



Department of the
Environment

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CLIMATE AND WASTE DIVISION

**CONSULTATION ON THE PROPOSAL TO AMEND
THE LANDFILL REGULATIONS (NORTHERN
IRELAND) 2003**

CLOSING DATE -15 SEPTEMBER 2010

CONSULTATION PAPER

The Landfill Regulations (Northern Ireland) 2003:

proposed amendment to change the date from which landfill sites which close (or have closed) must comply with the Landfill Directive (1999/31/EC) to 16 July 2001 and to redefine the term ‘operator’ to extend its meaning to cover the period 16 July 2001 to 18 December 2003.

SCOPE AND PURPOSE OF THE CONSULTATION

1. The Department of the Environment (‘the Department’), by way of this consultation paper, is seeking views in respect of a proposed amendment to the Landfill Regulations (Northern Ireland) 2003(a). (The draft regulations are attached as Appendix 1.)
2. In particular, the Department is seeking the views of stakeholders on a proposal to amend the date from which landfill sites which close must comply with the Landfill Directive (1999/31/EC). Views are also sought on the proposal to redefine the term ‘operator’ to extend its meaning to cover the period 16 July 2001 to 18 December 2003.
3. Those affected by the proposal will be District Councils and private operators of landfill sites. The Regulations will clarify that all landfill sites which closed after 16 July 2001 were required to do so in compliance with the Landfill Directive (1999/31/EC). This will have a financial impact on the small number of Council and private landfill operators whose sites closed within the period 16 July 2001 to 18 December 2003 and may not be in full compliance with the requirements of the Directive. It is not anticipated that there will be a significant impact on any other stakeholders.

(a) S.R. 2003 No. 496

THE CONSULTATION PROCESS.

4. A list of those to whom the consultation paper is being sent is provided in Appendix 4. If you are aware of anyone or any organisation that might be interested in seeing and commenting on the consultation paper but is not listed in Appendix 4, please let us know and a copy will be sent to them. Any such suggestions should be sent to the contact point shown below.

HOW TO RESPOND

5. Respondents are requested to explain who they are and, in the case of representative groups, to give a summary of the people and/or organisations they represent. The Department will acknowledge receipt of each response.

The closing date for responses is **15 September 2010**. Please send your responses marked 'Landfill Regulations Consultation Process' to:

John Waterworth
Department of the Environment (NI)
Central Policy and Resources Group
Climate and Waste Division
Calvert House
23 Castle Place
Belfast
BT1 1FY

e-mail: john.waterworth@doeni.gov.uk

Telephone: (028) 9025 4816

Textphone: (028) 9054 0642

FREEDOM OF INFORMATION ACT 2000

-CONFIDENTIALITY OF CONSULTATIONS.

6. The Freedom of Information Act gives the public a right of access to any information held by a public authority; in this case, the Department. This right of access to information includes information provided in response to a consultation exercise. The Department cannot automatically consider as confidential information supplied to it in the course of a consultation exercise. However, the Department does have a responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

7. This means that information provided by you in response to this 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

www.informationcommissioner.gov.uk/

AVAILABILITY OF THIS DOCUMENT.

8. Additional copies of this document may be obtained from the following Departmental web page: www.doeni.gov.uk/waste. This consultation document can also be made available in large print, disc, Braille or audio cassette. It may also be made available in minority languages for those not proficient in English. The Department will translate executive summaries of key publications into ethnic minority languages upon request.

PUBLICATION OF RESPONSES

9. In line with the Department's policy of openness, at the end of the consultation period, copies of the responses received may be made publicly available, upon request, from the Department (see paragraph 5 above for contact details). The information they contain may also be published in a summary of responses (see paragraph 11 below).
10. If you do not consent to this, you must clearly request that your response is treated confidentially. Any confidentiality disclaimer generated by your IT system in email 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 Environment Information Regulations 2004 **(b)**.

OUTCOME OF THE CONSULTATION

11. The Department will consider all of the responses to the consultation and by October 2010 will publish a summary of the consultation responses.

COMMENTS OR COMPLAINTS

- 12.** Comments or complaints about the consultation process (as opposed to comments about the issue which is the subject of the consultation) should be addressed to:-

Ms C. Fisher

Head of the Business Support Unit

Central Policy and Resources Group

Department of the Environment

Calvert House

23 Castle Place

BELFAST

BT1 1FY

E-mail: Catherine.fisher@doeni.gov.uk

Tel: 028 9025 4883

CONSULTATION CRITERIA

- 13.** This consultation paper has been prepared in line with the principles set out in HM Government's "Code of Practice on Consultation" (July 2008). The Code's consultation criteria are reproduced in Appendix 3.

THE CURRENT POSITION

- 14.** The EU Landfill Directive was adopted in 1999 and came into force on 16 July 2001. Due, in part, to the need to revise the regulatory regime first the Department did not transpose the Directive into Northern Ireland law through the Landfill Regulations (Northern Ireland) 2003 until January 2004. These Regulations as currently drafted apply only to landfill sites which closed after 6 January 2004.

15. In the intervening period a number of landfill sites across Northern Ireland were closed under the existing arrangements i.e. through rescinding the resolution in Council or, in the case of private operators, by handing back the licence. Although compliance with the EU Landfill Directive was obligatory from 16 July 2001 the legislation which existed at the time did not specifically require landfill operators, including Councils, to put in place appropriate aftercare arrangements.

PROPOSAL

16. It is proposed to amend the Landfill Regulations (NI) 2003 to ensure that they may be applied to all landfill sites in Northern Ireland which closed after 16 July 2001. This amendment is not deemed to be retrospective as the obligations on landfill operators will only take effect from the coming into operation of the amending regulations. It is intended that the regulations will provide clarity in respect of the obligations falling to landfill operators for the sites in question.

17. The proposed amendment:

(i) amends the date from which landfill sites which close (or have closed) must comply with European Union Landfill Directive 1999/31/EC to 16 July 2001, and

(ii) redefines the term 'operator' in order to extend its meaning to cover the period 16 July 2001 to 18 December 2003.

It is proposed that the amendment will come into effect on **27 October 2010**.

QUESTION

Do you agree with the proposal to amend the Landfill Regulations as set out above? If not, please explain why you disagree with this proposal.

IMPACT ASSESSMENT

- 18.** The proposed amendment to the Landfill Regulations (Northern Ireland) 2003 will have a financial impact on a small number of District Councils and private landfill operators whose sites closed between 16 July 2001 and 18 December 2003. It is not anticipated that there will be any significant impact on any other stakeholders or on costs to business. A partial Regulatory Impact Assessment has been carried out and is attached at Appendix 5.

HUMAN RIGHTS AND EQUALITY IMPACTS

- 19.** There are no human rights or equality impacts arising from the proposals. The proposals are considered compatible with the Human Rights Act 1998. An Equality Screening Document is attached as Appendix 2.

APPENDIX 1

DRAFT STATUTORY RULES OF NORTHERN IRELAND

ENVIRONMENTAL PROTECTION

The Landfill (Amendment) Regulations (Northern Ireland) 2010

Made	6 October 2010
Coming into operation	27 October 2010

The Department of the Environment makes the following Regulations in exercise of the power conferred by Article 4 of the Environment (Northern Ireland) Order 2002(a).

In accordance with Article 4(4) of that Order, the Department has consulted district councils and such bodies or persons appearing to it to be representative of the interests of district councils as it considers appropriate; such bodies and persons appearing to it to be representative of the interests of industry, agriculture and business as it considers appropriate; and such other bodies or persons as it considers appropriate.

Citation, commencement and interpretation

1.-(1) These Regulations may be cited as the Landfill (Amendment) Regulations (Northern Ireland) 2010 and shall come into operation on 27 October 2010.

(2) In these Regulations “the Landfill Regulations” means the Landfill Regulations (Northern Ireland) 2003(b).

Amendment of the Landfill Regulations

2. The Landfill Regulations are amended in accordance with the following regulations.

3. -(1) In regulation 2 (interpretation), under “operator” add “or, in the case of landfill sites closed between 16 July 2001 and 18 December 2003, the person who held a Waste Management Licence, granted under the Pollution Control and Local Government (Northern Ireland) Order 1978.”

(2) In regulation 2 (interpretation), under “relevant date” delete “means the date of coming into operation of these regulations” and insert “means 16 July 2001.”

(a) S.I. 2002/3153 (N.I. 7)

(b) S.R. 2003 No. 496 as amended by S.R. 2004 No. 297, S.R. 2005 No. 300, S.R. 2006 No. 280 and S.R. 2007 No. 179

Sealed with the Official Seal of the Department of the Environment on 6 October 2010.

EXPLANATORY NOTE

These Regulations amend the Landfill Regulations (Northern Ireland) 2003 ('the Landfill Regulations'). Regulation 3 amends Regulation 2 of the Landfill Regulations to include those landfills closed on or after 16 July 2001 pursuant to Directive 1999/31/EC ('the Landfill Directive').

APPENDIX 2

DOE SECTION 75 EQUALITY OF OPPORTUNITY SCREENING ANALYSIS FORM

Section 1

Background

The Legal Background

Under section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and
- between persons with dependants and persons without.

The main groups within each of the nine categories, highlighted above, are identified at Appendix 1.

In addition, without prejudice to its obligations above, the Department is also required, in carrying out its functions relating to Northern Ireland, to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group.

Section 2

2.1 Please insert below a brief description of the policy/legislation, including the title and all the main aims and objectives

Title **Consultation Document on the Landfill (Amendment) Regulations (Northern Ireland) 2010**

Aims **The draft regulations deal with a transferred matter, namely the landfilling of waste. Specifically, the regulations set out a pollution control regime for landfills for the purpose of implementing Council Directive 99/31/EC on the landfill of waste in Northern Ireland.**

It is essential that **all** the aims/objectives of the policy be clearly and fully defined.

2.2 On whom will the policies/legislation impact? Please specify

The small number of stakeholders affected will be the holders of Waste Management Licences who operate landfill sites which closed between 16 July 2001 and January 2004.

2.3 Who is responsible for (a) devising and (b) delivering the policy, e.g. is it DOE, a Whitehall Department or EU? What is the relationship and have they considered this issue and any equality issues?

(a) **The Department of the Environment has responsibility for transposing Council Directive 1999/31/EC on the Landfill of Waste.**

(b) **The Department of the Environment is responsible for delivering the policy on the landfilling of waste.**

2.4 What linkages are there to other NI Departments/NDPBs in relation to this policy/legislation?

None

2.5 What data are available to facilitate the screening of this policy/legislation?

There is currently no data available to facilitate the screening however any comments received in relation to Section 75 issues as part of this exercise will be taken into account.

2.6 Is additional data required to facilitate screening? If so, give details of how and when it will be obtained.

No

Section 3 – Screening Analysis

The following criteria must be considered when screening.

3.1 Is there any indication or evidence of higher or lower participation or uptake by the following Section 75 groups?

	Yes	No
Religious belief		No
Political opinion		No
Racial group		No
Age		No
Marital status		No
Sexual orientation		No
Gender		No
Disability		No
Dependants		

Please give details

3.2 Is there any indication or evidence that any of the following Section 75 groups have different needs, experiences, issues and priorities in relation to this policy issue?

	Yes	No
Religious belief		No
Political opinion		No
Racial group		No
Age		No
Marital status		No

Sexual orientation		No
Gender		No
Disability		No
Dependants		No

Please give details

3.3 Have consultations with the relevant representative organisations or individuals within any of the Section 75 categories, indicated that policies of this type create problems specific to them?

	Yes	No
Religious belief		No
Political opinion		No
Racial group		No
Age		No
Marital status		No
Sexual orientation		No
Gender		No
Disability		No
Dependants		No

Please give details of any consultations carried out, and any problems identified.

3.4 Is there an opportunity to better promote equality of opportunity or community relations by altering the policy, or by working with others, in Government, or in the larger community in the context of this policy?

No

Please give details

3.5 It may be that a policy/legislation has a differential impact on a certain Section 75 group, as the policy has been developed to address an existing or historical inequality or disadvantage. If this is the case, please give details below:

None

3.6 Please consider if there is any way of adapting the policy to promote better equality of opportunity or good relations.

Please give details
None

3.7 In relation to Departmental obligations under Section 49A of the Disability Discrimination Act 1995 (DDA) (as amended by the Disability Discrimination (Northern Ireland) Order 2006), please consider if there is any way of adapting the policy to show due regard to the need to promote positive attitudes towards disabled people and/or encourage participation by disabled people in public life.

Please give details

Not applicable

Section 4

EQIA Recommendation

You should consider carefully in this section whether full EQIA is necessary, particularly where answers to any questions in Section 3 are affirmative.

4.1 Full EQIA procedures should be carried out on policies considered to have significant implications for equality of opportunity. Please fill in the following grid in relation to the policy/legislation.

Prioritisation Factors	Significant Impact	Moderate Impact	Low Impact
Social Need.			Yes
Effect on people's daily lives.			Yes
Effect on economic, social and human rights.			Yes
Strategic significance			Yes
Financial significance			Yes

Please give details

4.2 In view of the considerations in Section 3 and 4 do you consider that this policy/legislation should be subject to a full EQIA? Please give reasons for your considerations. If you are unsure, please consult with affected groups and revisit the screening analysis accordingly. Yes/No/Unsure

A full EQIA is not necessary as there is no evidence to suggest that one S75 group will be affected more than another and the policy will have a low impact on the prioritisation factors listed in section 4.

4.3 If an EQIA is considered necessary please comment on the priority and timing in light of the factors in table 4.1.

Not applicable

4.4 If an EQIA is considered necessary is any data required to carry it out/ensure effective monitoring?

Please give details

Not applicable

APPENDIX 3

H.M. Government

Code of Practice on Consultation

THE SEVEN CONSULTATION CRITERIA

Criterion 1 - When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 - Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 - Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 - Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 - The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 - Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 - Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

APPENDIX 4.

List of Consultees.

Government/Local Authorities

Antrim Borough Council
arc21
Ards Borough Council
Armagh City and District Council
NI Assembly Bill Office
NI Assembly Business Office
NI Assembly Library
Ballymena Borough Council
Ballymoney Borough Council
Banbridge District Council
Belfast City Council
Carrickfergus Borough Council
Castlereagh Borough Council
Coleraine Borough Council
Cookstown District Council
Craigavon Borough Council
Departmental Equality Unit
Departmental Libraries
Derry City Council
DoE Library
DoE Press Office
Down District Council
Dungannon and South Tyrone District Council
Environment Committee
Environment Committee Assembly Researcher
Executive Ministers and Junior Ministers
Fermanagh District Council
HM Council of County Court Judges
Larne Borough Council
Leaders of Parties in the Assembly
Legal Deposit Libraries
Legislative Programme Secretariat
Limavady Borough Council
Lisburn City Council
Magherafelt District Council
Members of NI Assembly
Moyle District Council
MPs and MEPs
Newry and Mourne District Council
Newtownabbey Borough Council
NIO
North South Ministerial Council
North Western Region
Northern Ireland Environment Agency (NIEA)

North Down Borough Council
Office of the Legislative Council
OFMDFM Central Management Unit
OFMDFM Machinery of Government Division
Omagh District Council
Other NI Parties not in the Assembly
Southern Waste Management Partnership (SWaMP)
Speaker of the Assembly
Strabane District Council

Other Organisations

AES Kilroot Ltd.
Action Renewables
Alpha Resource Management Ltd.
Anderson Haulage Ltd.
Arcus Architects
Ards Containers
Aughrim Landfill Ltd.
Civil Law Reform Division
Chartered Institute of Environmental Health (NI)
Coleraine Skip Hire and Recycling Ltd.
Community Relations Council
Confederation of British Industry
Council for Mortgage Lenders
Belfast Healthy Cities
Belfast Solicitors' Association
Biffa Waste Services Limited
Bodleian Library, Oxford
Brennen Associates
Bryson House
Building Design Partnership
Department of Local Government & The Environment
Development Planning Partnership
District Judge (Magistrates Court)
DTZ Piedad Consulting
Eastwood Envirowaste
Environment and Planning Law Association
Equality Commission for NI
Executive Council of the Inn of Court of NI
Federation of Small Businesses
Food Standards Agency
Friends of the Earth
General Consumer Council
Head of the School of Law, Queens University Belfast
Head of the School of Law, University of Ulster
HM Council of County Court Judges

Human Rights Commission
IDOX Information Service
Institute of Professional Legal Studies - QUB
Irish Recycling Services Ltd
Kenneth Crothers, Deane & Curry
La Farge Cement
Law Centre (NI)
Law Reform Advisory Committee
Library of Queen's University, Belfast
Library of Trinity College, Dublin
Marks and Spencer
Mono Consultants Limited
Morrow Group
McClelland/Salter Estate Agents
National Library of Ireland
National Library Scotland
National Library Wales
NICVA
NI Association of Citizens Bureaux
NI Chamber of Trade
NIC/ICTU
NI Court Service
Northern Ireland Environment Link
NI Judicial Appointments Commission
NI Law Commission
NILGA
NI Ombudsman
Northern Ireland Publications Resource
Northern Ireland Retail Trade Association
NIRWIN
Ostick and Williams
Participation & The Practice of Rights Project
Planning Magazine
Pragma Planning
Quarry Landfill Services
Quinn Environmental Ltd.
RPS
Robert Turley Associates
Rural Community Network
Scott Wilson plc
Society of Local Authority Chief Executives (NI) (SOLACE)
Southern Waste Management Partnership (SWaMP)
Sustainable Energy Association
The British Library
The Landscape Institute Northern Ireland
The Law Society of NI
TSO Bibliographic Department
Tyrone Brick
Ulster Farmers Union
Ulster Society for the Protection of the Countryside

Ulster Wildlife Trust
University Library, Cambridge
West Belfast Partnership Board
Wdr & RT Taggart
Whitemountain Quarries Ltd.
20:20 Architects

APPENDIX 5

PROPOSAL TO AMEND THE LANDFILL REGULATIONS (NORTHERN IRELAND) 2003

Partial Regularity Impact Assessment.

1. Title of Proposal

The Department is proposing to amend the Landfill Regulations (Northern Ireland) 2003. These Regulations were made to transpose the EU Landfill Directive (Council Directive 1999/31/EC).

2. Purpose and intended effect of measure.

(i) The objective

The Department of the Environment ('the Department') is proposing to amend the Landfill Regulations (Northern Ireland) 2003 so that they may be applied to all landfill sites in Northern Ireland which closed after 16 July 2001.

In particular, the Department is proposing to amend the date from which landfill sites which close must comply with the Landfill Directive (1999/31/EC). Also, it is proposing to redefine the term 'operator' to extend its meaning to cover the period 16 July 2001 to 18 December 2003.

Those affected by the proposal will be District Councils and private operators of landfill sites. The Regulations will clarify that all landfill sites which closed after 16 July 2001 were required to do so in compliance with the Landfill Directive (1999/31/EC). This will have a financial impact on the small number of District Councils and private landfill operators whose sites closed within the period 16 July 2001 to 18 December 2003 and may not be in full compliance with the requirements of the Directive. It is not anticipated that there will be a significant impact on any other stakeholders.

The Department has identified 10 landfill sites which closed during the period 16 July 2001 and 18 December 2003. These 10 sites were not closed in accordance with the Landfill Directive and will require to be remediated to comply with the Directive.

(ii) The background

The EU Landfill Directive was adopted in 1999 and came into force on 16 July 2001. Due, in part, to the need to revise the regulatory regime first the Department did not transpose the Directive into Northern Ireland law through the Landfill Regulations (Northern Ireland) 2003, until January 2004. These Regulations currently apply only to landfill sites which closed after 6 January 2004.

In the intervening period a number of landfill sites across Northern Ireland were closed under the existing arrangements i.e. through rescinding the resolution in Council or, in the case of private operators, by handing back the licence. Although compliance with the EU Landfill Directive was obligatory from 16 July 2001 the legislation which existed at the time did not specifically require landfill operators, including District Councils, to put in place appropriate aftercare arrangements. It is proposed to amend the Landfill Regulations (Northern Ireland) 2003 to ensure that they may be applied to all landfill sites in Northern Ireland which closed after 16 July 2001. This amendment is not deemed to be retrospective as the obligations on landfill operators will only take effect from the coming into operation of the amending regulations. It is intended that the regulations will provide clarity in respect of the obligations falling to landfill operators for the sites in question.

The proposed amendment:

- (i) amends the date from which landfill sites which close (or have closed) must comply with European Union Landfill Directive 1999/31/EC to 16 July 2001, and
- (ii) redefines the term 'operator' in order to extend its meaning to cover the period 16 July 2001 to 18 December 2003.

It is proposed that the amendment will come into effect on 27th October 2010.

(iii) Risk assessment

If the Regulations are not amended there will be a significant risk of closed landfill sites not being remediated and no aftercare arrangements put in place. This in turn will lead to infraction penalties of potentially £millions. In addition, there will be environmental risks to the air, land and water caused by polluting leachate which will also contaminate ground and surface water. The Northern Ireland Environment Agency (NIEA) will also be unable to issue new Waste Management Licences in order to bring these sites into their Landfill Closure Plan.

3. Options

Option 1:

Do nothing

To do nothing would fail to satisfy the European Commission that the Landfill Directive had been fully transposed and applied to all sites closed after it came into force on 21 July 2001. There would then be a significant risk of infraction penalties on the grounds that these sites are in breach of Article 13 of the Landfill Directive.

Option 2:

This option proposes a voluntary code of practice or self regulation.

This option is not favoured on the grounds that it will not satisfy the European Commission that the Landfill Directive had been fully transposed nor guarantee full compliance with the Landfill Directive. It is likely that some landfill operators would seek to avoid incurring, voluntarily, the significant expenditure required to ensure that their landfill sites are fully compliant with the Landfill Directive. There is a significant risk of EU penalties being imposed should either option 1 or 2 be proposed as the favoured solution. It is difficult to estimate the scale of such fines as there are few precedents. In the most recent ruling in 2006 France was fined £50 million per year for failing to comply with the EU common fisheries policies and it has been suggested that the UK could be fined up to £180 million per year for failing to comply with Landfill Directive targets. Additionally, when the Lisbon Treaty enters into force it will significantly speed up the infraction process and the risk of infraction fines. Should the European Court of Justice decide to penalise the United Kingdom for non-conformity with the Directive and impose financial penalties the fine would be passed to HM Treasury who in turn are likely to refer it to the Department of Finance and Personnel (NI). They in turn are likely to seek redress from the Department of the Environment and, if this were the case, the Department would seek redress from the relevant District Councils and private operators.

Option 3:

It is proposed to amend the Landfill Regulations (NI) 2003 to ensure that they may be applied to all landfills in NI closed after 16 July 2001. This amendment is not deemed to be retrospective as the obligations on landfill operators will only take

effect from the coming into operation of the amending regulations. It is intended that the regulations will provide clarity in respect of the obligations falling to landfill operators for the sites in question and provide NIEA with appropriate enforcement powers.

4. Benefits

The main identifiable benefits are:

- Avoiding infraction fines through compliance with the Landfill Directive which sets out post closure aftercare obligations.
- Significant and continuous environmental improvement at specific sites.
- Proactive monitoring of emissions to improve the environmental quality to land, air and water with the objective of protecting human health.

Option 1:

There would no benefits from adopting this option, the potential for harmful environmental consequences would remain and there would be a risk of significant infraction fines.

Option 2:

There would be partial benefits from adopting option 2, getting operators to impose a voluntary code of practice/self regulation, but insufficient to stave off infraction penalties.

Option 3:

The benefits of this option are many. The two most significant would be the avoidance of infraction penalties costing many £millions and ensuring compliance with the Landfill Directive requirements which would significantly reduce the environmental risks to the natural environment at the site locations and over time would restore the land to its natural state.

Business sectors affected.

Those affected will be a small number of District Councils and some private operators of landfill sites. Businesses, in general will not be affected. The size of the private operators' businesses is not known. The private landfill sites closed some 7 years ago and little is known of the number of employees and turnover.

Other Impact Assessments

An Equality Impact Assessment has been undertaken which demonstrates that there is no adverse impact on Section 75 groups.

5. Costs

(i) Compliance costs

Option 1: There will be no cost of compliance under option 1.

Option 2: There will be no cost of compliance under option 2. Introducing a voluntary code of practice is unlikely to result in full compliance with the Directive.

Option 3: The cost of consultants to support NIEA to ensure compliance of landfill sites with the Landfill Directive is anticipated to amount to £425k over 4 years. It is estimated that year 1 spend will be £125k, year 2 £100k, year 3 £100k and year 4 £100k. The time period will be open for review to take account of the rate of compliance of operators. The in-house cost over 5 years is estimated at £20k (£4k per year). This cost has been based on the in-house need for a Senior Scientific Officer spending 2 days per month for a period of 5 years to manage/monitor the project. Depending on the extent of infrastructure works which are required to safely manage the leachate, ensure no groundwater or surface water contamination and to ensure good air quality, full compliance with the Directive could amount to up to £10m per site, over a period of 3-5 decades. It is estimated that the year 1 spend will be £2m, year 2 £2m, year 3 £2m and year 4 £2m. An anticipated spend of £50k per year for 40 years may be required for monitoring and maintenance. More accurate figures will emerge when the consultants have reported to NIEA as to the extent of the non-compliance with the Directive.

(ii) Other costs

There are no further costs other than those already quoted.

(iii) Costs for a typical business

The proposal does not cover a wide range of firms.

6. Consultation with small business: the Small Business Impact Test

The proposal will be widely distributed to all those organisations concerned with waste issues as part of the consultation process.

7. Enforcement and Sanctions

The NIEA, will enforce the legislation. For non-compliance with the Regulations, courts may impose fines, on summary conviction, of up to £30k or imprisonment for a term not exceeding six months or both. On conviction on indictment, courts can impose fines or imprisonment for a term not exceeding five years or both. There will be no costs to other Departments. District Councils will be made aware of the costs to their organisations through the consultation process.

8. Monitoring and Review.

Monitoring and review of environmental control, emissions and their effectiveness will in many cases continue for many decades in accordance with Landfill Directive standards. The effectiveness of the legislation will be measured against the rate and scale of the necessary remediation immediately after the coming into operation of the amendment.

9. Consultation

(i) Within Government

See the Consultation Document which lists all the Departments and agencies to be consulted.

(ii) Public Consultation

The Consultation Document has been prepared in line with the principles set out in HM Government's "Code of Practice on Consultation" (July 2008). The Code's consultation criteria are reproduced in the Consultation Document.

10. Summary and Recommendation

The Department is proposing to amend the date from which landfill sites which close must comply with the Landfill Directive (1999/31/EC). In addition, the Department is proposing to redefine the term 'operator' to extend its meaning to cover the period 16 July 2001 to 18 December 2003.

Ten sites have been identified that were not closed in accordance with the Landfill Directive and will require to be remediated to comply with the Directive. If the Regulations are not amended there will be a significant risk of closed landfill sites not being remediated and no aftercare arrangements being put in place. This in turn could lead to infraction penalties of potentially £millions.

Three options were considered; however, it is recommended that option 3 is implemented. This option is to amend the Landfill Regulations (Northern Ireland) 2003 so that they may be applied to landfills in Northern Ireland closed after 16 July 2001.

The estimated cost of this option has been summarised in the table below and is based on remediation of ten landfill sites.

Year	1	2	3	4	5	6 Onwards
Compliance Cost	£20m	£20m	£20m	£20m	£0.5m	£0.5m
Cost to NIEA	£129k	£104k	£104k	£104k	£4k	£0m
TOTAL	£20.1m	£20.1m	£20.1m	£20.1m	£0.5m	£0.5m

The compliance cost from year 5 onwards is for monitoring and maintenance; this could be required for approximately forty years. Therefore, the net present cost of this option has been calculated. This estimates the value of future costs (and benefits) in present day terms. A 3.5% discount rate has been used for the first 30 years and a 3% discount rate has been used thereafter. Using these figures gives a net present cost of £8.6m per site or £86m in total.

If this option is not implemented the United Kingdom (and more specifically Northern Ireland) could be liable for infraction fines, given the failure to comply with the Landfill Directive. It has been suggested that these fines could be as much as £180m per year.

11. Declaration

“I have read the Regularity Impact Assessment and I am satisfied that the benefits justify the costs.”

Signed.....

Date

Minister' s name, title, department.

Contact point.

John Waterworth