

INTRODUCTION

The Department consulted on a draft Order in Council - The Waste (Amendment) (Northern Ireland) Order - between 20 July and 31 October 2006.

The principal aim of the legislation is to amend The Waste and Contaminated Land (Northern Ireland) Order 1997 to provide greater enforcement powers and stiffer penalties in order to deter unlawful activity in relation to the management and disposal of waste. In the main, the legislation replicates new regulatory provisions introduced in England and Wales under Part 5 of the Clean Neighbourhoods and Environment Act 2005. However the Department is proposing some additional measures for Northern Ireland to reflect the more serious situation here arising from the involvement of organised criminal gangs in the illegal cross-boundary transport and disposal of waste.

A previous consultation exercise on this issue at the policy development stage was held in 2005. A summary of the responses to this consultation can be found on the Department's website – www.doeni.gov.uk

RESPONDENTS

The Department received 5 substantive responses to the consultation on the draft Order.

These were from:

- **arc21** – a body representing 11 councils and responsible for the development and implementation of a Waste Management Plan for the Eastern Region;
- **Southern Waste Management Partnership (SWaMP)** – a body representing 8 councils and responsible for the development and implementation of a Waste Management Plan for the Southern Region;
- **Fermanagh District Council;**
- **Craigavon Area Hospital Group Trust/Craigavon & Banbridge Community Trust;**
- **Western Group Environmental Health Service.**

Two further responses were received from:

- **Armagh City and District Council** (which endorsed SWaMP's response);
- **Larne Borough Council** (which commented that its previous submission remained valid).

OVERVIEW OF RESPONSES

All those responding to the consultation stated that, in principle, they supported the new legislation.

The majority of the other comments received fell broadly into the following areas:

Penalties

One respondent acknowledged the proposed increase in the penalties that could be imposed in the Magistrates Court and the Crown Court for illegal waste activities but felt that they might still not prove a deterrent given the potential financial rewards. This respondent held a similar view regarding fixed penalties for the unregistered transport of waste, whereas another respondent felt that a fixed penalty notice of £300 for this offence might be excessive. Another respondent asked that the Department include district councils in the bodies to which a court could award clean up costs.

Department's Response

The proposed fines and penalties are in line with provision in England and Wales and more serious waste offences can be taken to the Crown Court, where unlimited fines can be imposed. In addition, the legislation includes proposals to give courts the powers to order those convicted of certain waste offences to pay the Department's investigation and enforcement costs, to give possession of any vehicles used in the offence(s) to the Department, and to order offenders to pay the clean-up costs incurred or anticipated. The Department will urge the courts to make full use of these powers.

In relation to fixed penalties, the Department's powers are discretionary – ie the legislation states that Department "may" give a notice. The amounts of the fixed penalties are in line with those issued in England and Wales, and the legislation makes provision for future increases in these amounts.

The Department agrees that courts should have the power to award clean up costs to district councils and plans to make this amendment to the draft legislation.

Increased Powers for Councils

One respondent suggested that additional powers should be extended to district councils in relation to waste management issues such as waste collection. It also commented that it was disappointing that no timescales are given for the exploration of the extension of the powers of councils to tackle these and other waste issues. It urged the Department to initiate progress as

a matter of urgency and to announce an appropriate programme of work with timetables.

Department's Response

While the Department sees merit in extending enhanced powers to councils, such changes would require further consultation and this would lead to significant delay in the legislative programme. Given the urgent need for amending legislation, the decision has been taken to proceed with the Order as drafted, and consider the need for amendments at a later date, keeping the effectiveness of the new legislation under review. A firm timetable for future consultation with councils cannot be provided at the present time.

Extension of Article 28 powers to include landowners

Two respondents commented on the proposed extension of the powers of councils under Article 28 of the 1997 Order which, at present, enable a council to require an occupier of land to remove waste from the land, or to clean up the land, under certain specified circumstances. Under the terms of the new legislation, it is proposed that councils will have the same powers in relation to landowners. The respondents suggested that these powers should only be used as a last resort with the person who deposited the waste being pursued in the first instance – the “polluter pays” principle. Another respondent suggested that the inclusion of a defence for landowners would have the effect of negating the new powers. This respondent was of the view that Article 28 powers should be removed from councils and transferred to the Department while another respondent queried whether the inclusion of this Article meant that the Department would be assuming a larger role in effecting clean up in the future.

Department's Response

This measure will help councils to deal with derelict sites where there is no occupier of the land or an absentee landlord who is allowing his land to be used as an unlawful dump. The aim is to allow action to be taken against irresponsible landowners, without penalising the victims. Thus, it is considered vital, as is currently the case in relation to occupiers, that an owner will have rights of appeal against notices if he had neither deposited waste nor knowingly caused or permitted its deposit.

In relation to “the polluter pays” principle, the unlawful deposit of waste is already an offence under existing legislation. The proposed new legislation also gives the courts the power to require an offender, on conviction, to meet the disposal costs incurred.

In relation to any other changes to Article 28 powers, the Department has taken the decision – mainly due to the urgent need for amending legislation – not to bring forward further significant proposals at this time. However the issues raised during the consultation process will be considered further at a future review.

Registration of Carriers

Two respondents commented on the proposal to make changes to the current registration of carriers regulations, one querying operational aspects of the changes and the other stressing that the level of charging should be set so that legitimate waste companies are not discouraged from legislative compliance.

Department's Response

Details of the changes to the registration scheme will be set out in Regulations which will, of course, be subject to full consultation. Comments from this, and the previous consultation process, will be considered as part of the process of developing these Regulations.

Site Waste Management Plans

One respondent asked about operational aspects of the proposal to introduce Site Waste Management Plans for certain construction and demolition projects.

Department's Response

Details of how exactly this will operate will be set out in Regulations, which will, at the very least, need to define the type, nature and size of projects that will fall within the scope of the scheme, what such a Plan should actually contain, and the monitoring and enforcement arrangements. There will, of course, be full consultation on the detailed proposals once they are developed.

Other Operational Issues

Several respondents made suggestions and posed detailed questions in relation to how several of the proposed new powers (such as the removal of the defence of acting under an employer's instruction or the imposition of a fixed penalty notice for a failure to produce appropriate documentation) will work in practice.

Department's Response

The Department is committed to ensuring that all those likely to be affected by the proposed new legislation will be made aware of their duties and responsibilities and will consider how they can best be informed of the contents of the Order and its potential impact.

Education/Communication

One respondent advised that education and awareness campaigns would be required to ensure that those involved in, for example, the transport of waste, were aware of their responsibilities and the relevant legislative requirements.

Department's Response

As stated above, the Department is committed to ensuring that all those likely to be affected by the proposed new legislation will be made aware of their duties and responsibilities and will consider how they can best be informed of the contents of the Order and its potential impact.

Resources

Several respondents stressed that successful implementation of the legislation would only be possible if the Department ensured that sufficient resources were made available to undertake the necessary enforcement activities and that these resources were efficiently and effectively managed.

Department's Response

The Department is committed to securing the necessary resources for enforcement and, more generally, for the effective tackling of illegal waste activity. Since December 2003 the Department's Environment and Heritage Service (EHS) has been steadily building its resource to tackle the problem of illegal waste activity, with increasing numbers of successful prosecutions reflecting the prioritisation of this area of work.

NEXT STEPS

The Department would like to thank all those who responded to the consultation. The consultation process has assisted the Department in finalising the content of the legislation and the Minister's approval has now been sought to lay the draft Order at Westminster in December.

ACCESS TO INFORMATION

This is a summary document covering the main issues raised by respondents. Copies of the responses are available on the Department's website - www.doeni.gov.uk.