

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: Environmental Services

METHOD OF FUNDING: Existing budgets - revenue

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:

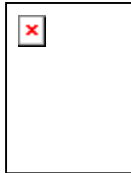
The Waste and Contaminated Land (Amendment) Bill has reached the Committee stage for consideration by the NI Assembly Committee for the Environment. Comments are invited by 28th May 2010.

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 –

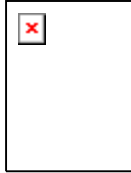
That councils accept additional powers under Articles 4 and 5 to deal with unlicensed waste disposal up to quantities of 20 tons and that this is included within the body of the legislation. This is on the understanding that adequate resources, financial and otherwise, would also be needed to enable 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.

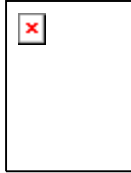
Guidance will be necessary to ensure the provision of a set of criteria for when the option of fixed penalty notices would be appropriate in order to achieve consistency of enforcement across Northern Ireland. This guidance would be best produced in partnership with councils.

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.