



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

**PLANNING AND ENVIRONMENTAL POLICY GROUP  
CLIMATE CHANGE AND WASTE MANAGEMENT  
DIVISION**

**CONSULTATION DOCUMENT- PROPOSALS FOR A  
WASTE BILL**

**6 APRIL 2009**

**This document is available in alternative formats. Please  
contact us to discuss your requirements:**

Ian Troy  
Department of the Environment  
Planning and Environmental Policy Group  
Calvert House  
23 Castle Place  
Belfast  
BT1 1FY

E-mail: [ian.troy@doeni.gov.uk](mailto:ian.troy@doeni.gov.uk)  
Telephone 028 9025 4917,  
Textphone 028 9054 0642,  
Fax 028 9025 4732

## **CONTENTS**

<b>Section 1:</b>	<b>5</b>
<b>Consultation arrangements</b>	
<b>Section 2:</b>	<b>8</b>
<b>Introduction</b>	
<b>Section 3:</b>	<b>9</b>
<b>Executive Summary</b>	
<b>Section 4:</b>	<b>12</b>
<b>Policy Proposals</b>	
<b>A. Proposed amendments to the existing legislative framework for the management of waste on land</b>	<b>13</b>
<b>Proposed new powers for councils and the Department of the Environment in tackling illegal waste disposal</b>	<b>14</b>
Background	14
New investigation and enforcement powers for councils	16
Revisions to Article 28 of the Waste and Contaminated Land (Northern Ireland) Order 1997	17
Fixed penalties for flytipping offences	19
Flytipping Protocol	20
<b>Amendments to Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997</b>	<b>22</b>
<b>Revised definition of offences under Article 4 of the Waste and Contaminated Land (Northern Ireland) Order 1997</b>	<b>24</b>

<b>Review of references to land in the Waste and Contaminated Land (Northern Ireland) Order 1997</b>	<b>26</b>
<b>Creation of a new offence of a failure to pay subsistence fees with respect to a Waste Management Licence</b>	<b>28</b>
<b>Power to retain seized vehicles</b>	<b>31</b>
<b>B. Proposed amendments to a planned Contaminated Land regime</b>	<b>33</b>
Background	34
Appeals	34
Definition of Contaminated Land	35
Significant Pollution of Waterways or Underground Strata	36
Interaction with the Pollution Prevention and Control Regime	36
<b>C. Proposals designed to clarify local government powers to enter into waste management contracts</b>	<b>38</b>
Background	39
Guarantee	42
Warranties and Indemnities	43
Joint and Several Liability	44
Delegation of Functions	45
Borrowing	46
Payments from Strategic Waste Infrastructure Fund	47
Unincorporated Joint Committees	49
Other Vires Issues	50

Single Waste Disposal Authority	51
<b>D. Proposed amendment to the Producer Responsibility Obligations (Northern Ireland) Order 1998</b>	<b>54</b>
<b>Section 5: Results of Equality Screening, Human Rights and Regulatory Impact Assessments and Rural Proofing</b>	<b>57</b>
<b><u>ANNEXES</u></b>	
<b>Annex 1: List of Questions</b>	<b>60</b>
<b>Annex 2: Guidance on the Confidentiality of Consultation Responses</b>	<b>66</b>

## **SECTION 1**

### **CONSULTATION ARRANGEMENTS**

#### **How to respond to this consultation**

The commencement date of this consultation is **6 April 2009** and it will close on **3 July 2009**.

The consultation paper can also be accessed at the following website address:

[http://www.doeni.gov.uk/index/protect\\_the\\_environment/waste.htm](http://www.doeni.gov.uk/index/protect_the_environment/waste.htm)

Responses can be sent:

**By email to:** [ian.troy@doeni.gov.uk](mailto:ian.troy@doeni.gov.uk)

**By post to:** Ian Troy  
Department of the Environment  
Planning and Environmental Policy Group  
Calvert House  
23 Castle Place  
Belfast  
BT1 1FY

**By fax to:** 028 9025 4732

When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are representing an organisation please make it clear which organisation

you represent, and, where applicable, how the views were assembled.

## **Enquiries**

Enquiries regarding the content of this consultation paper, or requests for further copies, should be made to Ian Troy (e-mail: [ian.troy@doeni.gov.uk](mailto:ian.troy@doeni.gov.uk); telephone: 028 9025 4917). Information and additional copies of the document can also be requested by text phone (028 9054 0642).

## **Confidentiality**

The Department may wish to publish responses to this consultation document. It will certainly, at the end of the consultation period, publish on its website a summary of the responses received.

If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request.

You should also be aware that there may be circumstances in which the Department will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information

Regulations. Annex 2 contains further information on Freedom of Information which you should read before you submit your response. It contains guidance on the legal position of any information given by you.

### **Geographical Coverage**

This consultation and descriptions of law relate only to Northern Ireland.

## **SECTION 2**

### **INTRODUCTION**

This policy consultation document invites comments on the Department's proposals for changes to the existing legislative framework for waste management and contaminated land in Northern Ireland. It also proposes additional legislation relating to local government contracts for waste management, enabling legislation for a Single Waste Disposal Authority and a minor amendment to the Producer Responsibility Obligations Order 1998. A brief outline of the issues addressed in the document is provided in the Executive Summary (page 9).

The Department is interested in your views on its policy proposals. For this reason, each section of the document contains a number of questions on which your comments are requested. The Minister will consider carefully the responses received to all of these questions before taking any final decisions on the way forward. Details of how you can respond to the consultation are provided on page 5.

The Department has already secured a place for a Waste Bill in the Assembly's legislative programme. Depending upon the outcome of the consultation exercise, it is anticipated that a number of the proposals outlined in this document will be included either in the Waste Bill or in other appropriate Primary legislation.

## **SECTION 3**

### **EXECUTIVE SUMMARY**

This policy consultation document comprises 4 separate elements:

- (A) Proposed amendments to the existing legislative framework for the management of waste on land – Part 2 of the Waste and Contaminated Land (NI) Order 1997 (“the 1997 Order”)<sup>1</sup>;
- (B) Proposed amendments to Part 3 of the 1997 Order – Contaminated Land;
- (C) A number of proposals designed to clarify local government powers to enter into waste management contracts with the private sector and to provide for a Single Waste Disposal Authority;
- (D) A proposed amendment to the Producer Responsibility Obligations (Northern Ireland) Order 1998<sup>2</sup>.

#### **(A) Proposed amendments to the existing legislative framework for waste management in Northern Ireland**

The proposals were generated from a number of sources including the 2006 NI Waste Management Strategy<sup>3</sup>, responses received to

---

<sup>1</sup> S.I. 1997 No 2778 NI 19

<sup>2</sup> S.I. 1998 No. 1762 NI 16

<sup>3</sup> <http://www.ni-environment.gov.uk/waste/strategyni.htm>

previous public consultations on the Waste (Amendment) (Northern Ireland) Order 2007<sup>4</sup>, and problems experienced by the Department itself in using existing legislative provision. Significantly, many of the proposals reflect a desire to promote an effective partnership between the Department and local government in tackling the problems caused by illegal waste disposal.

### **(B) Proposed amendments to a planned Contaminated Land regime**

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. 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.

### **(C) Proposals designed to clarify local government powers to enter into waste management contracts**

In December 2008 the Department issued a public consultation on its proposal for a Local Government (Contracts and Compulsory Purchase) Bill (“the Contracts Bill”)<sup>5</sup>. That Bill aims to clarify the

---

<sup>4</sup> S.I. 2007 No 611 NI 3

<sup>5</sup>

[http://www.doeni.gov.uk/index/local\\_government/lg\\_funding/local\\_government\\_consultations.htm](http://www.doeni.gov.uk/index/local_government/lg_funding/local_government_consultations.htm)

powers of district councils to enter into long-term service contracts with the private sector.

District Councils and Waste Management Groups in Northern Ireland are committed to the implementation of a major waste management infrastructure programme. The provisions contained in the Contracts Bill are viewed as critical to the successful completion of that programme. However key stakeholders in that process have highlighted a number of areas where they believe additional legislative provision is required in order to promote contractor confidence in the procurement process. This document therefore outlines proposals designed to address that need and to support the Department in making capital grant payments from the Strategic Waste Infrastructure Fund to local government organisations for the purposes of developing waste infrastructure.

The consultation document also proposes enabling legislation for the creation of a Single Waste Disposal Authority.

#### **(D) Proposed amendment to Producer Responsibility Obligations (Northern Ireland) Order 1998**

The Department proposes a minor amendment to the Producer Responsibility Obligations (Northern Ireland) Order 1998 to provide an inclusive definition of the Department's powers of entry and inspection.

## **SECTION 4**

### **POLICY PROPOSALS**

**A. PROPOSED AMENDMENTS TO THE EXISTING  
LEGISLATIVE FRAMEWORK FOR THE MANAGEMENT  
OF WASTE ON LAND**

## **NEW POWERS FOR COUNCILS AND THE DEPARTMENT OF THE ENVIRONMENT IN TACKLING ILLEGAL WASTE DISPOSAL**

### **Background**

Under existing legislation<sup>6</sup> both the Department of the Environment (“the Department”) and councils have powers to deal with illegally deposited waste. The Department has the power to prosecute offenders; however, its clean-up powers are confined to instances where there is imminent danger of serious pollution.

On the other hand, the 26 councils in Northern Ireland can require an owner or occupier of land to take remedial action in relation to illegally dumped waste. In the event of failure to do so, councils can take remedial action, and seek cost recovery through the courts. Unlike the Department however, they do not have specific powers to prosecute offenders for offences related to the illegal deposit of waste and/or breach of duty of care in respect of waste.

In their responses to recent Departmental consultations<sup>7</sup>, a number of councils contended that councils are being left with a significant number of cases of illegal dumping which have a serious detrimental impact on local amenity, but where offenders are not being pursued

---

<sup>6</sup> The Waste and Contaminated Land (Northern Ireland) Order 1997 (S.I. 1997 No 2778 NI 19).

<sup>7</sup> Public consultations on possible changes to The Waste and Contaminated Land (Northern Ireland) Order 1997 (consultation carried out in 2005) and on the draft Waste (Amendment) (Northern Ireland) Order 2007 (S.I. 2007 No 611 NI 3) (consultation carried out in 2006).

by the Department. They suggested that councils should be given a more proactive role in policing illegal waste activity.

Responding councils also gave a qualified welcome to the proposals to give them the powers to require landowners to deal with waste illegally deposited on their land<sup>8</sup> (they already had this power in relation to the occupiers of land). Some respondents felt that the power should be extended to allow councils to serve a notice on those responsible for the unlawful deposit of waste – rather than simply the owner or occupier of the land on which the waste has been illegally dumped. There was also support for either transferring this power entirely to the Department, or for giving the Department a similar role to councils.

In England and Wales both local authorities and the Environment Agency have specific powers to prosecute for alleged waste offences. Similarly, both can remove fly tipped material and can seek to recover the necessary costs of doing so from any person who deposited controlled waste or knowingly caused, or knowingly permitted its deposit. A “Flytipping Protocol” is in place which governs the respective roles of local authorities and the Environment Agency in dealing with flytipped material.

The Department recognises the importance of collaboration with councils and the potential benefits of a partnership approach to

---

<sup>8</sup> This power was provided to councils through Article 12 of The Waste (Amendment) (Northern Ireland) Order 2007.

tackling illegal waste disposal in Northern Ireland. Our objective is to ensure that both the Department and councils in Northern Ireland have sufficient statutory powers to deal effectively with illegal waste activity. Accordingly, the Department suggests the following revisions to The Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”):

### **New investigation and enforcement powers for councils**

Article 4 of the 1997 Order prohibits dealing with waste in a potentially harmful or polluting way. It is an offence to deposit or deal in other ways with waste without a waste management licence, or to breach any condition of a waste management licence. Article 5 of the Order establishes a duty of care to take reasonable measures in connection with controlled waste. The duty applies to producers, importers, holders, carriers and persons who treat or dispose of controlled waste.

It is proposed that the 1997 Order is amended to allow councils in Northern Ireland to prosecute for offences related to breaches of either of these Articles.

In addition, in order that councils are able to carry out comprehensive investigations of suspected breaches of Articles 4 and 5, the Department further proposes that council enforcement officers will be provided 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.

## **QUESTIONS**

- 1. Do you think that it would be appropriate for councils to be given the powers to carry out investigations and, where appropriate, prosecutions for alleged waste offences under Articles 4 and 5 of the 1997 Order?**
- 2. Have you any other comments on these proposals or any alternative suggestions?**

## **Revisions to Article 28**

Article 28 of the 1997 Order enables a council to serve a notice on an owner or occupier of land, requiring him to remove the waste or to take remedial action to eliminate or reduce the consequences of the unlawful deposit. The owner or occupier of the land can appeal the notice if he neither deposited the waste nor knowingly caused or knowingly permitted its deposit. If an occupier or owner fails to comply with the requirements in a notice, a council has powers to enter the land, remove the waste or take appropriate remedial action, and recover the associated costs. Article 28 also provides for court action in the event of failure to comply with a notice to remove illegally deposited waste and/or eliminate or reduce the consequences of the unlawful deposit. The maximum fine for an

offence is £5000 and, in the case of a continuing failure to comply, there is provision for an additional daily fine of £500.

The Department proposes to amend Article 28 of the 1997 Order so that:

- both the Department and councils can issue Article 28 notices;
- both the Department and councils have the power to serve an Article 28 notice on a suspected offender (ie the person suspected of illegally depositing the waste) in addition to the owner and occupier, where such a person can be identified; and
- an Article 28 notice can require, where appropriate, the cessation of the illegal keeping, treating and disposing of waste in addition to its removal/remediation.

Finally, the Department is considering whether the maximum fine imposed on conviction for an offence connected with breaches of Article 28 should be increased from its current level of £5000 (with a current maximum daily fine of £500).

## **QUESTIONS**

**3. Do you agree with the proposed changes to Article 28 of the 1997 Order as outlined above?**

**4. Do you have any comments on the level of fines?**

**5. Have you any other comments on these proposals or any alternative suggestions?**

### **Fixed penalties for flytipping offences**

It is proposed that the Department and councils will be given the powers to issue fixed penalty notices in relation to breaches of Article 4 of the 1997 Order.

At present all flytipping offences in Northern Ireland – regardless of scale - must be prosecuted through the courts. The maximum available fine on conviction for the illegal treatment, keeping or deposit of waste in the Magistrate’s Court is £50,000 and the maximum prison term on conviction in the Crown Court is 5 years.

However it is thought that in certain circumstances it might be more appropriate for the Department and councils to be able to issue fixed penalties for flytipping offences rather than to be obliged, in every case, to prosecute alleged offenders through the courts.

The option of issuing fixed penalties would provide a more flexible and less costly alternative to prosecution for lesser illegal dumping offences. It is proposed that the Department and the relevant council would be able to decide if the option of issuing a fixed penalty was

appropriate in each individual case. Obviously the enforcing authority would retain the option of prosecuting offenders through the courts in the normal way.

## **QUESTIONS**

- 6. Do you think that the Department and councils should have the option of issuing fixed penalty notices for flytipping offences as an alternative to prosecutions through the courts?**
  
- 7. If so, have you any views on when the issue of a fixed penalty notice might be appropriate and when might this not be the case?**
  
- 8. If the Department and councils were given the option of issuing fixed penalty notices for flytipping, at what level should such penalties be set?**
  
- 9. Have you any other comments on these proposals or any alternative suggestions?**

## **Flytipping Protocol**

The Department recognises that legislative change alone will not resolve the flytipping problem. In addition to the clear need to provide

both the Department and councils with sufficient statutory powers to deal effectively with illegal waste activity, there will also be a need for a formal protocol which clearly establishes the respective roles and responsibilities of the Department and councils in dealing with flytipped waste.

Discussions aimed at establishing such a protocol are underway between Departmental officials and representatives from the local government sector. This work will continue over the next few months.

## **QUESTION**

**10. Do you have any comments or suggestions concerning the proposed Flytipping Protocol?**

## **PROPOSED AMENDMENTS TO ARTICLE 72 OF THE WASTE AND CONTAMINATED LAND (NORTHERN IRELAND) ORDER 1997**

The Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”) gives enforcement officers a range of powers to enable them to investigate waste offences. Under Article 72 of the 1997 Order, enforcement officers can bring machinery into premises and enter residential premises (which may be used as a workplace by those committing waste crimes). However, except in an emergency situation, enforcement officers must give 24 hours notice of their intention to do so and must have either a court warrant or the permission of the occupier of the premises.

This requirement to give notice creates a risk of destruction of evidence by those who may have committed offences to prevent the Department or other law enforcement agencies from detecting criminality. Destruction or removal of evidence (e.g. waste in containers, vehicles, and computer or hard copy records) could prevent enforcement officers from gaining the evidence needed to pursue a court case. It could either lessen the perceived significance of a case or cause it not to be investigated at all.

In addition, individuals have on occasion sought to prevent access to their premises by the construction or placement of barriers to entry. This increases the health and safety risk to enforcement officers and other staff.

For these reasons, the Department feels that the requirement to give 24 hours notice to enter or bring heavy machinery onto premises should be removed. In all cases where enforcement officers would enter premises without notice, the purpose would be to conduct criminal investigation of alleged offences. In addition, the requirement for enforcement officers to obtain a court warrant before entry would be permitted would remain. Officials would be required to provide relevant evidence to the court in order to obtain the warrant.

In the event that councils are given Article 72 powers (see page 16 above), this proposal would apply equally to council officers.

## **QUESTIONS**

- 11. Do you think that the 24 hour notice period currently required before enforcement officers can bring machinery onto premises or enter residential premises should be removed?**
  
- 12. If so, do you think that the requirement to obtain a court warrant provides sufficient safeguards for the public?**
  
- 13. Have you any other comments on these proposals or any alternative suggestions?**

## **REVISED DEFINITION OF OFFENCES UNDER ARTICLE 4 OF THE WASTE AND CONTAMINATED LAND (NORTHERN IRELAND) ORDER 1997**

Article 4 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”) currently states:

*“...a person shall not –*

*(a) deposit controlled waste, or knowingly cause or knowingly 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) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of –*

*(i) in or on any land, or*

*(ii) by means of any mobile plant,*

*except under and in accordance with a waste management licence.”*

The Department has been challenged in the past where owners of large illegal landfill sites have claimed that they had no knowledge of the waste deposit. These challenges have confirmed that for the Department to achieve a conviction for the illegal deposit of waste it must be able to prove beyond reasonable doubt that the accused knew about the activity.

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.

## **QUESTION**

**14. Do you agree with the proposed change to the definition of an offence under Article 4 of the 1997 Order? If not, why not and have you any other suggestions?**

## REVIEW OF REFERENCES TO LAND IN THE WASTE AND CONTAMINATED LAND (NORTHERN IRELAND) ORDER 1997

Article 2(5) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”) states that:

*“For the purposes of this Order references to land on which controlled waste is treated, kept or deposited are references to the surface of the land”.*

This definition has caused difficulties in the prosecution of illegal waste cases where it is not clear what the original surface of the land was, or where waste has been buried or has been deposited in quarries or under water. For example, Article 27(2) of the 1997 Order states:

*“The Department may, by notice, direct any person who is keeping controlled waste on any land to deliver the waste to a specified person on specified terms with a view to its being treated or disposed of by that other person”.*

A notice issued under Article 27 of the Order can be challenged by the recipient, on the basis that the waste was buried or otherwise not deposited **on the surface of the land**.

Clearly this does not provide an efficient mechanism for the Department to require an individual to remove illegally deposited

waste from a site. The Department therefore proposes to review 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, on, over or under land.

## **QUESTIONS**

- 15. Do you agree that the Department should review the legislative references as summarised above?**
  
- 16. Do you wish to highlight any specific references to land in the 1997 Order which have caused problems?**
  
- 17. Have you any other comments on this proposal or any alternative suggestions?**

## **CREATION OF A NEW OFFENCE OF A FAILURE TO PAY SUBSISTENCE FEES WITH RESPECT TO A WASTE MANAGEMENT LICENCE**

The Department carries out its waste regulatory function by recovering the costs it incurs in regulating the legitimate waste sector.

Under Article 15(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”), the Department has introduced a scheme specifying fees and charges payable by licence holders in respect of Waste Management Licensing<sup>9</sup>. An application to the Northern Ireland Environment Agency (NIEA) to operate a licensed waste management facility must be accompanied by a fee for determination of the licence required to run the site. In addition, if a licence is subsequently issued, the site operator is required to pay an annual subsistence fee to NIEA. This covers, amongst other expenses, the costs of the inspections which need to be carried out to ensure that Northern Ireland meets the obligations of the Waste Framework Directive in ensuring that controlled waste is managed and disposed of in a way that does not harm the environment or human health.

As there are a wide range of waste management facilities handling different types and amounts of waste, it would be inappropriate to charge all businesses the same fee for quite different levels of regulation. The level of the annual subsistence charge is therefore

---

<sup>9</sup> More information can be obtained on the NIEA website – <http://www.ni-environment.gov.uk/waste/authorisation/license.htm>

determined by both the nature and annual capacity of the licensed facility.

At present NIEA is not in a strong position to recover subsistence fees if a business does not pay. This creates an accountancy and management problem for NIEA in that fees received can fall far short of what is required to pay for regulatory staff. Under the powers granted in the 1997 Order, the Department does have the power to revoke waste management licences if subsistence fees are not paid. However, should the Department revoke a licence or permit in these circumstances, the facility still presents a risk to the environment and the Department still incurs costs in inspecting the site. Non-payment also creates a problem for the waste industry in that those who choose not to pay are gaining pecuniary advantage over those who are fully compliant and, if this is not addressed, the legitimate waste industry will end up bearing the brunt of costs caused by the non-compliant.

The Department therefore proposes the creation of a new offence of a failure to pay subsistence fees with respect to a waste management licence. Further, the Department believes that it would be appropriate to include in the new legislation a daily penalty for continued non payment. Since annual subsistence fees are commonly several thousand pounds, in order to create a deterrent any penalty and daily fine associated with such an offence would need to be of greater magnitude than the cost of compliance.

The Department is also considering whether other penalties may be appropriate for non payment eg a charge or other restriction to be placed on an operator's land in the event of non payment of subsistence fees.

## **QUESTIONS**

- 18. Would you agree with the creation a new offence of a failure to pay subsistence fees? If so, have you any views on the level of the penalty which should be imposed on those convicted of such an offence?**
  
- 19. Have you any other suggestions for possible means of encouraging payment of subsistence fees?**

## **POWER TO RETAIN SEIZED VEHICLES**

Under the powers contained in Articles 5E and 42 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”), Departmental officials can stop and seize vehicles suspected of involvement in the illegal transport of waste. Subordinate legislation is required to give effect to these powers and the Department will shortly be issuing draft regulations for public consultation. Under these powers, in most cases the Department will be obliged to return a seized vehicle to its owner after the relevant forensic and other investigations have been completed.

In some circumstances however, this requirement could cause problems. An owner may sell a vehicle which has been returned to him prior to prosecution, in order to prevent the Department requesting a forfeiture order for the vehicle following a successful conviction. Also, in the most serious cases (for example ones that involve prolific illegal waste management sites), if seized vehicles are returned, the work of an illegal operator may simply continue in a new location. Moreover, retention of a seized vehicle may help ensure offenders actually appear in court to answer any charges brought against them.

For these reasons the Department believes that, in certain cases, there is justification for retaining a seized vehicle until the case comes to court. It therefore proposes to amend the relevant Articles in the 1997 Order to allow for this. However the Department does not think

it would be appropriate to give its enforcement staff the power to retain a seized vehicle indefinitely. It is therefore proposed that the new legislation would make it mandatory for enforcement officers to apply to a Magistrates' Court if they wished to keep a seized vehicle for longer than a prescribed maximum period (of, for example, 14 days). This would also allow the owner of the vehicle to appear in court to make an appeal to have the vehicle returned.

## **QUESTIONS**

- 20. Do you agree it would be beneficial to allow extended retention of seized vehicles provided an application is made to the court first? If not, why not?**
  
- 21. If you do not agree with extended retention, do you have any alternative proposals?**

**B. PROPOSED AMENDMENTS TO PART 3 OF THE  
WASTE AND CONTAMINATED LAND (NORTHERN  
IRELAND) ORDER 1997 – CONTAMINATED LAND**

## **Background**

Part 3 of the Waste and Contaminated Land (Northern Ireland) Order 1997<sup>10</sup> (“the 1997 Order”) makes provision for the introduction of a contaminated land regime in Northern Ireland, similar to that which operates under Part 2A of the Environmental Protection Act 1990<sup>11</sup> in Great Britain. When it is commenced, the new regime will provide a system for the identification and remediation of contaminated land through the application of the “polluter pays” principle.

Experience of operating the contaminated land regimes in England, Scotland and Wales has revealed some shortcomings which have been addressed by means of amendments to the regulations in force there. Similar issues would affect the proposed regime in Northern Ireland and the Department proposes to change the existing legislation to address these issues. Details are provided below.

## **Appeals**

Under Article 58 of the 1997 Order, appeals against remediation notices issued by a council under the contaminated land regime are heard by a Court of Summary Jurisdiction, while appeals against

---

<sup>10</sup> S.I. 1997 No 2778 NI 19

<sup>11</sup> 1990 Chapter 43

remediation notices issued by the Department are heard by the Planning Appeals Commission.

The Department feels that all appeals should be heard by the Planning Appeals Commission to ensure consistency and bring the regime more into line with other environmental regimes.

### **Definition of Contaminated Land**

The current definition of “contaminated land” in Part 3 of the 1997 Order refers to “waterways” and “underground strata”, the definitions of which are those contained within Article 2(2) of the Water (NI) Order 1999<sup>12</sup>. In England and Wales, the definition of “contaminated land” contained in Part 2A of the Environmental Protection Act 1990 (as amended by section 86(2)(f) of the Water Act 2003<sup>13</sup>) refers to the much narrower, “controlled waters”.

The Department proposes to amend the definitions in Part 3 to more accurately reflect the definition of “controlled waters” applicable in England and Wales. Although the definition of “waterways” is consistent with many elements of “controlled waters”, the addition of “underground strata” creates the possibility of a much wider range of polluted sites being captured by the contaminated land regime.

---

<sup>12</sup> S.I. 1999 No. 662 (N.I. 6)

<sup>13</sup> 2003 Chapter 37

Essentially, the regime needs to capture pollution to “waterways” and “waters contained within underground strata in the saturation zone only and not those waters in direct contact with the ground or subsoil within the unsaturated zone”.

### **Significant Pollution of Waterways or Underground Strata**

The current wording of the 1997 Order would allow *any* pollution of waterways or underground strata to trigger the contaminated land regime while "significant harm" or the “significant possibility of significant harm” would be needed to trigger the regime for other land contamination.

The Department proposes to amend the 1997 Order to introduce the notion of "significant" pollution of waterways or underground strata or the "significant possibility" of such pollution. Failure to do so could result in incidents of very minor pollution being captured by the contaminated land regime, leading to an unnecessary burden on regulators and operators alike.

### **Interaction with the Pollution Prevention and Control Regime**

Article 70 of the 1997 Order deals with the interaction of the contaminated land regime with other regulatory regimes and, *inter*

*alia*, precludes the serving of a remediation notice where enforcement action may be taken under Article 27 of the Industrial Pollution Control (Northern Ireland) Order 1997<sup>14</sup> or Article 28 of the 1997 Order.

Similar enforcement provisions are included in the Pollution Prevention and Control Regulations (Northern Ireland) 2003<sup>15</sup> and the Department feels it is appropriate to amend Article 70 of the 1997 Order to preclude the use of the contaminated land regime where the determination of contaminated land is attributable to the final disposal by deposit in or on land of controlled waste, and enforcement action can be taken under Regulations 24 and 26(2) of the Pollution Prevention and Control Regulations (Northern Ireland) 2003.

## **QUESTION**

**22. Have you any comments on the Department's proposals in this section?**

**23. Are there any circumstances where you feel the use of the Part 3 regime should be precluded?**

---

<sup>14</sup> S.I. 1997 No. 2777 (N.I. 18)

<sup>15</sup> S.R. 2003 No. 46

**C. PROPOSALS DESIGNED TO CLARIFY LOCAL  
GOVERNMENT POWERS TO ENTER INTO WASTE  
MANAGEMENT CONTRACTS**

## **Background**

The EC Landfill Directive<sup>16</sup> requires a reduction in the amount of biodegradable municipal waste (BMW) being sent to landfill. The targets are set as a percentage of 1995 levels; 75% by 2010; 50% by 2013 and 35% by 2020.

It is imperative that councils meet the Landfill Directive targets to avoid significant EU infraction fines for the UK.

In order to avoid such fines, new recycling facilities need to be constructed in Northern Ireland. To tackle the issue of waste management here, all 26 councils have formed themselves into three Waste Management Groups (WMGs). These groups are arc21 which represents the eastern councils (Antrim, Ards, Ballymena, Belfast, Carrickfergus, Castlereagh, Down, Larne, Lisburn, Newtownabbey, and North Down); SWaMP2008 which represents the southern councils (Armagh, Banbridge, Cookstown, Craigavon, Dungannon and South Tyrone, Fermanagh, Newry and Mourne and Omagh); and NWRWMG (North West Regional Waste Management Group) which represents the north west councils (Coleraine, Ballymoney, Derry, Limavady, Magherafelt, Moyle and Strabane).

The total capital investment for the major strategic waste infrastructure for Northern Ireland is estimated at approximately £620m. The Department's £200m Strategic Waste Infrastructure

---

<sup>16</sup> Council Directive 1999/31/EC

Fund (SWIF) is available to the WMGs to assist local government with meeting the capital costs associated with delivering the major infrastructure required to meet the EU Landfill Directive targets, thus reducing the burden on ratepayers.

The Department's support to local government for the new strategic waste infrastructure will:

- assist with the delivery of more sustainable waste management facilities and practices which will enable Northern Ireland to comply with EU regulations;
- enable Northern Ireland to avoid substantial fines for non-compliance with European legislative targets;
- create new construction, engineering and waste management jobs in relation to building and operating the new infrastructure.

The new strategic waste infrastructure will divert very significant quantities of municipal waste from Northern Ireland's landfill sites, assisting Northern Ireland in meeting the diversion targets outlined in the EU Landfill Directive.

The key environmental improvements resulting from the investment include a reduction in:

- the scale and visual impact of landfill sites;
- the environmental impact of waste haulage;
- methane gas from landfill;
- Northern Ireland's carbon footprint through increased recycling rates and energy recovery.

In December 2008 the Department's Local Government and Policy Division (LGPD) issued a consultation paper seeking comments on its draft Local Government (Contracts and Compulsory Purchase) Bill<sup>17</sup>. Pre-consultation discussions with WMGs and councils in relation to that consultation identified a number of areas in which the draft Bill may not provide sufficient assurances for prospective contractors and financiers. This may in turn impact on bidder appetite and therefore value for money.

The Department has sought legal opinion in relation to this matter, and has been advised that it would be very prudent (even if not essential) to make appropriate legislative provision in relation to these issues. This advice reflects the need to promote market confidence, the potential impact of a lack of clarity and certainty concerning councils' existing legislative powers, the huge sums at risk and the fact that we currently have a suitable legislative vehicle.

---

<sup>17</sup>

[http://www.doeni.gov.uk/index/local\\_government/lg\\_funding/local\\_government\\_consultations.htm](http://www.doeni.gov.uk/index/local_government/lg_funding/local_government_consultations.htm)

The Department therefore proposes legislative change to address these issues. The proposed powers detailed below will generally apply both to individual councils and to the WMGs that are bodies corporate, namely arc21<sup>18</sup> and SWaMP2008<sup>19</sup>. The NWRWMG, which is an unincorporated joint committee, will also have access to these powers through its lead council.

### **Guarantee**

It is likely that prospective contractors and/or financiers for waste infrastructure/management projects will seek to have cross guarantees with each of the councils for the obligations of the contracting party. This is because it will be the individual councils which are the bodies of substance in the arrangement.

Although section 106 of the Local Government Act (Northern Ireland) 1972 (“the 1972 Act”)<sup>20</sup> provides that a council may contribute towards the expenses incurred by another council, it is unclear (and unlikely within the principle of narrow interpretation of a body corporate’s power) whether this power would be sufficient to enable the councils to cross guarantee all of the obligations of the other constituent councils in their group or incorporated joint committee. Section 72 of the 1972 Act provides councils with the power to defray

---

<sup>18</sup> SR 2004 No. 49 The Local Government (Constituting a Joint Committee a Body Corporate Order) (Northern Ireland) 2004 as amended by SR 2007 No. 505

<sup>19</sup> SR 2008 No. 310 The Local Government (Constituting a Joint Committee a Body Corporate Order) (Northern Ireland) 2008

<sup>20</sup> 1972 Chapter 9

the expenses of the joint committee but it is unclear how this would work, particularly in the context of a significant liability.

In order to address this issue, it is proposed to include in the Waste Bill provisions for:

- (i) councils to guarantee the waste management obligations of other councils in their group;
- (ii) councils to guarantee the obligations of incorporated waste management joint committees to which they belong.

## **QUESTIONS**

**24. Do you agree with the Department's proposal concerning the guarantee of waste management obligations?**

**25. If not, why not?**

### **Warranties and Indemnities**

It is likely that, in order to provide reassurance to prospective contractors/financiers, councils will require powers to provide warranties and indemnities. These powers will need to be exercisable whether a council is acting simply in its own right, or on behalf of other councils in a WMG. Similarly, incorporated joint committees will require the power to provide such assurances.

It is questionable whether the general power contained in section 99 of the 1972 Act would confer the power to warrant and indemnify for the obligations or standing of a third party on the councils. Even if section 99 could be construed in this way, the absence of clarity could raise vires concerns with the contractors/financiers.

In order to address this issue, it is proposed to include in the Waste Bill provisions for councils and joint committees to provide warranties and indemnities for waste management purposes. Councils will also be given powers to provide warranties and indemnities on behalf of other councils in their WMG.

## **QUESTIONS**

**26. Do you agree with the Department's proposal concerning powers to provide warranties and indemnities for waste management purposes?**

**27. If not, why not?**

### **Joint and Several Liability**

There is no power for councils to accept joint and several liability with other councils. In addition to guaranteeing/warranting and indemnifying obligations, the constituent councils may have to

become joint and severally liable for any loan made to an incorporated joint committee.

In order to address this issue, it is proposed to include in the Waste Bill provisions for councils to accept joint and several liability for waste management purposes.

## **QUESTIONS**

**28. Do you agree with the Department's proposal to make provisions that would enable councils to accept joint and several liability for waste management purposes?**

**29. If not, why not?**

### **Delegation of Functions**

Consideration is being given to making provision in a forthcoming local Government Bill to give councils a general power to participate in companies.

In the event that legislation is put in place to achieve this, and a company is formed for the purposes of developing waste infrastructure, councils do not currently have the power to delegate their waste management functions to this body. Section 19 of the 1972 Act makes it clear that district councils may delegate their functions to a joint committee and section 104 makes it clear that a

council may make arrangements with any other council or any public body or government department for the exercise of any functions. However, it does not state that a council may delegate such functions to a company.

In order to address this issue, it is proposed to include in the Waste Bill provisions whereby councils, groups of councils and incorporated joint committees may delegate their waste management functions to a company that is formed in connection with the delivery of waste management.

## **QUESTIONS**

**30. Do you agree with the Department's proposals to make provisions whereby councils, groups of councils and incorporated joint committees may delegate their waste management functions to a company that is formed in connection with the delivery of waste management?**

**31. If not, why not?**

### **Borrowing**

A council, in exercising its power to borrow money, contained in section 61(1) of the 1972 Act, must have Departmental approval for any type of borrowing other than short term borrowing. This has been raised as an issue by councils and WMGs and will be considered in

the context of the forthcoming Finance Bill. A further concern has however been raised about the ability of councils to borrow money on behalf of WMGs or other councils (eg. in the case of unincorporated WMGs) for the purposes of developing waste infrastructure, and it is proposed to address this issue in the Waste Bill.

## **QUESTIONS**

**32. Do you agree with the Department's proposal to make provisions for constituent councils to borrow money on behalf of WMGs?**

**33. If not, why not?**

### **Payments from Strategic Waste Infrastructure Fund (SWIF)**

The Strategic Waste Infrastructure Fund (SWIF) is intended to provide local government with financial assistance towards the capital costs of delivering major new waste infrastructure. The objective is to reduce the burden on ratepayers.

The intention is that payments from SWIF will be made via the contractors. However, in line with EC State Aid guidelines, Government must be able to demonstrate that the contractors do not derive market advantage as a result of this funding mechanism.

We anticipate that this will be achieved through the SWIF offset mechanism, as follows. The Department will make capital payments out of SWIF to the WMGs or a council. In turn, the WMGs will use these funds to offset a portion of the contractor's debt. It is anticipated that the contractor will be contractually required to return these monies in full to the WMGs by means of a rebate which will have the effect of reducing the gate fee on the waste tonnage which is guaranteed to the contractor as part of the contract. The rebate will reflect the private finance cost which would have been incurred in the absence of SWIF.

The benefits resulting from the reduced gate fees will then be distributed across the constituent councils. In this way, the contractor will not profit from the SWIF payments, and there will be no distortion of the market.

(Note: the procurement process will also be structured such that SWIF has no bearing on the selection of the preferred bidder).

The Department is satisfied that it has the appropriate powers to make SWIF payments to the WMGs/councils, as described above. However, consideration will be given to the inclusion of clauses in the Waste Bill which will make explicit the vires of the councils and WMGs to implement the SWIF offset mechanism as described above.

## **QUESTIONS**

**34. Do you have any comments regarding the legislative issues that may need to be addressed in the Waste Bill to implement the SWIF offset mechanism?**

### **Unincorporated Joint Committees**

The NWRWMG is an unincorporated joint committee, with Derry City Council acting as the lead council. In order to ensure that, in cases such as this, the lead council has the necessary vires, it is proposed that the following provisions are built into the Waste Bill where these provisions are specifically required for waste management purposes:

- The right for local councils to delegate their powers to another council acting on their behalf;
- The right for a council to hold and acquire property for the benefit of all of the councils who have delegated authority to it;
- The right for a council to enter into Public Private Partnership (PPP) arrangements on behalf of other councils;
- The right for a council to borrow, receive money from and hold money on behalf of other councils and pay a contractor with this money;

- The right of a council to pay money to another council to pay for services provided under a PPP arrangement.

## **QUESTIONS**

**35. Do you agree that if these proposed provisions are included in the Waste Bill unincorporated joint committees will have the powers necessary in order to develop the strategic waste infrastructure programme?**

**36. If not, why not?**

### **Other Vires Issues**

A number of additional issues are being resolved through other legislative vehicles. These include the following:-

- **The power to borrow currently requires DOE approval** - to be considered in the context of the Local Government (Finance) Bill which will remove the requirements for councils to gain departmental approval for borrowings;
- **Councils/WMGs have no clear power to form and hold an equity share in a Joint Venture company-** to be addressed in a future Local Government Bill; and:

- **Councils/WMGs have no clear power to indemnify the members/officers of the council if they become a director of a company** - to be addressed through subordinate legislation to be made under Article 33 of the Local Government (Northern Ireland) Order 2005<sup>21</sup>.

## **QUESTIONS**

- 37. Are you content with the Department's proposals to legislate for these additional issues, as summarised above?**
- 38. Are there any other contractual vires issues which the Department needs to consider, in order to progress the strategic waste infrastructure programme? If so, please provide details.**

### **Single Waste Disposal Authority (SWDA)**

The Waste Infrastructure Task Force was established in April 2005 to consider how best to facilitate the future delivery of new waste infrastructure. In its subsequent Report<sup>22</sup>, the Task Force recommended:

“ ..the preparation of legislative proposals that allow for the creation of one or more waste disposal authorities within local government”.

---

<sup>21</sup> S.I. 2005 No. 1968 N.I. 18

<sup>22</sup> <http://www.doeni.gov.uk/report.to.pdf>

It also recognised the need to develop the preferred structural option in consultation with local government, and in the context of the Review of Public Administration.

The Department is conscious that significant time and effort would be required to legislate for a SWDA, carry out consultation with key stakeholders and then to establish such a body 'on the ground'. Certainly, the new arrangements could not be in place in time to support the current strategic waste infrastructure procurement process.

In order to meet the requirements of the European Landfill Directive, and to promote the effective management of waste, this process is scheduled to be completed by 2010. The Department recognises that the 3 existing Waste Management Groups are making good progress towards the provision of major new waste treatment facilities in line with this timetable. Accordingly, the Department is fully committed to supporting local government in delivering the necessary infrastructure through the current procurement process and will do nothing to jeopardise this.

Nonetheless, the Department believes that there is strong justification for the creation of a Single Waste Disposal Authority at an appropriate time following the completion of the current procurement process. This should help to generate efficiencies through economies of scale, enhancing purchasing power and centralising procurement

expertise. It would also facilitate future integrated waste management planning.

The Department therefore proposes, in the context of the overall Review of Public Administration, to include enabling legislation in the Waste Bill to provide for the establishment of such a body. This will, for the reasons outlined above, not impact on the current infrastructure procurement process.

## **QUESTION**

**39. What are your views on the need for, and timing of, a Single Waste Disposal Authority for Northern Ireland?**

**D. PROPOSED AMENDMENT TO THE PRODUCER  
RESPONSIBILITY OBLIGATIONS (NORTHERN IRELAND)  
ORDER 1998**

The Department proposes a minor amendment to the Producer Responsibility Obligations (Northern Ireland) Order 1998 (“the 1998 Order”)<sup>23</sup>.

The 1998 Order gives the Department powers to make regulations obliging certain persons to undertake the re-use, recovery and recycling of products or materials. Article 3 confers general powers to make regulations imposing producer responsibility obligations in this area. Article 4 outlines a number of specific issues which may be provided for in regulations; Article 4(1)(v) confers powers to make provision relating to the Department’s powers of entry and inspection.

The Department would now like to take this opportunity to amend the 1998 Order to provide an inclusive definition of the Department’s powers of entry and inspection. The aim is to explicitly provide powers comparable to Article 72 and Schedule 4 of the Waste and Contaminated Land (NI) Order 1997<sup>24</sup>. This will include powers to:

- (i) take photographs and make recordings, where these are deemed necessary for the purposes of any examination or investigation under the Order;
- (ii) take samples of anything found on the premises;

---

<sup>23</sup> S.I. 1998 No. 1762 NI 16

<sup>24</sup> S.I. 1997 No 2778 NI 19

- (iii) 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 Magistrates' Court to authorise entry to premises in circumstances where an entry has been refused or is likely to be refused.

## **QUESTIONS**

- 40. Are you content with this proposal, which is designed to clarify the Department's powers of entry and inspection in relation to the 1998 Order?**
  
- 41. Have you any other comments on this proposal or any alternative suggestions?**

## **SECTION 5**

### **RESULTS OF EQUALITY SCREENING, HUMAN RIGHTS AND REGULATORY IMPACT ASSESSMENTS AND RURAL PROOFING**

## **Equality of Opportunity**

Section 75 of the Northern Ireland Act 1998<sup>25</sup> places a duty on public authorities to have due regard to promote equality of opportunity. The Department has completed an Equality Impact Assessment screening exercise in order to identify if any of the proposals included in this consultation will have an impact on the Section 75 groups and has concluded that no adverse differential impact is likely.

## **Human Rights Assessment**

The proposals contained in this consultation are considered to be compatible with the Human Rights Act 1998<sup>26</sup>.

## **Regulatory Impact Assessment**

The Department has not conducted a Regulatory Impact Assessment at this stage as it is considered that the proposals contained in this consultation give rise to no costs or no savings, or negligible costs or savings, on business, charities, social economy enterprises or the voluntary sector.

---

<sup>25</sup> 1998 Chapter 47

<sup>26</sup> 1998 Chapter 42

## **Rural Proofing**

It is considered that there are no negative impacts on rural productivity or the provision of services to the rural community as a result of these proposals.

### **QUESTION**

**42. Have you any comments on the Department's preliminary conclusions in relation to equality screening, human rights or regulatory impact assessment, or rural proofing?**

**LIST OF QUESTIONS**

**PROPOSED AMENDMENTS TO THE EXISTING LEGISLATIVE FRAMEWORK FOR WASTE MANAGEMENT IN NORTHERN IRELAND**

**New investigation and enforcement powers for councils**

- 1. Do you think that it would be appropriate for councils to be given the powers to carry out investigations and, where appropriate, prosecutions for alleged waste offences under Articles 4 and 5 of the 1997 Order?**
- 2. Have you any other comments on these proposals or any alternative suggestions?**

**Revisions to Article 28**

- 3. Do you agree with the proposed changes to Article 28 of the 1997 Order?**
- 4. Do you have any comments on the level of fines?**
- 5. Have you any other comments on these proposals or any alternative suggestions?**

**Fixed penalties for flytipping offences**

- 6. Do you think that the Department and councils should have the option of issuing fixed penalty notices for flytipping offences as an alternative to prosecutions through the courts?**
- 7. If so, have you any views on when the issue of a fixed penalty notice might be appropriate and when might this not be the case?**

8. If the Department and councils were given the option of issuing fixed penalty notices for flytipping, at what level should such penalties be set?
9. Have you any other comments on these proposals or any alternative suggestions?

#### **Flytipping Protocol**

10. Do you have any comments or suggestions concerning the proposed Flytipping Protocol?

#### **Proposed Amendments to Article 72 of the Waste and Contaminated Land (Northern Ireland) Order 1997**

11. Do you think that the 24 hour notice period currently required before enforcement officers can bring machinery onto premises or enter residential premises should be removed?
12. If so, do you think that the requirement to obtain a court warrant provides sufficient safeguards for the public?
13. Have you any other comments on these proposals or any alternative suggestions?

#### **Revised definition of offences under Article 4 of the Waste and Contaminated Land (Northern Ireland) Order 1997**

14. Do you agree with the proposed change to the definition of an offence under Article 4 of the 1997 Order? If not, why not and have you any other suggestions?

#### **Review of references to land in the Waste and Contaminated Land (Northern Ireland) Order 1997**

15. Do you agree that the Department should review the legislative references to land in Part 2 of the 1997 Order?

16. Do you wish to highlight any specific references to land in the 1997 Order which have caused problems?
17. Have you any other comments on this proposal or any alternative suggestions?

**Creation of a new offence of a failure to pay subsistence fees with respect to a Waste Management licence**

18. Would you agree with the creation a new offence of a failure to pay subsistence fees? If so, have you any views on the level of the penalty which should be imposed on those convicted of such an offence?
19. Have you any other suggestions for possible means of encouraging payment of subsistence fees?

**Power to retain seized vehicles**

20. Do you agree it would be beneficial to allow extended retention of seized vehicles provided an application is made to the court first? If not, why not?
21. If you do not agree with extended retention, do you have any alternative proposals?

**PROPOSED AMENDMENTS TO A PLANNED CONTAMINATED LAND REGIME**

22. Have you any comments on the Department's proposed amendments to a planned Contaminated Land regime?
23. Are there any circumstances where you feel the use of the Part 3 regime should be precluded?

## **PROPOSALS DESIGNED TO CLARIFY LOCAL GOVERNMENT POWERS TO ENTER INTO WASTE MANAGEMENT CONTRACTS**

### **Guarantee**

24. Do you agree with the Department's proposal concerning the guarantee of waste management obligations?
25. If not, why not?

### **Warranties and Indemnities**

26. Do you agree with the Department's proposal concerning powers to provide warranties and indemnities for waste management purposes?
27. If not, why not?

### **Joint and Several Liability**

28. Do you agree with the Department's proposal to make provisions that would enable councils to accept joint and several liability for waste management purposes?
29. If not, why not?

### **Delegation of Functions**

30. Do you agree with the Department's proposals to make provisions whereby councils, groups of councils and incorporated joint committees may delegate their waste management functions to a company that is formed in connection with the delivery of waste management?
31. If not, why not?

### **Borrowing**

32. Do you agree with the Department's proposal to make provisions for constituent councils to borrow money on behalf of WMGs?
33. If not, why not?

### **Payments from Strategic Waste Infrastructure Fund (SWIF)**

34. Do you have any comments regarding the legislative issues that may need to be addressed in the Waste Bill to implement the SWIF offset mechanism?

### **Unincorporated Joint Committees**

35. Do you agree that if the Department's proposed provisions are included in the Waste Bill, unincorporated joint committees will have the powers necessary in order to develop the strategic waste infrastructure programme?
36. If not, why not?

### **Other Vires Issues**

37. Are you content with the Department's proposals to legislate for these additional vires issues?
38. Are there any other contractual vires issues which the Department needs to consider, in order to progress the strategic waste infrastructure programme? If so, please provide details.

### **Single Waste Disposal Authority**

39. What are your views on the need for, and timing of, a Single Waste Disposal Authority for Northern Ireland?

**PROPOSED AMENDMENT TO PRODUCER RESPONSIBILITY OBLIGATIONS (NORTHERN IRELAND) ORDER 1998**

- 40. Are you content with the proposal designed to clarify the Department's powers of entry and inspection in relation to the 1998 Order?**
- 41. Have you any other comments on this proposal or any alternative suggestions?**

**RESULTS OF EQUALITY SCREENING, HUMAN RIGHTS AND REGULATORY IMPACT ASSESSMENTS AND RURAL PROOFING**

- 42. Have you any comments on the Department's preliminary conclusions in relation to equality screening, human rights or regulatory impact assessment, or rural proofing?**

**GUIDANCE ON THE CONFIDENTIALITY OF CONSULTATION RESPONSES**

The Freedom of Information Act 2000<sup>27</sup> gives the public a right of access to any information held by a public authority – for the purposes here, the Department of the Environment – which includes information provided in response to a consultation.

However, the Department of the Environment is responsible for deciding whether any information provided in response to a consultation should then either be made public or considered confidential – a decision which extends to information about a consultee’s identity.

In practice, this means that information provided by a consultee is unlikely to be regarded as confidential other than in very particular circumstances. The Lord Chancellor’s Code of Practice on the Freedom of Information Act 2000 provides that:

- the Department of the Environment 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 its functions and it would not otherwise be provided;

---

<sup>27</sup> 2000 Chapter 36

- the Department of the Environment should not agree to hold information received from third parties “in confidence” which is not confidential in nature;
- acceptance by the Department of the Environment of confidentiality provisions must be for good reason and capable of being justified to 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/>

You may also find the following document useful:

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_2\\_-\\_information\\_provided\\_in\\_confidance.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_2_-_information_provided_in_confidance.pdf)