

**CONSULTATION PAPER ON PROPOSED AMENDMENTS TO THE  
WASTE AND CONTAMINATED LAND (NORTHERN IRELAND)  
ORDER 1997**



Department of the  
**Environment**  
[www.doeni.gov.uk](http://www.doeni.gov.uk)

**AUGUST 2005**

<b>INDEX</b>	<b>PAGE</b>
Introduction	3
Unlawful deposit of waste – Defence of acting under one’s employer's instructions	4
Penalties on conviction	4
Investigation and enforcement costs	4
Clean-up costs	4
Forfeiture of vehicles	5
Failure to furnish documentation: fixed penalty notices	5
Power to search and seize vehicles	5
Offences relating to waste receptacles: fixed penalty notices	6
Power of Department to require waste to be accepted, treated, disposed of or delivered	6
Power to require owner of land to remove waste	6
Unregistered transportation of waste - Defence of acting under one’s employer's instructions	7
Registration requirements and conditions	7
Enforcement powers	7
Failure to produce authority: fixed penalty notices	8
Supplementary enforcement powers	8
Making certain offences arrestable offences	8
Site waste management plans	8

# **CONSULTATION PAPER ON PROPOSED AMENDMENTS TO THE WASTE AND CONTAMINATED LAND (NORTHERN IRELAND) ORDER 1997**

## **INTRODUCTION**

1. This consultation paper sets out the first stage of the Department's proposals for a major over-haul of the current legislation governing the unlawful management and disposal of waste, as set out in the Waste and Contaminated Land (Northern Ireland) Order 1997 ("the 1997 Order"). The proposals largely replicate the provisions contained in Part 5 of the Clean Neighbourhoods and Environment Act 2005 that received Royal Assent earlier in April this year. The Department has, however, taken the opportunity to amend some of the provisions in the 2005 Act to reflect the more serious situation here in Northern Ireland arising from the involvement of organized criminal gangs taking advantage of the increasing practice of illegal cross boundary transport and illegal management of waste. This is economic criminal activity, which breaches environmental legislation and is often associated with other criminal activity not involving waste. In the Department's opinion, the proposed measures are necessary and sufficient to tackle the illegal transportation and disposal of waste in Northern Ireland.
2. The illegal treating, keeping and deposit of waste creates major problems for landowners and managers across Northern Ireland. This illegal activity can adversely affect the environment both in terms of air, water and land pollution and the effect on wildlife and can, in some cases, adversely affect people's health. It can also cause risk of injury, odour and infestation by vermin such as rats, flies etc. It is important to note that illegally deposited waste on private land with no public access can still pose a risk to the local environment. In addition, the illegal deposit of waste has netted large profits for illegal waste operators with the involvement of organised criminal gangs in waste transport and disposal. This has a negative impact, not only on the environment of Northern Ireland, but on the competitive status of legitimate waste businesses in Northern Ireland who have difficulty competing effectively against illegal activity.
3. The current powers available to the Department and district councils are not sufficient to deal with this growing problem. The large and increasing costs involved in cleaning up illegally deposited waste also provides a further reason to introduce new powers to address the growth of this unacceptable environmental and economic crime. The proposed measures outlined in this consultation paper will bring together in new legislation, new powers covering the scope and penalties for the offence of the illegal disposal of waste, the cleaning-up of illegally disposed waste, the stop, search and seizure of vehicles used in committing offences and the duty of care including the registration of waste carriers. The new powers would be stronger and more effective to use than

existing legislation and should provide a more effective deterrent. They would also make use of fixed penalties, as a more practical alternative to prosecution, for a number of waste related offences, and help to strengthen the enforcement of the duty of care for waste.

4. Anyone wishing to comment on these proposals, or to put forward any alternative proposals, should do so in accordance with the guidance set out in Appendix 1.

## **DETAIL**

### **5.0 Unlawful deposit of waste - Defence of acting under one's employer's instructions**

- 5.1 We propose amending Article 4 of the 1997 Order (under which it is an offence to make an unauthorised or harmful deposit etc. of waste) so as to remove the defence (at paragraph 4(7)(b)) of acting under one's employer's instructions. The Department's information indicates that employees of illegal operators make substantial earnings for the illegal transport of waste.

### **6.0 Penalties on conviction**

- 6.1 We propose amending the penalties available for offences under Article 4(8) of the 1997 Order, by increasing the maximum term of imprisonment from 6 months to 12 months and the maximum level of fine from £20,000 to £50,000 on summary conviction for the illegal disposal of waste. We also propose raising the maximum term of imprisonment on conviction on indictment for non-hazardous waste offences from two years to five years (the same as is already applied for offences involving special (hazardous) waste).

### **7.0 Investigation and enforcement costs**

- 7.1 We propose inserting a new provision into the 1997 Order to the effect that where a person is convicted of an offence under Articles 4(1) or 5(1) of the 1997 Order, the Court may make an order requiring the offender to pay the Department's investigation and enforcement costs, as well as any costs associated with seizure of vehicles involved in the offence.

### **8.0 Clean-up costs**

- 8.1 We propose inserting a new provision into the 1997 Order to the effect that where a person has been convicted of an offence under Articles 4(1) or 5(1) of the 1997 Order, consisting of the deposit or disposal of controlled waste, the Court may make an order requiring the offender to pay to either the Department or the occupier of land or the owner of land, any costs incurred by them in removing waste that has been illegally deposited or disposed of in or on land, or in taking steps to eliminate or reduce the consequences of the deposit or both.

## **9.0 Forfeiture of vehicles**

- 9.1 We also propose inserting a new provision into the 1997 Order to the effect that where a person has been convicted of an offence involving contravention of Articles 4(1) or 5(1) of the 1997 Order, consisting of the keeping, treating or deposit or disposal of controlled waste, the Court may make an order to deprive the offender of his rights to a vehicle (and its contents) if it is satisfied that the vehicle was used in or for the purpose of the commission of the offence.
- 9.2 The Court may give possession of the vehicle, plant or machinery and its contents to the Department and in deciding whether or not to make the forfeiture order the Court will take into account the value of the vehicle, the impact of forfeiture on the offender, the offender's need to use the vehicle lawfully, and, if it appears that the offender is engaged in a business that illegally disposes of waste, whether the order is likely to be dissuasive of further such activity.

## **10.0 Failure to furnish documentation: fixed penalty notices**

- 10.1 Article 5 of the 1997 Order places a duty of care on any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, to secure a written description of the waste whenever it is transferred. Article 5(7) provides for regulations to be made to require such documents to be retained and furnished.
- 10.2 We propose inserting a new provision into the 1997 Order to give the Department the power to issue a fixed penalty notice to a person who has failed to comply with a requirement to furnish documents under regulations made under Article 5, offering that person the opportunity to discharge any liability to conviction for an offence by payment of a fixed penalty.

## **11.0 Power to search and seize vehicles**

- 11.1 We propose inserting two new provisions into the 1997 Order to confer powers to stop, search and seize a vehicle (and its contents) where it is reasonably believed that the vehicle has been, is being, or is about to be, used in the commission of an offence under Articles 4 or 5.
- 11.2 The first of these provisions will allow an authorised officer or a constable to seize a vehicle and its contents; will create offences of failing to assist or otherwise intentionally obstructing an authorised officer or constable; will empower an authorised officer or a constable to demand the name and address of any occupant of a vehicle he has stopped under this Article, the name and address of the registered owner of the vehicle, or any other information he may reasonably request and create an offence of failing, without reasonable excuse, to give this information, or to give information which is knowingly or recklessly false or misleading. An offence under the new provision will be punishable on summary

conviction by a fine not exceeding level 5 on the standard scale (currently £5,000). Under existing legislation elsewhere in the UK, only a constable in uniform may stop a vehicle on a public road. We propose extending this power to an authorised officer of the Department.

- 11.3 The second new provision will empower the Department to make regulations specifying how it must deal with any seized property.

### **12.0 Offences relating to waste receptacles: fixed penalty notices**

- 12.1 We propose inserting new provisions into the 1997 Order to the effect that where a district council has reason to believe that a person has committed an offence under Articles 21 and 22, the council may issue a notice to that person, offering him an opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty.

### **13.0 Power of Department to require waste to be accepted, treated, disposed of or delivered**

- 13.1 We propose introducing in a provision relating to a continuing daily offence on non-compliance with a direction issued under Article 27.

### **14.0 Power to require removal of waste unlawfully deposited**

- 14.1 Under Article 28 of the 1997 Order, where waste has been unlawfully deposited on land in the district of a district council in contravention of Article 4(1) of the Order, that district council has the power to serve a notice requiring the occupier remove the waste or take such steps as are specified in the notice with a view to eliminating or reducing the consequences of the unlawful deposit of the waste. We propose inserting a new provision into the 1997 Order to enable a notice to be served on the owner of the land requiring him to clear waste from it in circumstances where there is no occupier of the land or the occupier cannot be found without a district council incurring unreasonable expense or the occupier has successfully appealed against a notice served in him.

### **15.0 Unregistered transportation of waste - Defence of acting under one's employer's instructions**

- 15.1 Under Article 38 of the Waste and Contaminated Land (Northern Ireland) Order 1997 ("the 1997 Order"), it is an offence for anyone who is not a registered carrier of controlled waste to transport such waste in the course of any business of his or otherwise with a view to profit. Controlled waste is defined as household, industrial and commercial waste.
- 15.2 We propose amending Article 38 of the 1997 Order so as to remove the defence (at paragraph (4)(c)) of acting under one's employer's instructions.

## **16.0 Registration requirements and conditions**

- 16.1 Article 39 of the 1997 Order sets out provisions as to the registration of waste carriers. We propose amending the provisions in Article 39 relating to certificates of registration for carriers of controlled waste (in relation to which provision can be made in regulations under that Article). In particular, we propose removing the requirement that a certificate of registration, and copies of such a certificate, must be provided free of charge, thereby enabling the Department to charge for such documentation. We also propose extending the time allowed within which to take prosecutions in a Magistrates' Court.
- 16.2 We propose providing, by way of two new provisions in the 1997 Order, that regulations under Article 39 may include provision for the registration of carriers of controlled waste to be subject to conditions relating to the vehicles they use, as well as for the possible revocation of a registration in the event of breach of such a condition. In support of this, the regulations may provide for inspections of such vehicles and charges for such inspections.

## **17.0 Enforcement powers**

- 17.1 We propose substituting Article 42 of the 1997 Order with two new provisions, the principal effect of which is to enable a constable or an authorised officer to stop, search and seize a vehicle that he reasonably believes is being used in the commission of an offence under Article 38 of that Order (transporting controlled waste without being registered).
- 17.2 The new provisions will set out the powers of an authorised officer or a constable in relation to such a vehicle and its contents. This new Article will largely re-enact the current offence under the present Article 42 of failing to comply with a requirement to produce authority for transporting controlled waste; it will also create new offences of failing to assist or otherwise obstructing an authorised officer or constable. Under existing legislation elsewhere in the UK, only a constable in uniform may stop a vehicle on a public road. We propose extending this power to an authorised officer of the Department.
- 17.3 We also propose giving an authorised officer or constable a power to require any occupant of the vehicle to give his name and address, and that of the registered owner of the vehicle, and any other information he may reasonably request. It will be an offence to fail to give such information or to give information which is knowingly or recklessly false or misleading, punishable by a fine not exceeding level 5 on the standard scale (currently £5,000).
- 17.4 The new provision will also empower the Department to make regulations specifying how it must deal with vehicles or their contents seized under Article 42.

## **18.0 Failure to produce authority: fixed penalty notices**

18.1 We propose inserting a new provision into the 1997 Order to the effect that where it appears to an authorised officer that a person has committed an offence under Article 42(7)(a) (failure to produce authority for transporting controlled waste) he may issue that person with a notice, offering him an opportunity to discharge by payment of a fixed penalty any liability to conviction for the offence.

## **19.0 Supplementary enforcement powers**

19.1 We propose strengthening the Department's powers of investigation in investigating incidents or offences in relation to any of its functions under Part II of the 1997 Order. In particular, we propose giving to an authorised officer of the Department a new general power to stop, seize and search a vehicle on a public road; a new power to be accompanied by unauthorised officers during searches of property; a new power to remove computer equipment and records held in other electronic formats; an extension of the period allowed to investigate offences of obstruction, and the deletion of the requirement to give at least 7 days notice prior to entering residential property or taking heavy equipment onto premises. We also propose giving the Department the power to enter land to carry out remedial works where a court has awarded clean up costs following conviction for an offence under Articles 4 or 5 of the 1997 Order.

## **20.0 Making an offence under article 4 and 5 of the 1997 Order and arrestable offence**

20.1 We propose amending the Police and Criminal Evidence (Northern Ireland) Order 1989 so as to make certain offences under the Waste and Contaminated Land (NI) Order 1997 an arrestable offence.

## **21.0 Site Waste Management Plans**

21.1 We are minded to require developers and contractors of construction and demolition projects to prepare a written Site Waste Management Plan that would identify the volume and type of material to be demolished and/or excavated. The Plan would need to demonstrate how off-site disposal of wastes would be minimised and managed. The Department proposes consulting further on the possible models available for Site Waste Management Plans in the forthcoming consultation on the Waste Management Strategy for Northern Ireland, prior to taking forward any legislative proposals.

## **22.0 Equality Impact Assessment and Human Rights Compliance**

22.1 An equality impact screening process on the main proposals in this Consultation Document has been carried out. The conclusion from the screening exercise is that there is no adverse differential impact anticipated for any of the groups

specified in section 75 the Northern Ireland Act 1998, as a consequence of the implementation of these proposals.

**22.2** The Department is of the view that the proposed legislative changes are compatible with the Human Rights Act 1998.

**23.0 Regulatory Impact Assessment**

**23.1** A Partial Regulatory Impact Assessment has been carried out and can be found at Appendix 2.

## Responses

Where possible responses to this consultation should be sent by email to the address below by 14<sup>th</sup> November 2005.

By e-mail: [Jackie.lambe@doeni.gov.uk](mailto:Jackie.lambe@doeni.gov.uk)

Alternatively, if you do not have access to email, please send responses by post to the following address:

Jackie Lambe  
DOE (EPD)  
22-24 Donegall Street  
BELFAST  
BT1 2GP

Or by fax: 028 90544520

Please send your response using only one of these options.

## Enquiries

Enquiries regarding the contents of this consultation paper should be made to:

Jackie Lambe  
DOE (EPD)  
22-24 Donegall Street  
BELFAST  
BT1 2GP  
Tel.: 028 90544549  
Fax: 028 90544520  
E-mail [Jackie.lambe@doeni.gov.uk](mailto:Jackie.lambe@doeni.gov.uk)

## **FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS**

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations as they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. 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.

This means that information provided by you in response to the consultation 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 that 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 to the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see the website at: <http://www.informationcommissioner.gov.uk/>).

### **Further copies of this consultation paper**

Requests for further copies of this document should be made to:

Department of the Environment  
Environmental Policy Division  
22-24 Donegall Street  
BELFAST  
BT1 2GP  
Tel.: 028 90544549  
Fax: 028 90544520  
E-mail [Jackie.lambe@doeni.gov.uk](mailto:Jackie.lambe@doeni.gov.uk)

The consultation paper is also available on the Department's website, at <http://www.doeni.gov.uk/epd>

## 1.0 PARTIAL REGULATORY IMPACT ASSESSMENT

- 1.1 The consultation paper on proposed amendments to the Waste and Contaminated Land (Northern Ireland) Order 1997 aims to provide the Department and district councils with more effective powers to deal the illegal deposit of waste.
- 1.2 The ability of this proposed package of measures to enhance the waste legislation will depend on the effectiveness of the individual measures to improve local environments (and how they improve on the status quo) and on how, and how much, the relevant bodies use the various measures.
- 1.3 While the individual measures can be examined to assess how they change the status quo it is difficult to assess the extent to which the relevant bodies will choose to use the new measures at their disposal. This is because in the vast majority of cases, the measures provide those bodies with additional powers that they can choose whether or not to use.
- 1.4 It is, however, necessary to examine the mechanisms of the measures more closely to understand how they work.

### 2.0 **Amend provisions for dealing with the illegal disposal of waste by removing the statutory defence relating to employers instructions. Increase penalties. Allow forfeiture of vehicles. Allow the court to order offender to pay costs of investigation and clearance. Extend Article 28 of the Waste and Contaminated Land (Northern Ireland) Order 1997 to include the landowner.**

- 2.1 These measures would make a series of amendments to Article 4 and Article 5 of the 1997 Order to make the offence of the illegal deposit of waste more robust. It would also amend Article 28 so that district councils can require landowners as well as occupiers to clear illegally deposited waste, or pay the costs of the clearance, in cases where they caused or knowingly permitted the deposit of waste.

### 2.2 **Benefits**

- Reduce levels of illegally deposited waste where landowners are aware that it is taking place
- Allow district councils to deal with some long-standing problem areas where there is no occupier
  
- Reduced harm to health and wildlife
- Better cost recovery for district councils and land owners
- Stronger deterrents.

### **2.3 Costs**

- Cost to district councils and culpable landowners of clearing waste. On an individual basis this will depend on size of site, amount and the types of waste that have been deposited.

### **3.0 Failure to furnish documentation: fixed penalty notices.**

- 3.1 The amount of the fixed penalty would be say £300 in respect of each incident, although this could be altered by subsequent order.

### **3.2 Benefits**

- Potential reduction in the illegal deposit of waste as there will be a greater incentive to dispose of waste within existing regulations
- Better enforcement of existing law

### **3.3 Costs**

- Cost to businesses that fail to comply with regulations.

### **4.0 Power to search and seize vehicles.**

- 4.1 Officers of the Department would be given powers to instantly seize a vehicle involved in illegally depositing waste and impound it for the purposes of taking further evidence, which may involve prosecution action.

### **4.2 Benefits**

- Reduced illegal depositing through more effective enforcement and associated reduction in clean-up costs
- Reduced demand for police time.

### **4.3 Costs**

- Cost of enforcement.

### **5.0 Registration requirements and conditions.**

- 5.1 This measure would introduce an enabling power that would allow the Department to make new regulations covering the registration of waste carriers.

### **5.2 Benefits**

- More effective operation and enforcement of these regimes.

### **5.3 Costs**

- None.

### **6.0 Failure to produce authority: fixed penalty notices.**

6.1 The amount of the fixed penalty would be say £300 in respect of each incident, although this could be altered by subsequent order.

### **6.2 Benefits**

- Potential reduction in illegal deposit of waste as there would be more effective deterrence
- Easier and less costly for the Department to enforce existing law

### **6.3 Costs**

- Cost to businesses that fail to comply with regulations.

### **7.0 Supplementary enforcement powers.**

7.1 Amend Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997 to enhance the Department's powers to investigate offences involving the illegal disposal of waste. In particular, we propose giving to an authorised officer of the Department a new general power to stop, seize and search a vehicle on a public road; a new power to be accompanied by unauthorised officers during searches of property; a new power to remove computer equipment and records held in other electronic formats; an extension of the period allowed to investigate offences of obstruction, and the deletion of the requirement to give at least 7 days notice prior to entering residential property or taking heavy equipment onto premises. We also propose giving the Department the power to enter land to carry out remedial works where a court has awarded clean up costs following conviction for an offence under Articles 4 or 5 of the 1997 Order. In addition, we propose amending the Police and Criminal Evidence (Northern Ireland) Order 1989 so as to make certain offences under the Waste and Contaminated Land (NI) Order 1997 an arrestable offence.

### **7.2 Benefits**

- More effective enforcement.

### **7.3 Costs**

- None.

## **8.0 Introduce a new requirement for Site Waste Management Plans**

8.1 One of the most common types of waste found to be illegally disposed of is construction, demolition and excavation waste. Despite increases in Landfill Tax, good environmental practice and efficient waste management is not widespread in the construction sector. Without action to address this issue, inefficient use of resources and mismanagement of the waste process in this sector will continue to proliferate with significant detrimental impact on the environment.

8.2 We propose giving the Department the power to develop regulations to require developers and contractors to produce a written Site Waste Management Plan for all construction projects above the value of £200,000. The plan would need to identify the volume and type of material to be demolished and/or excavated and would need to demonstrate how off-site disposal of wastes would be minimised and managed. Production of these plans would improve regulatory compliance, encourage re-use and recycling, and reduce levels of illegal disposal.

### **8.3 Benefits**

- Increased re-use and recycling, resource efficiency and waste minimisation with associated cost saving to business
- Increased regulatory compliance in dealing with waste
- Reduced illegal deposit of waste.

### **8.4 Costs**

- Time spent by the construction industry in preparing plans.
- Cost to the Department of enforcing the requirements.

## **9.0 Offences under Articles 21 and 22 (waste receptacles): Fixed penalty Notices**

9.1 The amount of the fixed penalty would be say £100 in respect of each incident, although this could be altered by subsequent order.

### **9.2 Benefits**

- Easier and less costly for district councils to enforce existing law

### **9.3 Costs**

- Cost to individuals and businesses that fail to comply with regulations.

## **10.0 SUMMARY AND RECOMMENDATION**

- 10.1 The measures proposed in the consultation paper are based on sound policy considerations and, in the Department's opinion, represent the minimum measures necessary to tackle an increasing illegal activity. Over the coming months, the Department will continue to develop its thinking on how much, and to what extent, additional powers may be needed in this area and intends consulting further later in the year on its full range of policy considerations.
- 10.2 The majority of measures provide the Department and district councils with additional powers rather than duties. Where there are costs to businesses or individuals these normally result from making them pay for the illegal activity they carry out. Some of the measures transfer costs onto private individuals or organisations that have direct responsibility for property or land to which the powers relate. These costs would normally only apply where the individual had first not taken steps to minimise the problem and would be reduced through effective partnership working.
- 10.3 The benefits of these measures outweigh the costs associated, and it is, therefore, recommended that all the measures are included in a forthcoming draft Waste and Contaminated Land (Amendment) (Northern Ireland) Order 2006.

**List of Consultees**

MPs/MEPs  
Government Departments  
District Councils  
Environmental Health Groups  
Voluntary Groups  
Waste Management Firms  
CIWM  
CTA  
NICVA  
CBI  
Belfast Hills