



SWaMP2008

Southern Waste Management Partnership

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Environment Committee
Room 247
Parliament Buildings
Stormont Estate
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', followed by a short horizontal line.

Graham Byrne, Chief Officer, SWaMP2008