. All of the DAs rely on WRAP's services to provide advice and support to councils on how to improve quality. Some specific examples of the initiatives introduced in the DAs are provided below:

Scotland

Zero Waste Scotland (the Scottish government's delivery agent) has a number of initiatives identified in the 2010/11 Business Plan which are linked to the need to drive better quality. These include:

- Development of standards for recyclate e.g. from Material Recovery Facilities (MRFs);
- Development of a carbon metric which will give greater prominence to recycling of materials that deliver the best environmental performance e.g. higher weighting factor applied to closed loop recycling of colour separated cullet than down cycling mixed cullet into aggregate type replacement material;
- Training and guidance to local authorities on good collection practice;

- Benchmarking good practice – comparing / contrasting performance and capture rates between different recycling schemes in operation;
- Education and awareness campaigns (local and national) designed to optimise participation in recycling schemes (quality as well as quantity);
- Provision of support to local authorities in optimising recycling/ composting performance e.g. Recycling Adviser Support Programme – door knocking/provision of advice to householders in poorly performing areas;
- Master composting scheme – includes advice on quality issues.

Wales

The Welsh Assembly Government's approach to waste management is very clearly predicated on improving the quality of recyclates. The new Waste Strategy (Towards Zero Waste) includes a clear policy preference for high quality recycling via kerbside sort (where materials are sorted at the kerbside into different compartments on a vehicle).

- The Welsh Government has signalled that it may withdraw part of the Sustainable Waste Management Grant (£73 million in 2010/11) from any local authority that continues with co-mingled collections;
- Funding support is available for the separate collection of food waste. Wales is trying to discourage local authorities from mixing green waste and food waste. An additional £23 million has been provided for 2009/10 and 2010/11 for food waste collections;
- A discussion paper was produced by WAG (April 2010). This notes that high recycling rates can be achieved through comprehensive collection of food waste, with weekly food waste collections, and the weekly collection of dry recyclables.
- Wales does not support investment in MRFs, as it goes against the kerbside sort policy;
- Wales is keen to see standards set for Material Recovery Facility (MRF) outputs and there is disappointment that this has not been taken up voluntarily;
- Wales is setting up an improved system for monitoring (via WasteDataFlow) the destination of recyclates. Indirectly this might influence collection of higher quality recyclate, as there is a presumption that higher quality recyclate is more easily tracked and more likely to be used in the UK.

England

WRAP has undertaken several studies for Defra to assess the merits of various collection schemes and on the performance of MRFs (ie in terms of reject rates and quality of recyclates produced). This work is important in demonstrating what is achievable and in setting realistic quality standards for collection systems/MRFs. WRAP provides considerable support to local government to improve material quality at MRFs/collection systems.

Work undertaken by WRAP to date for Defra can be summarised as follows:

- Input, output and residual material testing at 20% of UK MRFs. This work showed that modern state of the art MRFs can produce material to a very high quality. The work also showed that there are a % of MRFs whose quality levels are behind the exemplar MRFs and that material output quality is an ongoing issue for those MRFs;
- A downloadable quality tool that allows users to input their own data to receive a statement of their MRF performance (ie material quality);

- Report into UK material exports from MRFs to highlight examples of good practice both in the UK and the main destination countries;
- Investigation into MRF through-put speeds and their effect on material quality;
- Investigation report into the effects of cross contamination within MRFs and possible solutions to reduce;
- Five case studies have been produced to highlight examples of good practice regarding material quality. These include reducing targeted material in the residual stream, implementing a quality management system, benefits of material testing;
- Using co-mingled glass in remelt applications. Conclusions were that the ceramic content was very high and the surface contamination caused the clear glass (which is the desired colour for remelt application) to be optically sorted into the brown and green glass bays;
- Study into potential new materials being collected for MRF processing and their end markets;
- Marketing campaign linked to testing at MRFs to reduce non-target materials being placed in the recycling collection container;
- Implementation of a common testing guidance methodology between MRFs and reprocessors across the main material streams;
- Consultancy funding support offered as a one off grant to all GB MRFs;
- Ongoing advice/support/communications activity on correct usage of bins/containers etc.

Republic of Ireland:

- In the Republic of Ireland regulations to require commercial producers (eg restaurants/hotels) of food waste to separate food waste for collection will come into effect on 1 July 2010. However, the regulations will not apply to households.
- The waste collection permits issued by local authorities to collectors of waste include a condition that the collection service provided should include a dry recycling scheme (eg for paper, card etc).

Bryson House information on recycling

Choosing the right recycling collection system



WRAP's role in relation to the design of recycling systems is to help practitioners by gathering and sharing knowledge and understanding about the relevant operational principles. This leaflet addresses a question which WRAP (Waste & Resources Action Programme) is often asked: which collection system is the best, in particular whether kerbside sort systems or co-mingled collections are to be preferred?

There is no simple answer, and certainly no one-size-fits-all solution. Local authorities have to make choices that are right for their local circumstances. Provision for recycling needs to be considered alongside requirements for refuse, garden and increasingly food waste and taking account of factors such as the physical characteristics of collection areas and property types.

Recognising that experience and knowledge is increasing all the time WRAP has identified some underlying principles which we believe should guide decision making.

Kerbside collection systems

Kerbside sort – involves the sorting of materials at kerbside into different compartments of a specialist collection vehicle.

Single stream co-mingled – involves the collection of materials in a single compartment vehicle with the sorting of these materials occurring at a MRF (Materials Recovery Facility).

Two stream co-mingled – residents are provided with two recycling containers and are asked to place different materials in each container, typically paper/card (fibre) in one and plastics, glass and cans (containers) in the other. These materials are kept separate but collected on one vehicle which has two chambers.

In WRAP's view, the choice of collection system should be based on:

- quality of material;
- cost efficiency;
- cost effectiveness; and
- public acceptability.

Whichever system local authorities choose they have a duty to ensure that it is operated safely. The collection of materials for recycling is a physically demanding activity carried out in a hazardous environment. In respect of the principle categories of accidents reported – slips, trips and falls and moving vehicle injuries – the exposure to risk is likely to be similar for all systems. There are some risk categories where there are differences between the systems but no system is believed to carry risks which cannot be practically managed.

Health & safety

In 2006 an ergonomic study by the Health and Safety Laboratory (HSL/2006/25) concluded that the likelihood of muscular skeletal disorders could be greater for box and sack based systems and recommended the use of wheeled bins. A later report from Centre for Health and Environment Research and Expertise (*A Health and Safety Study of Kerbside Recycling Schemes Using Boxes and Bags*) concluded that there were no significant risks in kerbside sort systems that could not be managed or controlled. For co-mingled collections there are the safety implications of sorting materials at MRFs to take into account when making decisions. In making decisions authorities can consult the latest HSE/WISH guidance: *Safe Waste and Recycling Collection Services* and may also wish to use the *Risk Comparator Tool (RSU/RA/07/01)* on the HSE website.

Quality

Recycling has to be done for a purpose and it is clear from the national waste strategies that recycling should be viewed as more than simply an alternative to traditional waste disposal practices.

Recycling is an integral part of the vision for the UK's Low Carbon Industrial Strategy designed to bring financial benefits for business, economic growth and job creation through improved resource efficiency. Recycling reduces the use of virgin materials and much of the energy required to extract and process raw materials.



Generally the greatest benefit is achieved by closed loop recycling where materials are put back into the same or equivalent application substituting for virgin materials. These benefits can only be achieved if the collection system delivers recyclates of sufficient quality.

Lower quality recyclates can generally only be used for lower value open loop applications. One example is container glass that has to be used as aggregate with little environmental, resource or financial benefit because it is not of a quality suitable for re-melt applications.

What is quality?

Quality means consistently delivering materials to the market place that are:

- effectively separated to meet reprocessor and end market requirements;
- in the required volumes and with security of supply; and
- at a price that sustains the market.

It is well known that the UK has become very dependent on export markets for its collected recyclates. It is less well known that in key areas e.g. paper, aluminium and certain types of glass, UK reprocessors are importing materials because sufficient material of the required quality is not available on the UK market.

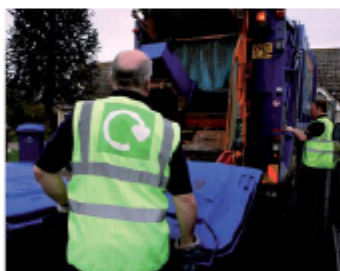
WRAP believes that a healthy international market for recyclates is helpful to resource efficiency and increases the chances of closed loop recycling. However, we know that some material, which would not be of sufficient quality for UK reprocessors, finds export markets in countries where low labour costs allow further sorting before the material can be reprocessed. Where this is managed badly, media coverage of the activity has posed a significant threat to the positive perception of recycling among the public and is one of the identified barriers to recycling.

WRAP has maintained for more than two years now that kerbside sort systems which allow contamination to be filtered out at the point of collection gives the most reliable stream of quality materials.

Co-mingled collections – particularly single stream collections – face quality problems from three sources: householders putting the 'wrong' materials into the collection, compaction of the waste which breaks glass into small pieces and tends to bind materials together, and the technical and physical capacity of the MRF to separate materials in the volumes delivered to them.

Two stream co-mingled collections can reduce some of these problems by keeping fibres separate from containers and reducing the potential for materials to bind together.

WRAP is working with MRF operators to improve the quality of materials recovered by UK MRFs. Whilst it is true that considerable success is being achieved by some newer MRFs, even they are unable to deliver the levels of quality achieved by kerbside sort systems.



MRF reject rates

Reject rates for kerbside sort schemes typically are <1%.

Reports of MRF reject rates vary:

- The Environment Agency (2008) considers 10.8% to be a typical average reject rate.
- Waste Data Flow 2007/08 reports total MRF rejects at 7% (of total input by weight).
- Residue rates at MRFs involved in a WRAP study (2006) ranged widely with average reject rates in the range 12% to 15% (of total input by weight) and those for the most efficient MRFs in the range 2% to 5%.

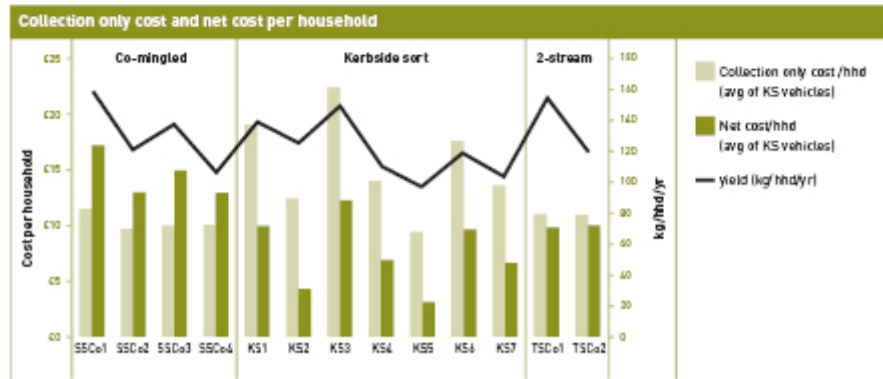
However, these reject rates reflect only the residual material sent for disposal. Reports from UK reprocessors suggest that they send a further fraction to landfill reflecting contaminants in the material supplied to them.

Cost efficiency

Local authorities are rightly concerned about the cost to the council taxpayer of recycling services. But it is important in comparing options that the full cost of the service should be taken into account and options are compared on a like for like basis. Kerbside sort collections often appear more expensive but the comparison should be made with co-mingled collections plus the cost of the MRF gate fee.

WRAP has modelled collection costs for different systems and the results are summarised in the graph below.

The graph shows that on a like for like basis kerbside sort systems have lower net costs than co-mingled systems. This reflects the effect of MRF gate fees and the opportunity for kerbside sort collections to sell materials direct to reprocessors. Two stream co-mingled systems have lower net costs than single stream systems reflecting lower MRF requirements and the opportunity to sell fibre streams direct to reprocessors.





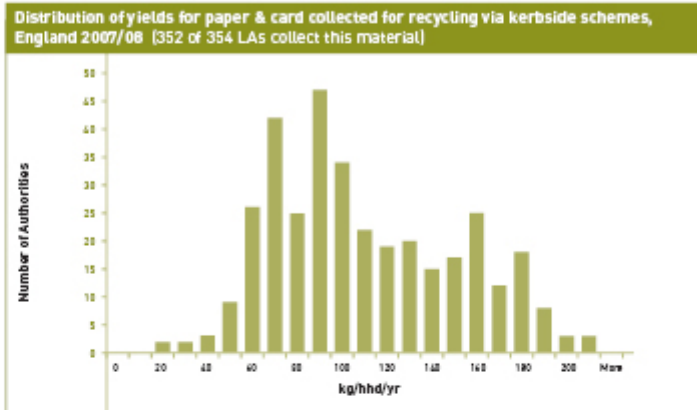
In practice the prices charged for services will not be the same as the modelled cost. The differences will reflect the appropriateness of the system specification and the effectiveness of the procurement process. The modelled costs, however, provide a better benchmark than the cost of an existing service which may be inefficient or less effective than what is now desired.

Cost effectiveness

There have been significant investments made by local authorities in recycling systems, however they are not all performing as well as they should in capturing recyclable materials. It is widely perceived that co-mingled collections are more effective at capturing material than kerbside sort schemes. A number of local authorities have reported that their recycling rates have increased dramatically following introduction of a co-mingled system. On the surface, WRAP's analysis of local authorities' WasteDataFlow returns suggests that on average co-mingled collections do attract around 36kg per household more material – most of which is paper and card. But these figures make no allowance for rejects from either the MRF or the reprocessor of wrongly sorted material.

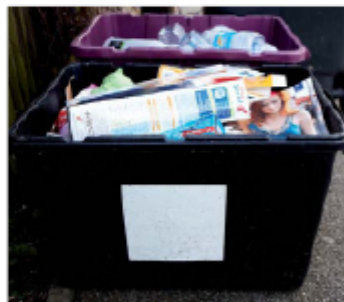
However, local authority experiences of increased capture rates with co-mingled systems often reflect the contrast between kerbside sort systems using standard 55 litre boxes and co-mingled collections using 240 litre wheeled bins. Closer inspection of the data suggests that it is the amount of space provided for recycling and the frequency of collection of both recycling and residual waste which determines the amount of material collected. There is evidence that by providing additional containers or by more frequent collections, kerbside sort schemes can have the same effective volume for recyclates as co-mingled collections and achieve similar results.

In fact variations in the capture of materials are greater between authorities running the same types of collection than between different collection systems. This reflects a need for greater attention to performance benchmarking.



Public acceptability

Engaging the public in their local recycling scheme has been shown to be essential to the success of a scheme. Whichever scheme is chosen it is important that it is designed to fit the needs of the local population and the houses they live in. The type and sizes of containers can be central to this.



Separating materials

All collection systems require residents to separate their recyclables from their residual waste and place each in a designated container (box, bin or sack) and to present the container for collection on the specified collection day. Some kerbside sort and co-mingled schemes provide residents with more than one container and ask that people put different materials into each container for collection on the same day or on alternate weeks. Contrary to perception, WRAP's research indicates that the requirement to sort materials into different containers is not of great concern to householders – 87% of respondents who have to separate out different materials indicated that they do not mind that task – and all systems can be designed to limit the amount of sorting done by householders.

Householders do care about having a scheme which is understandable and properly explained. Half of households say they withhold material which may be recyclable if they are not sure about it and a third say they include material which may not be recyclable if they think it ought to be recyclable or is recycled elsewhere. Kerbside sort schemes are better able to deal with contaminants and explain errors to householders.

Householders also say that they want to know where their materials go for reprocessing to give them assurance that recycling is actually taking place. This is something which should be possible with any collection system but where marketing of the material is managed by a waste company or MRF operator provision for this should be included in contracts.

Conclusion

Ultimately, the choice of collection system remains a matter for local authorities to decide. The purpose of this leaflet is to help local authorities in making these choices by indicating what evidence is available and the conclusions we have drawn from it.

On the evidence available to WRAP, our view is that kerbside sort systems offer reliable material quality and lower net costs for council taxpayers. They are also capable of capturing the same volume of material as co-mingled schemes. There is no evidence that their operation – properly explained and justified – is unacceptable to householders and the physical evidence of sorting of materials happening at the kerbside is reassuring to sceptical residents. There appear to be no unmanageable health and safety considerations. Because of our priority for quality materials as a way to improve resource efficiency, WRAP believes that kerbside sort collections should be preferred where they are practical and should be in the majority of local authority areas.

Where there are practical and operational barriers to kerbside sorting, two stream co-mingled collections have significant advantages over single stream collections, mainly through improved material quality and value as a result of keeping paper and card separate from other materials, particularly glass.

Single stream co-mingled collections may be appropriate in circumstances where the other options are impractical. These might be the densest urban areas where on-street parking and heavy traffic require fast loading without the need to return containers to the point of collection or for high density flats, transient areas and multi-occupied properties.

WRAP will of course continue to work to improve the quality of materials achieved from mechanical sorting for both single and two stream collections.

If you have any comments on the content of this leaflet, or ideas for areas of further work, please contact us at LGS@wrap.org.uk



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JUNE 2009



Bryson House letter on recycling

Alex McGarel
Clerk to the Environment Committee
NI Assembly
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Stromont
BELFAST
BT24 3XX 18th June 2010

Dear Alex

Thank you for forwarding the letter from the Department to me. I have forwarded the letter to Huhtamaki, Cherry Polymers, Quinn Glass and Cookstown Textiles. These companies are the four main NI buyers of our material who have all expressed their concerns regarding the issue of quality. The views below are shared by all these parties, and we greatly appreciate the opportunity to engage directly with the Committee on this matter.

We warmly welcome the increased interest in recycling shown by the Minister and the Department over the last few months. The message that recycling should come before energy from waste, or other forms of disposal is well received.

However, in pursuing quantity, quality can easily become compromised, and while we are delighted to see the overall approach from the Department, we remain strongly of the opinion that specific measures to control quality are currently ineffective, and the proposed measures outlined in the letter from the Department do not appear to be sufficiently robust to deal with the specific concerns we are experiencing in the industry.

An obvious option for Councils committed to co-mingling, is to increase tonnage by adding more materials into the comingled system. Where this has happened, in the case of the NW Group, the feedback from NI reprocessors is that this has resulted in a dramatic deterioration of material quality, seriously compromising the ability of these materials to be reprocessed in NI. The drive for higher quantities in this case is directly impacting on quality right now, and could get much worse, especially if Councils decide to include glass in comingled collections. Not only would this almost certainly result in paper and plastic that could not be reprocessed, it would also produce glass that is unfit for remanufacture, and would only be fit for road aggregate use (an activity with marginal economic and environmental benefits). Textiles, which have also been added to the NW contract, once comingled are usually considered useless by the industry (see comments made by Cookstown Textiles in the appendix).

Our view is that the measures outlined by the DoE are simply not strong enough to head this risk off. It is also worth noting, that while the other Devolved Regions, and the RoI have instigated a number of measures to address quality, none have as yet resulted in significant improvements in the quality of materials purchased by UK reprocessors. This is dramatically illustrated by the responses given by a number of UK reprocessors to a question posed to them on current quality – please see appendix 1.

The Welsh Assembly Government, which for some while has been proactive in pursuing quality recycling systems has tried to persuade Welsh Local Authorities to adopt better quality systems. Their recent extension of this approach to restrict grant money only to kerbside sort approaches may persuade some local authorities to shift systems, but on its own still unlikely to be enough to change most. Most Local Authorities have invested in wheeled bins, refuse collection vehicles and contracts that are unsuitable for better quality approaches. Their reluctance to change system is therefore understandable, even though a strong financial case can be made for making the transition. Far too often decisions are made that compromise on quality, rather than changing the system used.

It is our strongly held view that the only effective method of achieving change is to set the legal parameters in which local authorities and their contractors operate. We believe that it is very reasonable for the NI Assembly to ensure that the growing economic activity of adding value to these materials, with the jobs and wealth this is generating, is protected locally. It is simply not acceptable that local authorities carry out recycling systems directly or through a third party, resulting in materials that are not of suitable quality for local remanufacture, and subsequently require to be exported for further sorting overseas.

We do not want to prevent international trade in recyclables, but we do want to prevent the continuation of an export market that exists purely as a result of poor quality recycling.

We would like to respond to a few specific points in the letter.

The references to the WRAP study on MRF quality, (MRF Quality Assessment Study, Material quality assessment of municipal MRFs within the UK, Nov 09) correctly state that some MRFs are able to produce quality material. However, one could also reasonably draw the conclusion from the report that at least 75% of the MRFs sampled produced materials that are not suitable for reuse by UK reprocessors.

Para 3, Page 2

Material	Standard UK specification (percentage of contamination acceptable) *	Best 25% of MRFs	Middle 25% of MRFs	Worst 25% of MRFs
News and Pam	2%	< 4.6%	4.6% - 15%	> 15%
Mixed paper	3%	< 3.2%	3.2% to 25.3%	> 25.3%
Mixed plastics	10%	< 6.9%	6.9% to 26.6%	> 26.6%
Card	3%	< 4.8%	4.8% to 12.0%	> 12.0%
Alu cans	0%	< 0.9%	0.9% to 4.6%	> 4.6%

Figures from exec summary of WRAP report.

It would also be reasonable to state that a very substantial proportion of the MRFs studied are operating at such high contamination levels, that any exports sent from these plants would or should be deemed by the Environment Agency to be in breach of Trans Frontier Shipment Regs, and should actually result in prosecution of the companies involved. The table above is an extract taken from the executive summary of the WRAP report.

You may also wish to refer to another WRAP document named 'Choosing the Right Recycling System' June 2009, in which WRAP states 'Whilst it is true that considerable success is being achieved by some newer MRFs, even they are unable to deliver the levels of quality achieved by kerbside sort systems.'

Para 1, Page 3

The Rethink Waste Fund is welcome, and we hope that it will increase the quality as well as the quantity of recycling. We note from the evaluation criteria that 15% of scoring system will be for quality recycle 'The proposed end markets or outlets for the materials collected and the quality of the recyclables collected. Schemes that result in higher added-value outputs will score more favourably.' Our view is that producing quality recycle should be a prerequisite for receiving grant aid, given the significance of this issue to the NI reprocessing industry. However even if this was achieved, it is unlikely in it's self to result in the shift in systems required by local authorities.

Para 3, Page 3

Quality protocols for Councils. This could be an interesting development, however it is unlikely to encourage Councils to shift systems unless used mandatorily. We also note that the one example given, rejection rates from MRFs, is by no means an indication of good material quality. In fact, it is often the case that MRFs with low reject rates in effect 'sell' items of contamination that are mixed in with their loads of recyclables. All four reprocessors would appreciate the opportunity to contribute to the establishment of these standards.

We would like, once again to thank the Environment Committee for the opportunity to enter into this debate. To conclude, we believe that there are two steps that the Department could take would create sufficient momentum to change the direction of future recycling plans.

The first is a relatively small step that could be taken to extend the remit of the Environment Agency who already regularly visit MRFs (they specifically look at the quality of materials), to include a bi-annual unannounced visit and sampling of materials. Materials could then be tested against an agreed UK standard. Improvement notices would then be served against MRFs that fail to reach the standard.

The second is to direct future funding to approaches to recycling that are known to be reliable at providing quality recyclables.

We would of course be delighted to provide any further views.

Yours sincerely

Eric Randall

Appendix 1

Views of UK reprocessors

There has been a concerted campaign from UK reprocessors for the last three years to tackle the materials quality issue. This is supported by a large majority of packaging recycling industry. www.realrecycling.org.uk

To give a recent example I have copied a section of a speech made on 24 June 2010 from Dr Wolfgang Palm, CEO of Palm Paper, at the opening of Europe's newest plant, based in Kings Lynn, East Anglia. (Quote taken from lets Recycle.com 24th June 2010)

"Commingling is a disaster for the paper industry. Our customers ask for a very high quality and paper from commingled sources can cause problems."

Dr Palm said that using materials recycling facilities "cannot solve the problem" saying that collecting paper separately is the solution. "If you do this in a small way there are not additional costs to the system."

To assist the Environment Committee in their deliberations, we sent an email to the buyers of materials in a number of GB and NI reprocessors, asking specifically if the measures they have seen adopted in their region have made any improvements in the quality of materials received:

Looking at the quality trends over the last 5 years, is the quality of the materials you are currently receiving from MRFs generally

- 1 Getting a lot better, and you now have very few concerns
- 2 Getting a bit better but quite a lot has still to be done
- 3 Staying about the same as before and still proving a serious problem
- 4 Getting noticeably worse
- 5 Getting dramatically worse

They responded as follows:

Material	Company name	Rating 1 getting a lot better, to 5 getting dramatically worse
Paper	Hutamaki, NI	Overall 4 but with strong regional differences
Paper	Shotton, GB	3
Paper	Aylesford, NI	5
Plastic	Cherry Polymers, NI	4-5
Plastic	Linpac, GB	4
Plastic	Chase Plastics, GB	4-5
Glass	Berrymans GB	4-5
Aluminum	Novelis, GB	3

Each provided a brief comment which is shown below:

Huhtamaki 22nd June 2010

Hi Eric,

From Huhtamaki (Lurgan) we have seen a dramatic deterioration in the quality of the co-mingled waste paper sourced in the North West Group Five years ago the the plant sourced 100% of the recovered paper requirements from this area through Glassdon Waste However over the last 12 months we have had to switch almost completely away from this material due to the high waste levels in this supply, now run by One 51 The level of contamination prohibited the plant from running the pulping system The plant now is sourcing cleaner material from a blended co-mingled/kerb side sort mix in the Arc 21 region, and also 100% kerb side sort from Banbridge The supply of this is currently limited and to fill the remaining needs higher grade material (OIN) is being sourced

A quality clean local material is essential to our business success.

Best Regards

Jeff Kearon

Logistics Manager
Huhtamaki (Lurgan) Ltd
Inn Road, Dollingstown,
N Ireland
BT667JN

Shotton Paper (UPM-Kymmene (UK) Limited) 23rd June 2010

Eric,

My answer is No.3. Suppliers achieving consistent reliable quality is a constant concern.

Best Regards

Craig Robinson

Head of RCP Sourcing – UK & Ireland
RCP Resource Management
UPM-Kymmene (UK) Limited
UPM Shotton
Weighbridge Road
Shotton, Deeside
Flintshire CH5 2LL
United Kingdom

Aylesford Newsprint

From: Perkins, Andrew [andrew.perkins@aylnews.com]
Sent: 21 June 2010 12:19

Eric

Without question the average quality we receive is 5. Getting dramatically worse, to the point where we have imported material rather than buy some of the poorer quality produced more locally.

Regards

Andrew

Cherry Polymers

From: Stefan Cherry [stefan@cherryplasticsgroup.com]
Sent: 24 June 2010 14:36

Hi Eric

From our view we would see it as a 4 heading to a 5 at present, however there are big variances in the quality of materials between different MRFs, there are MRFs producing materials that are 2/3 and there are MRFs producing a bad 5.

For us the best material is kerbside collection bottles, for us these are a grade 1.

Its quite a worrying factor for us as a reprocessor as the quality of the materials are dropping, like every other reprocessor we need volume to keep our plants running, but our plants cant handle grade 5 materials as they are struggling in a big way on grade 4 materials, what will happen all the local reproccessors and local recycling when it gets to the stage we cant accept the materials at all, and we are not far from that at the moment on some of the grades from a certain number of MRFs.

Kind Regards

Stefan Cherry

Development Director

Linpac Packaging Ltd (Plastic)

From: Bernard Chase [mailto:Bernard.Chase@linpac.com]

Sent: 21 June 2010 11:51

Dear Eric,

Initiatives are generally pointless and ineffective as they allow waste management companies to claim to be doing one thing whilst actually doing another ('do as I say, not as I do'). The evidence of the recent past is that having moved away from source separate collection of recyclables in favour of commingled collection of recyclables, the waste management sector are now focussed purely upon collection targets and speed of throughput at the expense of any quality targets and the needs of local reproccessors. They rely largely upon the Far East markets to provide the outlet for their poorly sorted low quality outputs and want nothing to do with quality measurement let alone quality standards as this will slow them down and impact on their profits. Meanwhile, Government and its agencies stand idly by as they have no wish to place any obstacles in the way that might endanger achievement of their precious 'targets'.

In answer to your question, 4 would be my answer.

Regards,

Bernard Chase

Purchasing Manager
LINPAC Packaging Limited
Plastics Recycling Division
Newton Lane
Allerton Bywater
Castleford
West Yorkshire

Chase Plastics

From: Jessica Baker [jessica.baker@btopenworld.com]

Sent: 21 June 2010 11:53

Chase Plastics Ltd experience in the commercial polythene waste sector is a 4. But I would like to add that the household plastic stream is about to do a 5. Since mixed plastics are going to be 'thrown' into the household recycling bin. Without altering the current weight based targets, and while the system supports exporting to deliver those targets, there is going to be little physical reprocessing going on in the UK in the future. Collection and lots of pre-sorting will be the principal recycling activities. ie waste management by any other name, with the end result not being landfilled in the UK, but exported, where the contamination material will end up in foreign landfill instead.

Jessica Baker

Chase Plastics Ltd

Berrymans Glass

From: Mick Keogh [mkeogh@berryman-uk.co.uk]

Sent: 21 June 2010 13:29

Good afternoon, Eric

The glass we receive in increasing quantities is from MRFs as result of commingled collections.

Negligible amounts of this are suitable for remelting where the real environmental benefits lie and the vast amount of material would fall into your categories 4 & 5.

Regards

Mick Keogh

Reuse Collections Ltd

T/A Berrymans

Novelis

From: Andy Doran [andy.doran@novelis.com]

Sent: 24 June 2010 10:20

Hi Eric,

I think it should be a straightforward answer to your question but in reality it is more complex, there are certain MRF operators (yourselves included!) who I think I could happily categorize in the "2 Getting a bit better but quite a lot has still to be done", but I guess in reality and in particular if I consider the last five years as the timeframe there are still a large number of companies and individual sites from which Novelis cannot consider receiving material. Therefore

overall I think you should put me down as a 3 "Staying about the same as before and still proving a serious problem"

Regards

Andy

NOVELIS

Andy Doran
National Manager - Novelis Recycling
Novelis Latchford
Latchford Lock Works
Warrington WA4 1NN
UK

Other responses

Responses from NI companies that do not receive raw materials from comingled sources, because either they have ruled them out as an option (textiles), or they are concerned that their introduction into the co-mingled system would be very damaging to their business.

Quinn Glass

From: Fiacre.ODonnell@quinn-group.com
Sent: 28 June 2010 15:47

Attachments: Letter from DoE to Env Committee re quality June 18 10.pdf; response to DoE letter June 2010.doc

Eric,
..... At best cullet used for roads is neutral in terms of savings on carbon emissions, whereas in comparison the environmental benefits in glass manufacture are huge.
Quality is of paramount importance to us and our customers. We consider quality not only from the finished container we ship out to our customer, but in all our processes we use to make that container. This includes the quality of our raw materials we receive in, thus we require cullet to be of the same level of acceptance as any of our other raw materials.

Regards

Fiacre

Cookstown Textiles

From: Peter Fisher [Peter@c-t-r.com]
Sent: 28 June 2010 10:57

Eric

I concur with the content of your letter but stress that CTR does not buy clothes that have been co-mingled. It just doesn't work for us -- any experimenting we have attempted with clothes that have been cross-contaminated due to co-mingling. This results in us landfilling them at considerable expense. CTR has now taken the decision to abandon any attempts to salvage clothing/textiles that have been co-mingled. It absolutely does not work in our particular industry unless you are prepared to wash and dry the clothing. The environmental and financial implications of this (we have costed this out at length) make it a non-starter.

Hope all is well.

Peter

Bryson House information on recycling

MRF Quality Assessment Study



Material quality assessment of municipal MRFs within the UK

Executive Summary

Enviro was commissioned by WRAP to undertake a nationwide (England, Wales and Northern Ireland) assessment of the composition and quality of material currently being sent to MRFs and the associated quality of material then sent to reprocessors. In all 17 MRFs were included in the survey. A parallel project was commissioned, with Resource Futures, for Scotland which recruited 1 MRF. All numbers and analysis in this report cover all 18 sampled MRFs.

The aim of these projects was to provide robust data on the composition of input, output and residual waste material at MRFs to provide information on the quality of material processed at MRFs and inform the waste management industry on current material quality benchmark thresholds.

- A range (upper, lower and median) of contamination was identified for the input and each output material:
- lower level – 25th percentile bound, meaning that one quarter of the MRF contamination was at this level or below i.e. achieving this level of average contamination or better is very good in comparison to the rest of the sector;
 - middle level – 50% (or half) of the average output from MRF samples were in this range i.e. achieving this level of contamination is on average comparable with the sector; and
 - upper level – 75th percentile bound, meaning that one quarter of the MRF contamination was at this level or higher i.e. achieving this level of average contamination or higher is poor in comparison to the rest of the sector.

Basically, the MRFs with the lowest material contamination are shown in the lower level range. The 18 MRFs consisted of 13 single-stream MRFs and 5 twin-stream MRFs.

The analysis of these ranges can be done from two perspectives; that of compiling all the 4,676 individual samples taken; or that of comparing the average results for each of the 18 MRFs. The use of the individual samples may skew the ranges by allowing more weight to unusually good or bad MRFs, whereas the comparison of overall MRF figures is perhaps more realistic for benchmarking. For this report all analysis is carried out on MRF averages, with no data removed as sample sizes are low for some material streams.

The table below gives a quick and easy-to-use benchmarking comparison for MRFs. More detail on these ranges is given in the main body of this report, in particular MRF type breakdowns are given for output materials.

Benchmarking ranges based on MRF average contamination figures			
Material Stream	Lower Level	Median Level	Upper Level
Input Material All			
All	< 6.4%	6.4% to 17.5%	> 17.5%
Single-stream	< 8.4%	8.4% to 17.5%	> 17.5%
Twin-stream – Fibre based	< 2.9%	2.9% to 9.0%	> 9.0%
Twin-stream – Container based	< 4.9%	4.9% to 22.6%	> 22.6%
Output Material			
Aluminium	< 0.9%	0.9% to 4.6%	> 4.6%
Steel	< 2.8%	2.8% to 7.1%	> 7.1%
News and PAM	< 4.6%	4.6% to 15.0%	> 15.0%
Mixed Paper	< 3.2%	3.2% to 25.3%	> 25.3%
Card	< 4.8%	4.8% to 12.0%	> 12.0%
Mixed Plastic	< 6.9%	6.9% to 26.6%	> 26.6%
Mixed Plastic bottles	< 8.3%	8.3% to 16.2%	> 16.2%
HDPE Coloured Plastic Bottles	< 6.9%	6.9% to 11.3%	> 11.3%
HDPE Natural Plastic Bottles	< 1.9%	1.9% to 4.0%	> 4.0%
PET Clear	< 2.6%	2.6% to 9.5%	> 9.5%
PET Coloured	< 5.6%	5.6% to 10.7%	> 10.7%
Residual (contamination is targeted material)			
All	< 28.3%	28.3% to 80.9%	> 80.9%
Single-stream	< 24.7%	24.7% to 61.7%	> 61.7%
Twin-stream – Fibre based	< 33.0%	33.0% to 59.2%	> 59.2%
Twin-stream – Container based	< 72.2%	72.2% to 88.0%	> 88.0%



Material change for a better environment

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1.0 Introduction

1.1 Background

Enviro was commissioned by WRAP to undertake a nationwide (England, Wales and Northern Ireland) assessment of the composition and quality of material currently being sent to MRFs and the associated quality of material then sent to reprocessors. In all 17 MRFs were included in the survey. A parallel project was commissioned, with Resource Futures, for Scotland which recruited 1 MRF. All numbers and analysis in this report cover all 18 sampled MRFs.

This report is for MRF benchmarking and analyses the average figures for each of the 18 MRFs. As some material streams are only targeted by a small number of the MRFs no outlying figures have been excluded so as to maintain as much comparable data as possible.

1.2 Aims and objectives

The aim of these projects was to provide robust data on the composition of input, output and residual waste material at MRFs across England, Wales, Northern Ireland and Scotland. The data provides information on the quality of material processed at MRFs and can be used to inform the waste management industry on current material contaminant levels. There were six main project objectives:

1. recruiting and sampling at as many MRFs as possible;
2. define appropriate MRF sector classifications;
3. collate waste composition data on statistically representative samples of input, output and residual material;
4. assess the variability in the composition of material samples across MRF sector classifications;
5. identify a range (i.e. upper, lower and median) of contamination for input and each output material; and
6. using the data collected update recommendations within the current WRAP MRF sampling guidance¹ on the number and weight of samples required to ensure a robust ongoing monitoring regime.

This report is intended to provide summary responses to all of these objectives. It is not the intention of this report to comment or recommend that any particular MRF technology, design or configuration produces a particular quality of output material or separation performance.

For simplicity, there are a number of abbreviations used in the charts and tables presented throughout this report. A list of these abbreviations is in Appendix 1.

1.3 Approach

MRFs were selected through initial approaches from WRAP and final recruitment and confirmation from Enviro in England, Wales and Northern Ireland and Resource Futures in Scotland. It was agreed that the MRFs would either be trained in how to sample and then supported in the process, of which there were 8 MRFs; or the sorting would be carried out by an Enviro team, of which there were 10 MRFs.

The sorting was carried out over intensive 5 to 10 day periods for the Enviro sort MRFs and over a more extended 2 or 3 month period for the self-sorting MRFs. Each sample was hand sorted into 19 material categories on top of a 45mm sorting screen. Material that fell through the screen was classified as miscellaneous <45mm with the exception of samples of aluminium outputs and residual material where the material <45mm was sorted again into the same 19 material categories.

The sample weights, numbers of samples and sorting screen size were all taken from the WRAP MRF sorting protocol document. The definition of input, output and residual streams and the identification of sampling points was undertaken in conjunction with each MRF and WRAP.

2.0 Sampling at as many MRFs as possible

The number of MRFs included in the project has been maximised through rigorous recruitment and communication with the MRF operators and owners. The final number taking part was 19% of the UK MRFs at 18 out of 93.

¹ Report on the conclusion of Phase 2: practical field trials of material sorting and sampling techniques (WRAP April 2008)

MRFs were unable to take part for a variety of practical and business reasons including space on the site (as the recycle market was slow at the beginning of 2009) and limited staff resource. There had been a hope that most MRFs would receive training and then carry out their own sorting, as this would add skills and experience into the MRF. However the limited staff resource meant there were more 'full-sort' MRFs than 'training' MRFs.

3.0 Classification of the MRFs

A site visit was made once a MRF was recruited during which various details of the MRF were collected. This included basic information on the configuration, confirmation on the type of input materials and target output materials as well as a health and safety assessment for on-site work. The configuration information detailed the material handling and material separation technologies for the MRF.

At the inception of the project it had been hoped that this information would allow the classification of the MRFs into clearly defined groups / sectors based upon the technology used. It soon became clear that various factors made this task impractical. Firstly the fact that only 18 MRFs were included means that any range of classes would have little or no statistical validity.

The second point is that the design and operation of a MRF is very specific to local operating conditions and contractual commitments. The original purpose of groups/sectors was to define them by factors that could restrict or influence the MRFs ability to affect material quality; whereas in fact any MRF can achieve any quality of material and the number of different combinations used to achieve this is too broad. If we had standardised on the design and operation at the time of the visit the potential classes would have had so few MRFs in each that the grouped analysis would have given no advantage over individual analysis.

The other area for classification looked at was in terms of materials processed. The output materials of the MRFs are related to the inputs and this area did allow for one classification of MRFs by how the material was presented; as either a single input stream or two input streams.

Figure 1 Single-stream (Type 1) input and material processing MRF arrangement

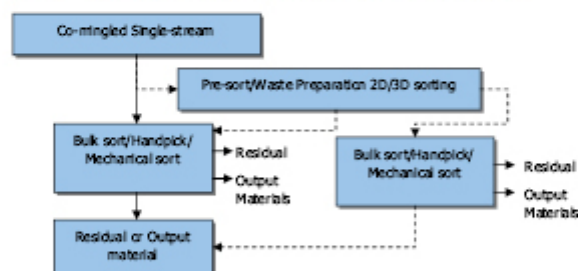
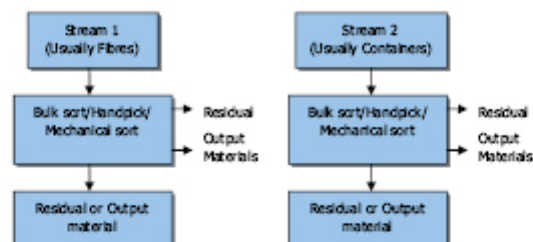


Figure 2 Twin-stream (Type 2) input and material processing MRF arrangement



In a single-stream MRF the input material is presented in one co-mingled mix (Type 1). In twin-stream MRFs there are two different co-mingled inputs, usually one of co-mingled fibres (paper, card etc) and one of containers (HDPE, PET bottles etc) (Type 2). Whilst theoretically both MRF types could achieve similar output material quality, the risk of cross contamination between fibre based materials and containers is likely to be less where this material is collected separately rather than a single mix. The 18 MRFs were split 13 of Type 1 and 5 of Type 2.

Overall the project agreed that the data report would manage the analysis by classification of MRFs by reviewing the material quality in the two types and across each anonymous MRF. This report only considers the composition and material quality (i.e. level of contamination) across all MRFs sampled and then by the two classification types.

4.0 Collect composition data from the MRFs

4.1 How much waste?

Around 272 tonnes of material was hand sorted over a 6 month period from a total of 18 MRFs. Around 115 tonnes of material was sorted by 8 training MRFs and 157 tonnes of material was sorted by the Envirox project sorting team from 10 full sort MRFs. In terms of MRF sector classification there was 190 tonnes of waste sorted from Type 1 (single input stream) and 82 tonnes of waste from Type 2 (two input streams).

The 272 tonnes was made up of 85.7 tonnes of input material, 179.8 tonnes of output material and 6.6 tonnes of residual material. Table 1 below shows these tonnages are broken down by MRF sector, sampling approach (i.e. training or full sort, and sample type).

Table 1 Quantity of material sampled

Type	Data Type	Input		Outputs		Residual	
		Number of Samples Sorted	Total Weight of Material Sorted (kg)	Number of Samples Sorted	Total Weight of Material Sorted (kg)	Number of Samples Sorted	Total Weight of Material Sorted (kg)
Type 1	Full	40	4,210	190	9,413	10	264
Type 1	Full	41	3,595	102	3,459	11	302
Type 1	Training	40	4,017	202	10,543	10	315
Type 1	Training	40	4,630	189	10,976	10	365
Type 1	Training	44	4,684	239	13,718	11	444
Type 1	Training	41	4,648	262	12,053	10	314
Type 1	Full	40	4,531	270	14,069	10	334
Type 1	Full	39	2,328	226	11,562	10	265
Type 1	Full	40	4,160	230	13,231	10	418
Type 1	Full	40	4,297	250	11,769	10	289
Type 1	Full	40	3,874	264	13,432	10	614
Type 1	Training	40	3,844	150	5,597	10	305
Type 1	Training	37	2,621	91	4,740	6	188
Type 1 training		242	24,444	1,133	57,627	57	1,931
Type 1 full sort		280	26,995	1,532	76,935	71	2,486
Type 1 sub total		522	51,439	2,665	134,562	128	4,417
Type 2	Training	80	7,087	170	5,577	10	188
Type 2	Training	80	7,724	230	10,164	20	546
Type 2	Full	40	4,594	190	10,177	10	329
Type 2	Full	80	9,978	250	12,429	20	825
Type 2	Full	40	4,918	131	6,874	10	321
Type 2 training		160	14,811	400	15,741	30	734
Type 2 full sort		160	19,490	571	29,480	40	1,475
Type 2 sub total		320	34,301	971	45,221	70	2,209
Total training		402	39,255	1,533	73,368	87	2,665
Total full sort		440	46,485	2,103	106,415	111	3,961
Total		842	85,740	3,636	179,783	198	6,626

4.2 What type of sampling?

The sampling for this project was based on understanding the contamination levels of the material streams at the MRFs. So the sampling strategy at the MRFs was set to enable statistical validity of the contamination levels within the sample set. The numbers and weights of samples were based on research undertaken by WRAP on a previous project. There was no attempt to weight the sampling according to the throughput tonnage of each MRF or any observations around the relative balance of input in the two streams of a Type 2 MRF. Also, within any particular MRF, the sampling of each input, output and residual stream was carried out independently. In essence this means that the figures quoted in this report around composition are valid and accurate but should not be used to scale up to a full material mass balance.

4.3 What is the composition of the waste sampled?

The following sections discuss the composition of the input, residual and output streams from the MRFs. Summary graphs and tables are presented in each section, but the full compositional results for the 'All MRF', 'Type 1' and 'Type 2' MRFs are shown in Tables A2.1, A2.2, and A2.3 in Appendix 2.

The compositional result for input material is represented below in Figure 3.4.5. Naturally the inputs to the MRF come in the form from local authority kerbside collections, so Table 3 shows the make up of the input samples in this study grouped by the four main categories of materials collected at the kerbside (excluding glass). In terms of the sorting categories (see Appendix 1, Table A1 for abbreviations) these cover:

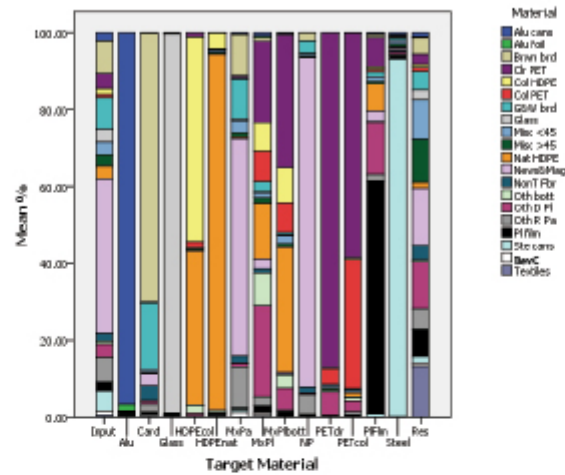
- paper: News & Mag, Other R Rx;
- plastic bottles: Of PET, Col PET, Nat HDPE, Col HDPE, Oth bott;
- cans: Brwn brd, G&W brd, and
- cans: Alu cans, Ste cans.

Material	% Composition		
	Full Data	Type 1 MRFs	Type 2 MRFs
Paper	36.8	46.6	20.8
Plastic Bottles	17.6	10.4	28.5
Card	14.6	16.6	11.3
Cans	15.0	7.5	27.3
Other	16.0	18.9	12.1

Figure 3 Inputs, outputs and residual composition across all MRFs

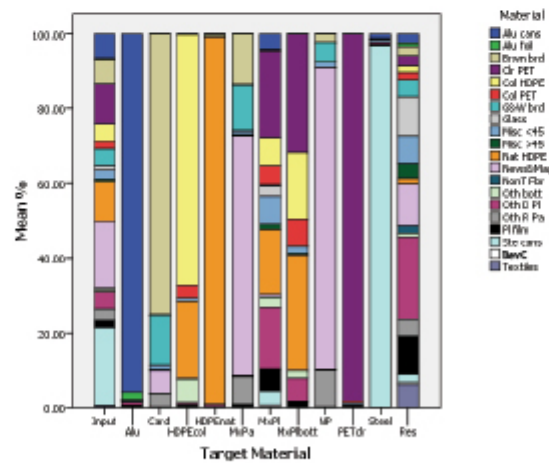


Figure 4 Input, output and residual composition across all Type 1 single-stream MRFs



Graph produced from SPSS.

Figure 5 Input, output and residual composition across all Type 2 twin-stream MRFs



Graph produced from SPSS.

4.3.2 Residual material

A quantity of materials received at a MRF is either missed by the process at the MRF and not recovered to the output streams, or should not have been in the input: these leave the MRF in the residual waste.

In some cases materials are accepted in the input stream but not recovered as an output and so leave the MRF in the residual waste. This is done to accommodate the varying types of material collected across different authorities that feed into the same MRF and/or to increase participation and/or material capture rates by including a simple message to the public: "plastics" rather than the targeted material "HDPE and PET plastic bottles" for example. Within some MRFs it was noted that some materials that would normally be left to leave the MRF in the residual waste are recovered and sold as an output material due to the volume of contaminating material received in the input.

The main materials (those of more than 10% composition) in the residual waste for the full data set and for single-stream Type 1 MRFs are dense plastic, newspaper and magazines, textiles and miscellaneous. For twin-stream Type 2 MRFs the textiles are replaced by glass and plastic film.

Table 3 Main materials in residual material sampled

Material	% Composition		
	Full Data	Type 1 MRFs	Type 2 MRFs
Dense Plastic	15.5	12.1	21.9
News & Mags	13.5	14.8	11.1
Textiles	10.8	13.4	6.1
Misc (<45 & >45)	17.8	21.4	11.2
Glass	5.4	2.5	10.6
Plastic Film	8.0	6.9	10.2
Other	29.0	28.9	28.9

It is not surprising that 'miscellaneous' makes up a large proportion due to the various processes the materials have been through. The miscellaneous materials arrives in the residual waste either by being positively picked or removed as contaminant as part of a quality control process or left on the conveyor once all other output materials are positively picked. The materials included within this category are 'true contaminating materials' that were not targeted by the MRF. They will comprise composite materials or unidentifiable material i.e. material that is severely contaminated beyond recognition such as paper soaked in food liquid.

Dense plastic is only targeted in 8 of the 18 MRFs but due to a lack of public awareness can be put into the kerbside collection schemes and so it comes through into the residual. Paper is invariably targeted into different output grades within a MRF but comes through into the residual. This can be a result of the different separation processes involved and the different particle size ranges of the material. For example, if newspaper and magazines are positively picked as an output material then the material remaining on the conveyor belt continues into the residual. So paper with a small particle size range maybe missed. Unless mechanical or optical sorting equipment is 100% efficient again not all material will be recovered. The speed of the conveyor picking belt will also influence how much of the paper is picked. MRF throughput versus output material quality or the proportion of targeted material leaving the MRF as residual is often a local commercial decision. The difference with textiles will be biased due to it being targeted in only 2 of 13 single-stream Type 1 but 2 of 5 Type 2 MRFs.

The residual waste should contain a minimum amount of the materials generally targeted by the authority collection schemes (as per Table 2). The percentage of the residual due to each of these materials is shown in Table 4. This is illustrative and not the same as the actual missed recycle in the residual as the different MRFs accept a range of materials. An interesting point is that paper is the main common input material in the residual waste probably due to the reasons already outlined. Plastic bottles, card and cans are of broadly similar proportions. These figures should be as close to 0% as possible. However, this probably reflects the efficiency of the various sorting options operating within a MRF. Clearly, the proportion of common input materials in the residual waste is a reflection of residual waste not being positively removed but instead being the point at the end of the MRF process once all output materials have been removed. For example, it is unlikely that plastic bottles would be positively picked as a contaminant and placed into the residual waste stream.

Table 4 Common targeted materials in residual material sampled

Material	% Composition		
	Full Data	Type 1 MRFs	Type 2 MRFs
Paper	18.7	20.3	15.7
Plastic Bottles	7.3	6.3	9.0
Card	8.5	9.3	6.9
Cans	3.5	2.7	5.0
Other	62.0	61.4	63.4

4.3.3 Output material

The output categories to be sampled were dictated by the materials that are targeted at each MRF and those requested to be sampled by WRAP. Not all output materials at each MRF were sampled. The list of the headline materials is quite standard with the occasional material only targeted by a few MRFs. However another area of difference across the MRFs was which sub-category they accept in the headline material (e.g. foil in aluminium cans).

For the 18 MRFs in the survey the number that targeted each material stream is shown in Table 5 as is the number of those streams that were sampled.

Table 5 Materials targeted at # of 18 MRFs in project

	Targeted by # MRFs	Sampled at # MRFs
Aluminium	18	18
Steel	18	18
News & PAMs	12	12
Card	14	12
Mixed Paper	10	9
Mixed Plastic	8	8
Mixed Bottles	8	8
Plastic Film	8	1
Nat HDPE	6	6
Clear PET	5	4
Textiles	4	0
Col HDPE	3	3
Glass	3	1
Col PET	2	2
Bev Cartons	1	0

The output materials at the MRFs are by-and-large made up of the correct type of material, e.g. all forms of plastic output are mainly plastic (rather than metal or paper based materials), however within each specific output stream there can be a mixture of materials. This section captures some of the key findings from this analysis.

For the main output streams that were sampled the results are shown in Figures 6,7 and 8 (the full data is in Appendix 2). It should be noted that the following analysis looks at the composition of each stream and not the contamination. Having material other than the main category is not the same as contamination, as what is acceptable in the main category can vary between MRFs. For example coloured PET can have clear PET in it, so Clear PET is not a contaminant and the MRF may not attempt to separate it.

Table 6 has the summary data for Figure 6 and shows that the can streams are very closely controlled and well segregated. This is almost certainly a function of the value of these streams to the MRF and the technology used to separate them being robust and in most cases unlikely to pick the wrong material, e.g. a magnet will pick up

ferrous based material such as steel cans and an eddy current separator non-ferrous materials such as aluminium cans. However, like any bulk separation process, this can and will capture other material that is either wrapped around the targeted material, gets caught up in the recovery, or is similar in magnetic/non-magnetic properties. For example beverage cartons where the internal lining has similar material properties to aluminium so it can get recovered by an eddy current separator.

The proportion of 'non-cans' in the aluminium is lower than for steel which is thought to be driven primarily by the significant higher aluminium revenue and purity requirements specified by the reprocessor. In most cases this justifies the additional investment in further quality control procedures after the bulk separation process. Aluminium cans contamination is lower in Type 2 MRFs. This is not surprising as the Type 2 MRFs surveyed during this project were smaller scale MRF operations with lower throughputs than the single-stream Type 1 MRFs, therefore the costs of additional quality control after the eddy current separator are less.

A further point to note is that a magnet to recover ferrous materials is often positioned before the eddy current separator, therefore, as this bulk separation process is recovering targeted materials from a greater mix of materials the risk of other materials getting caught in this recovery process is higher than during the aluminium recovery process which is often at the end of the process from a simple material mix.

The proportion of non-steel can material is less in twin-stream Type 2 MRFs. For Type 2 only container based materials are being processed on the container conveyor when steel cans are being recovered by the over band magnet, whereas in single-stream Type 1 MRFs the over band magnet tends to operate over a greater mix of material and hence greater risk of picking up other contaminating materials during the process.

Table 6 Composition of can based outputs by each metal category and non-metal categories

Cans Outputs	Alu Cans % Composition			Steel Cans % Composition		
	Full Data	Type 1 MRFs	Type 2 MRFs	Full Data	Type 1 MRFs	Type 2 MRFs
Aluminium Cans	96.29	96.47	95.84	0.84	0.67	1.25
Aluminium Foil	1.98	1.98	1.98	0.12	0.13	0.1
Steel Cans	0.25	0.28	0.17	93.93	92.81	96.67
Non-cans/foil	1.48	1.27	2.00	5.12	6.39	1.99

Table 7 has the summary data for Figure 7 and shows that there is a relatively good separation of card and news and PAMs in their own streams. However, there is a mixture of paper types in each of the output materials. The mixed paper is made up of over half News and PAMs and a further fifth of card.

These results are in line with the expectation when the relative financial value of the news and PAMs and mixed paper streams are considered. At the time of this project the price differential was lower and so the need to maximise News and PAMs was not strong. There is also a need for some News and PAMs in the mixed paper stream in order to meet the reprocessor specifications.

The card outputs consist primarily of card based material most of which is corrugated brown board material which is often recovered at the pre-sort stage.

The News and PAM outputs are over 80% newspaper and magazines and in total around 90% when including other recyclable paper which is often included in this material specification. Whilst there is some non-targeted fibre (more so in single-stream Type 1 MRFs thought to be a result of more mechanical and optical sorting processes) this figure is low as is the quantity of non-fibre based materials. As expected the proportion of non-fibre based materials is higher in single-stream Type 1 MRFs where the News and PAM output is sorted from a mix of materials in comparison twin-stream Type 2 MRFs where the material is sorted from fibre input stream.

Table 7 Composition of 'paper and card' based outputs as by each 'paper and card' category and non-'paper and card' categories

Paper and Card Outputs	Card % Composition			Mixed Paper % Composition			News and PAMs % Composition		
	Full Data	Type 1 MRFs	Type 2 MRFs	Full Data	Type 1 MRFs	Type 2 MRF	Full Data	Type 1 MRFs	Type 2 MRF
Brown Board	71.35	69.83	75.13	10.76	10.67	13.75	2.13	2.04	2.49
G&W Board	16.12	17.18	13.49	10.45	10.40	12.18	3.67	3.30	5.18
News & Mags	3.90	3.03	6.05	56.64	56.41	63.89	84.54	85.52	80.61
Other Recy Paper	2.62	2.21	3.64	10.49	10.58	7.61	6.22	5.31	9.89
Non-targeted fibre	2.69	3.73	0.10	1.70	1.75	0.28	1.23	1.48	0.22
Non-Paper & Card	3.33	4.02	1.61	9.95	10.19	2.30	2.21	2.36	1.62

Table 8 has the summary data for Figure 8 and shows that the plastic outputs consist of a large mix of material types. The clear PET and natural HDPE are the two main plastic streams that contain the least other dense plastics. This is likely to be due to the constraints on quality enforced by the markets, the higher price these two materials attract and the nature of the materials. These two material outputs tend to be positively picked from the conveyor or targeted by optical sort processes. The coloured HDPE and coloured PET outputs generally contain some of the natural and clear counterpart. The issue here is in the potential loss of the price differential by having the natural and clear material in the coloured output. The analysis clearly shows some MRF configurations are positively collecting these materials together rather than separating them into their polymer types, which will be a local consideration on the economic viability of the investment required, and expected return, to warrant these materials being kept separate. However, what is clear is that even when natural and coloured HDPE and PET are collected separately within the same MRF, a large proportion of the clear bottles are still collected in the coloured stream resulting in a potential loss of income which could be rectified without significant investment.

Mixed plastic and mixed plastic bottles are, as expected, a mix of the various grades of plastic, but the higher value natural HDPE and clear PET may need to be in the mix to meet the market needs, however this analysis is not known as part of this report. What is interesting to note is that mixed plastic is the only output stream with a significant amount of completely unconnected materials present. Overall nearly 20% of the mixed plastic is fibre, metal, plastic film or <45mm miscellaneous. Further work could be done to investigate this but it may be related to the point of the process that mixed plastic is collected. The other materials are positively picked out and the mixed plastic is often negatively picked remaining as 'last off the line' it will almost certainly pick up more residual material depending on the effectiveness of the quality control procedures within the MRF for removing residual contaminants. In most cases the MRFs collecting mixed plastics only positively picked one other plastic output either as mixed bottles, PET or HDPE natural bottles with the remaining mix of plastics being retained in the mixed plastic output. There were a number of opportunities to recover additional polymer types through either optical or manual sorting, however a point of consideration raised is that if all of the 'high value' bottle polymers are removed from the mixed plastic, this action in itself as noted above could reduce the value of the mixed plastic output or make this product unmarketable.

Table 8 Composition of dense plastic based outputs as each dense plastic category and non-dense plastic categories

Dense Plastic Outputs % Comp	HDPE Coloured			HDPE Natural			Mixed Plastic		
	All	Type 1	Type 2	All	Type 1	Type 2	All	Type 1	Type 2
Clear PET	0.82	1.14	0.14	0.04	0.06	0.02	21.61	21.03	23.06
Col PET	2.22	1.68	3.33	0.08	0.11	0.05	7.11	7.92	5.04
Col HDPE	57.73	53.19	67.12	2.44	4.31	0.58	7.54	7.50	7.63
Nat HDPE	33.57	39.83	20.65	95.45	92.50	98.40	15.39	14.62	17.34
Oth Bottles	3.69	2.34	6.49	0.33	0.61	0.04	6.93	8.57	2.77
Oth Dense Plastic	0.69	0.74	0.58	0.40	0.25	0.55	21.56	23.57	16.46
Non-Dense Plastic	1.28	1.08	1.69	1.26	2.16	0.36	19.86	16.78	27.70
Dense Plastic Outputs % Comp	Mixed Plastic Bottles			PET Clear			PET Coloured		
	All	Type 1	Type 2	All	Type 1	Type 2	All	Type 1	Type 2
Clear PET	33.72	34.74	31.70	92.53	86.94	98.12	58.46	58.46	-
Col PET	7.62	7.74	7.37	2.42	4.14	0.70	33.42	33.42	-
Col HDPE	11.88	8.92	17.73	0.16	0.30	0.01	0.45	0.45	-
Nat HDPE	32.01	32.61	30.82	0.05	0.07	0.03	1.08	1.08	-
Oth Bottles	2.93	3.40	2.02	0.34	0.42	0.26	0.90	0.90	-
Oth Dense Plastic	5.85	5.71	6.13	3.10	6.17	0.04	2.96	2.96	-
Non-Dense Plastic	5.99	6.88	4.25	1.40	1.97	0.84	2.72	2.72	-

Figure 6 Composition of can based outputs showing mix of metal categories with non-metal materials grouped

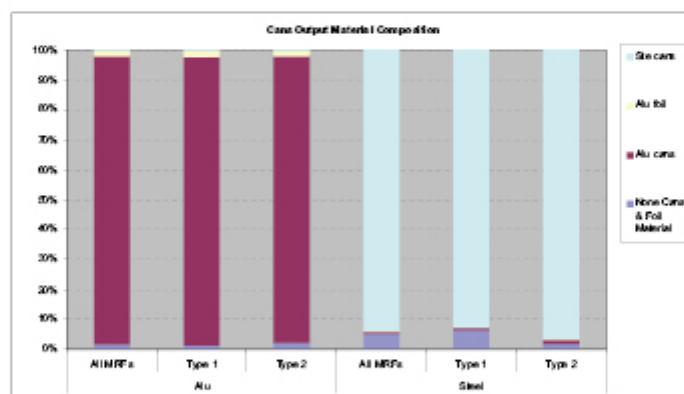


Figure 7 Composition of paper and card based outputs showing mix of paper and card categories with non-paper and card materials grouped

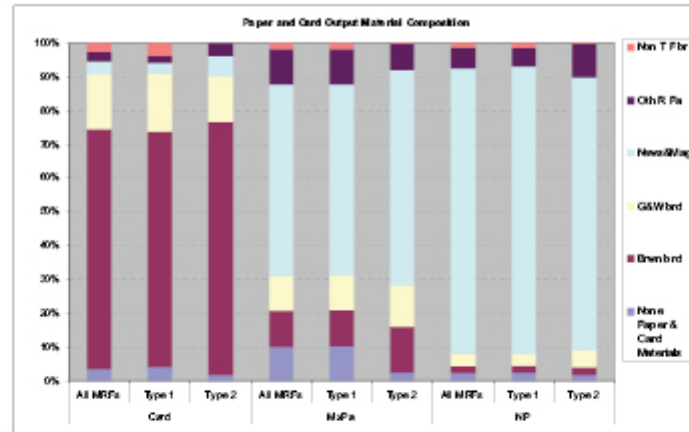
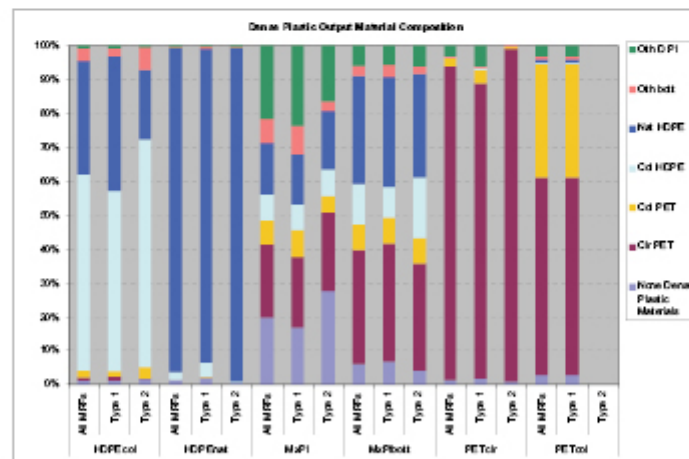


Figure 8 Composition of dense plastic based outputs showing mix of dense plastic categories with non-dense plastic materials grouped



5.0 MRF contamination ranges

The main requirement of this project was to understand the quality of material received at MRFs (input material) and material leaving MRFs and sent to reprocessors (MRF outputs). For this we needed to define the level of contamination that was in each material stream. As mentioned earlier there is a broad consistency over the detailed definition of the contents of a material stream but there are some variations in what is accepted. For example for some MRFs aluminium foil was considered a contaminant in aluminium cans.

There are two ways that the contamination was analysed: across all individual samples taken in the project and across each MRF. Naturally the number of samples is very high and so gives a large sample size compared with the 18 individual MRF figures, however it also exposes the analysis to a higher bias when one MRF has a particular characteristic. It also exposes maximum and minimum limits to the extremes of individual samples.

For example the maximum contamination in an aluminium sample across all 524 samples was 25.6% but the largest average MRF contamination for aluminium over the 18 MRFs was 2.5%. This clearly shows that a schedule of samples is needed to address quality and not just a programme of infrequent spot checks.

The analysis in this report focuses on the overall MRF data to give a better indication of what can be expected in ranges of performance for a MRF.

5.1 Overview of contamination levels

The level of variation in the quality of output materials between MRFs was significant. However this varied on a material basis. For example, just because the output quality of one output material was poor does not mean that all the output materials in the same MRF were also highly contaminated. The quality of some output materials was very good.

Table 9 shows the average contamination rate for all the material streams. Residual is shown to have the most contamination but that would be expected. In fact 54.8% contamination does mean that there is potentially 45.2% targeted material not recovered by the MRF. However the actual tonnage of residual waste in relation to MRF throughput is small and much of it is small particle size and recovery by manual picking would be difficult i.e. ripped paper.

Table 9 All MRF Average contamination rates (%)

Target Material	N	Min %	Max %	Mean %	Standard Deviation
Alu	18	0.0	8.1	2.5	2.3
Card	12	1.9	57.4	12.0	14.8
Glass	1	1.5	1.5	1.5	-
HDPEcol	3	3.3	12.2	8.7	4.7
HDPEnat	6	0.8	14.6	4.5	5.1
Input ²	18	5.7	22.7	12.9	6.0
MxRb	9	2.1	36.7	15.8	12.1
MxRbott	8	0.5	23.0	12.2	7.9
MxR	8	0.6	43.5	18.2	15.1
NP	12	1.9	22.0	9.8	6.4
PETdr	4	0.5	20.1	7.5	8.7
PETool	2	3.0	13.2	8.1	7.2
PFFm	1	39.5	39.5	39.5	-
Res ³	18	9.1	100.0	54.8	31.1
Steel	18	0.4	23.8	6.2	5.6

²² The input and residual analysis in this table combines the two input streams for two-stream Type 2 MRFs

The lowest levels of contamination across all samples were in aluminium cans at 2.5% on average. The low contamination level in aluminium is thought to be driven primarily by the significant higher aluminium revenue and purity requirements specified by the reprocessor. In most cases this justifies the additional investment in further quality control procedures.

The greatest level of contamination in output materials was found in the plastic film 39.5%, mixed plastic 18.2% and mixed paper 15.8%. Cross contamination was evident within most MRFs where materials targeted were recovered in other output materials.

An indication of the likely main contaminants for the main output materials sampled is provided below:

- Input - miscellaneous >45mm, glass and other dense plastic;
- aluminium - other dense plastic, miscellaneous <45mm, aluminium foil;
- card - non-target fibre, other dense plastic, plastic film;
- HDPE natural - coloured HDPE, other dense plastic, miscellaneous <45mm;
- mixed paper - miscellaneous <45mm and >45mm material, beverage cartons, brown board;
- mixed bottles - other dense plastic >45mm miscellaneous material, plastic film;
- mixed plastic - miscellaneous <45mm material, newspaper and magazines, grey and white board;
- news and PAM - brown board, grey and white board, non-target fibre;
- steel - miscellaneous <45mm material, aluminium cans, plastic film; and
- residual - other dense plastic, textiles, plastic film, miscellaneous <45mm and >45mm material.

5.2 Material stream contamination benchmarking

The analysis in this section focuses on the range of contamination that is found in each stream. The contamination range is defined by looking across the 18 MRFs at the:

- minimum, this is the lowest contamination rate the survey found;
- 25th percentile bound, meaning that one quarter of the MRF contamination was at this level or below;
- mean, being the average contamination rate across the sample;
- 75th percentile bound, meaning that one quarter of the MRF contamination was at this level or higher; and
- maximum, this is the highest contamination rate the survey found.

So when looking at benchmarking the tables in each subsequent section will allow a MRF that performs its own analysis to benchmark itself within one of six ranges formed by the factors described above. This is not the same as statistical 95% upper and lower bound confidence intervals.

5.2.1 Input material contamination

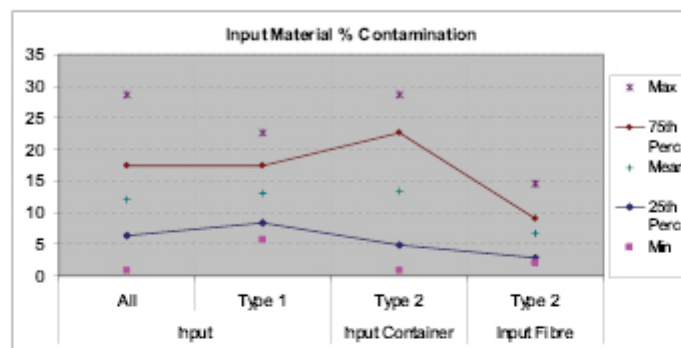
The contamination of the input materials is broken out in Table 10 and represented graphically in Figure 9. The numbers have been split into the full set of 18 MRFs, the 13 Type 1 MRFs and the 5 Type 2. The twin-stream Type 2 MRFs have two distinct input streams and so for quality analysis these are separated out. The two main streams are the containers such as plastic bottles and cans and the fibres such as paper and card.

Table 10 Percentage contamination in input material across 18 MRFs

Material	MRF Type	Max %	75 th Perc	Mean %	25 th Perc	Min %
Input	Full Data	28.61	17.48	12.00	6.37	0.79
Input	Type 1 MRFs	22.54	17.48	13.10	8.37	5.72
Input (container)	Type 2 MRFs	28.61	22.64	13.35	4.85	0.79
Input (fibre)	Type 2 MRFs	9.00	9.00	6.74	2.86	2.08

The analysis of the individual samples showed there is a statistical significant difference in the contamination rates between the two types of MRF. Overall the figures show the level of contamination from the twin-stream co-mingled input samples was marginally lower than those from single-stream input samples. This may reflect households more diligent consideration of what materials can go into the recycling bin during the initial segregation into fibres and containers, or it may simply be a function of less targeted materials being in each group.

Figure 9 Percentage contamination of input materials stream



Any MRF with an input contamination rate between the two lines on Figure 9 would be in the central 50% of MRFs within the analysis of this project.

5.2.2 Residual material contamination

The contamination of the residual materials is broken out in Table 11 and represented graphically in Figure 10. The numbers have been split into the full set of 18 MRFs, the 13 Type 1 MRFs and the 5 Type 2. The twin-stream Type 2 MRFs have two distinct input streams and so for quality analysis these are separated out. The two main streams are the containers such as plastic bottles and cans and the fibres such as paper and card.

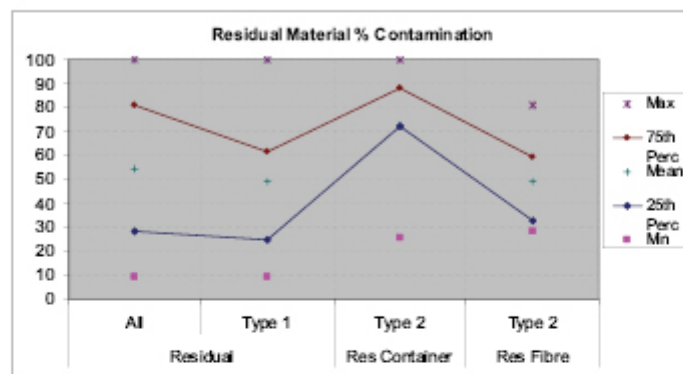
It is key to note that the contamination in residual material (i.e. materials not targeted by the MRF) should be read as good when high, this means the targeted materials are removed into the output streams and contaminating material continue through into the residual waste.

Table 11 Percentage contamination in residual material across 18 MRFs

Material	MRF Type	Max %	75 th Perc	Mean %	25 th Perc	Min %
Residual	Full Data	100.00	80.91	54.60	28.33	9.09
Residual	Type 1 MRFs	100.00	61.70	48.99	24.70	9.09
Res (container)	Type 2 MRFs	99.95	87.99	72.60	72.23	25.55
Res (fibre)	Type 2 MRFs	80.91	59.24	48.94	32.95	29.33

The analysis shows that twin-stream Type 2 MRFs seem to allow more targeted material through in the fibre stream and less in the container stream than single-stream Type 1 MRFs. Figure 10 very clearly shows that the performance from the fibre stream of a twin-stream Type 2 MRF type is much better and more consistent. Single-stream Type 1 MRF types have a wider range of contamination levels, but also process a wider mix of materials within the same process.

Figure 10 Percentage contamination of residual materials stream



Any MRF with a residual contamination rate between the two lines on Figure 10 would be in the central 90% of MRFs within the analysis of this project.

5.2.3 Output material contamination

The contamination of the output materials is considered in the same three groups as the composition. These groups are can based, paper and card based and plastic based. Each group is given its own analysis section below.

Can based outputs

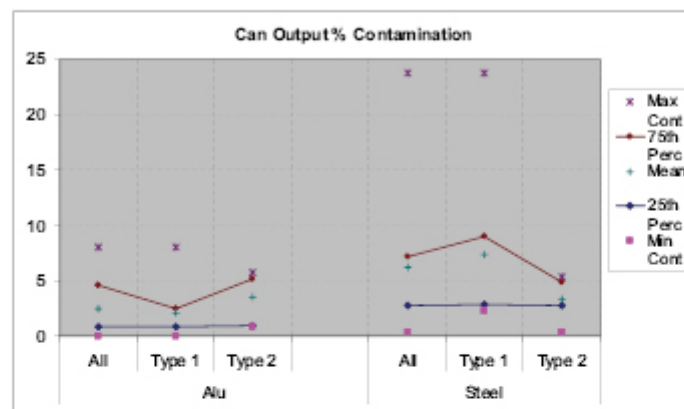
The contamination of can based output streams is shown in Table 12 and represented graphically in Figure 11. As discussed in the compositional section the aluminium stream commands a strong market value and so is sorted very carefully. This is born out by aluminium having the lowest average contamination but also a very narrow band of performance across the sampled MRFs.

Table 12 Percentage contamination in can based output material across 18 MRFs

Material	MRF Type	Max %	75 th Perc	Mean %	25 th Perc	Min %
Aluminium	Full Data	8.04	4.59	2.53	0.88	0
	Type 1 MRFs	8.04	2.45	2.13	0.84	0
	Type 2 MRFs	5.78	5.22	3.58	1.00	0.84
Steel	Full Data	23.78	7.14	6.24	2.82	0.35
	Type 1 MRFs	23.78	8.98	7.36	2.83	2.34
	Type 2 MRFs	5.32	4.92	3.33	2.80	0.35

Steel cans have a slightly higher average contamination but a much wider band of performance. As discussed in the composition section, this could be due to the separation process and the position in which steel is often recovered in the overall MRF process.

Figure 11 Percentage contamination of can based materials stream



Any MRF with a contamination rate between the two lines on Figure 11 would be in the central 50% of MRFs within the analysis of this project.

Paper and card based outputs

The contamination of paper and card based output streams is shown in Table 13 and represented graphically in Figure 12.

This suggests that twin-stream Type 2 MRFs produced a higher quality card output than single-stream Type 1 MRFs, but this may be more due to how the data was collected i.e. full sort or training MRF. These figures should be interpreted with some caution as the approach to collecting card varied greatly between MRFs, although typically oversized material was removed at the pre-sort stage. Lower levels of contamination in the twin-stream MRF would be expected as the risk of contamination from non-fibre materials is less as a result of the card being collected and then processed with the paper input and not the container input.

For mixed paper no real comparison can be drawn between the types of MRF as there was only one twin-stream Type 2 MRF in the study with a mixed paper output for which only a small number of samples were taken. However this one twin-stream Type 2 MRF did show a significantly higher quality of mixed paper.

News and PAMs average contamination rates are very similar across the two MRF types. There is though greater consistency on the twin-stream Type 2 MRFs shown by a slightly narrower middle percentile bounds (performance range) and even narrower max and min range (shown graphically on Figure 12). This could be due to the separation in the two-streams at the household although the best (lowest) reported level of contamination was from a single-stream Type 1 MRF.

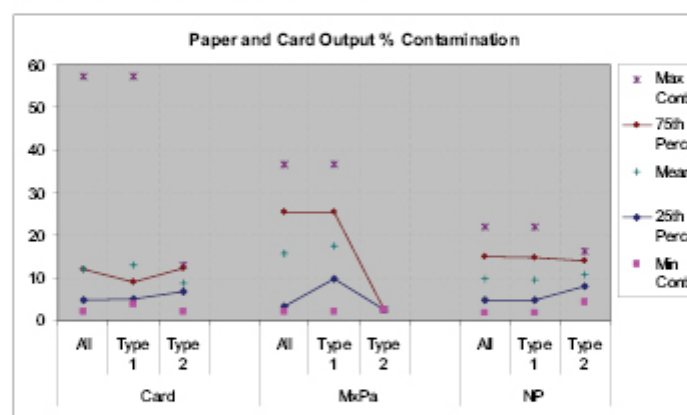
Although similar levels of minimum contamination can be achieved from mixed paper as News and PAM, on average the mixed paper is more contaminated than the News and PAM. Whilst the News and PAM output has a higher market value the differential was not significant during the time of the survey. More likely the difference in contamination between the two outputs is thought to be caused by the different approaches within a MRF to recovering these materials. News and PAM is often positively picked from the process i.e. removing the targeted material off the conveyor, whereas mixed paper is often negatively picked from the process i.e. leaving the targeted material on the conveyor and removing the contaminating materials. Therefore, there is a greater risk of contamination in the mixed paper output. A point of interest is that due to the market price differential between paper grades during the time of the survey, in some cases News and PAM and mixed paper were not being

collected separately and all paper material consigned as mixed paper and would therefore contain a higher proportion of newspaper and magazines.

Table 13 Percentage contamination in paper and card based output material across 18 MRFs

Material	MRF Type	Max %	75 th Perc	Mean %	25 th Perc	Min %
Card	Full Data	57.38	12.00	11.97	4.82	1.90
	Type 1 MRFs	57.38	9.07	13.01	4.97	3.77
	Type 2 MRFs	12.92	12.31	8.84	6.80	1.90
Mixed Paper	Full Data	36.70	25.34	15.80	3.20	2.10
	Type 1 MRFs	36.70	25.52	17.45	9.83	2.10
	Type 2 MRFs	2.58	2.58	2.58	2.58	2.58
News and PAMs	Full Data	21.97	15.05	9.79	4.62	1.86
	Type 1 MRFs	21.97	14.71	9.49	4.72	1.86
	Type 2 MRFs	16.07	13.87	10.68	7.98	4.30

Figure 12 Percentage contamination of paper and card based materials stream



Any MRF with a contamination rate between the two lines on Figure 12 would be in the central 50% of MRFs within the analysis of this project.

Dense plastic based outputs

The contamination of dense plastic based output streams is shown in Table 14 and represented graphically in Figure 13.

For odoured HDPE the analysis comparing the two MRF types is limited as there were only two single-stream Type 1 and one twin-stream Type 2 MRFs in the data. The main statistical analysis did indicate that the differences reported between the two MRF types, across individual samples, was not statistically relevant.

Overall natural HDPE shows the lowest mean contamination of all the plastic materials. For natural HDPE the difference between the average contamination for single-stream Type 1 MRF and the twin-stream Type 2 MRF was shown to be statistically significant: the Type 2 MRFs generating much lower levels of contamination. As

Figure 13 clearly shows, twin-stream Type 2 MRF also have a narrow range of performance. The high value of natural HDPE in the market seems to force investment in good separation practice, positively picking these materials.

For mixed plastic the single-stream MRF seems to produce a higher average quality of output that was found to be statistically significant; however there is a much wider performance range. The twin-stream Type 2 MRFs whilst with a higher level of average contamination were much more consistent in the level of contamination achieved, shown by a narrower performance range.

For mixed plastic bottles there is very little difference in the average contamination. Although for the individual sample analysis this was shown to be statistically significant; but this was thought to be driven by one MRF having unusually low contamination levels. On comparison of contamination quartile range in Figure 13 shows single-stream Type 1 MRFs have a similar spread of extremes but a narrow middle band.

The level of contamination in Clear PET in the twin-stream Type 2 MRFs is lower than single-stream Type 1 MRFs in both the average level of contamination and the upper and lower quartile range. This difference was shown to be statistically significant.

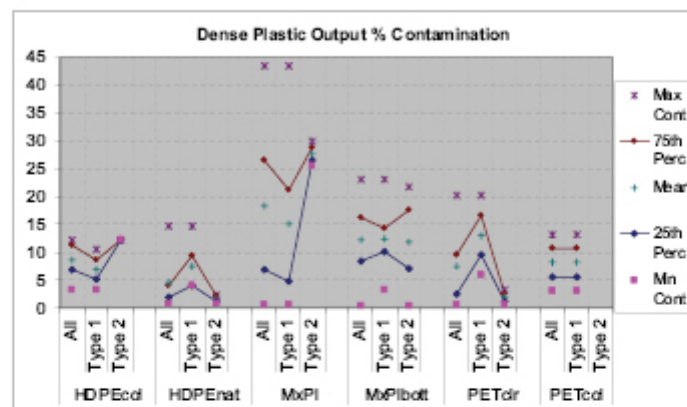
Coloured PET was not processed as an output material at any of the twin-stream Type 2 MRFs in the study. The contamination at single-stream Type 1 MRFs for coloured PET and all the non-mixed output streams does seem to be similar as illustrated in Figure 13.

As noted in the composition section of this report, the quality of the different plastic outputs varies which appears to be driven by the market value i.e. higher for clear PET and natural HDPE, and then the associated process to recover the plastic outputs within the MRF.

Table 14 Percentage contamination in dense plastic based output material across 18 MRFs

Material	MRF Type	Max %	75 th Perc	Mean %	25 th Perc	Min %
Coloured HDPE	Full Data	12.33	11.34	8.66	6.88	3.32
	Type 1 MRFs	10.44	8.66	6.88	5.10	3.32
	Type 2 MRFs	12.23	12.23	12.23	12.23	12.23
Natural HDPE	Full Data	14.59	3.98	4.55	1.85	0.75
	Type 1 MRFs	14.59	9.29	7.50	3.96	3.93
	Type 2 MRFs	2.34	2.02	1.59	1.22	0.75
Mixed Plastic	Full Data	43.55	26.59	18.21	6.88	0.56
	Type 1 MRFs	43.55	21.24	15.05	4.85	0.56
	Type 2 MRFs	29.92	28.81	27.70	26.59	25.48
Mixed Plastic Bottles	Full Data	23.04	16.16	12.21	8.34	0.47
	Type 1 MRFs	23.04	14.30	12.40	10.03	3.26
	Type 2 MRFs	21.72	17.61	11.89	6.98	0.47
Clear PET	Full Data	20.14	9.52	7.47	2.56	0.53
	Type 1 MRFs	20.14	16.60	13.06	9.52	5.98
	Type 2 MRFs	3.24	2.56	1.89	1.21	0.53
Coloured PET	Full Data	13.24	10.68	8.13	5.57	3.01
	Type 1 MRFs	13.24	10.68	8.13	5.57	3.01
	Type 2 MRFs	No MRF data				

Figure 13 Percentage contamination of dense plastic based materials stream



Any MRF with a contamination rate between the two lines on Figure 13 would be in the central 50% of MRFs within the analysis of this project.

6.0 Updated sampling regimes

One of the key practical conclusions from this project is that the level of sampling originally specified was very intensive for the training MRFs. Often the level of resource required to hand sort the specified weight and number of samples in the original protocol was beyond the level of resource available. Of particular interest was the implication of trying to achieve the minimum sample weight for input material at twin-stream Type 2 MRFs that did not contain paper. This increased further the resource demands on the MRF operators to hand sort this material in terms of sorting time, space, manpower and equipment due to the additional volume of material that was required.

This project used the WRAP MRF sampling protocol document² for the sample sizes. These are provided in Table 15 below. A revised data set of minimum sample sizes and minimum sample weights has been produced to reflect the data collected during the MRF11 study and the practicalities of sampling and ensuring that ongoing sampling where possible is less resource intensive. The revised sample sizes are provided in Table 16.

² Report on the conclusion of Phase 2: practical field trials of material sorting and sampling techniques (WRAP April 2008)

Table 15 WRAP MRF protocol minimum sample number and weights

Material Stream	Number of Samples	Minimum Sample Weight (kg)
Input Material	40	95
Output Material		
News and PAMs	40	70
Mixed Paper	40	70
Aluminium Cans	30	25
Steel Cans	30	40
Clear PET Bottles	30	25
Mixed Plastic	50	30
Natural HDPE Containers	30	25
Residual Material	10	30

The figures in Table 16 are intended as a 'starting point' for MRF operators and any future similar study to assist the sample plan design. However, one of the main conclusions from this project is that there is a significant variability in the quality of the same outputs between MRFs due to local operational and economic factors. Therefore, ongoing sample sizes at a MRF should be based only on the composition and associated variability of samples collected at the MRF and not on a generic table that accommodates the variability across various MRF designs achieving varying levels of performance. The sample size required for each output will be a direct function on the consistency of a specific material at a MRF. In some MRFs the sample size will be high and in others it will be low. Clearly this will affect the resource commitment required by the MRF. It is also important to stress that the required sample size is based on variability and not the level of quality achieved. For example, if samples within a MRF consistently have a high level of contamination then a smaller sample size could be required in comparison to a MRF where on average the level of contamination is a lot lower but the variability around this average is greater.

Within this project, there was no requirement to measure the weight and number of particles within each sample. Therefore, it is not possible to derive a revised minimum sample weight. Instead, a minimum sample weight has been based on the average weight of samples taken for each stream. This is because the measured variability and confidence levels will be influenced by the weight of material sampled.

Based on this weight, a view has been taken on the appropriate number of samples required to achieve an acceptable level of precision at a 95% confidence level. This means that if the number and weight of samples specified were sorted again you would be 95% confident that the values would be within the specified percentage of the mean. Clearly it is important to try and achieve as narrow a band of precision (i.e. be as accurate) as possible.

The narrowest band of precision (and the associated number of samples required to achieve this) has been selected considering:

- the length of time to sort the samples and hence resource requirements on the MRF operators. For example a required sample size of 491 samples to achieve 10% level of precision for aluminium is not practical; and
- the actual mean contamination value reported across the 18 MRFs sampled. For example whilst a figure of +/- 30% around the mean for aluminium appears high, the mean in some MRFs is as low as 0.1%. Therefore the 95% confidence range will be between 0.05% and 0.15%.

Table 16 WRAP MRF protocol minimum sample number and weights *

Material Stream	Number of Samples	Minimum Sample Weight (kg)	Estimated +/- % around the mean with 95% Confidence
Input Material (Single-stream)	20	100	+/- 20%
Input Material (Twin-stream with paper)	30	100	+/- 20%
Input Material (Twin-stream without paper)	25	100	+/- 20%
Output Material			
Aluminium	20	30	+/- 50%
Card	40	70	+/- 20%
Mixed Paper	25	80	+/- 25%
Mixed Plastic	25	35	+/- 20%
Mixed Plastic Bottles	25	35	+/- 20%
HDPE Coloured Plastic Bottles	35	30	+/- 30%
HDPE Natural Plastic Bottles	30	30	+/- 30%
News and PAM	35	85	+/- 20%
PET Clear	25	30	+/- 25%
PET Coloured	20	30	+/- 50%
Steel	20	45	+/- 25%
Residual Material	10	35	+/- 25%

(*The sample numbers have been rounded up or down to the nearest 5)

7.0 Conclusions

During this project around 270 tonnes of material was hand sorted from 18 MRF across the UK. There is a significant quantity of data contained within this report where a number of different conclusions can be drawn. These have been discussed within the report in the relevant sections. Each of these conclusions should be considered within the context of the data limitations outlined within the report and the number of MRF sampled and approach taken. A number of statistical relationships have been identified, but these should be interpreted with caution due to the potential inter-relationship between these. In many cases there are a range of factors that appear to correlate with material quality which cannot be accounted for in the same analysis and therefore a triangulated approach is required to take an informed view of the actual factors causing this change.

This section outlines the key conclusions of this project, drawn from the report, and listed below:

- The average contamination of the material streams varied significantly.

Table 17 All MRF Average contamination rates (%)

Target Material	N	Min %	Max %	Mean %	Standard Deviation
Alu	18	0.0	8.1	2.5	2.3
Card	12	1.9	57.4	12.0	14.8
Glass	1	1.5	1.5	1.5	-
HDPEcol	3	3.3	12.2	8.7	4.7
HDPEnat	6	0.8	14.6	4.5	5.1
Input ⁴	18	5.7	22.7	12.9	6.0
MxPa	9	2.1	36.7	15.8	12.1
MxRbott	8	0.5	23.0	12.2	7.9
MxR	8	0.6	48.5	18.2	15.1
NP	12	1.9	22.0	9.8	6.4
PETdr	4	0.5	20.1	7.5	8.7
PETod	2	3.0	13.2	8.1	7.2
PFilm	1	39.5	39.5	39.5	-
Res ⁵	18	9.1	100.0	54.8	31.1
Steel	18	0.4	23.8	6.2	5.6

- Input contamination for Type 1 MRFs and container based input on Type 2 have a similar mean (13.1% and 13.3%), but Type 2 container has a wider range between maximum and minimum. Type 2 fibre based input has a lower mean (6.7%) and a narrow range.
- Residual contamination for Type 1 MRFs and fibre based residual on Type 2 have a similar mean (48.99% and 48.94%), but Type 2 fibre has a narrower range. Type 2 container based residual has a higher mean (72.6%). For residual contamination is good, as this means Type 2 container based lines allowed less targeted material through into the input.
- Steel cans had a similar minimum contamination to aluminium cans (0.35% and 0%), but a much higher maximum (23.78% and 8.04%).
- Of the paper based outputs, News and PAMs has the lowest mean contamination (9.79%) then card (11.97%) and then mixed paper (15.8%). One card MRF had a particularly high contamination rate.
- For plastic based outputs the mixed plastic (18.21%) and mixed bottles (12.21%) showed the highest level of contamination. The lowest was natural HDPE (4.53%). Coloured HDPE (8.66%), Clear PET (7.47%) and coloured PET (8.13%) had similar mean contaminations. The highest range of contamination was not surprisingly on mixed plastics.

The following conclusions are pulled from the technical data report, and so the figures are based on the analysis of the 4,676 individual samples unless otherwise stated.

- Input contamination across all MRFs sampled varied significantly between 6% and 23%.
- Newspaper and Magazines is the dominant material in nearly all MRFs sampled. Whilst all MRFs sampled accepted aluminium, steel, PET and HDPE bottles, acceptance of other materials varied. Some materials were tolerated at the MRF for a variety of reasons specific to local circumstances on the assumption that the material would be removed and be contained in the residual material. Conversely, some materials not targeted in the inputs, but were 'targeted' into output materials i.e. some materials were present in sufficient

⁴ The input and residual analysis in this table combines the two input streams for twin stream Type 2 MRFs

quantities to remove as a marketable product (or to avoid the disposal cost), but they did not want to encourage this material into the process.

- Whilst no clear conclusion between a MRF configuration and material quality can be made some relationships were observed. It was observed that where the priority for a particular output was high purity levels (for a range of reasons) that these levels could be achieved. These observations support the view that in most cases a MRF can achieve lower contamination levels if local operational or market conditions require it. Where residual contaminants were only positively removed by hand from the picking line and the residual output was not the last point in the MRF configuration, the last output material showed higher levels of contamination than similar output materials that were positively picked.
 - The composition of each output material was predominantly the appropriate targeted material. The percentage assay of the two main material categories for the main output materials sampled are provided below:
 - aluminium (96.3% aluminium cans; 2.0% aluminium foil);
 - card (71.4% brown board; 16.1% grey and white board);
 - HDPE natural (95.5% natural HDPE; 2.4% coloured HDPE);
 - mixed paper (56.6% newspaper and magazines; 10.8% brown board);
 - mixed bottles (33.7% clear PET; 32% natural HDPE);
 - mixed plastic (21.6% clear PET; 21.6% other dense plastic);
 - news and PAM (84.5% newspaper and magazines; 6.2% other recyclable paper); and
 - steel (93.9% steel cans; 1.1% miscellaneous <45mm).
 - The level of variation in the quality of output materials between MRFs is significant. However this varies on a material basis. For example, just because the output quality of one output material is poor does not mean that all the output materials in the same MRF are also highly contaminated. The quality of some output materials was very good. Based on all 524 samples of aluminium cans, this output showed one of lowest levels of contamination at 2.4% on average; with a variation between samples indicated by a 95% confidence interval of $\pm 0.3\%$ (12% of the Mean). Two MRFs declared 100% pure aluminium samples; and other MRFs also showed <1% contamination. The average output contamination for aluminium output samples between the 18 MRFs was 2.5% (Standard Deviation of 2.3%). Aluminium is a high value material and it is economically viable to invest in additional quality control procedures to ensure that high purity levels are achieved.
 - Based on the individual samples, the greatest level of contamination was found in the mixed plastic and mixed paper outputs with 19.9% and 16.9% respectively. The lowest levels of contamination were found in the aluminium and HDPE natural bottles with levels less than 5% achieving 2.4% and 4.5% respectively. The figures for glass and plastic film are not reliable as there was only one sampled stream for each.
 - The materials identified as a contaminant varied between MRFs for the same output materials. Therefore, it is difficult to state with any certainty the main contaminating material for each output material. However, an indication of the likely main contaminant for the main output materials sampled is provided below:
 - Input - miscellaneous >45mm, glass and other dense plastic;
 - aluminium - other dense plastic, miscellaneous <45mm, aluminium foil;
 - card - non-target fibre, other dense plastic, plastic film;
 - HDPE natural - coloured HDPE, other dense plastic, miscellaneous <45mm;
 - mixed paper - miscellaneous <45mm and >45mm material, beverage cartons, brown board;
 - mixed bottles - other dense plastic >45mm miscellaneous material, plastic film;
 - mixed plastic - miscellaneous <45mm material, newspaper and magazines, grey and white board;
 - news and PAM - brown board, grey and white board, non-target fibre;
 - steel - miscellaneous <45mm material, aluminium cans, plastic film; and
 - residual - other dense plastic, textiles, plastic film, miscellaneous <45mm and >45mm material.
- The average proportion of residual material samples that is material targeted by MRFs i.e. missed and is collected in the residual waste is 46.0% \pm 4.6% (95% confidence interval) of the residual waste. The residual waste in single-stream Type 1 MRF contains a greater proportion of targeted material than twin-stream Type 2 MRF accounting for 49.3% in comparison to 38.1% of the residual waste total. Whilst this figure as a percentage assay appears high, this must be considered within the context of small quantities of residual waste leaving MRFs. A perfect operation would comprise of 0% targeted materials in the residual waste.
- Materials not targeted at the MRF do not necessarily continue to be recovered in the residual waste. However there appears to be no consistent output stream contaminated although some tentative comparisons can be made. However the flow of material through the MRF and the associated risk of contaminating the output vary between MRFs and specific to the MRF configuration, how that configuration is operated, the associated

local contract and material specifications trying to be achieved. In many cases, most of these variables can vary on daily or weekly basis, but almost certainly on a monthly basis.

- The contamination of card, coloured and natural HDPE, mixed plastics and mixed plastic bottles and Clear PET output materials did not show a statistically significant correlation with input contamination (Sig. >0.05), namely. Steel cans, aluminium cans, mixed paper, newspapers and magazines did show significant correlations (Sig. <0.05).
- For a large proportion of output materials (all outputs except newspapers and magazines and steel) twin-stream MRFs showed significantly lower level of cross-contamination as a proportion of the total contamination observed. Although having a twin-stream collection system will reduce the proportion of contamination caused by cross-contamination, cross-contamination rates can still be as high as observed for single-stream systems for some output materials.
- It is not possible to say conclusively that there is a statistical difference in the quality of output materials produced from a single-stream Type 1 MRF in comparison to a twin-stream Type 2 MRF. The quality of material will be dependent on local operating conditions and the range and type of materials targeted. However, there were some statistical differences between some materials where the quality in single-stream was better than twin-stream for some and others a higher output quality was achieved from the twin-stream MRF. This study concluded that:
 - the output material contamination rates were statistically lower in a single-stream MRF configuration for aluminium cans and mixed plastic;
 - card, natural HDPE, steel cans, clear PET showed a statistically lower level of contamination in a twin-stream MRF rather than a single-stream MRF;
 - no comparisons could be made for glass or plastic film, as only one MRF was sampled that produced that specific output; and
 - whilst some tentative relationships exist, the level of contamination for the other output materials did not show any statistical difference or it is not certain if the statistical difference is due to how the data is collected (i.e. Full sort or Training).
- Based on the limited responses from the questionnaire data those MRFs that regularly sampled materials were more able to monitor and control quality and thus produced higher quality materials (e.g. natural HDPE, clear PET and steel cans).
- Contamination thresholds imposed on local authorities by MRF operators had no significant effect on input quality as MRFs are reluctant to enforce any thresholds.
- Notwithstanding the limitations in the data, there are some tentative indications that threshold (limits) imposed on the output material contamination by the customer could have a positive effect on output quality of certain materials. Aluminium, card, mixed plastic and news and PAFs showed less mean contamination but mixed plastic, mixed plastic bottles and steel cans showed increased contamination.

There is a requirement for future sampling to become more robust within MRFs but a need to recognise the immense resource commitment in order to undertake the appropriate level of sampling / testing. A number of MRFs currently undertake their own quality assurance and material sampling, of which some is of a very high quality and at an appropriate level of detail. However for the MRFs who participated in this study as a data MRF i.e. they undertake their monitoring and therefore did not require sampling, the quantity and quality of data was poor.

In most cases only tonnage information was provided which could not be used to assess the quality of output materials. Where composition data was provided it was inconsistent, infrequent, small sample size and a limited number of material classifications were used.

There was no standard approach between MRFs however it is worth noting that whilst there are some concerns on the quality and quantity of ongoing monitoring, the alternative approach adopted within this project is resource intensive and unlikely to be sustainable at this level over a long period of time. Therefore it is essential that local monitoring is started using the standard approach (outlined in the WRAP training and sampling plan) as a baseline. Going forward the sample size and frequencies should be based on an individual MRF data and the associated variation within the MRF. As the material quality and variability in this material quality improves, the required sample size and weight of samples required to achieve the same level of statistical confidence will reduce along with the resource commitment to undertake the sampling.

Appendix 1: Abbreviations

Table A1.1 Waste composition material category abbreviations

Abbreviation	Description
News & Mag	Newspaper and Magazines
Brwn brd	Brown Board
G&W brd	Grey and White Board
Oth R Pa	Other Recyclable Paper
NonT Fbr	Non-Target Fibre
Clr PET	Clear PET Bottles
Col PET	Coloured PET Bottles
Nat HDPE	Natural HDPE Bottles
Col HDPE	Coloured HDPE Bottles
Oth bott	Other Bottles
Oth D Pl	Other Dense Plastic
Pl film	Plastic Film
Alu cans	Aluminium Cans
Ste cans	Steel Cans
Alu fol	Aluminium Foil
Textiles	Textiles
BevC	Beverage cartons
Glass	Glass
Misc >45	Miscellaneous material remaining on top of the 45mm mesh screen
Misc <45	Miscellaneous material falling through the 45mm mesh screen

Table A1.2 Targeted material category abbreviations

Abbreviation	Description
Alu	Aluminium
Card	Cardboard
Glass	Glass
Input	Input
MxPa	Mixed Paper
MxPl	Mixed Plastic
MxPlbott	Mixed Plastic Bottles
HDPEnat	Natural HDPE
HDPEcol	Coloured HDPE
NP	News and PAMs
PETclr	Clear PET
PETcol	Coloured PET
PlFilm	Plastic Film
Res	Residual
Steel	Steel

Appendix 2: Composition tables

Table A2.1 All MRF input, output materials and residual material composition (%)

Material	Input	Res	Alu	Card	Glass	HDPE col	HDPE nat	Mx Pa	Mx PI	Mx PI bott	NP	PET clr	PET col	PI Film	Steel
Alu cans	3.790	1.619	96.289	0.135	0.034	0.034	0.033	0.449	1.875	0.208	0.062	0.042	0.131	0.423	0.837
Alu foil	0.241	0.497	1.981	0.013	0.317	0.006	0.001	0.026	0.371	0.013	0.008	0.006	0.020	0.100	0.121
Brwn brd	7.728	3.715	0.026	71.351	0.000	0.004	0.022	10.764	0.750	0.160	2.129	0.003	0.009	0.812	0.244
Clr PET	6.552	2.612	0.029	0.097	0.000	0.818	0.044	0.570	21.605	33.719	0.078	92.531	58.463	7.670	0.153
Col HDPE	2.653	1.133	0.027	0.085	0.000	57.729	2.443	0.102	7.537	11.878	0.016	0.155	0.448	0.598	0.061
Col PET	1.297	1.338	0.012	0.013	0.000	2.219	0.075	0.208	7.109	7.617	0.016	2.420	33.418	0.679	0.059
G&W brd	6.844	4.770	0.070	16.115	0.014	0.048	0.087	10.454	1.963	0.415	3.674	0.097	0.373	1.188	0.416
Glass	2.450	5.350	0.012	0.007	98.530	0.000	0.000	0.422	0.885	0.151	0.021	0.000	0.000	0.000	0.012
Misc <45	2.897	9.248	0.231	0.884	0.000	0.446	0.355	3.174	3.114	2.024	0.747	0.622	0.643	1.358	1.063
Misc >45	2.196	8.569	0.295	0.300	0.402	0.307	0.242	1.012	1.390	0.762	0.289	0.271	0.005	0.636	0.517
Nat HDPE	6.026	1.568	0.034	0.096	0.000	33.574	95.450	0.402	15.389	32.009	0.087	0.046	1.084	6.934	0.127
News & Mag	31.698	13.512	0.110	3.898	0.069	0.032	0.033	56.639	1.912	0.318	84.535	0.004	0.006	2.669	0.411
Non-T Fbr	1.314	3.181	0.025	2.689	0.021	0.005	0.009	1.704	0.760	0.103	1.227	0.001	0.150	0.171	0.270
Oth D PI	3.794	15.542	0.342	0.601	0.306	0.685	0.403	0.823	21.562	5.851	0.266	3.102	2.963	13.589	0.583
Oth R Pa	5.105	5.178	0.041	2.620	0.304	0.050	0.170	10.488	1.668	0.238	6.223	0.106	0.748	1.642	0.247
Oth bott	0.756	0.630	0.005	0.084	0.000	3.692	0.327	0.119	6.934	2.933	0.022	0.343	0.903	0.118	0.082
PI film	2.208	8.036	0.190	0.501	0.004	0.196	0.243	0.681	2.989	1.347	0.288	0.201	0.583	60.546	0.745
Ste cans	11.230	1.905	0.251	0.147	0.000	0.149	0.056	0.746	1.186	0.133	0.123	0.046	0.038	0.752	93.926
Bev cartons	0.669	0.758	0.027	0.318	0.000	0.005	0.008	1.136	0.725	0.097	0.138	0.004	0.016	0.061	0.095
Textiles	0.553	10.839	0.004	0.047	0.000	0.001	0.000	0.083	0.275	0.024	0.048	0.000	0.000	0.053	0.030



Material change for a better environment

MRF Quality Assessment Study 31

Table A2.2 Single-stream MRF input, output materials and residual material composition (%)

Material	Input	Res	Alu	Card	Glass	HDPE col	HDPE nat	Mx Pa	Mx PI	Mx PI bott	NP	PET clr	PET col	PI Film	Steel
Alu cans	2.095	1.042	96.468	0.189	0.034	0.031	0.039	0.463	0.919	0.307	0.077	0.058	0.131	0.423	0.670
Alu foil	0.210	0.283	1.981	0.018	0.317	0.010	0.000	0.027	0.422	0.010	0.010	0.002	0.020	0.100	0.131
Brwn brd	8.356	4.454	0.036	69.827	0.000	0.006	0.043	10.670	0.974	0.221	2.039	0.006	0.009	0.812	0.343
Clr PET	3.997	2.543	0.033	0.131	0.000	1.144	0.064	0.587	21.033	34.742	0.097	86.941	58.463	7.670	0.159
Col HDPE	1.531	0.801	0.016	0.116	0.000	53.185	4.306	0.105	7.501	8.918	0.020	0.297	0.448	0.598	0.078
Col PET	.852	1.030	0.011	0.017	0.000	1.684	0.106	0.214	7.923	7.743	0.020	4.137	33.418	0.679	0.072
G&W brd	8.221	4.909	0.097	17.175	0.014	0.071	0.173	10.400	2.614	0.613	3.298	0.195	0.373	1.188	0.584
Glass	3.268	2.495	0.007	0.010	98.530	0.000	0.000	0.433	0.170	0.214	0.015	0.000	0.000	0.000	0.016
Misc <45	3.192	10.229	0.177	0.775	0.000	0.276	0.525	3.244	1.358	2.115	0.621	0.681	0.643	1.358	1.160
Misc >45	3.123	11.183	0.281	0.347	0.402	0.410	0.469	1.033	1.407	0.915	0.329	0.522	0.005	0.636	0.702
Nat HDPE	3.225	1.538	0.036	0.121	0.000	39.830	92.500	0.413	14.619	32.613	0.107	0.065	1.084	6.934	0.152
News & Mag	40.170	14.804	0.148	3.033	0.069	0.037	0.063	56.411	2.413	0.472	85.517	0.008	0.006	2.669	0.577
Non-T Fbr	1.972	3.852	0.035	3.734	0.021	0.007	0.018	1.748	1.044	0.155	1.480	0.002	0.150	0.171	0.378
Oth D PI	3.301	12.079	0.170	0.830	0.306	0.735	0.251	0.846	23.570	5.708	0.331	6.170	2.963	13.589	0.608
Oth R Pa	6.463	5.519	0.055	2.211	0.304	0.074	0.339	10.579	2.279	0.356	5.307	0.211	0.748	1.642	0.345
Oth bott	0.801	0.451	0.003	0.117	0.000	2.339	0.614	0.122	8.573	3.397	0.028	0.424	0.903	0.118	0.103
PI film	2.237	6.854	0.131	0.662	0.004	0.132	0.431	0.688	1.907	1.138	0.338	0.270	0.583	60.546	0.938
Ste cans	5.387	1.645	0.282	0.206	0.000	0.027	0.041	0.769	0.140	0.182	0.153	0.003	0.038	0.752	92.808
Beverage cartons	0.984	0.877	0.030	0.431	0.000	0.003	0.016	1.161	0.806	0.143	0.161	0.007	0.016	0.061	0.134
Textiles	0.615	13.412	0.004	0.049	0.000	0.000	0.000	0.085	0.327	0.037	0.051	0.000	0.000	0.053	0.042

MRF Quality Assessment Study 32

Table A2.3 Twin-stream MRF input, output materials and residual material composition (%)

Material	Input	Res	Alu	Card	Glass	HDPE col	HDPE nat	Mx Pa	Mx PI	Mx PI bott	NP	PET clr	PET col	PI Film	Steel
Alu cans	6.535	2.674	95.844	0.000		0.040	0.026	0.000	4.304	0.011	0.001	0.026			1.246
Alu foil	0.291	0.889	1.982	0.000		0.000	0.001	0.000	0.243	0.017	0.000	0.011			0.096
Brwn brd	6.704	2.364	0.000	75.130		0.000	0.001	13.746	0.182	0.041	2.487	0.000			0.000
Clr PET	10.721	2.739	0.021	0.013		0.144	0.023	0.033	23.099	31.696	0.003	98.120			0.138
Col HDPE	4.482	1.740	0.053	0.007		67.119	0.591	0.000	7.628	17.729	0.001	0.013			0.020
Col PET	2.024	1.902	0.016	0.003		3.325	0.045	0.000	5.040	7.366	0.000	0.702			0.029
GMW brd	4.598	4.516	0.003	13.486		0.000	0.000	12.179	0.309	0.036	5.181	0.000			0.003
Glass	1.115	10.569	0.026	0.000		0.000	0.000	0.058	2.701	0.025	0.045	0.000			0.003
Misc <45	2.415	7.454	0.367	1.155		0.797	0.185	0.945	7.575	1.846	1.251	0.563			0.826
Misc >45	0.683	3.789	0.329	0.182		0.092	0.014	0.334	1.346	0.438	0.130	0.020			0.063
Nat HDPE	10.596	1.622	0.028	0.033		20.646	98.400	0.028	17.344	30.815	0.010	0.027			0.067
News & Mag	17.878	11.149	0.014	6.045		0.022	0.002	63.894	0.640	0.014	80.608	0.000			0.003
Non-T Rbr	0.240	1.955	0.000	0.097		0.000	0.000	0.282	0.041	0.000	0.218	0.000			0.004
Oth D PI	4.599	21.875	0.769	0.031		0.583	0.554	0.080	16.463	6.132	0.006	0.035			0.523
Oth R Pa	2.890	4.555	0.008	3.636		0.000	0.001	7.606	0.116	0.003	9.889	0.000			0.005
Oth bott	0.682	0.957	0.010	0.001		6.490	0.041	0.005	2.771	2.017	0.000	0.261			0.030
PI film	2.160	10.197	0.335	0.102		0.328	0.055	0.443	5.738	1.760	0.092	0.131			0.270
Ste cans	20.761	2.380	0.174	0.000		0.403	0.070	0.000	3.842	0.037	0.002	0.090			96.674
Beverage cartons	0.154	0.540	0.019	0.038		0.009	0.000	0.369	0.520	0.007	0.043	0.000			0.000
Textiles	0.453	6.134	0.003	0.040		0.003	0.000	0.000	0.141	0.000	0.032	0.000			0.001

Bryson House email re quality of waste

From: Eric Randall [mailto:Eric@brysonrecycling.co.uk]
 Sent: 03 August 2010 14:08
 To: McGarel, Alex
 Subject: FW: Ministers statement

Alex

Just thought you may like to see this, it just heightens the significance of the transposition on the Revised Waste Framework Directive. If the rWFD informs the second policy, then that makes the document all that more important.

I will be writing to Maraid Adams who is looking after the transposition, to get set up a meeting with the four reprocessors, to ensure that their views are separately taken into account. I've been told that an audience is likely.

All the best

Eric Randall

Director
 Bryson Recycling
 Belfast Road
 Central Park

Mallusk
BT36 4FS

T: 028 9084 8494
F: 028 9084 8493
www.brysonrecycling.co.uk

From: Tohill, Anne [mailto:Anne.Tohill@doeni.gov.uk]
Sent: 03 August 2010 14:02
To: Eric Randall
Subject: RE: Ministers statement

Eric,

I think you're possibly referring to the Minister's answer to the assembly question asked by Paul Butler on glass recycling?

In the answer the Minister refers to work on the development of a recycling policy with the intention that there will be a consultation on the policy during the autumn (will be late autumn). This process is separate to the transposition of the WFD but will obviously be informed by and reflect the requirements of the WFD.

Hope this clarifies,

Anne

From: Eric Randall [mailto:Eric@brysonrecycling.co.uk]
Sent: 03 August 2010 13:06
To: Tohill, Anne
Subject: Ministers statement

Hi Anne

Hope you are keeping well.

I saw a response to a question about glass recycling from the Minister, and note with interest a reference to a consultation that is to take place shortly to look into the issue of improving quantity and quality of materials, and what steps would be needed to achieve this. Would you know whether this is the same process as the transposition of the WFD or is it an entirely separate process?

Many thanks

Eric Randall

Director
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Bryson House Recycling e mail

Alex

Thought this correspondence may be of interest re. the prospect of the transposed waste directive. The line you were given on 'comingled material is acceptable' may be in doubt when this process is complete, so renewing our interest in bringing NI reprocessors together to put in a joint response.

Presumably if GB and wales are questioning this key line, then it makes it more possible to have the conversation here, especially when EU are taking a particular interest in the matter too.

All the best

Eric Randall

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Update Bryson Response to DoE letter

From: Eric Randall [<mailto:Eric@brysonrecycling.co.uk>]
Sent: 05 October 2010 12:16
To: McGarel, Alex
Subject: correction to letter

Good morning Alex

I find myself in the somewhat embarrassing situation of needing to correct errors in the letter I had sent to the Environment Committee in June. As the errors are fairly minor I would not have troubled you with them if it were not for the fact that the letter has now entered the wider public domain. I am not sure what the protocol at your end is, but I would like it on the record that these errors have been highlighted and received by the Committee. If there is some other action that I need to take then please let me know.

I appreciate that this is the second time I have spotted an error in this letter, and please accept my apologies for this carelessness. In my hurry to compile a substantial amount of information I clearly did a poor proof reading job.

I have reattached the letter with the two further errors corrected in red. I also took the opportunity of changing a few typing errors. I did not highlight these as there is no change to the meaning of what was said.

The two changes are as follows:

- On the second to last paragraph of the first page I have inserted the word 'locally'. This may have been implied from what was said earlier, but I wanted to make this clear.
- The table at the bottom of the second page contained information referenced to a document from Wrap. I had inserted a column in the table with information on standard specification for materials, followed by an asterisk. What I failed to do was add the note to the asterisk to show that this column was Bryson info rather than from the Wrap document. This is now added.

While I don't think that these errors substantially change the document that was submitted, the issue involving the Wrap quote could be deemed as misleading and therefore be used to discredit what I had submitted. I would therefore rather deal with it proactively. I will also write to Philip Ward at Wrap to make him aware of the error.

Once again, please accept my apologies for troubling you with this issue.

Yours sincerely

Eric Randall

Director
Bryson Recycling
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Bryson House letter on recycling

Alex McGarel
Clerk to the Environment Committee
NI Assembly
Parliament Buildings
Stromont
BELFAST
BT24 3XX 18th June 2010

Dear Alex

Thank you for forwarding the letter from the Department to me. I have forwarded the letter to Huhtamaki, Cherry Polymers, Quinn Glass and Cookstown Textiles. These companies are the four main NI buyers of our material who have all expressed their concerns regarding the issue of quality. The views below are shared by all these parties, and we greatly appreciate the opportunity to engage directly with the Committee on this matter.

We warmly welcome the increased interest in recycling shown by the Minister and the Department over the last few months. The message that recycling should come before energy from waste, or other forms of disposal is well received.

However, in pursuing quantity, quality can easily become compromised, and while we are delighted to see the overall approach from the Department, we remain strongly of the opinion that specific measures to control quality are currently ineffective, and the proposed measures outlined in the letter from the Department do not appear to be sufficiently robust to deal with the specific concerns we are experiencing in the industry.

An obvious option for Councils committed to co-mingling, is to increase tonnage by adding more materials into the comingled system. Where this has happened, in the case of the NW Group, the feedback from NI reprocessors is that this has resulted in a dramatic deterioration of material quality, seriously compromising the ability of these materials to be reprocessed in NI. The drive for higher quantities in this case is directly impacting on quality right now, and could get much worse, especially if Councils decide to include glass in comingled collections. Not only would this almost certainly result in paper and plastic that could not be reprocessed locally, it would also produce glass that is unfit for remanufacture, and would only be fit for road aggregate use (an activity with marginal economic and environmental benefits). Textiles, which have also been added to the NW contract, once comingled are usually considered useless by the industry (see comments made by Cookstown Textiles in the appendix).

Our view is that the measures outlined by the DoE are simply not strong enough to head this risk off. It is also worth noting, that while the other Devolved Regions, and the RoI have instigated a number of measures to address quality, none have as yet resulted in significant improvements in the quality of materials purchased by UK reprocessors. This is dramatically illustrated by the responses given by a number of UK reprocessors to a question posed to them on current quality – please see appendix 1.

The Welsh Assembly Government, which for some while has been proactive in pursuing quality recycling systems has tried to persuade Welsh Local Authorities to adopt better quality systems. Their recent extension of this approach to restrict grant money only to kerbside sort approaches may persuade some local authorities to shift systems, but on its own still unlikely to be enough to change most. Most Local Authorities have invested in wheeled bins, refuse collection vehicles and contracts that are unsuitable for better quality approaches. Their reluctance to change system is therefore understandable, even though a strong financial case can be made for making the transition. Far too often decisions are made that compromise on quality, rather than changing the system used.

It is our strongly held view that the only effective method of achieving change is to set the legal parameters in which local authorities and their contractors operate. We believe that it is very reasonable for the NI Assembly to ensure that the growing economic activity of adding value to these materials, with the jobs and wealth this is generating, is protected locally. It is simply not acceptable that local authorities carry out recycling systems directly or through a third party, resulting in materials that are not of suitable quality for local remanufacture, and subsequently require to be exported for further sorting overseas.

We do not want to prevent international trade in recyclables, but we do want to prevent the continuation of an export market that exists purely as a result of poor quality recycling.

We would like to respond to a few specific points in the letter.

The references to the WRAP study on MRF quality, (MRF Quality Assessment Study, Material quality assessment of municipal MRFs within the UK, Nov 09) correctly state that some MRFs are able to produce quality material. However, one could also reasonably draw the conclusion from the report that at least 75% of the MRFs sampled produced materials that are not suitable for reuse by UK reprocessors.

Para 3, Page 2

Material	Standard UK specification (percentage of contamination acceptable) *	Best 25% of MRFs	Middle 25% of MRFs	Worst 25% of MRFs
News and Pam	2%	< 4.6%	4.6% - 15%	> 15%
Mixed paper	3%	< 3.2%	3.2% to 25.3%	> 25.3%
Mixed plastics	10%	< 6.9%	6.9% to 26.6%	> 26.6%
Card	3%	< 4.8%	4.8% to 12.0%	> 12.0%
Alu cans	0%	< 0.9%	0.9% to 4.6%	> 4.6%

Figures from exec summary of WRAP report.

*information in this column is added by Bryson to indicate industry norms.

It would also be reasonable to state that a very substantial proportion of the MRFs studied are operating at such high contamination levels, that any exports sent from these plants would or should be deemed by the Environment Agency to be in breach of Trans Frontier Shipment Regs, and should actually result in prosecution of the companies involved. The table above is an extract taken from the executive summary of the WRAP report.

You may also wish to refer to another WRAP document named 'Choosing the Right Recycling System' June 2009, in which WRAP states 'Whilst it is true that considerable success is being achieved by some newer MRFs, even they are unable to deliver the levels of quality achieved by kerbside sort systems.'

Para 1, Page 3

The Rethink Waste Fund is welcome, and we hope that it will increase the quality as well as the quantity of recycling. We note from the evaluation criteria that 15% of scoring system will be for quality recyclate 'The proposed end markets or outlets for the materials collected and the quality of the recyclables collected. Schemes that result in higher added-value outputs will score more favourably.' Our view is that producing quality recyclate should be a prerequisite for receiving grant aid, given the significance of this issue to the NI reprocessing industry. However even if

this was achieved, it is unlikely in it's self to result in the shift in systems required by local authorities.

Para 3, Page 3

Quality protocols for Councils. This could be an interesting development, however it is unlikely to encourage Councils to shift systems unless used mandatorily. We also note that the one example given, rejection rates from MRFs, is by no means an indication of good material quality. In fact, it is often the case that MRFs with low reject rates in effect 'sell' items of contamination that are mixed in with their loads of recyclables. All four reprocessors would appreciate the opportunity to contribute to the establishment of these standards.

We would like, once again to thank the Environment Committee for the opportunity to enter into this debate. To conclude, we believe that there are two steps that the Department could take would create sufficient momentum to change the direction of future recycling plans.

The first is a relatively small step that could be taken to extend the remit of the Environment Agency who already regularly visit MRFs (they specifically look at the quality of materials), to include a bi-annual unannounced visit and sampling of materials. Materials could then be tested against an agreed UK standard. Improvement notices would then be served against MRFs that fail to reach the standard.

The second is to direct future funding to approaches to recycling that are known to be reliable at providing quality recyclables.

We would of course be delighted to provide any further views.

Yours sincerely

Eric Randall

Appendix 1

Views of UK reprocessors

There has been a concerted campaign from UK reprocessors for the last three years to tackle the materials quality issue. This is supported by a large majority of packaging recycling industry. www.realrecycling.org.uk

To give a recent example I have copied a section of a speech made on 24 June 2010 from Dr Wolfgang Palm, CEO of Palm Paper, at the opening of Europe's newest plant, based in Kings Lynn, East Anglia. (Quote taken from lets Recycle.com 24th June 2010)

"Commingling is a disaster for the paper industry. Our customers ask for a very high quality and paper from commingled sources can cause problems."

Dr Palm said that using materials recycling facilities "cannot solve the problem" saying that collecting paper separately is the solution. "If you do this in a small way there are not additional costs to the system."

To assist the Environment Committee in their deliberations, we sent an email to the buyers of materials in a number of GB and NI reprocessors, asking specifically if the measures they have seen adopted in their region have made any improvements in the quality of materials received:

Looking at the quality trends over the last 5 years, is the quality of the materials you are currently receiving from MRFs generally

- 1 Getting a lot better, and you now have very few concerns
- 2 Getting a bit better but quite a lot has still to be done
- 3 Staying about the same as before and still proving a serious problem
- 4 Getting noticeably worse
- 5 Getting dramatically worse

They responded as follows:

Material	Company name	Rating 1 getting a lot better, to 5 getting dramatically worse
Paper	Hutamaki, NI	Overall 4 but with strong regional differences
Paper	Shotton, GB	3
Paper	Aylesford, NI	5
Plastic	Cherry Polymers, NI	4-5
Plastic	Linpac, GB	4
Plastic	Chase Plastics, GB	4-5
Glass	Berrymans GB	4-5
Aluminum	Novelis, GB	3

Each provided a brief comment which is shown below:

Huhtamaki 22nd June 2010

Hi Eric,

From Huhtamaki (Lurgan) we have seen a dramatic deterioration in the quality of the co-mingled waste paper sourced in the North West Group Five years ago the the plant sourced 100% of the recovered paper requirements from this area through Glassdon Waste However over the last 12 months we have had to switch almost completely away from this material due to the high waste levels in this supply, now run by One 51 The level of contamination prohibited the plant from running the pulping system The plant now is sourcing cleaner material from a blended co-mingled/kerb side sort mix in the Arc 21 region, and also 100% kerb side sort from Banbridge

The supply of this is currently limited and to fill the remaining needs higher grade material (OIN) is being sourced

A quality clean local material is essential to our business success.

Best Regards

Jeff Kearon

Logistics Manager
Huhtamaki (Lurgan) Ltd
Inn Road, Dollingstown,
N Ireland
BT667JN

Shotton Paper (UPM-Kymmene (UK) Limited) 23rd June 2010

Eric,

My answer is No.3. Suppliers achieving consistent reliable quality is a constant concern.

Best Regards

Craig Robinson

Head of RCP Sourcing – UK & Ireland
RCP Resource Management
UPM-Kymmene (UK) Limited
UPM Shotton
Weighbridge Road
Shotton, Deeside
Flintshire CH5 2LL
United Kingdom

Aylesford Newsprint

From: Perkins, Andrew [andrew.perkins@aylnews.com]
Sent: 21 June 2010 12:19

Eric

Without question the average quality we receive is 5. Getting dramatically worse, to the point where we have imported material rather than buy some of the poorer quality produced more locally.

Regards

Andrew

Cherry Polymers

From: Stefan Cherry [stefan@cherryplasticsgroup.com]

Sent: 24 June 2010 14:36

Hi Eric

From our view we would see it as a 4 heading to a 5 at present, however there are big variances in the quality of materials between different MRFs, there are MRFs producing materials that are 2/3 and there are MRFs producing a bad 5.

For us the best material is kerbside collection bottles, for us these are a grade 1.

Its quite a worrying factor for us as a reprocessor as the quality of the materials are dropping, like every other reprocessor we need volume to keep our plants running, but our plants cant handle grade 5 materials as they are struggling in a big way on grade 4 materials, what will happen all the local reproccessors and local recycling when it gets to the stage we cant accept the materials at all, and we are not far from that at the moment on some of the grades from a certain number of MRFs.

Kind Regards

Stefan Cherry

Development Director

Linpac Packaging Ltd (Plastic)

From: Bernard Chase [mailto:Bernard.Chase@linpac.com]

Sent: 21 June 2010 11:51

Dear Eric,

Initiatives are generally pointless and ineffective as they allow waste management companies to claim to be doing one thing whilst actually doing another ('do as I say, not as I do'). The evidence of the recent past is that having moved away from source separate collection of recyclables in favour of commingled collection of recyclables, the waste management sector are now focussed purely upon collection targets and speed of throughput at the expense of any quality targets and the needs of local reproccessors. They rely largely upon the Far East markets to provide the outlet for their poorly sorted low quality outputs and want nothing to do with quality measurement let alone quality standards as this will slow them down and impact on their profits. Meanwhile, Government and its agencies stand idly by as they have no wish to place any obstacles in the way that might endanger achievement of their precious 'targets'.

In answer to your question, 4 would be my answer.

Regards,

Bernard Chase

Purchasing Manager
LINPAC Packaging Limited

Plastics Recycling Division
Newton Lane
Allerton Bywater
Castleford
West Yorkshire

Chase Plastics

From: Jessica Baker [jessica.baker@btopenworld.com]
Sent: 21 June 2010 11:53

Chase Plastics Ltd experience in the commercial polythene waste sector is a 4. But I would like to add that the household plastic stream is about to do a 5. Since mixed plastics are going to be 'thrown' into the household recycling bin. Without altering the current weight based targets, and while the system supports exporting to deliver those targets, there is going to be little physical reprocessing going on in the UK in the future. Collection and lots of pre-sorting will be the principal recycling activities. ie waste management by any other name, with the end result not being landfilled in the UK, but exported, where the contamination material will end up in foreign landfill instead.

Jessica Baker

Chase Plastics Ltd

Berrymans Glass

From: Mick Keogh [mkeogh@berryman-uk.co.uk]
Sent: 21 June 2010 13:29

Good afternoon, Eric

The glass we receive in increasing quantities is from MRFs as result of commingled collections.

Negligible amounts of this are suitable for remelting where the real environmental benefits lie and the vast amount of material would fall into your categories 4 & 5.

Regards

Mick Keogh

Reuse Collections Ltd
T/A Berrymans

Novelis

From: Andy Doran [andy.doran@novelis.com]
Sent: 24 June 2010 10:20

Hi Eric,

I think it should be a straightforward answer to your question but in reality it is more complex, there are certain MRF operators (yourselves included!) who I think I could happily categorize in the "2 Getting a bit better but quite a lot has still to be done", but I guess in reality and in particular if I consider the last five years as the timeframe there are still a large number of companies and individual sites from which Novelis cannot consider receiving material. Therefore overall I think you should put me down as a 3 "Staying about the same as before and still proving a serious problem"

Regards

Andy

NOVELIS

Andy Doran
National Manager - Novelis Recycling
Novelis Latchford
Latchford Lock Works
Warrington WA4 1NN
UK

Other responses

Responses from NI companies that do not receive raw materials from comingled sources, because either they have ruled them out as an option (textiles), or they are concerned that their introduction into the co-mingled system would be very damaging to their business.

Quinn Glass

From: Fiacre.ODonnell@quinn-group.com
Sent: 28 June 2010 15:47

Attachments: Letter from DoE to Env Committee re quality June 18 10.pdf; response to DoE letter June 2010.doc

Eric,

..... At best cullet used for roads is neutral in terms of savings on carbon emissions, whereas in comparison the environmental benefits in glass manufacture are huge. Quality is of paramount importance to us and our customers. We consider quality not only from the finished container we ship out to our customer, but in all our processes we use to make that container. This includes the quality of our raw materials we receive in, thus we require cullet to be of the same level of acceptance as any of our other raw materials.

Regards

Fiacre

Cookstown Textiles

From: Peter Fisher [Peter@c-t-r.com]
Sent: 28 June 2010 10:57

Eric

I concur with the content of your letter but stress that CTR does not buy clothes that have been co-mingled. It just doesn't work for us -- any experimenting we have attempted with clothes that have been cross-contaminated due to co-mingling. This results in us landfilling them at considerable expense. CTR has now taken the decision to abandon any attempts to salvage clothing/textiles that have been co-mingled. It absolutely does not work in our particular industry unless you are prepared to wash and dry the clothing. The environmental and financial implications of this (we have costed this out at length) make it a non-starter.

Hope all is well.

Peter

Paul Butler - Assembly Question to Minister re recycling

Assembly Questions

Mr. Paul Butler (SF-Lagan Valley) – To ask the Minister how many of the 26 local councils allow households to recycle glass products in their recycling bins; and what steps he is taking to ensure that all local councils allow households to recycle glass products in their recycling bins.

Answer – At present nine local councils provide kerbside glass recycling collection scheme. In some of these councils the service is available to all households whilst in others there is partial coverage. Overall, 202,914 households or 28% of all households in Northern Ireland have a kerbside glass collection service.

I am committed to improving Northern Ireland's recycling performance and am keen to support local councils in their efforts to put in place the necessary recycling infrastructure to enable more waste materials, including glass, to be recycled.

Whilst decisions on the collection of waste and the type of container made available to householders for this purpose are a matter for councils, as set out in Articles 20 and 21 of The Waste and Contaminated Land (Northern Ireland) Order 1997, my Department is taking forward a range of initiatives to assist councils in their efforts to boost recycling of key waste streams including glass.

I launched the Rethink Waste Fund on 28 May which will provide an initial £3.13m capital funding to councils to bring forward initiatives to boost recycling of a range waste streams including glass. In addition, the £1m funding provided by my Department each year to the Waste and Resources Action Programme (WRAP) has enabled WRAP to provide advice and support to local councils on a range of recycling issues including advice on establishing glass recycling collection systems.

I have asked my officials to commence work on a draft recycling policy which will consider the potential to recycle more of key waste streams, the potential to produce higher quality recyclates and the interventions necessary to bring this about. It is anticipated that the draft policy will be issued for consultation in the autumn.

Departmental Waste Recyclates Briefing



Central Management Branch
10-18 Clarence Court
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BT2 8GB

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Your reference:
Our reference:

Date: 10 September 2010

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast BT4 3XX

Dear Alex

Re: Request from the Committee for a Briefing from Officials on Departmental Initiatives to Improve: A) Recycling Rates, and; B) The Quality of Recyclates

At the Environment Committee meeting of 15 June, the Committee considered the Department's response of 8 June on the potential to include recycling provisions in the Waste and Contaminated Land (Amendment) Bill. Members subsequently invited Departmental officials to attend the Committee meeting on 16 September to brief Members on the work being taken forward by the Department to achieve improvements in:

- a) recycling rates, and;
- b) the quality of recyclates.

Considerable progress has been made over the last ten years in improving recycling levels across Northern Ireland (NI) as evidenced by the sharp increase in NI's recycling rate from 4.9% in 1999 to 34.4% in 2008/09. This is due to the combined efforts of the Department, local councils, the Waste Management Groups, key stakeholders and householders. Much further progress will be required, however, if Northern Ireland is to meet the statutory EU target of 50% recycling of household waste by 2020.

The Department also recognises that waste is increasingly perceived as a valuable resource which, through effective management, has the potential to generate substantial environmental and economic benefits. Realising that value is dependent on the quantity and quality of the materials captured for recycling.

The Department is committed to working with local councils, the Waste Management Groups and key stakeholders to deliver further improvements in Northern Ireland's recycling rates and in the quality of recyclables and is taking forward a range of initiatives (with its partners) to achieve this, namely:

- a) Rethink Waste Communications Campaign
- b) Rethink Waste Capital Fund (circa £5m)
- c) Rethink Waste Revenue Fund (£200k)
- d) Waste and Resources Action Programme – Annual Funding (£1m)
- e) North South Market Development Steering Group
- f) Quality Protocols Programme
- g) All Island Plastics Recycling Study
- h) Recycling Standards
- i) Recycling Policy Paper

Further detail on each of the above activities is provided in Tab 1.

I trust this information is of assistance, however, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO

[by email]

Tab 1

Response to Environment Committee

Introduction:

The Environment Committee has requested a briefing by Departmental officials on steps being taken to improve the quantity recycled and the quality of recyclates. A full response is provided below.

Current Recycling Rates and Progress to Date:

Northern Ireland's household recycling rate in 2008/09 (the most recent annual data available) stood at 34.4%. This is a marked increase from the 1999 rate of only 4.9% and reflects the combined efforts of local councils, the three Waste Management Groups and key stakeholders working in partnership with the Department to improve recycling performance. The Department continues to work closely with its key partners to seek to boost recycling activity across all areas of Northern Ireland and to improve the quality of the materials collected for recycling. It is clear that significant progress has been made to date.

The Department recognises, however, that much further progress will be required if Northern Ireland is to meet the statutory EU target of 50% recycling of household waste by 2020.

In addition, the Department recognises that waste is an increasingly valuable resource which has the potential to generate environmental and also economic benefits. Realising that value, however, is dependent on both the quantity and quality of the materials captured for recycling. A significant factor determining the tonnage and quality of recyclate subsequently produced is the method used to collect and sort waste materials.

Departmental Initiatives to Improve Recycling Rates/Recyclate Quality:

A range of policy levers are required to achieve sustained increases in recycling performance and in recyclate quality including:

- Changing behaviours and attitudes - Informing and educating householders, businesses etc on the value of recycling and on the need to segregate waste into appropriate containers to facilitate high volume and high quality recyclates
- Ensuring adequate and appropriate waste collection and treatment facilities are in place and providing funding where necessary.
- The provision of training and guidance to Councils on methods to improve the quantity/quality recycled (WRAP NI currently provide this service in NI)
- The introduction of "quality protocols" for various waste streams (to boost recyclate quality)
- The provision of training and guidance to MRF operators on improving recyclate quality (WRAP NI currently provide this function in Northern Ireland).

Consequently, the Department has identified and is implementing a variety of initiatives which (directly or indirectly) will contribute to achieving further improvements in recycling activity and in the quality of recyclates, specifically:

- a) Rethink Waste Communications Campaign
- b) Rethink Waste Capital Fund (circa £5m)
- c) Rethink Waste Revenue Fund (£200k)
- d) Waste and Resources Action Programme – Annual Funding (£1m)
- e) North South Market Development Steering Group

- f) Quality Protocols Programme
- g) All Island Plastics Recycling Study
- h) Recycling Standards
- i) Recycling Policy Paper

Further detail on each of these initiatives is outlined in the following sections.

A. Rethink Waste Communications Campaign

Northern Ireland's Rethink Waste campaign, run by the Department, aims to raise awareness, encourage best practice and achieve behavioural change among households, and the business, community and education sectors. Research indicates that changing behaviours and attitudes to how waste is managed is critical to achieving high recycling rates and encouraging prevention and re-use.

The campaign seeks to effect a cultural shift towards better waste prevention and waste management and improved environmental quality in Northern Ireland. A three year Communications Action Plan will use a variety of communications methods to encourage waste prevention and highlight the Reduce, Reuse and Recycle message.

Food waste will also be targeted through a Northern Ireland version of the Love Food Hate Waste campaign. The Rethink Waste website www.rethinkwasteni.org was launched in March 2010 and was the first step in this campaign.

The site contains carefully tailored information for each target group, and aims to engage the public through user friendly, interactive features. There is a recycling centre locator, which the public can use by inputting their postcode and the material to be recycled, with a map to display the nearest recycling facilities. The Rethink Waste website also acts as an effective portal and signpost to partner organisations, with a focus on sharing best practice across different sectors

The Campaign will contribute to changing householder, business and the community sectors approach to waste and help boost recycling rates, promote the correct approach to sorting waste for collection in recycling containers and in turn help reduce contamination and improve recyclates quality.

B. Rethink Waste Fund (Capital)

Minister Poots launched Round 1 of the Rethink Waste Fund on 28 May 2010 with an initial capital funding allocation of £3.13m. The purpose of the Fund is to provide funding to local councils for initiatives which will boost the quantity and quality recycled. The funding available is for capital items/equipment eg collection vehicles, bins, home composters, infrastructure works at household waste recycling centres (HWRCs).

There has been a very high level of interest in the Fund and 38 applications were submitted by councils across Northern Ireland. On 3 September Minister Poots announced that 16 projects would be offered £2.83m funding having met the selection criteria and passed the panel assessment. The successful projects include glass collection schemes, food and garden waste collections, improvements to household waste recycling centres and home composting schemes. A full list of the projects which have been offered funding (including a brief description of the project) is set out in Figure 1 below.

It is estimated that these projects alone will divert an additional 12,000 tonnes of waste per annum (or 120,000 tonnes over 10 years) from landfill which will help boost recycling rates and reduce the burden on local ratepayers.

The projects will also help improve the quality of recyclables captured for further processing. For example, funding has been offered for projects which will enable glass to be collected separately for the first time or to extend existing glass collection services to a number of households and for separate food and garden waste collections. This will reduce the amount of these waste streams currently placed in the refuse bin and the tonnages sent to landfill. In addition, by enabling a greater degree of kerbside segregation of waste for collection and further treatment this will significantly improve the quality of recyclables generated.

Figure 1: Rethink Waste Fund – Round 1 Successful Projects

Applicant	Project Description
North West Region Waste Management Group (NWRWMG)	Provision of home composters for 5 councils in area
North Down Borough Council	Purchase of compactor to compact timber at Household Waste Recycling Centre (HWRC) and max use of existing skips
Ards Borough Council	Purchase compactor to compact timber at HWRC and purchase new roll on/off skips
Ballymena Borough Council	Purchase brown bins for food garden waste for 5000 households
Omagh District Council	Purchase home composters, brown bins and caddies for food/garden waste and purchase of collection lorry
Dungannon & South Tyrone BC	Funding for food and garden waste Collection, HWRC and Home Composters
Strabane District Council	Extension of glass collection to 5,500households
Ballymoney Borough Council	Upgrade of Civic Amenity site and HWRC
Magherafelt District Council	Mixed glass collection
Down District Council	Funding for HWRC
Larne Borough Council	Funding for HWRC
Cookstown Borough Council	Funding for a transfer station (storage facility) for food waste - would enable council to collect food waste in brown bin for first time
Ballymoney Borough Council	Purchase/install concrete wall units to recycle more timber at recycling/transfer facility
Lisburn City Council	Purchase 2 vehicles for 3000 households for food waste and dry recyclables. Purchase of green and brown bins.
Belfast City Council	Storage facilities for bulky waste
Antrim Borough Council	Purchase of mobile recycling unit for community events as currently only residual bin provided

Potential Pilot Programme:

The assessment process for Round 1 of the Rethink Waste Fund highlighted that there were a number of applications for projects in which there may be merit but which the panel considered had not been sufficiently tested in Northern Ireland to justify funding at this stage. Minister Poots has asked his officials, therefore, to develop proposals for a range of pilot projects covering new and innovative approaches to increasing recycling rates.

Potential For Round 2 of Rethink Waste Capital Programme

The Minister has earmarked £5m capital funding in total for recycling and reuse initiatives in the current financial year and is considering the potential for a second round of funding.

C. Rethink Waste Revenue Fund (£200k)

On 1 September 2010, the Rethink Waste Revenue Fund was launched by the Minister as part of the wider Rethink Waste Fund with a total funding allocation of £200K. The purpose of this revenue programme is to boost waste prevention, recycling and re-use, to reduce the quantity of waste sent to landfill and improve resource efficiency.

It is anticipated the fund will encourage a range of initiatives which are required to maximise the diversion of waste from landfill. Applications for up to 100% of revenue costs, to a maximum value of £150K, have been invited from the Community and Voluntary sector, councils, waste management groups and the private sector. They may make an application either individually, or, in partnership. The deadline for the receipt of applications is 2pm on 22 September. Eligible revenue costs include salaries, premises, travel & subsistence and promotional material. All applications submitted will be considered by an Assessment Panel and it is proposed that applicants will be notified of the outcome in October 2010.

D. Waste and Resources Action Programme – Annual Funding

The Department provides funding each year of circa £1m to the Waste and Resources Action Programme (WRAP). This funding enables WRAP to work with and advise local councils, businesses and householders on methods to improve the quantity and quality of recyclates. An element of this funding was allocated to Natural World Products to develop the in-vessel composting facility in Dunmurry and a key funding requirement was that compost produced at the facility must be produced to PAS 100 standard hence ensuring the production of a high quality recycle. The facility can treat up to 60,000 tonnes of organic waste from households across Northern Ireland each year and will make a significant contribution to improving both the quantity and quality of materials recycled.

E. North South Market Development Steering Group (NSMDSG)

Under the auspices of the North South Ministerial Council, Ministers from both jurisdictions agreed a number of waste projects to be taken forward by the North South Market Development Steering Group. The main elements of the North South Market Development Steering Group's Programme relate to initiatives on bulky waste, quality protocols (please see further detail below) and best practice case studies. The purpose of this work is to seek to develop markets for waste recycling and re-use north and south of the border - the quality and quantity of waste materials is a key factor in this regard.

The review of Bulky Household Waste items in Northern Ireland commissioned by DOE through the Waste and Resources Action Programme (WRAP) was published in June 2010. The project mainly examined the types, and quantities, of bulky items collected by Councils; organisations that form the 'Furniture Recycling Network', and the voluntary sector. The report made

recommendations in relation to improving the operation of this sector and identifies potential barriers to the expansion of this category of 're-use' which contributes to waste prevention. WRAP is working with rx3, project lead, on a proposal to take forward the NSMDSG project on bulky waste.

F. Quality Protocols

The Department is working with the Quality Protocols Programme in order to publish Quality Protocols for recyclates for Northern Ireland. The Programme is a joint venture (including joint funding) involving NIEA, Environment Agency, Welsh Assembly Government and WRAP. Quality protocols are agreed standards which clearly describe how certain low-risk, well-managed waste materials can be turned into quality products and thus removed from the waste regulatory controls. They provide confidence in the integrity of the resulting recycled products and therefore stimulate recycling markets. It is of benefit to businesses in the relevant jurisdictions as it reduces the regulatory burden associated with waste regulatory controls and, if viable, mutual recognition of standards could provide larger markets for recyclates and create a further incentive for recycling. The first three Quality Protocols for Northern Ireland, for compost, anaerobic digestate and processed fuel oil, were launched in July 2010. The Department plans to publish six quality protocols in 2010/2011.

In addition, the NSMDSG has also identified the quality protocols initiative as an area for collaboration and the Group is examining the feasibility of having protocols in place which would be mutually recognised by both jurisdictions. There has been close liaison and information sharing between Northern Ireland and Ireland with regards to quality protocols. DOE has offered an opportunity for the Department of the Environment, Heritage and Local Government (DEHLG) to be part of the gypsum Quality Protocol baseline survey, which would expand the baseline survey across Northern Ireland and the Republic of Ireland.

WRAP is working with rx3 on a best practice case study in relation to gypsum. Gypsum has been selected as a relevant case study as there is close working between the industry in both Northern Ireland and the Republic of Ireland, which has been driven by the landfill restrictions for gypsum in Northern Ireland and the established gypsum industry in Ireland.

G. All Island Plastics Recycling Study

DOE has availed of an opportunity offered by DEHLG to be part of a study on the generation and fate of recycled plastic waste across the island of Ireland. The primary objective of the study is to establish baseline information in respect of the quantity, quality, type, origin, flow and end-use of plastics across the island of Ireland – information which is critical to understanding key issues in terms of developing the market for recyclates and identifying where there may be a need for policy intervention. This study has now commenced with a completion date planned for the end of December 2010.

H. Quality Standards for Councils - The Department is preparing draft quality standards for waste collection/treatment systems for councils and will engage with councils in the near future on the proposed standards. However, it is hoped that the standards will assist councils in benchmarking and evaluating their performance against key criteria and encourage councils to take steps to improve performance where weaknesses are identified eg reducing the rejection rate from MRFs.

I. Recycling Policy Paper

The Department is reviewing its approach to recycling and work is underway on the development of a recycling policy paper. In addition, the Department has been engaged in discussions with the Waste Management Groups to identify where there may be further potential to improve the tonnages recycled and the quality of recyclates. This will help inform and shape the development of the Department's policy on recycling.

NIEA briefing for meeting ~ Fly Tipping Protocol



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Your reference:

Our reference:

Date: 10 September 2010

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast BT4 3XX

Dear Alex

The Environment Committee has requested that officials from the Northern Ireland Environment Agency attend its meeting on 16 September to discuss the Fly Tipping Protocol.

Please see attached briefing for the meeting which has been cleared by the Minister.

Should you require anything further please contact me directly.

Yours sincerely

Una Downey

DALO

[By Email]

Annex A

NIEA Role in Regulating The Waste Industry

Background

The Northern Ireland Environment Agency (NIEA) regulates the licensed waste industry, and pursues those making considerable profits from illegal and unlicensed waste activities, under the domestic legislation, the Waste and Contaminated Land (Northern Ireland) Order 1997.

The EU Waste Framework Directive says that Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

- (a) without risk to water, air or soil, or to plants or animals;
- (b) without causing a nuisance through noise or odours;
- (c) without adversely affecting the countryside or places of special interest.

It also states that "Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste".

Certain environmental crimes, including the unauthorised deposit, treatment or disposal, etc., of waste under Article 4 of the Waste and Contaminated Land (Northern Ireland) Order 1997, are now classified as serious crimes under the Serious Crime Act 2007.

Because of its very harmful environmental impact, illegal dumping goes directly to the DoE's interests in the Executive's Programme for Government. The presence of organised crime in illegal dumping of waste in NI and waste management has been highlighted by the NIAOs report into organised crime and officials from NIEA gave evidence to the PAC in April on this topic.

The need to remain vigilant, take robust enforcement action and the economic and societal impacts of organised crime have been well voiced by the ECU.

NIEA (formerly EHS) took over legal responsibility for waste management from the District Councils in December 2003, having had limited legal powers prior to that time. The change in regulator for the industry coincided with the EC Directive being transposed in NI.

During 2002, routine regulatory activity had revealed that there were a number of serious problems regarding waste management in NI and illegal dumping of ROI waste in NI. In addition, there were few registered carriers. Problems were severe enough to have attracted the participation of organised criminality and there was evidence that criminals were taking over previously legitimate waste businesses to further their illegal activities with a veneer of respectability. The environmental and human health issues associated with the illegal activities are severe and have prompted the European Commission (EC) to begin a number of infraction cases. Strategically (based on past environmental enforcement experience and the techniques of other law enforcement agencies) it was necessary to deal with enforcement in this key area in order to disrupt and deter illegal activity, protect the legitimate industry and present a defence to the EC.

The licensed waste industry, i.e. waste management facilities (both Council and privately owned) and landfills, is overseen and regulated by NIEA's Land and Resource Management Unit. Their remit covers waste management licensing, permitting, carrier registration and producer responsibility

ECU investigates and instigates legal action against serious and persistent waste offenders, whose activities generate major environmental repercussions. Their actions are essentially an economic crime driven by the desire to make financial gain. The involvement of criminality prevents the legitimate waste industry from being able to compete economically in the market for waste disposal and recycling and could, if left unchecked, result in its disappearance.

Illegal waste in Northern Ireland stems from two sources: illegally disposed of household and municipal waste has historically been transported across the border from collections by private companies (the Republic of Ireland does not have centralised Council refuse collections), because of the landfill tax price differential. Domestically, the crime relates to disposal of waste from legitimate demolition/construction/excavation industries in landfill sites without paying landfill tax and in breach of environmental protection law, often involving transport in deficient lorries and falsifying documentation certifying proper disposal etc.

As you will be aware from recent publicity, NIEA is working with ROI authorities to progress the issue of repatriating the estimated 250,000 tonnes of waste from the Republic of Ireland that is deposited in Northern Ireland, and work has just finished at the first site.

Annex B

Role of NIEA's Environmental Crime Unit

Background

- NIEA's Environmental Crime Unit (ECU) was established as a distinct Unit in December 2008, separate from the regulatory functions overseeing the legitimate waste industry following recommendations made in 2007 by the Criminal Justice Inspectorate (CJI) review panel and commitments made by then Environment Minister Sammy Wilson MP MLA when NIEA was launched. However, the dedicated investigators in the Unit have been active against waste crime since 2003 (as part of NIEA's Land and Resource Management Unit), investigating cases of illegal dumping on a commercial scale.
- The CJI Report (October 2007) recommended that a single, separate enforcement unit should be established to draw together all of the enforcement elements of the Agency to produce a more coordinated and consistent approach to compliance and enforcement.
- Since tackling waste crime in 2003, the team has overseen successful prosecutions against 419 defendants, generating £1,074 m in fines, as well as a number of custodial and suspended prison sentences. NIEA has been instrumental in securing the first NI environmental crime case heard at the Crown Court and has secured the first environmental crime confiscation order ever in the UK.
- Due to the economic driver to waste crime, and the need for a further deterrent in addition to the higher fines and custodial sentences being imposed, ECU requested and received powers under the Proceeds of Crime Act (POCA). This has allowed ECU to extend its work to pursue and recoup the financial benefits accrued by serious and persistent environmental offenders causing the greatest risk of pollution.
- ECU has a team of trained and accredited financial investigators and financial intelligence officers in-house, who have secured 6 confiscation orders worth a total of £691,196. Further confiscation hearings are pending in the Crown Courts. Prior to ECU's Financial Investigators becoming accredited, the ECU worked in partnership with the former Assets Recovery Agency to secure a further 5 confiscation orders, valued at £833,019. This brings the total sum of confiscation orders secured to date to £1.52m and demonstrates

the considerable enforcement advantage in the confiscation approach as opposed to the fines approach.

- ECU is becoming increasingly intelligence-led and has shifted its focus to the activities of the most serious offenders who cause the greatest risk of pollution with the greatest negative impact on the economic competitiveness of the legitimate waste industry. It is hoped that the long term strategy of focusing on the major criminals will also reduce the levels of activity and hence the amount of waste disposed of. Our observation would be that many apparently small incidents of illegal waste management are caused by groups of businesses acting illegally. It is an efficient use of resources (mirrored by other law enforcement agencies) to tackle the individuals who are at the head of criminality and that is what ECU is involved with.
- While smaller scale reports do not result in NIEA staff visiting sites normally, they will be logged as intelligence and assessed for any possible connections to organised waste criminality. High priority will be given to incidents involving: large commercial scale deposits of waste; operation of waste management facilities without licences or permits e.g. vehicle dismantlers, landfill sites or the commercial scale disposal of non-inert waste (i.e. non-hazardous or hazardous).
- The ECU does not have a 'cut of point' of scale of cases that will be investigated. Rather, many factors are considered prior to taking enforcement action.
- An intelligence led approach, coupled with financial investigation, is developing as the effective means to deal with the offending and continues to produce tangible and encouraging results. The value of these confiscation orders is as exceeds the fines for all the cases taken by the team to date. The power of this legislation in providing a deterrent and in denying funds for further offending is immense.
- We cannot provide resources to carry out investigations of small-scale deposits of fly-tipped material and NIEA does not remove illegally deposited waste for disposal.
- ECU liaises with a number of regulatory agency partners, including HMRC, SOCA, the PSNI and District Councils and its ROI colleagues. It is represented on the Organised Crime Task Force's Criminal Finance Sub-Group and Cross Border Fuel Enforcement Group, and regularly participates in joint Agency operations. It also works with the media to raise awareness and combat the issue of illegal dumping.
- Although the proposed amendments to the 1997 Order will empower the Department to remove such waste, a key barrier to the Department's participation in such activity will remain, i.e. a lack of sufficient staff numbers and an infrastructure network (namely machinery and landfill sites). There is no current budget stream to absorb the significant costs of removing such waste either by contract or by developing in-house expertise and capability. To put this in context disposal of one tonne of non-hazardous waste costs in the region of £80 to £85 in NI at present which does not allow for cost of handling and transport.

Annex C

Prioritisation of Environmental Crime Unit

Background

If Northern Ireland does not take every available opportunity to follow EC Law (Waste Framework and Landfill Directives) by tackling the illegal deposit of waste by the illegal industry then Infraction proceedings are likely, with the European Commission recommending to the

European Court of Justice the imposition of substantial financial penalties on the UK for breaches of the EU Waste Directive

The power to fine member states was given to the European Court of Justice when the Treaty on European Union came into force (on 1 November 1993). Fines can either be in the form of a lump sum or a penalty payment (Article 228(2) EC).

Successive cases have been subject to progressively greater financial penalties. From 2009, the Commission has had the ability to refer cases of non-compliance to the ECJ more quickly than before, for financial penalties to be imposed. Financial penalties are calculated on a number of factors including the seriousness of the infringement (the waste that we have in the ground is indeed serious), the duration of the waste being in the ground (in some cases years) and the need to ensure that the financial penalty is a deterrent to further infringements. The potential future financial impact from Europe far exceeds the current extent of our problem.

In order to be compliant with EC requirements it is necessary to prioritise tackling of the illegal waste management industry. We are therefore not in a position to investigate the in excess of c. 1,000 incidents reported to us every year. Investigating what has often in the past turned out to be very small deposits of fly-tipped waste, or incidents where no prosecution is possible (for various reasons) is a poor use of our already extremely constrained resources - the current financial situation has left ECU almost 50% below staffing complement. We have utilised these resources in the best way possible by having our staff trained to PSNI investigator standards, whilst our specialist Financial Investigators maintain an ongoing professional development through the National Policing Improvement Agency. This has helped increase the number of cases being heard in the Crown Court and has reduced the scope for cases to be legally challenged on procedural grounds.

Experience has shown that small deposits of waste are often made casually i.e. by dumping from a vehicle at a convenient location such as an un-gated field, lay-by etc. In these cases it is unlikely that sufficient evidence of the identity of the individual who made the deposit can be identified for enforcement.

This is in direct contrast to the magnitude of waste deposits investigated by ECU, where the site is chosen deliberately and more often than not with a financial arrangement with the landowner. In these cases the amount of financial gain and the motivation of the perpetrators mean that no amount of education or advocacy will bring about a reduction in offending, however it may for casual deposits.

It would seem that a 'one size fits all' enforcement approach is not appropriate for all cases where offences of illegal dumping of waste are being considered. The ECU does consider a number of factors before deciding to adopt a case for investigation – these factors reflected in the revised Enforcement Policy, include the type and quantity of waste, environmental impact, history of previous offending and attitude of the offender.

Annex D contains some photographs of serious waste offending for information.

Annex D





Departmental response to Committee queries on Waste Bill and Contaminated Land (Amendment) Bill



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Your reference:
Our reference:

Date: 10 September 2010

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast BT4 3XX

Dear Alex

Re: Waste and Contaminated Land (Amendment) Bill – Clause by Clause Table

I refer to the clause by clause table for the Waste and Contaminated Land (Amendment) Bill which summarised the issues raised with the Committee in written submissions and oral evidence sessions.

I now attach the Department's response as requested. This paper will also form the basis for officials' attendance before the Committee on 23 September 2010.

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely,

Una Downey

DALO

Response to Environment Committee clause by clause analysis of Waste and Contaminated Land (Amendment) Bill

Clause	Issue	Department's Response
1. Fixed penalty notices for offences under Article 4	Generally supportive of clause (A21, LCC, NILGA, SWAMP, NDC, SWAMP) Clause should be amended to strengthen prosecuting powers as proposed in consultation i.e. to shift the burden of proof from enforcing authority to accused (BDC, SG, NDC, NILGA) the absence of such an	Noted. In the consultation paper the Department asked for views on its proposal to provide a revised definition of an offence relating to the unlawful deposit of waste. The policy consultation paper had proposed amending existing legislation to provide that an

Clause	Issue	Department's Response
	<p>amendment will pose a significant impediment to enforcement and there are precedents. NIEA have found the existing wording to be an impediment to bringing offenders to justice (BDC) Suggested amendment to Article 4(1)(a) and (b): '4. - (1) Subject to paragraphs (2) and (3) a person shall not - (a) either: (i) deposit controlled waste; or (ii) cause controlled waste to be deposited; or (iii) permit controlled waste to be deposited, in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence; (b) either: (i) treat, keep or dispose of controlled waste; or (ii) cause controlled waste to be treated, kept or disposed of; or (iii) permit controlled waste to be treated, kept or disposed of,</p>	<p>offence is committed in any instances where an unlawful deposit of waste is made, whether knowingly or otherwise. The objective was to shift the burden of proof from the enforcing authority to the accused and make it easier to prosecute waste offences. This proposal prompted strong negative reactions from several respondents. Some cited a fear that the change would impact negatively on farmers and/or landowners – who may well be innocent victims of illegal waste offences. Several respondents also outlined human rights concerns. While the legislation would have provided a defence for those who are innocent of any offence, the Department recognised these concerns and decided not to proceed with this proposal. In preparing its response on this issue, the Department referred the proposal to the Office of the Legislative Counsel (OLC). OLC has advised that this proposal does not seem to have any practical effect. On the suggestion of removing "knowingly" from the offence, OLC state that the prosecution are still required to prove that the accused "caused" or "permitted" the activity and doubt whether simply removing "knowingly" will actually prevent this defence being run in the future. Further, OLC suggests that the proposed new Article 4(1)(d) merely duplicates the existing defence in Article 4(7)(a) which applies to all Article 4 offences.</p>
	<p>in or on any land, or by means of any mobile plant, except under and in accordance with a waste management licence.' A new paragraph could be added to the clause to ensure balance between effective enforcement and protection of responsible persons: Article 4 (1) (d) 'Where a person is charged with</p>	<p>The Department maintains its position that this provision should not be included in the Bill.</p>

Clause	Issue	Department's Response
	<p>an offence under article 4(1)(a)(ii), 4(1)(a)(iii), it shall be a defence to prove that he exercised all reasonable care to prevent the deposit in question. Likewise, in the case of a person charged with an offence under 4(1)(b)(ii) or 4(1)(b)(iii), it shall be a defence to prove that he exercised all reasonable care to prevent the treatment, keeping or disposal in question'. (BDC)</p>	
	<p>Guidance should be provided in partnership with councils outlining circumstances for use of fixed penalty notices to ensure consistent enforcement (A21, SG, LCC, NILGA, ODC, SWAMP, NDC) and avoid offenders taking advantage of differences between councils (A21)</p>	<p>Agreed. The Department proposes to prepare guidance on this issue and will consult with councils and the Waste Management Groups in drawing this up. However, since use of these powers will be discretionary, differences between councils may still arise. It is open to councils or groups of councils to reach agreement if they feel that inconsistencies are becoming a problem in tackling flytipping offences.</p>
	<p>Fixed Penalty Notices should be set at a level that acts as a deterrent, e.g. £200 and regularly reviewed (NILGA, NDC, A21) and guidance, which should be produced in partnership with the waste management groups, is needed to determine a set of criteria for when fixed penalty notices should be used (SWAMP, NILGA, A21)</p>	<p>The Department accepts that set fines - rather than a range – may help promote consistency of approach across councils. However it may on occasion be difficult to differentiate between "domestic waste" and minor commercial offences; this in itself may lead to inconsistencies in approach.</p>
	<p>Fixed penalty notices should be set at a £200 for domestic waste and £500 for minor commercial waste (NILGA)</p>	<p>On balance, the Department prefers to legislate for a range of offences. It accepts that the upper limit could be increased although it is of the view that £400 would be a more appropriate figure than £500 given the comments above and the need to avoid too large a variation in the range of available fines. In addition, the Department believes that a lower limit of £200 is too high given that fixed penalty notices are intended as a quick economical way of penalising smaller-scale offences. The level of fine should be sufficient to act as a</p>

Clause	Issue	Department's Response
		<p>deterrent but not so high as to lead to non-payment and as a fixed penalty notice for a litter offence is currently £50, it is thought appropriate that the 'entry point' for a flytipping offence be set at £100. In summary, the Department feels that the legislation should provide for a range of fines of between of £100 to £400, that the need for consistency should be addressed in guidance, and, beyond that, that councils should be encouraged to work together to establish common procedures.</p>
	<p>Although councils will be able to use funds from fixed penalty notices to recover costs of offences, these are intended for smaller offences and councils will still be left with the burden of bigger offences (SWAMP)</p>	<p>The Bill, together with existing provision in the Waste and Contaminated Land (NI) Order 1997 ("the 1997 Order") (as amended by the Waste (Amendment) (NI) Order 2007) ("the 2007 Order") enables both the Department and councils to recover the investigation and enforcement costs of more serious offences through the courts.</p>
	<p>Need to consider how to address differences between domestic vs commercial dumping (NILGA, NDC) through development of a fly-tipping protocol before enactment of legislation (ODC, SWAMP)</p>	<p>Agreed. A Flytipping Protocol is of critical importance and discussions with representatives from the local government sector are ongoing in the development of such a protocol. The Minister is taking a close interest in this issue and has convened a meeting with local government technical experts to discuss the issue.</p>
	<p>Need for adequate funding as revenue from fixed penalty fines will not cover staffing and training costs (ODC, SWAMP) additional training will be necessary for councils before implementation (SWAMP)</p>	<p>The availability of sufficient resources to tackle fly tipping is a problem for both councils and the Department. This issue can not easily be resolved in the current economic climate. However the Minister believes that the best way forward is for the Department and the local government sector to work together to deal with flytipping more effectively. This working relationship should be underpinned by a Flytipping Protocol which determines 'who does what'. In time, as quantitative</p>

Clause	Issue	Department's Response
		data emerges on the scale of the problem – in this instance smaller-scale flytipping - this will inform any future bids for additional resources.
	Need clarity on who is responsible for clearing litter on land where no legal owner can be identified (ODC, SWAMP, BDC, SWAMP)	This is an issue which will need to be included in any Flytipping Protocol. However, realistically, both NIEA and councils will have to prioritise their clean-up and enforcement activities due to resource constraints and, unless there is a serious danger to health and/or the environment, they may not be in a position to clear illegally deposited waste from such land.
	Need clarity on which authority should deal with special hazardous waste (BDC, ODC, SWAMP) Special waste should be the sole preserve of NIEA and councils should not be involved in enforcing illegal special waste (BDC)	Hazardous waste should be dealt with in accordance with the Hazardous Waste Regulations (NI) 2005 and disposed of at an authorised facility in compliance with the Waste Management Licensing Regulations (NI) 2003. Responsibility for dealing with hazardous waste will need to be dealt with in the proposed Flytipping Protocol; the availability of infrastructure and resource implications will need to be addressed.
	New Article 4A(8) allows DOE to prescribe by regulation the form of a fixed penalty notice which will be subject to negative resolution which seems appropriate (ESR)	Noted.
	New Article 4A(10) allows DOE to alter the amount of a fixed penalty by order which will be subject negative resolution. Other Bills currently before the Assembly make powers to alter amounts of fixed penalties subject to draft affirmative procedure and the Committee may wish to amend Schedule 1 accordingly. (ESR) See Schedule 1	The Department accepts the need for consistency of approach. However OLC is of the view that Article 4A(10) does not require affirmative resolution. OLC points out that the provision merely sets parameters; it does not set the actual amount of the penalty. In addition, OLC states that while there may be cases – eg in particularly sensitive or politically controversial areas - where this type of power is subject to affirmative resolution, the majority

Clause	Issue	Department's Response
		of precedents are for negative resolution.
	The cap of £200 is too low – £300-£400 would be more appropriate (CTTEE)	See comments above.
	The wording of 1(11) should reflect that the offender will be charged an 'enhanced penalty' if they fail to pay rather than a 'discount' for paying early (CTTEE)	The wording is consistent with the existing provision for fixed penalties for waste offences (eg Article 5A of the 1997 Order). The Department acknowledges Committee concerns on this matter. However, rather than alter the provision as drafted, the suggested form of wording could be reflected in guidance on the use of fixed penalties, specifically in relation to the format of the fixed penalty notice itself.
2. Detention of seized property	Generally supportive of clause (A21, LCC, NILGA, NDC) Need clarity on which authority should deal with special hazardous waste (BDC, ODC, SWAMP) which should reflect the value money issues regarding its disposal (cheaper to establish a mechanism for disposing of hazardous waste, such as cat litter, centrally rather than each council going through a separate process on an ad hoc basis) (SWAMP) New paragraphs (3A) of Articles 5F and 42A contain further powers to make regulations in respect of seized property which will be subject to negative resolution which seems appropriate (ESR).	Noted. See comments above. Hazardous waste should be dealt with in accordance with the Hazardous Waste Regulations (NI) 2005 and disposed of at an authorised facility in compliance with the Waste Management Licensing Regulations (NI) 2003. Responsibility for dealing with hazardous waste will need to be dealt with in the proposed Flytipping Protocol; the availability of infrastructure and resource implications will need to be addressed. Noted.
3. Offence of failing to pay charge for subsistence of licence	Generally supportive of clause (A21, LCC, NILGA, NDC).	Noted.
4. Powers to require removal of waste unlawfully deposited	Generally supportive of clause (A21, LCC, NILGA, ODC, SWAMP, NDC)	Noted.
	To avoid duplication need agreement on which organisation will use the powers in any given circumstance (A21, LCC, NILGA) before bill is	Agreed. The Flytipping Protocol should determine this. The relevant powers in the Bill will not be commenced until a protocol has been agreed.

Clause	Issue	Department's Response
	implemented (BDC, SG, ODC, SWAMP)	
	Need a more constructive approach between councils and NIEA in the development of a protocol (ODC, BDC)	Noted. As outlined above, meetings involving both parties are ongoing.
	Concerned about landowners having liability to clean up land of illegally deposited waste (A21, LCC) and need to discuss this with Justice Minister (ODC, SWAMP)	It is anticipated that the Flytipping Protocol will encourage action to be taken to clean up illegally deposited waste on private land where the landowner is not suspected of any involvement in illegal activity. Realistically however, this will be limited by resource constraints on both NIEA and councils.
	Clarification required on who is responsible for clearing litter in the case of unregistered land (SWAMP)	See comments above. This is an issue which will need to be included in any Flytipping Protocol. However, realistically, both NIEA and councils will have to prioritise their clean-up and enforcement activities due to resource constraints and, unless there is a serious danger to health and/or the environment they may not be in a position to clear illegal waste from such land.
	Amendment to Article 28 of 1997 Order - Urgent need to address confusion that exists regarding who is responsible for dealing with special hazardous waste and recognition of the higher costs involved in disposal of special hazardous waste materials if councils are required to deal with them (SWAMP)	See comments above. Responsibility for dealing with hazardous waste will need to be dealt with in the proposed Flytipping Protocol; the availability of infrastructure and resource implications will need to be addressed.
5. Councils to enforce Articles 4 and 5 of 1997 Order	Generally supportive of clause (A21, LCC)	Noted.
	Councils must be given same powers of entry and investigation as Department under Article 5(7) (A21, LCC, NILGA) or powers under articles 4 and 5 will not be deliverable (NILGA, A21)	The Department intends to propose an amendment to the Bill which would give councils powers under Article 5(7) of the 1997 Order. This would allow councils to take enforcement action in the event of failure to present appropriate waste documents.

Clause	Issue	Department's Response
	Councils needs to be given adequate resources to take on the extra responsibilities (A21, BDC, SG, LCC, NDC, NILGA) and financial support for training (SWAMP)	As indicated above, the availability of sufficient resources to tackle flytipping is a problem for both councils and the Department. This issue can not easily be resolved in the current economic climate. However the Minister believes that the best way forward is for the Department and the local government sector to work together to deal with flytipping more effectively. This working relationship should be underpinned by a Flytipping Protocol which determines 'who does what'. In time, as quantitative data emerges on the scale of the problem, this will inform any future bids for additional resources.
	Must be clear demarcation of responsibilities between councils and NIEA (ODC, NDC, BDC, SWAMP) – as per England (NILGA)	See comments above. A Flytipping Protocol will set out this demarcation.
	A cut off point in tonnage quantity to demarcate the responsibilities of councils and NIEA might be better specified in legislation rather than guidance (NILGA, NDC)	The absence of comprehensive statistics for flytipping makes it difficult to firm up on a quantitative threshold. The Department acknowledges legitimate concerns in relation to the cost of such an exercise (estimated by local government to be between £350K and £500K). It also acknowledges the differing views as to the level at which the threshold should be set. For these reasons however, it seems more appropriate to identify an initial threshold and introduce arrangements on a pilot basis, to be kept under review. Specifying the threshold in a Flytipping Protocol will allow for flexibility of approach in relation to any future changes to this threshold. Further, it is acknowledged that – regardless of the level at which the threshold is set - both councils and NIEA will have to prioritise their activity according to resource constraints.
	Councils should accept responsibility for unlicensed waste disposal up to	See comments above. The Department's preference is for the

Clause	Issue	Department's Response
	20 tonnes which should be included on the face of the bill. (NIEA currently refusing to deal with quantities less than 20,000 tonnes) (NILGA, NDC, A21) Responsibility for the amount of illegally dumped waste between 20 and 20,000 tonnes is a grey area and incidences of illegal dumping will increase as landfill taxes rise if not addressed (NILGA)	quantitative threshold to be included in a Protocol rather than enshrined in legislation. It is not strictly correct to state that NIEA refuses to deal with quantities of illegally deposited waste of less than 20,000 tonnes. In practice, NIEA does not apply any specific threshold - although resource constraints and the Agency's Enforcement Policy lead towards a focus on larger-scale commercial activity.
	New enforcement powers are likely (in the short term) to lead to increased prosecutions and increased costs. (SWAMP, ODC).	Noted.
	Need to be mindful that some defendants will be eligible for legal aid and while the courts may award clean-up costs DOE or councils will still have to recover their own legal costs (CTTEE)	Noted.
6. Right of entry with heavy equipment or to domestic premises	Generally supportive of clause (A21, LCC, NILGA).	Noted.
7. Contaminated Land: pollution of waterways and underground strata	Generally supportive of clause (A21, LCC, NILGA, NDC)	Noted.
8. Appeals against remediation notices	Generally supportive of clause (A21, LCC, NILGA, NDC)	Noted.
	Is there a risk that PAC will be used to buy time – especially if there is no charge? (CTTEE)	Article 58(1) of the Waste and Contaminated Land (Northern Ireland) Order 1997 provides for appeals against remediation notices to be made within 21 days to a Court of Summary Jurisdiction where the notice is issued by a District Council, or the Planning Appeals Commission where the notice is issued by the Department. No fee can be charged by the PAC although a fee of £100 is chargeable for an appeal heard by a Court of Summary Jurisdiction under the Magistrates' Courts Fees (Amendment) Order (Northern

Clause	Issue	Department's Response
		<p>Ireland) 2007. There is currently no enabling power for the introduction of a fee for this type of appeal but the Department would be happy to consider an amendment of the Bill to that effect. The standard fee charged by the PAC for other appeals within its remit is currently £126. In the rest of the UK the similar provisions of section 78L of the Environmental Protection Act 1990 were amended by section 104 of the Clean Neighbourhoods and Environment Act 2005, requiring all appeals to be taken to the Secretary of State (in England and Wales) or the Scottish Ministers. No fee is chargeable for such appeals. The timeframe for the appeals process is the same UK-wide but will vary according to the precise procedure adopted. The maximum period for completion of the process is generally 19 weeks although there is provision for this to be extended by the appellate body in exceptional cases. Defra has advised that since this amendment took effect in England and Wales (2006) only two appeals have been initiated, both of which were in respect of a single case.</p>
9. Interaction with other provisions	Generally supportive of clause (A21, LCC, NILGA, NDC).	Noted.
	Should there be a timescale for final disposals? (CTTEE)	<p>The Department believes that existing legislative provision in this area is satisfactory. The 1997 Order provides the legislative framework for the management of waste on land. The general presumption in the Order is that removal of illegally deposited waste and/or appropriate remedial action should be carried out as soon as possible. Article 28 of the Order currently allows councils to serve notice on the owner or occupier of land on which waste has been unlawfully deposited. Such a notice can stipulate that the waste must</p>

Clause	Issue	Department's Response
		<p>be removed and remedial action taken within a specified time period (which must be at least 21 days from the date on which the notice is served). The legislation provides for a fine of up to £5,000 for non-compliance, and a subsequent daily fine of up to £500 for continued non-compliance. A key point is the need to serve notice to ensure that an appropriate time limitation is applied. This in effect gives councils the powers to set a timescale for the final disposal of waste – which could be as little as 21 days. This provides for flexibility of approach on a case by case basis; a set timescale could prove to be counter-productive, as it might encourage offenders to make maximum use of any such period. The Bill does not dilute Article 28 powers in any way but extends them to the Department, and also allows notice to be served on the person believed to have illegally deposited the waste – rather than just the landowner or occupier. We anticipate that a range of factors could be considered when setting the appropriate timescale for removal and/or remedial action in each instance eg the quantity and nature of the waste and site-specific environmental and health and safety risks. The most serious waste offences are likely to be dealt with as prosecutions under Article 4 of the Order (offence of unauthorised or harmful deposit etc of waste). Such offences are punishable by an unlimited fine and or imprisonment of up to 5 years. It can take some time to assemble the evidence needed to secure successful prosecutions for such offences, or even to bring alleged offenders to court. However the Department is committed to ensuring that illegal waste activity</p>

Clause	Issue	Department's Response
		is dealt with as quickly and effectively as possible.
10. Producer responsibility obligation regulations	Generally supportive of clause (A21, LCC, NILGA).	Noted.
11. Minor and consequential amendments and repeals	Generally supportive of clause (NILGA)	Noted.
12. Commencement	Generally supportive of clause but want development of a protocol in regard to fly-tipping prior to enactment of legislation.(NILGA, ODC, BDC, SWAMP, NILGA, A21) with a 'slush fund' for councils to access to cover costs of larger clean-ups in the interim (NILGA)	The Department's position is that the specific clauses which relate to councils' enhanced waste management powers will not be enacted until a Flytipping Protocol is agreed. It is possible that other clauses may require a different commencement date. Due to resource constraints –and the absence of definitive data on the scale of the problem – the issue of a 'slush fund' cannot be addressed at this point in time.
13. Interpretation	N/A	N/A
14. Short title	N/A	N/A
Schedule 1 - Amendments	The Committee may wish to consider whether Schedule 1 should include an amendment of Article 82 of the 1997 Order so that under Article 4A(10), 5A(10), 22B(5) and 42B(10) altering the amount of a fixed penalty are subject to draft affirmative procedure (ESR) – see Clause 1	See comments above. The Department accepts the need for consistency of approach. However OLC states that while there may be cases – eg in particularly sensitive or politically controversial areas - where this type of power is subject to affirmative resolution, the majority of precedents are for negative resolution.
Schedule 2 – Repeals	N/A	N/A
General Comments	Resources Councils should be provided with adequate resources from central government to enable them to implement their new powers (A21, LCC, BDC, SG, NILGA, SWAMP) and this should not fall to the rate payer (ODC, SWAMP)	See comments above. The Department accepts that funding is a problem and in the current economic climate this is not an issue that will be easily resolved. In addition, the Department is not in a position to quantify the resources required in the absence of definitive flytipping data – particularly in relation to small incidents of flytipping.

Clause	Issue	Department's Response
	Estimated costs for councils to gather data for DOE 350-500k. If landfill tax could be ring-fenced to deal with environmental issues (NILGA)	Landfill tax is a reserved matter and as such is the responsibility of HM Treasury. Since 2003/4, as a consequence of the Barnett formula, NI has received an allocation from UK landfill tax receipts. However there is no direct link between the area in which the revenue is raised and where it is spent. The use of all funding allocated through the Barnett formula is a matter for the Executive.
	Resources should not determine who deals with an incident – it should be the most appropriate organisation (A21)	The Department agrees with this statement. It would also contend that the Flytipping Protocol for England and Wales, - while providing a useful starting point - should not automatically be applied here. The Minister has therefore convened a meeting with local government technical experts, as a step towards developing a protocol that is workable in practice in NI.
	Enforcement Powers must be sufficient and effective deterrents and punishments (BDC, NILGA, A21)	Noted and agreed.
	Demarcation of responsibility There must be a clear demarcation of responsibility between NIEA and councils prior to enactment of the legislation (A21, LCC, NILGA, BDC, ODC, SG, SWAMP)	See comments above. The Department's position is that the specific clauses which relate to councils' enhanced waste management powers will not be enacted until a Flytipping Protocol is agreed. It is possible that other clauses may require a different commencement date.
	Of 250 formal referrals of fly-tipping to NIEA, action was taken in 1% of cases.	NIEA has always focused enforcement resources on the most serious incidents of illegal dumping of waste. This is due to risk of infraction for lack of industry regulation and the need to prevent environmental pollution or harm to human health. Often incidents reported by councils are of a minor nature and enforcement action is not taken

Clause	Issue	Department's Response
	<p>Quality of recycle In light of new pressures coming from EU to divert waste from landfill there is a risk that the quality of co-minlged collection systems will deteriorate as tonnage increases. Could the Bill include an amendment (to Articles 20/21?) of the 1997 Order to put in place targets for recycle quality that will ensure councils retain/meet quality as well as tonnage objectives for their recycled materials (CTTEE)</p>	<p>The Department is committed to promoting improvements in the quality of recyclates and a range of initiatives are currently being taken forward to achieve sustained improvements in this regard. This includes the £5m Rethink Waste Recycling Infrastructure Fund launched in May 2010, the £1m annual funding provided by the Department to the Waste and Resources Action Programme (to work with local councils to boost the quality and quantity of recyclates) and the Quality Protocols Programme (to enable certain waste materials to be classified as quality products). Financial incentives, the provision of guidance/advice and the establishment of standards are methods which have been introduced throughout the UK for this purpose. The Committee may wish to note that whilst all Devolved Administrations (DAs) have sought to improve the quality of recyclates through a range of measures, however, none have sought to introduce legislation for this purpose.</p>
	<p>Obligations relating to private land There must be no obligation on councils to clean up private land. If perpetrators got to know they could avoid landfill fees they would dump material knowing that if the landowner couldn't be found or couldn't pay the council or NIEA would clean it up. However the authorities should intervene in exceptional cases where there is an immediate threat to public health / risk of pollution (SWAMP) maybe a 'slush fund' could be established to fund large clean-ups or a mechanism to recoup costs from the NIEA for amount >20 tonnes (NILGA) but must not be borne by the ratepayer (SWAMP)</p>	<p>It is anticipated that the Flytipping Protocol will encourage action to be taken to clean up illegally deposited waste on private land where the landowner is not suspected of any involvement in illegal activity. This could entail pursuing the perceived offender, where this is appropriate. It is anticipated that the NIEA and councils would only act themselves to clean up private land in instances where there is an imminent threat to human health or of serious threat to the environment. Realistically however, activity will be limited by resource constraints on both NIEA and councils. Both NIEA and councils will have to prioritise their clean-up</p>

Clause	Issue	Department's Response
		and enforcement activities due to resource constraints.
	Working forum There is a need for a working forum to be established in which the DOE, NIEA and councils can meet regularly to consider enforcement matters (NILGA)	The Waste Programme Board (previously the Strategic Waste Board), chaired by the Minister, provides an opportunity to consider key waste management issues. However the Minister is interested in exploring further options for partnership working, particularly in tackling illegal waste activity. For example, on 14 September he convened a meeting with technical experts from councils to discuss the flytipping problem and inform future decisions on the development of a Flytipping Protocol. The Department is therefore interested in exploring options for such an arrangement, as a further development of this existing provision for partnership working between the Department, NIEA and councils. The remit of any such forum would obviously need to be discussed and agreed by key stakeholders.

Abbreviations:

A21 Arc 21 (Written Evidence)

Bdc Banbridge District Council (Written Evidence)

Sg Southern Group Environmental Health Committee (Written Evidence)

Lcc Lisburn City Council (Written Evidence)

Nilga Northern Ireland Local Government Association (Written Evidence)

Odc Omagh District Council (Written Evidence)

Swamp Swamp2008 (Written Evidence)

Ndc North Down Council – Late Response, Still To Be Ratified By Full Council (Written Evidence)

A21 Arc 21 (Oral Evidence – Where Different/Additional To Written)

Bdc Banbridge District Council (Oral Evidence – Where Different/Additional To Written)

Swamp Swamp (Oral Evidence – Where Different/Additional To Written)

Nilga Nilga (Oral Evidence – Where Different/Additional To Written)

Esr Examiner Of Statutory Rules Report On The Delegated Powers Of The Bill

Cttee Committee For The Environment

Ulster Farmers' Union (UFU) views on Waste Bill - flytipping

From: Kate Cairns [mailto:kmagill@ufuhq.com]

Sent: 23 September 2010 11:23

To: McGarel, Alex

Cc: Wesley Aston

Subject: Waste Bill- fly-tipping [Scanned]

Alex,

Below is a few points on fly-tipping from our response to the waste bill. The last point is probably the one that is most relevant.

Let me know if you need any further information.

Regards

Kate

- As part of its response to DOE's consultation document- Proposals for a Waste Bill the Ulster Farmers Union highlighted the issue of fly-tipping.

This is a big issue for allot of our members. Private farmland, particularly land interfacing with urban areas, is often an easy target for fly-tipping incidents, particularly during public holidays when bin collections days are disrupted. Under current legislation, public officials only have a legal requirement to remove fly-tipped rubbish from public places, roads etc. They are not obliged to remove fly-tipped waste from privately owned land. Although some local authorities and government agencies can be sympathetic about the problems of fly-tipping and in certain situations may help the landowner victim, in the majority of cases it is left to the land manager to remove, manage and pay for the disposal of dumped waste. In the case of serious incidents, which are clearly the result of organised criminal activity, or where the waste involved is considered hazardous, the costs of removal can be substantial. If the landowner fails to remove fly-tipped material sufficiently he could be prosecuted and made to cover all costs of a clean-up.

- By simply prosecuting a landowner, just because he owned the land, this does little to prevent future incidents and a landowner could potentially become a repeat offender, without actively committing any criminal act.
- It is impossible for landowners to fully prevent fly tipping, incidents which are often unknowingly deposited. The UFU believes current legislation is unfair, unhelpful and it is not in the public interest for farmers to continually bear the cost of cleaning up illegally dumped waste. For a long time we have been lobbying government for more support to

be made available to help farmers who are innocent victims of this crime. We feel that these proposals could only make the issue bigger and more unfair.

- It would be extremely unjust for landowners to be committing an offence even though it has been caused by factors outside of their control.
- It is worth noting, there may be cases where farmers buy land and later find controlled waste that had been previously buried. In these cases, farmers may not seek professional advice for fear of prosecution therefore the waste could end up causing more environmental damage because it has not been appropriately dealt with.
- The UFU considers it extremely unfair and unjust that the burden of proof could be simply shifted from the enforcing authority to the 'accused'. The Department, in conjunction with local councils, should be seeking to reduce/prevent incidents of deposits of waste, not simply issue fines to unknowing landowners. Enforcement authorities are best placed to implement an effective investigative procedure and it would be extremely unfair that the burden of proof could simply be left to the landowner.

GLASSDON Letter to the NI Assembly Environment Committee

GLASSDON



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28th September 2010

Dear Alex,

We have recently obtained a copy of a letter that was sent to the NI Assembly Environment Committee by Mr Eric Randall of Bryson Recycling, which makes serious and incorrect accusations regarding:

1. The quality of the dry recyclables collected by the North West Group and
2. The ability of Glassdon Recycling to process these dry materials to a standard that is acceptable to re-processors in the UK and Ireland.

We are obviously very concerned that the Environment Committee are only hearing one side of this story from a party who do not have any direct evidence to back up their claims but also have a vested interest in promoting their preferred method of collecting dry recyclables. We would also like to set the record straight with regard to the alleged quality issues and, in particular, how Glassdon's name as a respected, professional recycling company, has been called into question. Therefore we request that this letter be presented to the Environment Committee and the Minister for the Department for the Environment, in an effort to provide some balance to this debate.

Unlike the negative emphasis of the letter in question, we intend to concentrate our response on the positive aspects and benefits that a well managed comingled dry recyclable collection service can offer. We would also like to highlight the excellent record that both the North West Group and Glassdon have achieved over the last six years, under the current dry recyclables contract. However; first of all we do have to respond directly to the claims made by Huhtamaki, in their letter to Eric Randall of Bryson Recycling dated 22nd June 2010, which has been included in Mr Randall's appendices.

Glassdon entered into a 5 year contract with Huhtamaki (Lurgan), for the supply of "Mixed Paper" in 2005. Initially there was a good relationship between the companies and Glassdon did indeed supply 100% of Huhtamaki's requirements. However; the relationship became strained in 2008/09 because of pricing and Huhtamaki's perceived issues with the quality of Glassdon's paper. During 2007/08 Huhtamaki were being supplied recycled paper from Glassdon for a price substantially lower than that being paid by other paper re-processors. This is borne out by the fact that during the same period, Glassdon were selling their excess paper (of the same quality), to a number of other UK Mills with no complaints about quality.

When the supply contract between Glassdon and Huhtamaki came up for renewal in October 2009, Glassdon were of the opinion (based on wider market feed-back), that there were no quality issues and that they could achieve substantially higher prices for their paper than Huhtamaki were willing to pay. Therefore Glassdon were unwilling to enter into a new long term contract with Huhtamaki but could offer them a limited volume of paper on a month by month basis at the market rate. Since then Glassdon have continued to supply Huhtamaki a limited volume of paper at a substantially higher price than previously paid.



We would now like to address the wider subject of the quality of the dry recyclables collected by the North West Group and the ability of Glassdon to process these materials to a standard that meets the requirements of re-processors in the UK, Ireland and further afield.

Glassdon were awarded the contract to process comingled dry recyclables collected by the North West Group in 2004. This was a 5 year contract with the provision for a 2 year extension, which the North West Group awarded to Glassdon in 2009. Glassdon are very proud of the relationship we have developed with all of the councils in the North West Group over the last 6 years. Through close communication and excellent education of the public by the North West Group, it is our opinion that, having seen a wide variety of sources of dry recyclables, the materials collected in this region are among the cleanest available in the UK. This is supported by the fact that after the material has been processed through our MRF in Toomebridge, we achieve a final waste level (non recyclable materials), of on average 6%, though approximately 50% of this is plastic bags, which we are now recovering. This is set against the fact that the North West Group boasts the highest dry recycling rate (25.6% in 2008/09), of any of the regions in Northern Ireland.

As part of the process of being awarded the extension to the dry recyclables contract in 2009, Glassdon offered to improve their service, providing better value for money by including 6 additional waste materials in the comingled collection. These were; mixed plastic containers, Tetra Pak, Aerosols, Textiles, small WEEE, and batteries. These new materials have had no effect what so ever on the quality of Glassdon's outbound commodities. Mr Randall claims, in his letter, that adding more materials resulted in a dramatic deterioration of material quality, sighting the views of the named four local re-processors as the basis for this conclusion. We point out that aside from Huhtamaki, Glassdon does not supply these companies with material sourced from the North West comingled dry recyclables. However; we are and have been supplying various UK and Irish based re-processors and brokers with the commodities we have sorted from comingled collections and they are more than satisfied with the quality of these materials and are paying the top market prices for them. We have attached letters from three of these re-processors, SCA Paper, AWS Plastics and Textile Recycling Ltd, as evidence of their continued support and satisfaction with the quality of our materials. It is also worth pointing out that we have supplied Novelis with baled Aluminium cans for many years and they have never raised any issues regarding quality.

We are all aware that the debate over comingled collections verses kerbside sort is a very hot topic. Wrap have been very much in the pro-kerbside sort camp for the last couple of years. However; there are a number of very important factors that must be taken into consideration to balance this view;

1. We would refer the committee to an article in MRW (Materials Recycling Weekly) from 7th May 2010, regarding a review carried out by Environmental Consultants WYG, to highlight successful recycling schemes (of any design) and to re-examine some of the arguments regarding comingled collections. The key findings of this review are as follows: (we have attached copy of the full article for your reference)
 - 26 of the top-performing 30 English local authorities for dry recycling use comingled collections
 - WasteDataFlow information for 2008/09 showed local councils using comingled collection performed significantly better than those using kerbside sort collections, diverting on average 25% more tonnage even after allowing for MRF rejections
 - Using alternate-week collections of residual waste and comingled dry recyclables from wheeled bins, plus weekly food waste collections and chargeable garden waste collections, can produce recycling and composting rates of 70%!
 - There is anecdotal evidence that comingling can improve operational health and safety, public ease of use and street cleanliness

- MRFs produce recyclates from comingled collections that meet the specifications of reproprocessors in the UK and abroad, which is the only true and tangible test of Recyclate quality.

On contamination

- Overall MRF reject rates of 2-10.8% are typical, with 4% being the average
 - Contamination rates are much lower for modern MRF's that accept a wide range of materials
 - Discussions with UK reproprocessors indicate that materials from MRF's are just as acceptable as kerbside-sort ones
 - Some MRF's report contamination rates of less than 1% in paper bales, which meets the paper specification of typical UK mill requirements as suggested in PAS 105.
2. There is a growing trend of UK Paper Mills building their own fully comingled (including glass) MRF's! SCA being one who have built a MRF in Southampton and Shotton Paper (UPM-Kymmene (UK) Limited), one of Mr Randall's references, are currently building a fully comingled MRF in Deeside. There are 3 very important reasons for this;
- i. UK Paper mills need to secure greater volumes of recycled paper to supply their operations and they cannot capture sufficient volume via kerbside-sort systems
 - ii. Local authorities are under pressure to recycle a much greater percentage of their waste and therefore must use the most economical and successful methods of collection to achieve this. The paper mills are reacting to this and providing fully comingled services because if they don't, other companies will secure the paper they require
 - iii. The technology is now available to reliably sort fully comingled materials and produce top quality recycled paper that meets the required specifications.

We can only add our weight to this debate and argue that if local councils in NI want to achieve the recycling rates that they must, to avoid EU fines and save money by avoiding landfill costs, then comingled collections are the best option. It is also very important to note that the cost of comingled collections has and will continue to come down, due to increased competition and the relative value of the commodities that can be recovered from the recycled materials. We would suggest that councils will see much lower gate fees offered for comingled dry recyclable contracts in the coming year, as many councils re-tender their contracts and this will make the option of comingled collections even more attractive.

With this in mind Glassdon intend to offer a service that, we believe, will be unique not only in NI but across the UK. Glassdon are currently investing in a multi-million pound upgrade to our existing facility in Toomebridge. This will incorporate state of the art separation equipment to sort the various comingled materials including paper and glass and a first of its kind glass clean up plant. The new glass clean up plant will allow shredded paper, plastic caps and other contaminants to be removed from the glass, prior to it being fed into our existing state of the art, full colour sort, glass plant (the only one of its kind in Ireland and reputedly the most advanced in Europe). We expect to be able to recover 90% of the glass we capture and all of this recycled glass will go back into glass packaging manufacture. We believe this will be the only true complete comingled service, which processes paper and the glass to the stage that they can all be used by reproprocessors and the glass does not end up as aggregate.

With regard to all the commodities that Glassdon trade, quality is of the utmost importance; we are a commercial organisation and therefore must ensure that we sell our materials at the highest achievable rates. This can only be achieved by constantly meeting reproprocessor's specifications and as stated earlier this is the only true measure of Recyclate quality.

We thank you for taking the time to read this letter, we hope that it has at least helped to balance the argument put forward by Mr Randall. Should the committee like any further information or would like to visit our newly upgraded facility, which will be completed by the end of January 2011, please do not hesitate to contact the undersigned and we will be only too happy to oblige.

Yours sincerely


Michael Deeney
General Manager

Date 27th September 2010
Our Ref.
Your Ref.



To Whom It May Concern:

SCA Recycling UK Ltd purchase approximately 1000 tonnes per month of News and Pams grade paper month from Glassdon Recycling. This material is shipped directly to an established Asian paper mill that SCA Recycling UK Ltd have been supplying to for over 20 years. However, should the SCA mill in the UK require additional supply we can and have diverted some of Glassdon's News and Pams grade paper there.

Over the past 2 years the quality of the News and Pams grade paper supplied by Glassdon has met and been in accordance with the end customers grade specifications. There have been no issues with the quality of this material supplied and SCA Recycling UK Ltd are more than happy to continue with the current contractual arrangements, which are in place with Glassdon.

Yours faithfully

Claire O'Donoghue
Sales Manager
SCA Recycling UK Limited



AWS Eco Plastics Ltd
Unit 2, Birtsmere Business
Park
Ford, Pleasant Hill, Brackley
NN16 8EJ
Tynes & Wals
NN23 6SA
T 0345 678 4500
F 0945 678 4501
W www.awsrecycling.com

24th September 2010

To Whom it may concern

Glassdon have been supplying AWS with plastic bottles over the last 5 years. The quality of the bottles Glassdon supply has never been in question and has actually improved over the last 12 months with the introduction of new separation equipment and Quality Control Procedures.

It is our opinion that the introduction of additional materials in the North West Group's collection has had no effect whatsoever on the quality of the processed commodities Glassdon supply. In addition, with mixed plastics being accepted at more and more Kerbside collections throughout the UK and Ireland, AWS have installed state of the art processing equipment at our bottle processing facility to handle mixed plastics. These non bottle plastics will be segregated by polymer and processed further to increase recovery rates of these grades.

Yours Sincerely

Martin Robb
Purchasing Manager
AWS Ecoplastics Ltd

CLEANER, CLEARER, CLOSER

AWS Eco Plastics Ltd is a limited company, registered in England and Wales No. 3048140. Registered address as above.



Importers and Exporters of Second Hand Clothing

Glassdun Complex

Belgard Road

Millfield, Dublin 24

Tel: +353 1 462 5995

Fax: +353 1 462 5994

Email: info@trl.ie

Web: www.trl.ie

Our Ref. 10/1212/AK/LMcN

28th September 2010

To Whom It May Concern

Textile Recycling Ltd has been working with Glassdun Recycling for the past number of years, prompting the recycling of used clothes and textiles in Northern Ireland. Glassdun has recently started collecting clothes/textiles via the "comingled dry recyclable contract" they have with the North West Group. These clothes/textiles are segregated, washed, dried and then bagged ready for our collection.

The quality and the cleanliness of the clothes/textiles received from Glassdun has been excellent. We have no issue in confirming that we can and are accepting clothes/textiles from comingled collection method as long as they are processed in the manner that Glassdun has been doing to date.

Yours faithfully

.....
Aidan Kenny
Business Development Manager
for Textile Recycling Ltd
Mobile: 00 353 87 6311698

TOP-PERFORMING COUNCILS FOR DRY RECYCLING DIVERSION 2008/09

Authority	Recycling system	Dry recycling %	Composting %	Total recycling %	Dry recycling kg/hh/yr
1 Worcester	Commingle	36	0	36	258.0
2 Mid Sussex	Commingle	35	10	45	273.0
3 Mid Suffolk	Commingle	29	5	40	244.7
4 Waverley	Kerbside cart	34	6	40	251.0
5 City of London	Commingle (sack)	34	1	35	249.2
6 Holt Valley	Commingle	34	18	52	297.7
7 Uttlesford	Commingle	33	28	61	301.4
8 South Kensington	Commingle	33	17	50	291.8
9 Bournemouth	Commingle	33	18	51	311.2
10 Hart	Commingle	33	6	39	270.5
11 East Hampshire	Commingle	33	6	39	262.9
12 South Holland	Commingle (sack)	33	1	34	242.0
13 Naving	Commingle	32	12	44	244.9
14 Adur	Commingle	32	3	35	241.0
15 Broadland	Commingle	32	18	50	280.5
16 Blackburn	Commingle	32	9	41	256.7
17 Swale	Commingle	32	3	35	246.9
18 Chiltern	Dual stream	31	17	48	279.5
19 Redditch	Commingle	31	0	31	258.6
20 Chichester	Commingle	31	7	38	247.0
21 Eastleigh	Commingle	31	10	41	238.4
22 West Dorset	Kerbside cart	31	2	33	221.9
23 Purbeck	Commingle	30	4	34	194.2
24 Charnwood	Dual stream	30	11	41	245.4
25 Havant	Commingle	30	1	31	220.0
26 South Norfolk	Commingle	30	9	39	237.0
27 Caste Mapeth	Commingle	30	10	40	271.2
28 Guildford	Kerbside cart	30	11	41	256.4
29 Canterbury	Commingle (sack)	30	10	40	253.5
30 Reding	Commingle	29	6	35	254.9

SOURCE: WYGL REPORT, RECYCLING DIVERSION COLLECTION SCHEMES FOR LOCAL AUTHORITIES

do quality checks hourly on our fibre, and we take a bale off every shift and we analyse it down to the mill degree and analyse what our quality standards are. It's not as simple as how good people are at picking or how fast you run a belt – it's much more complicated than that. That is the sophistication I don't think is being understood."

Would it not help to have a quality standard for MRFs? Atwill says that local authorities themselves will help to drive up the quality standards of MRFs as they seek new contracts.

"This is not an argument that 'we want good-quality MRFs because we want good-quality MRFs'; it is the fact that good-quality MRFs do give this very high capture rate because they are handling a wide range of materials," he says. "In time, councils themselves will move towards higher quality MRFs. I believe the market will have to respond to that by raising its game because no one will want to buy from under-performing facilities."

Edwards adds that, as MRFs develop, not only does quality improve but contamination reduces, simply because newer MRFs take in and separate more materials that would previously have been considered contaminants, such as Tetra Paks or mixed plastics. "Just by extending the range of materials, contamination drops, and that is something that will



Atwill: "Councils need to look at this on a case-by-case basis, do some modelling, and not just look at the finances and capture rate but also consider their local priorities."

only increase going forward," he says.

The WYG report suggests an average MRF rejection rate of 4% versus the official Environment Agency figure of 16.8%. Walsley adds that as more MRFs are built and upgraded, rejection rates should fall.

On costs, the report also finds that you cannot generalise that one system is cheaper than another because proximity to a MRF, MRF gate fee and differential in collection costs, recycle rate, tonnage diverted and so on are all key cost determinants.

According to WRAP, "kerbside sort schemes show lower costs, not of income from material sales, than single-stream commingled streams". But WYG's reports says that if all "true costs" are considered, these should include the financial benefits of diverting more material from landfill and reduced operational and tax costs. It has examples showing how each type of system can be cheaper, depending on the local circumstances.

Edwards says: "I think that, fundamentally, because of the procurement process and the ways that it works, for anyone to say 'X is the cheapest system' is wrong – the market will determine what is deemed to be 'best value' for a particular local authority at a particular time."

➔ FIND THE FULL REPORT AT: WWW.WYG.COM/RECYCLINGREVIEW

Examiner of Statutory Rules Advice on Waste and Contaminated Land (Amendment) Bill Delegated Powers

Scrutiny of Delegated Powers

Advice to the Committee for Social Development

From the Examiner of Statutory Rules on the Waste and Contaminated Land (Amendment) Bill

1. I have considered this Bill, in conjunction with the Delegated Powers Memorandum submitted by the Department of the Environment, in relation to powers to make subordinate legislation.
2. The Bill contains several powers to make subordinate legislation. Clause 1/new Article 4A(8) of the Waste and Contaminated Land (Northern Ireland) Order 1997 allows the Department to prescribe [by regulations (see Article 2(1) of the 1997 Order) subject to negative resolution (see Article 82(1) of the 1997 Order)] the form of a fixed penalty notice under that Article; and Clause 1/new Article new Article 4A(10) of the 1997 Order allows the Department to alter the amount of a fixed penalty under that Article by order [subject to negative resolution — see Article 82(1) of the 1997 Order]. Clause 2/new paragraphs (3A) of Articles 5F and 42A of the 1997 Order contain further powers to make regulations [subject to negative resolution — see Article 82(1) of the 1997 Order] in respect of seized property under those Articles.
3. The regulation-making powers set out in the Bill, and the level of Assembly scrutiny (negative resolution) attached to them, seem appropriate and I do not draw attention to them.
4. But I draw attention to the order-making power in clause 1/new clause 4A(10) of the 1997 Order to alter the amount of a fixed penalty notice by substituting a new amount — order subject to negative resolution (see Article 82(1) of the 1997 Order). As the Department points out there are already other order-making powers (subject to negative resolution – see Article 82(1) of the 1997 Order) to alter fixed penalties by substituting new amounts: these are, it seems, in Articles 5A(10), 22B(5) and 42B(10) of the 1997 Order as inserted by the Waste (Amendment) (Northern Ireland) Order 2007, made before the restoration of the Assembly with very limited legislative scrutiny. Because of the general nature of what is in Article 82(1) of the 1997 Order these orders allowing for the alteration of the amounts of fixed penalties are subject to negative resolution. But other Bills currently before the Assembly make powers to alter the amounts of fixed penalties subject to draft affirmative procedure: see, for example, the Sunbeds Bill and the Dogs (Amendment) Bill. Accordingly, the Committee may wish to consider whether Schedule 1 to the Bill should include an amendment of Article 82 of the 1997 Order so that orders under Articles 4A(10), 5A(10), 22B(5) and 42B(10) of that Order (altering the amount of a fixed penalty by substituting a new amount) are subject to draft affirmative procedure, (consistent with other current Assembly Bills) rather than subject to negative resolution. This would seem to be the appropriate level of Assembly scrutiny for the alteration of fixed penalty amounts.
6. There are no other matters to which I draw the attention of the Committee for the Environment.

Gordon Nabney

Examiner of Statutory Rules
26 May 2010

Waste Bill Drafted Amendments



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Date: 15 October 2010

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings, Stormont
Belfast BT4 3XX

Dear Alex

Re: Waste and Contaminated Land (Amendment) Bill

Following officials' attendance at the Committee meeting of 28 September 2010, Committee requested sight of the Department's proposed amendments to the Waste Bill.

I now attach a schedule of amendments to the Bill which the Minister plans to bring forward at Consideration stage.

Amendment to Clause 1: Fixed Penalties

The attached amendment to the Bill will allow for a range of fines of between £100 and £400 for offences under Article 4 of the Waste and Contaminated Land (NI) Order 1997. The Bill currently contains a £200 upper limit for these fines.

Clause 5: Enforcement powers

Under the Bill as drafted, council officials would not be able to take enforcement action in the event of a failure to present appropriate waste documents. The attached amendment to the Bill will extend to councils powers under Article 5(7) of the 1997 Order and therefore allow them to take this action.

Clause 8: Contaminated Land

The attached amendment to the Bill will provide for the Planning Appeals Commission to charge a fee to hear an appeal brought under Article 58(1) of the 1997 Order.

I would stress that the Attorney General has not yet confirmed that in his view the Bill - including the planned amendments should they be passed – would be within the legislative competence of the Assembly; nor have the amendments received the approval of the Executive Committee.

I trust this information is of assistance; however should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO

Waste and Contaminated Land (Amendment) Bill

Amendments to be Moved at Consideration Stage

Clause 1, page 2, line 19, leave out '£200' and insert '£400'

Clause 5, page 6, line 37, leave out '(but not regulations under Article 5(7))'

Clause 5, page 6, line 41, leave out '(but not regulations under Article 5(7))'

Clause 5, page 6, line 41, at end insert—

'(2A) In Article 5A of the 1997 Order (fixed penalty notices for certain offences under Article 5(8))—

(a) in paragraph (1) for "the Department" (where it first occurs) substitute "an authorised officer of an enforcing authority" and for "to the Department" substitute "to the enforcing authority";

(b) in paragraph (2) for "Department" substitute "authorised officer" and at the end add "to the enforcing authority";

(c) in paragraph (9) for "the Department" substitute "an enforcing authority";

(d) in paragraph (11) for "The Department may" substitute "An enforcing authority may" and for "by the Department" substitute "by the enforcing authority";

(e) for paragraph (13) substitute—

"(12A) Article 22C (use of fixed penalty receipts by a district council) applies in relation to amounts received by a council under this Article as it applies in relation to amounts received under Article 22A.

(13) In this Article—

"authorised officer" means an officer of the enforcing authority who is authorised in writing by the enforcing authority for the purposes of this Article;

"enforcing authority" means—

(a) the Department; and

(b) in relation to an offence committed within its district, a district council.".'

Clause 8, page 8, line 38, at end insert—

'(2A) After paragraph (1) insert—

"(1A) Article 127(2)(b) of the Planning (Northern Ireland) Order 1991 (power to prescribe fees for appeals to the planning appeals commission under that Order) shall apply to appeals under this Article as it applies to appeals under that Order; and a notice of appeal to the planning appeals commission under this Article shall be accompanied by such fee (if any) as may be prescribed under Article 127(2)(b) of that Order.".'

Ministerial letter re recycling targets

From the office of the
Minister of the Environment



Department of the
Environment
www.doeni.gov.uk

Cathal Boylan MLA
Chair of the Environment Committee
Parliament Buildings
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Your reference:
Our reference: COR/544/2010

12 October 2010

Dear Mr Boylan

**CORRESPONDENCE FROM MICHAEL DEENEY, GLASSDON RECYCLING ON
BRYSON RECYCLING'S LETTER TO THE COMMITTEE**

I am aware that the Committee is currently giving detailed consideration to the quality of recyclables produced by local Material Recovery Facilities (MRFs). This is an issue which is clearly of importance to the sustainable development of the recycling sector and I very much welcome the Committee's focus on this matter.

You recently forwarded to the Department for review and comment a copy of a letter from Eric Randall, Bryson Recycling, in conjunction with Huhtamaki, Cherry Polymers, Quinn Glass and Cookstown Textiles (four locally based reprocessing companies) to the Committee. The letter was considered by the Committee at its 16 September 2010 meeting.

You will be aware that in his letter Mr Randall outlines the concerns of Bryson and the four reprocessors on a perceived decline in the quality of recyclables from some named local MRFs. My officials are currently preparing a response to the matters raised by Mr Randall which will be issued to you in the near future.

I would wish, however, to draw your attention to a letter which I have recently received from Michael Deeney, General Manager, Glassdon Recycling (a recycling company based in Toomebridge which owns and operates a MRF facility) dated 28 September 2010 and which is of direct relevance to the Committee's current consideration of recycle quality. As you will be aware Glassdon is one of the MRFs specifically identified in Mr Randall's letter by Huhtamaki (the Lurgan-based paper recycling company). Huhtamaki note that they have been required to switch virtually all of their supply of recyclables from Glassdon to other MRFs because of the decline in the quality of output produced by Glassdon. In his letter Mr Deeney advises that he has received a copy of Mr Randall's letter and outlines his concerns.

While it would not be appropriate for me to comment on the detailed commercial issues which have been raised in the letters from Bryson and Glassdon, the letters do highlight the fact that there are significant commercial issues involved in the sale of recyclates. They also

highlight that there are a number of factors which will influence these commercial decisions by MRF operators and reprocessors. Such factors include the quality of recyclates, the price of recyclates and demand for recyclates locally and globally; all factors which vary with the economy.

I am sure you agree that careful consideration is required ahead of any additional intervention by government. Any intervention which influences the operation of markets is generally required where there is clear evidence of market failure. An intervention could potentially impact on local businesses and jobs, both in recycling facilities and in reprocessing facilities, and could also inadvertently lead to a reduction in the levels of recycling and an associated increase in landfill.

I understand that the Committee intends to propose a clause for the Waste and Contaminated Land Bill which would address the issues of recyclate quality. I am keen to continue to work with the Committee on this matter and will be happy to look at these issues again in light of that proposal. I would request, however, that the Committee gives due consideration to the issues which have been raised.

In the meantime, you may wish to note that Mr Deeney wrote to me in August to invite me to visit Glassdon's facilities in Toomebridge. Arrangements have been made for a tour of the facilities on 14 October 2010. You will wish to note that in his letter Mr Deeney also extends his invitation to the Environment Committee.

I trust this letter will be helpful in your current consideration of the development of the recycling sector.

Yours sincerely



EDWIN POOTS MLA
Minister of the Environment

Departmental reply to Committee queries on recycling



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Date: 13 October 2010

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast BT4 3XX

Dear Alex

Re: Request from the Committee for the Department's Views on a Range of Recycling Issues

At the Environment Committee meeting of 16 September departmental officials briefed members on the work being taken forward by the Department to achieve improvements in recycling rates and the quality of recyclates. Following this meeting the Committee has requested the following information:

- a. Rejection rates for Material Recycling Facilities in NI (by Waste Management Group (WMG));
- b. Projects which have been offered funding under Round 1 of the Rethink Waste Fund;
- c. The costs of recycling waste for each local council;
- d. Data on glass recycling levels; and
- e. The Department's response to a letter submitted to the Committee by Bryson Recycling on recyclate quality.

The Department's response on each of the above is provided in Tab 1.

I trust this information is of assistance, however, should you require anything further please contact me directly.

Yours sincerely,

Úna Downey

DALO
[by email]

Tab 1

Response to Environment Committee (September 2010)

Introduction:

1. Following the Environment Committee meeting of 16 September the Committee has requested information from the Department on the following issues:

- a. Rejection rates for Material Recycling Facilities in NI (by Waste Management Group (WMG));
- b. Projects which have been offered funding under Round 1 of the Rethink Waste Fund;
- c. The costs of recycling waste for each local council;
- d. Data on glass recycling levels; and
- e. The Department's response to a letter submitted to the Committee by Bryson Recycling on recyclate quality.

A Rejection Rates for Material Recovery Facilities in Northern Ireland (by Waste Management Group):

2. The Committee was provided with figures on Mechanical Recycling Facilities (MRF) rejection rates at the meeting on 16 September. The two key sources of information on rejection rates are the Waste Management Groups (WMGs) and the Waste Data Flow System.

3. The latter is a UK-wide web based system through which local councils report on their waste arisings/treatment methods and for which the Northern Ireland Environment Agency is the monitoring authority. There is some variation between these two sources and, therefore, Figure 1 provides both sets of figures. Where there are differences between the two these figures, those differences are addressed in the commentary below.

4. The average rejection rates for the Material Recovery Facilities (MRFs) in each of the WMGs/Northern Ireland as a whole are as follows:

Figure 1: Input and Rejection Rates MRFs (by WMG).

Waste Management Group	WMG Data - Input Tonnages	WMG Data - Average MRF Rejection Rate (%)	Waste Data Flow Data - Input Tonnages	Waste Data Flow Data - Average MRF Rejection Rate (%)
Arc21	40,038	7.4%	48,406	5.4%
SWAMP	31,428	5.9%	23,639	7.8%
NWRWMG	23,977	5.0%	18,384	5.0%
Northern Ireland	95,443	6.3%	90,429	6.0%

5. NWRWMG - The figure supplied by the North West Region Waste Management Group (NWRWMG) gives a higher waste input tonnage than the Waste Data Flow (WDF) data as the latter only refers to kerbside collected waste which has been sent to an MRF for treatment whilst

the former includes materials from Household Waste Recycling Centres (3,460 tonnes approx.) and from "bring sites" (2,100 tonnes approx.). The rejection rate, however, using either of these data sets remains unchanged at 5.0%.

6. Arc21 - The data supplied by Arc21 indicates MRF input tonnages of 40,038 tonnes which is much lower than the 48,406 tonnes recorded on Waste Data Flow. The relevant MRF rejection rates stand at 7.4% and 5.4% respectively. The data supplied by Arc21 relates to the MRF input tonnages for only 8 of the 11 councils in the area as the remaining 3 councils have in place kerbside sort collection systems which enable waste to be collected and sorted by material type directly. Whilst this material may be sent to a MRF for baling it may not go through a further sorting process. However, when this data is included in the overall MRF input tonnages the rejection rate is automatically lowered as the rejection rate for kerbside sorted material is minimal.

7. SWAMP - SWAMP's data demonstrates much higher MRF input tonnages than those recorded on the WDF system yet the rejection rate provided by SWAMP is significantly lower than that on WDF. The higher input tonnages are due to the inclusion by SWAMP of some of the residual waste from HWRC which is also sent to MRFs for sorting – as noted above the WDF system only includes kerbside collected waste for recycling.

8. While this information addresses MRF rejection rates, it is not currently possible to monitor any rejection of materials by reprocessors as the activities of reprocessors are not monitored subsequent to them purchasing the materials.

B) Projects which have been offered funding under Round 1 of the "Rethink Waste Fund"

9. In total 16 projects have been offered funding of circa £2.83m through Round 1 of the Rethink Waste Fund. Further detail on the successful projects is provided in Figure 2 below. The Waste and Resources Action Programme (WRAP) which is administering the fund for the Department is currently engaging with successful applicants to finalise the funding agreements.

Figure 2: Round 1 Rethink Waste Fund – Successful Applications

Applicant	Project Description
North West Region Waste Management Group (NWRWMG)	Provision of home composters for 5 councils in the area
North Down Borough Council	Purchase of compactor to compact timber at Household Waste Recycling Centre (HWRC) and maximise use of existing skips
Ards Borough Council	Purchase compactor to compact timber at HWRC and purchase new roll on/off skips
Ballymena Borough Council	Purchase brown bins for food garden waste for 5000 households
Omagh District Council	Purchase home composters, brown bins and caddies for food/garden waste and purchase of collection lorry
Dungannon & South Tyrone BC	Funding for food and garden waste Collection, HWRC and Home Composters
Strabane District Council	Extension of glass collection to 5,500households

Applicant	Project Description
Ballymoney Borough Council	Upgrade of Civic Amenity site and HWRC
Magherafelt District Council	Mixed glass collection service
Down District Council	Funding for HWRC
Larne Borough Council	Funding for HWRC
Cookstown Borough Council	Funding for a transfer station (storage facility) for food waste - would enable council to collect food waste in brown bin for first time
Ballymoney Borough Council	Purchase/install concrete wall units to recycle more timber at recycling/transfer facility
Lisburn City Council	Purchase 2 vehicles for 3000 households for food waste and dry recyclables. Purchase of green and brown bins.
Belfast City Council	Storage facilities for bulky waste (will enable more bulky items to be reused/recycled).
Antrim Borough Council	Purchase of mobile recycling unit for community events as currently only residual bin provided
Total Funding Offer	£2.83M

C. The Costs of Waste Recycling at Council Level

10. The Department does not hold data on the costs to local councils of recycling waste hence this information has been requested from and provided by the Waste Management Groups. Figure 3 below provides a breakdown for financial year 2009/10 of the overall capital and revenue costs for each council. The average cost per household within each council area is also included. Whilst the data indicates that there is considerable variation in the costs between councils it is important to note that this may be due to variation in how councils calculate their recycling costs. The figures therefore should be interpreted with caution.

11. The figures do not include the capital costs incurred by either Ballymena or Down as these have not been provided at this point to the Department.

Figure 3: Recycling Costs (Per Household) By Local Council

W.M. G	Council	Total Cost (£)	No of Households	Cost per Household (£)	Household Recycling & Composting Rate - 2008-09	Annual Household Waste Per Household (Tonnes)
ARC 21	1 Antrim	£2,110,000	19,900	£106	48.33%	1.595
	2 Ards	£1,669,000	32,300	£52	33.90%	1.269
	3 Ballymena	£1,226,039	24,800	£49	36.20%	1.306
	4 Belfast	£11,058,000	116,600	£95	26.31%	1.045

W.M. G		Council	Total Cost (£)	No of Household s	Cost per Househol d (£)	Household Recycling & Compostin g Rate - 2008-09	Annual Househol d Waste Per Househol d (Tonnes)
	5	Carickfergus	£959,000	16,700	£57	32.95%	1.212
	6	Castlereagh	£1,245,000	28,400	£44	38.08%	1.059
	7	Down	£2,225,594	26,000	£86	32.63%	1.162
	8	Larne	£855,205	13,300	£64	40.50%	1.214
	9	Lisburn	£3,242,000	44,400	£73	33.14%	1.190
	10	Newtownabbey	£1,641,000	34,100	£48	34.98%	1.302
	11	North Down	£1,633,000	33,600	£49	40.39%	1.195
NWR WMG	12	Ballymoney	£246,000	11,500	£21	32.47%	1.148
	13	Coleraine	£1,264,789	23,100	£55	38.44%	1.286
	14	Derry	£3,221,996	40,000	£81	32.61%	1.251
	15	Limavady	£740,234	12,000	£62	33.03%	1.430
	16	Magherafelt	£1,351,640	15,200	£89	42.13%	1.384
	17	Moyle	£678,942	6,600	£103	30.75%	1.161
	18	Strabane	£351,176	14,300	£25	25.68%	1.235
SWaM P 2008	19	Armagh	£731,500	20,600	£36	36.30%	1.175
	20	Banbridge	£927,965	18,300	£51	47.90%	1.373
	21	Cookstown	£633,000	12,800	£49	38.96%	1.361
	22	Craigavon	£1,665,000	36,800	£45	35.42%	1.185
	23	Dungannon	£1,050,235	20,000	£53	33.33%	1.426
	24	Fermanagh	£1,932,000	23,300	£83	26.72%	1.165
	25	Newry & Mourne	£1,815,363	34,300	£53	32.65%	1.286

W.M. G	Council		Total Cost (£)	No of Household s	Cost per Househol d (£)	Household Recycling & Compostin g Rate - 2008-09	Annual Househol d Waste Per Househol d (Tonnes)
	2 6	Omagh	£921,104	18,500	£50	38.13%	1.185
Total			£45,394,78 3	697,400	£1,577	-	1.217

D) Data on Glass Recycling Levels

12. It is estimated that in 2008/09 waste glass accounted for around 63,000 tonnes of all municipal waste arisings (1,017,000 tonnes) in Northern Ireland of which 23,300 tonnes (36.5%) was recycled (either through kerbside sort schemes, civic amenity or bring sites). A recent assessment undertaken by the Department in collaboration with the WMGs on the potential to achieve higher recycling rates indicates that there is potential to recycle an additional 14,000 – 19,000 tonnes of glass each year.

13. Two of the successful projects under Round 1 of the Rethink Waste Fund (in the Strabane and Magherafelt council areas) have been offered funding either to extend their existing glass collection service or to introduce a new kerbside glass collection service.

E) Bryson Recycling's Letter – Departmental Response

Introduction:

The Department is pleased to note that Bryson Recycling and the four reprocessing companies (Huhtamaki, Cherry Polymers, Quinn Glass and Cookstown Textiles) recognise the Department's increased focus on boosting recycling activity and the Department's continued efforts in this regard. As noted in Bryson's letter the Department is committed to promoting the management of waste in a manner which is consistent with best practice guidance on the application of the waste hierarchy and is working with the Waste Management Groups, local councils and other stakeholders to this end.

Mr Randall covers a range of interconnected issues in his letter to the Committee, namely:

- Concerns of the Reprocessors on MRF Output Quality
- Departmental Measures to Support Recyclate Quality
- Bryson Recommendations

The Department's response on each issue is outlined in the following sections.

Concerns of the Reprocessors – Contamination Rates of Material Recovery Facilities (MRFs) / Quality of Recyclables / Export of Contaminated Material:

The Department recognises that a sustainable market for recyclables requires a consistent supply of materials of a standard acceptable to the market place and notes the concerns expressed by Bryson Recycling and some Northern Ireland and Great Britain based reprocessors on the quality of recyclables from some local MRFs.

The Department continues to monitor the key issues currently impacting on the reprocessing sector and on the MRF operators. At present, however, there is no quantitative evidence to confirm that the claims made in Bryson's letter on an alleged deterioration in the quality of materials collected for recycling by local councils and in the outputs from local MRFs are correct.

MRFs are regulated by the Northern Ireland Environment Agency under the Waste Management Licensing Regulations (NI) 2003 and Amendments. The current legislation does not require/permit the inclusion of quality controls. NIEA therefore does not have the powers to inspect this criteria and the Agency does not have evidence of an increase in contamination levels from MRFs.

The North West Region Waste Management Group (NWRWMG) and Glassdon Recycling are specifically mentioned in the letter from Bryson (in relation to a reported deterioration in the quality of recyclables from the area and Huhtamaki's decision to end its contract with Glassdon 151). The Department has advised the NWRWMG that these issues have been raised with the Committee by Bryson / local reprocessors and has requested a response from the Group on the claims made. Unfortunately, the response has been delayed as the Group has written to member councils to request views but is not yet in a position to provide a composite reply on behalf of the group.

The NWRWMG has confirmed, however, that it is aware that the contract between Glassdon and Huhtamaki for the supply of recycled paper ended due to commercial considerations (please see below) and that Glassdon continues to supply a small amount of paper each month to Huhtamaki.

The Minister has recently written to the Chair of the Committee following correspondence from Michael Deeney, Glassdon Recycling - a copy of Mr Deeney's letter was enclosed with this correspondence given its direct relevance to the issues currently under consideration. As the Committee will be aware Mr Deeney's letter challenges the claims made in the letter from Bryson Recycling.

While it would not be appropriate for the Department to comment on the commercial issues which have been raised, both letters do highlight the fact that there are significant commercial issues involved in the sale of recyclates. They also highlight that there are a number of factors which will influence these commercial decisions by MRF operators and reprocessors. Such factors include the quality of recyclates, the price of recyclates and demand for recyclates locally and globally; all factors which vary with the economy (see also below).

Export of Poor Quality Material – Bryson note a concern that the materials collected by and for councils for recycling are subsequently sent to local MRFs for sorting. The letter concludes that this results in materials being secured which are not of a suitable quality for local remanufacture and are therefore exported for further sorting overseas.

A key factor in this is the natural operation of global market forces of demand and supply for recyclates and their impact on price. The market place for recycled paper and recycled plastics is of a global nature – for example, in 2009 almost 54% of the UK's recycled paper and 70% of recycled plastics were exported. If MRF operators are unable to secure local buyers for their outputs at a price which they consider acceptable to cover costs / maximise profits they will naturally look elsewhere to find buyers for this material.

In relation to this, the NIEA has advised that the Waste Shipment Regulations (EC 1013/2006) provides the regulatory framework covering exports of waste from NI to other countries outside the United Kingdom. The systems which must be followed for the export of waste depend on the waste stream involved, the country of destination and the process for which the waste is destined. One country's level of acceptance, therefore, may be different to another's taking into account the process destined for the recyclates.^[1] The Committee may wish to note that this year the NIEA have stopped 6 containers of waste from being exported due to the levels of contamination (which would have prevented their recovery). Of these 3 were from commercial sources with the remainder from a mixed source commercial / municipal.

Conclusion:

These exchanges helpfully highlight the fact that there are significant commercial issues involved in the sale of recyclates. They also demonstrate that there are a number of factors which will influence these decisions by MRF operators and reprocessors, including the quality of recyclates, the price of recyclates and demand for recyclates locally and globally.

It is also clear that, while there is a need to promote the quality of recyclates, careful consideration will be required ahead of any additional intervention by government. As the Committee will be aware, any government intervention which influences the operation of markets (whether through financial assistance, the provision of guidance, setting of standards or by legislation) is generally required where there is clear evidence of market failure. An intervention could potentially impact on local businesses and jobs, both in recycling facilities and in reprocessing facilities, and could also inadvertently lead to a reduction in the levels of recycling and an associated increase in landfill.

At present, however, the information which has been provided does not contain the quantitative and independent evidence necessary to reach a firm conclusion that:

- the quality of recyclables from MRFs has deteriorated or that it has deteriorated to the extent where the operators are unable to find markets for their materials;
- the reprocessing sector as a whole is unable to source sufficient quantities of recyclables of the required quality to sustain their businesses;
- the manner in which local MRFs are operating is causing negative environmental impacts.

Departmental Measures to Support Recyclate Quality:

The Department is keen to see improvements in the quality of recyclables and notes Mr Randall's view that the Department's current measures in this regard are not sufficiently robust to control quality effectively. The priority, however, must be to ensure that Northern Ireland is on track to meet the statutory European targets and avoid the risk of very significant infraction fines which ultimately would be borne by the Northern Ireland ratepayer.

As the Committee will be aware the revised Waste Framework Directive sets a target of 50% recycling of household waste by 2020 – a significant uplift from the current rate of 34.4%. Considerable progress will be required to deliver this target. Consequently, the Department will continue to direct increasingly scarce resources to those interventions which will deliver the greatest benefits in terms of improvements in both the quantity recycled and the quality of recyclates. The Department remains of the view that initiatives such as the Rethink Waste Fund, the annual funding to WRAP, the Rethink Waste Campaign and the Quality Protocols Programme will directly contribute to delivery of these twin objectives.

The Department is currently developing a recycling policy paper, in line with the Minister's view that more can be achieved in terms of increasing recycling rates over and above those specified in the revised Waste Framework Directive, and will be giving further consideration to and consulting on the interventions which may be required to improve recycling performance.

Bryson Recycling's Recommendations:

Mr Randall makes three recommendations as to how improvements in the quality of recyclables from MRFs might be achieved, namely:

- i) Set the legal parameters in which local authorities and their contractors operate;
 - ii) Extend the remit of the Environment Agency who already regularly visit MRFs (they specifically look at the quality of materials), to include a bi-annual unannounced visit and sampling of materials. Materials could then be tested against an agreed UK standard. Improvement notices would then be served against MRFs that fail to reach the standard;
 - iii) Direct future funding to approaches to recycling that are known to be reliable at providing quality recyclables.
- i) With regard to the setting of statutory standards for recyclate quality, as noted above Northern Ireland's MRF operators, along with the reprocessing sector, operate in global markets. While it is not unreasonable for government to seek to positively influence quality standards, the Department would seek to ensure that any approach does not lead to unintended consequences.

For example, if standards are imposed on local councils, and potentially in turn on local MRFs, which are more onerous than those which apply elsewhere in the UK this could in effect place local operators at a competitive disadvantage. Clearly, this could have serious implications for affected companies in terms of export sales, profitability and in turn viability and, therefore, may be detrimental to the longer term development of the sector in Northern Ireland.

The setting of quality standards could be challenged locally by companies who would not be on a level playing field with other parts of the UK. In addition such measures could be construed to be unreasonable, uneconomic and biased towards a very limited number of commercial operations and in favour of others. Were statutory standards to be set at too high a level, the outcome could be a reduction in levels of recycling and an increase in landfill.

The Department is working with the Environment Agency to develop the Quality Protocols programme. Amongst its purposes, a Quality Protocol aims to provide increased market confidence in the quality of products made from waste and so encourage greater recovery and recycling. The existence of a waste Quality Protocol for a particular material would allow a processor confidence in the quality and consistency of the material being received. However, for waste materials where there is a global, dynamic market and demand, a recycling facility may opt not to process waste to a relevant protocol standard particularly if profitability was affected. In the case of a MRF, a Quality Protocol would seem to only be reasonably applied to the output from a facility.

Introducing statutory protocol standards would require careful consideration as to what would happen if a waste material fails a standard, which could still otherwise be recycled. The material would have to be resorted at the recycling facility, in order to meet the standard and thus create a larger carbon footprint, or be destined to a recovery use or disposal.

The Department understands that the Committee intends to propose a clause for the Waste and Contaminated Land Bill which would address the issue of recyclate quality and will be happy to look at these issues again in light of that proposal.

ii) Bryson recommend an extension to the remit of the Environment Agency (NIEA) to test the quality of outputs from MRFs. Current legislation does not require/permit the inclusion of quality controls. NIEA therefore do not have the powers to inspect this criteria and the Agency does not hold any evidence in relation to an increase in contamination levels from MRFs.

The Agency has advised that there are a range of practical difficulties in seeking to implement such a measure. For example, the possible form, application and future measurement of performance against such a standard is likely to prove very difficult (if at all possible) to establish and consequently to implement. This is a key practical aspect which must be given due consideration. In terms of sampling and testing of quality at MRFs a recent WRAP study^[2] concluded that "there is a requirement for future sampling to become more robust within MRFs but a need to recognise the immense resource commitment in order to undertake the appropriate level of sampling/testing." The NIEA does not have the resources at present to conduct such testing and it is unlikely given the current financial constraints that additional resources could be made available for this purpose.

ii) Directing funding to certain recycling methods - a variety of research demonstrates that comingled collections, source-segregated collections and modern, efficient MRFs can all produce a high quality of recyclables. Different methodologies will tend to be more effective in different contexts, with methodologies that are highly suited for some areas proving less effective in others. Councils, which are responsible for the collection and management of municipal waste, and the Department must ensure that public funding is directed at those interventions which represent the best value for money for the taxpayer and which will deliver the greatest overall benefits. The Department will continue to take a balanced view and hear and understand in full the issues from all sides to identify if and where there may be a role for intervention and what form that intervention should take.

[1] Green listed" wastes follow the simplest controls under the regulations but the regulations do not include set % rates wherein a material may be deemed to no longer be classified under the green list criteria. The regulations simply indicate that the waste streams included on that list can no longer follow the simple procedures if they are contaminated by other materials to an extent which prevents the recovery of the wastes in an environmentally sound manner or increases the risks associated with the wastes sufficiently to render them appropriate for submission to the procedure of prior written notification and consent, when taking into account the hazardous characteristics listed in Annex III to Directive 91/689/EEC.

[2] WRAP - MRF Quality Assessment Study November 2009

Recyco letter re recycling



Mr Cathal Boylan
Chair of Environment Committee
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

7th October 2010

Mr Boylan

We have processed the co-mingled Dry Mixed Recyclables (Blue Bin Scheme) for Omagh, Cookstown & Dungannon Councils for the past seven years. Materials in the scheme are paper, cardboard, plastic bottles, steel & aluminium cans. We have worked with the councils to educate the public and have invested heavily in plant & equipment allowing us to produce high quality separated materials with secure end markets.

Over the past few months I have been approached by several councils to see if we will expand the range of materials we will accept. Materials mooted include small electrical goods, batteries, mixed plastics and glass. I appreciate the councils are eager to maximize recycling rates but this rush to expand the scheme will ultimately effect quality and jeopardise end markets. My fears were highlighted in the recent BBC report into the poor quality of materials coming from some of the MRF's in the north. The scheme's I currently process allow me to produce high quality commodities but this will undoubtedly cease if the councils are allowed to go ahead with their plans to expand the range of materials covered.



If direction is not given to the councils the fear is we disillusion the public, close markets for our material and ultimately unravel all the good work that has been done over the last 10 years.

I am keen to hear your thoughts on this issue and look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Cunningham", is written over a horizontal line.

Michael Cunningham

Director
RecyCo

CC: Minister Edwin Poots



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Departmental Response to Committee Queries on the Waste and Contaminated Land (Amendment) Bill

Central Management Branch
10-18 Clarence Court
BELFAST
BT2 8GB

Mrs Alex McGarel
Clerk to the Environment Committee Telephone: 028 90 5 40855
Northern Ireland Assembly Facsimile: 028 90 5 41169
Parliament Buildings Email: una.downey@doeni.gov.uk
Stormont Your reference:
Belfast Our reference: CQ/79/10
BT4 3XX

Date: 6 July 2010

Dear Alex

The Environment Committee has raised a number of questions following its meeting on 24 June 2010 and its briefing by Banbridge District Council and SWaMP 2008 on the Waste and Contaminated Land Bill.

Issue

The Committee wishes to know what mechanisms are in place for liaison with local authorities on waste issues, what happens to landfill tax and if work has started to develop a flytipping protocol, what stage it is at and when it might be completed.

Background:

NIEA has no formal mechanisms in place to deal with local councils on waste issues. Rather, it enjoys ongoing liaison on a case-by-base basis and responds favourably to requests for meeting attendance and for advice.

Landfill tax a reserved matter, administered by HMRC on behalf of the Treasury, with DFP the lead Department in Northern Ireland. Introduced in 1996, it is payable by landfill site operators. There are two rates of tax – a standard rate (currently £48 per tonne) for active wastes such as household wastes which decay, and a lower rate (currently £2.50 per tonne) for inactive or inert wastes. Under the landfill tax escalator (an annual increase of £8 a tonne until 2013), the standard rate of landfill tax will increase to £56 in 2011, £64 in 2012 and £72 in 2013.

Since 2003/04, as a Barnett consequential, Northern Ireland has received an allocation from the landfill tax UK, via the UK Exchequer. There is no direct link between where the revenue is raised and where it is spent. The use of all funding that is allocated through the Barnett formula is a matter for the Executive.

Some further landfill taxes are returned to Northern Ireland through the Landfill Communities Fund but apart from that, there is no mechanism for Northern Ireland to reclaim the tax.

The Landfill Communities Fund (formerly the Landfill Tax credit Scheme) enables landfill site operators to claim tax credit for contributions they make to approved environmental bodies for spending on projects that benefit the environment. The environmental bodies are those enrolled by ENTRUST, the regulatory body for the scheme.

As the Committee is aware, one of the main objectives for the Waste and Contaminated Land (Amendment) Bill is to legislate for an effective partnership between the Department and the local government sector in tackling illegal waste activity in Northern Ireland.

However, the Department recognises that this alone will not provide a solution to illegal waste activity. I can confirm that Departmental officials have therefore been working with local government representatives to develop a Flytipping Protocol which will clearly establish the respective roles and responsibilities of the Department and councils in dealing with flytipped waste. It is hoped that a draft of the document will be available by the end of this year and I can confirm that further detail on the development of the Protocol is being forwarded to the Committee in response to a separate query (text reproduced below for ease of reference):

"Members considered the above reply and were of the view that the Minister has to take the lead to encourage councils to have uniform policies on illegal dumping, particularly in light of the recent announcement that there will continue to be 26 councils. Members also expressed concern that illegal dumpers are crossing between council boundaries and would like to see more collaboration between councils and NIEA to stop this practice".

I trust this information is of assistance, should you require anything further please contact me directly.

Yours sincerely

Una Downey
DALO
[By Email]

Departmental Response to Committee Queries on Illegal Dumping

Central Management Branch
10-18 Clarence Court
BELFAST
BT2 8GB

Mrs Alex McGarel	
Clerk to the Environment Committee	Telephone: 028 90 5 40855
Northern Ireland Assembly	Facsimile: 028 90 5 41169
Parliament Buildings	Email: una.downey@doeni.gov.uk
Stormont	Your reference:
Belfast	Our reference: CQ/74/10
BT4 3XX	

Date: 6 July 2010

Dear Alex

Re: Committee Queries on Illegal Dumping

The Environment Committee has requested comments from the Department on two issues:

- The need for the Minister to take the lead to encourage councils to have uniform policies on illegal dumping, particularly in light of the recent announcement that there will continue to be 26 councils; and

- Concern that illegal dumpers are crossing between council boundaries and the fact that the Committee would like to see more collaboration between councils and NIEA to stop this practice.

In terms of the second of these issues the Minister shares Committee's desire to promote a closer working relationship between councils and NIEA. The Waste and Contaminated Land (Amendment) Bill ("the Waste Bill") represents the first step in this process. The Waste Bill legislates for an effective partnership approach between the Department and the local government sector in tackling illegal waste disposal in Northern Ireland. The objective is to ensure that both the Department and councils have sufficient statutory powers to deal with the problem. The proposed new powers for councils will allow them to investigate illegal waste activity and to prosecute suspected offenders. In addition, clean up powers – currently the preserve of councils – have been extended to the Department.

However, legislative change alone can not resolve the problems associated with illegal waste. In previous discussions with Committee reference has been made to the development of a Flytipping Protocol which clearly establishes the respective roles and responsibilities of the Department and councils in dealing with flytipped waste. It is anticipated that NIEA will have investigative and enforcement responsibility for the larger deposits of waste – and that the Protocol will need to define this responsibility by establishing a 'quantitative threshold'.

The Department intends to issue the draft Protocol for consultation with key stakeholders – which will, of course, include the Committee – later this year. It is anticipated that the new legislative framework, if enacted, will not be commenced until the Protocol is in place.

The Committee also made the point that the Minister needs to take the lead in encouraging the 26 councils to have uniform policies on illegal dumping. In the first instance, as stated above, the Protocol will set out clearly "who does what" across all council areas; this will entail defining roles and responsibilities in relation to clearance, investigation and enforcement. Within this framework, councils will of course have the option to work together (through the 3 Waste Management Groups and NILGA) to agree a standardised procedure for dealing with illegal waste disposal across the 26 council areas.

Ideally therefore, consistency of approach can be achieved on a voluntary basis, through close co-operation between councils and between councils and NIEA. A further option however, might be to amend the Bill to provide the Department with a discretionary power - exercisable in the event that the voluntary approach is not working – to direct that enforcing authorities have regard to waste management guidance issued by the Department. We would be happy to explore with Members the merit of such an approach as the Committee stage of the Bill continues.

I trust this information is of assistance; however should you require anything further please contact me directly.

Yours sincerely,

Una Downey
DALO

[by email]

Department reply re Commencement Dates for Waste Bill

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Mrs Alex McGarel
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Your reference:
Our reference: CQ/176/10

Date: 28 October 2010

Dear Alex

RE: Waste and Contaminated Land (Amendment) Bill

Following officials' attendance at the Committee meeting of 21 October 2010, Committee commented as follows:

The Committee is concerned that previous Bills scrutinised and reported on by the Committee remain unimplemented and would like the Minister to give a commitment in relation to commencement of this legislation when it comes to the Assembly for Consideration. Departmental officials also agreed to forward the Committee a copy of the consultation document on the flytipping protocol.

The Minister notes the Committee's concerns. With regard to the Waste Bill, the Minister is committed to the commencement of this legislation as soon as possible after its enactment. He has confirmed that he will outline the Department's plans for commencement at Consideration Stage.

Officials anticipate that the Waste Bill should receive Royal Assent by April 2011, and those powers that can be used straightway will be commenced as soon as possible thereafter. In relation to the flytipping provisions, the Department has previously agreed that these clauses should not be commenced until a Flytipping Protocol is in place. This is consistent with a request made by the local government sector during consultation on the Bill.

However the Department is determined that the absence of a Protocol should not delay commencement of the flytipping provisions. Officials are currently finalising the consultation document which will set out the roles and responsibilities of all key players who are responsible for dealing with flytipping. This is planned for issue in December 2010 and a copy of the document will be forwarded to the Committee for information, prior to its issue to stakeholders. While it is not possible to predict the outcome of the consultation process, the Minister is committed to reaching agreement on a Protocol as soon as possible, with a view to commencement of the flytipping provisions alongside other provisions.

I trust this information is of assistance; however should you require anything further please contact me directly.

Yours sincerely,

Úna Downey
DALO

[by email]