



Department of the
Environment

www.doeni.gov.uk

All District Councils in Northern Ireland

Environment Committee of the Northern
Ireland Assembly

NI Sub-Regional Waste Management
Planning Groups

Planning and Environmental Policy Group
20-24 Donegall Street
BELFAST

BT1 2GP

Telephone: 028 90544511

Email: donald.starritt@doeni.gov.uk

Your ref:

Our ref:

Date: 7th November 2007

Dear Sir/Madam,

**RE: COMMENCEMENT OF ARTICLE 10 OF THE WASTE (AMENDMENT)
(NORTHERN IRELAND) ORDER 2007**

Background

The Waste (Amendment) (Northern Ireland) Order 2007 ("the 2007 Order") was made on 6 March 2007. Its main objective is to provide a more effective deterrent to unlawful waste activity in Northern Ireland. While many of its provisions are already operational, others have not yet been commenced.

The Department of the Environment ("the Department") is now considering the early commencement of Article 10 of the 2007 Order, which relates to the misuse of waste receptacles. However it is important that any decision on this issue takes full account of the views of local government.

This paper highlights a range of issues for consideration and raises a number of questions. Councils are invited to comment on these. The Department will consider carefully all responses received, before taking a final decision on whether to commence Article 10.

This paper has also been forwarded to the Environment Committee and to the three NI Sub-Regional Waste Management Planning Groups for consideration and comment.

Freedom of Information

The Freedom of Information Act gives the public a right of access to any information held by a public authority – in this case, the Department. This right of access extends to information provided in response to a consultation.

This means that the responses received to this consultation may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential

Before you submit your response, please read the paragraphs below on the confidentiality of consultations. These provide guidance on the legal position concerning any information given by you in response to this consultation.

The information which you provide is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain information in connection with the exercise of any of the Department's functions and it would not otherwise be provided.
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature.
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified by the Information Commissioner.

For further information about confidentiality or responses, please contact the Information Commissioner's Office, or see the web-site at: <http://www.ico.gov.uk/>

The following document is also relevant:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_2_-_information_provided_in_confidence.pdf

Responses and Enquiries

Please forward your responses to the Department by **30th January 2008**.

Responses can be sent using any of the following means of communication:

By e-mail: roger.irwin@doeni.gov.uk

By post:

Roger Irwin
Department of the Environment
20-24 Donegall Street
BELFAST
BT1 2GP

Or by fax: 028 9054 4520.

Please send your response using only one of these options.

Enquiries regarding the content of this consultation paper, or requests for further copies, should be made to Roger Irwin (telephone 028 9054 4515).

Yours faithfully

DONALD STARRITT

Enc.

**Consultation paper
Department's model notice for issuing fixed penalties**

USE OF FIXED PENALTY NOTICES FOR MISUSE OF WASTE RECEPTACLES

CONSULTATION

1. BACKGROUND

1.1 Article 10 of The Waste (Amendment) (Northern Ireland) Order 2007 (“the 2007 Order”) enables authorised officers of local councils in Northern Ireland to issue fixed penalties for offences under Articles 21 and 22 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”).

1.2 Offences under Articles 21 and 22 of the 1997 Order concern the improper use of waste receptacles for household, commercial and industrial waste. Under these Articles, district councils can issue a notice to occupiers specifying certain requirements relating to the waste receptacles (such as wheelie bins and recycling containers). A notice can include provisions relating to:

- The placing of waste in a particular type and number of receptacles;
- The size, construction and maintenance of these receptacles;
- The placing of receptacles to facilitate access and emptying;
- The placing of receptacles to facilitate emptying on roads;
- The substances which may or may not be put into the receptacles and any precautions that should be taken; and
- The steps to be taken by occupiers to facilitate the collection of waste.

1.3 Failure to comply with the requirements of such a notice is an offence. However if the Department were to commence Article 10 of the 2007 Order, a £100 fixed penalty notice (FPN) could be served.

1.4 At present, district councils taking action against householders or businesses for such offences must prosecute them through the courts. The

objective of FPNs is to provide a more cost-effective and less time-consuming means of enforcing the legislation, with benefits for both councils and householders.

2. USE OF FIXED PENALTY NOTICES – ISSUES FOR CONSIDERATION

2.1 Education and communication

2.1.1 The Department recommends that district councils considering issuing FPNs for the first time allow a well-publicised lead-in period. This should help to ensure public support for FPNs. During this time, if an offence is committed, the district council might consider not issuing a fixed penalty; if the offence is serious, they might issue a warning that in future similar offences may lead to fixed penalty notices (or prosecution). The Department's view is that this would help raise awareness amongst the community, help the public to adapt to the new system and should help to manage public perception. Of course councils would still have the option of pursuing more serious offences through the courts, even during this lead-in period.

2.1.2 The Department would also recommend that detailed guidance should be produced by district councils intending to implement this new enforcement regime.

2.1.3 Guidance material will obviously vary between district councils, as each has its own waste collection system. However it would seem appropriate that the guidance should explain how waste receptacles should be used, the warning procedure for improper use, and the process by which FPNs will be issued and then prosecutions pursued. In the interests of fairness, the Department would recommend that councils be consistent with householders and businesses in relation to the number of warnings issued before a fixed penalty is administered.

2.1.4 The Department also recommends that district councils should develop a communications strategy designed to raise awareness of the new

enforcement system. Again strategies would need to be tailored to meet the needs of individual district councils. However they could make use of local media and council websites to provide details of the new legislation and explain how and why the council intends to use these powers. Councils would wish to consider whether guidance should be distributed to all households and businesses. It might also be considered appropriate to hold community meetings at which council officers could inform the public of the new policy.

2.2 Refusal to pay Fixed Penalties

2.2.1 The Department's view is that FPNs should only be issued where there is adequate evidence to support a prosecution if the amount is not paid. Evidence from GB would suggest that there can be difficulties in enforcing waste receptacle legislation and that a district council must therefore have a very strong case in order to prove in court that an accused was directly responsible for the misuse of the waste receptacle.

2.2.2 Similarly, we recommend that FPNs should not be issued unless councils are certain that they have the financial means to contest the court cases that could arise in the event of refusals to pay fixed penalties. The Department's view is that failure by councils to follow up unpaid FPNs and to pursue them through the courts could well discredit their use in the district council area, and lead to declining rates of payment.

Taking the above issues into account, do you think that your council would issue fixed penalty notices for offences under Articles 21 and 22 of the 1997 Order, if the relevant legislation was commenced in the near future?

3. THE FORM OF A FIXED PENALTY NOTICE

3.1 While the legislation gives the Department the power to prescribe the form to be used for fixed penalty notices, it does not intend to make use of this power at the present time. Therefore, once the legislation is commenced,

councils would be free to tailor their Notices to suit the requirements of their individual areas.

3.2 However, the 2007 Order states that all of the following details must by law be included on the Notice:

- reasonable details of the circumstances of the alleged offence;
- the period during which proceedings will not be taken for the offence;
- the amount of the fixed penalty (see further details below);
- details of how the fixed penalty can be paid.

3.3 Where a district council provides for a discount for early payment of a fixed penalty (see further details below), the notice will need to provide details. Notices should also state prominently that non-payment is likely to result in prosecution for the alleged offence and the maximum fine payable on conviction.

3.4 Full details of the mandatory requirements are stipulated in Article 10 of the 2007 Order. However, to assist district councils, the Department intends to place a “model” notice on its website (draft copy attached). District Councils would be free to adapt the form of this notice to suit their needs (provided of course the mandatory requirements are satisfied).

Have you any comments on the form and/or content of the Department’s draft fixed penalty notice?

4. TIME PERIODS AND DISCOUNTS FOR EARLY PAYMENT

4.1 The legislation introduces a power for district councils to offer a discount for early payment of a fixed penalty. While the Department has the power to

restrict the circumstances in which district councils can exercise this power, it does not intend to make use of this power at the present time. Once the legislation is in force, district councils would therefore be free to utilise this power to suit local circumstances.

4.2 There is a standard period of 14 days for payment of fixed penalties. Once a FPN has been issued, a district council cannot prosecute for the alleged offence if the fixed penalty is paid within this period, and this must be stated on the notice. For this reason, the period during which a discount for early payment is offered must be less than 14 days and, to avoid confusion, the Department recommends that it should not be more than 10 days.

Do you think that your council would utilise its powers to offer a discount for early payment of a fixed penalty?

If so, how much discount do you think that your council would offer for early payment?

5. FUTURE SUBORDINATE LEGISLATION

5.1 As mentioned above, the 2007 Order gives the Department the power to legislate further in this field. This includes the power to change the amount of the fixed penalty to be paid for these offences and to prescribe the form of the fixed penalty notice to be used by district councils.

5.2 The Department will consult fully with district councils before introducing any further legislation in these areas.

SUMMARY

The Department invites councils to comment on any aspect of Article 10 of the 2007 Order. However, as outlined above, it would be of particular interest to hear opinions on the following issues:

- **Do you think that your council would utilise the powers to issue fixed penalty notices for offences under Articles 21 and 22 of the 1997 Order if the relevant legislation was commenced in the near future?**
- **Have you any comments on the form and/or content of the Department's draft fixed penalty notice?**
- **Would your council utilise its powers to offer a discount for early payment of a fixed penalty?**
- **If so, how much discount would your council offer for early payment?**

Any assistance that councils could provide on any of these issues would be of great assistance to the Department.