

# Summary of Responses to 2006 Consultation on Proposals for Contaminated Land (Northern Ireland) Regulations and Statutory Guidance

## Introduction

The Department consulted on draft regulations – the Contaminated Land Regulations (Northern Ireland) - and associated statutory guidance. The consultation period was from 5<sup>th</sup> July to 11<sup>th</sup> October 2006.

The aim of the legislation is to provide appropriate procedures and guidance to underpin the bringing into operation of Part 3 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”). Part 3 of the 1997 Order provides a framework for a regulatory regime to deal with historically contaminated land and essentially replicates Part 2A of the Environmental Protection Act 1990, under which contaminated land regimes have been brought into force in England Scotland and Wales.

## Respondents

The Department received 9 substantive responses to the consultation from:

- ◆ **Disability Action** – a Northern Ireland charity working with and for people with disabilities.
- ◆ **Armagh City and District Council**
- ◆ **Belfast City Council**
- ◆ **Cookstown District Council**
- ◆ **Chief Environmental Health Officers’ Group (CEHOG)** – a group representing the Chief Environmental Health Officers of the 26 District Councils in Northern Ireland.
- ◆ **Northern Ireland Environment Link (NIEL)** – a networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland.
- ◆ **Geological Survey of Northern Ireland (GSNI)** – an office of the Department of Enterprise, Trade and Investment (DETI), is responsible for providing a wide range of geological advice and information in support of planning, land use, environmental protection and natural resource assessment.
- ◆ **Construction Employers’ Federation (CEF)** – the representative body for the construction industry in Northern Ireland.
- ◆ **White Young Green** – an international multi-discipline environmental consultant.

Further responses were received from:

- ◆ **Northern Ireland Commissioner for Children and Young People (NICCY)** – (not in a position to respond at this time).
- ◆ **Northern Ireland Judicial Appointments Commission** – (no comment to make on the proposals).
- ◆ **Equality Commission for Northern Ireland** – (unable to comment at this time due to other commitments)

## **Overview of Responses**

All of the respondents who expressed a view were broadly supportive of the aims and objectives of the proposals.

The majority of the other comments received are broken down into the following areas:

### **Format of Consultation Document**

One respondent expressed concern that no information regarding details of a textphone number or alternative formats is included at the front of the consultation document.

### ***Department's Response***

*The cover letter accompanying the consultation and the newspaper advertisements publicizing the document contained the relevant information, such as a textphone number and details on other available formats. The Department accepts however, that this information was omitted from the website and the main body of the consultation document itself.*

*The Department's intentions when distributing this consultation were to access as wide an audience as possible and ensure that everyone had equal access to the document. Those aims were achieved for those directly consulted and those informed by the newspaper advertisements. Unfortunately these issues were not fully considered for those accessing the consultation directly through the Department's website.*

### **Natural Background Contamination**

One respondent pointed out that the proposed legislation makes no distinction between “man-made” contamination and that which occurs naturally due to the geological make up of the area. The respondent suggested that the Regulations and guidance should make users aware of this possible distinction.

### **Department's Response**

*This issue has been discussed at length both in Northern Ireland and GB and has formed part of the deliberations of Defra's Soil Guideline Values Task Force.*

*Although the Department has not yet reached any firm conclusions, it is aware of the issue and will continue to consider the most appropriate way forward.*

### **Basis for Statutory Guidance**

Several respondents commented that the draft statutory guidance appeared to be based on the original guidance issued by Defra in 2000 rather than the updated guidance issued in 2006. Specific issues raised in relation to this point were:

- ◆ Expansion of the regime to cover radioactive contaminated land.
- ◆ Appeals against remediation notices.
- ◆ Clarification that the pollution of "controlled waters" ("waterways and underground strata" in Northern Ireland) does not include groundwaters contained within the unsaturated zone.
- ◆ The introduction of the concept of "significant pollution" of "controlled waters" ("waterways and underground strata" in Northern Ireland).

The respondents recommended that these changes should be effected before the Part 3 regime is implemented.

### **Department's Response**

*The Department agrees that these are important issues and it is hoped that the aforementioned amendments can be effected, and updated statutory guidance published, in advance of implementation. However, the draft Regulations and Statutory Guidance being consulted upon are, quite properly, based on the primary legislative position now. Further consultation will be undertaken when these amendments are proposed.*

### **References to Existing Regimes**

Several respondents commented that, in their view, the references to Industrial Pollution Control and Waste Management regimes are outdated and do not properly reflect the introduction of the Pollution Prevention and Control regime. They also expressed concern that the interaction with Part 2 (specifically Art 28) of the 1997 Order needed greater clarity and that it appeared that the Part 3 regime could not be used to effect remediation of illegal dumping sites.

### **Department's Response**

*The references to Industrial Pollution Control and Waste Management Licensing regimes are factually correct. However, the Department accepts that expansion and greater clarity is required regarding the PPC Regulations. The Statutory Guidance will be revised accordingly.*

*While the Department recognises that the issue of illegal dumping is of great significance, this consultation relates specifically to the Regulations and Statutory Guidance supporting the Part 3 regime rather than the 1997 Order itself. Therefore the question of whether Articles 28 and 70 are appropriate is a much wider issue which falls outside the scope of this consultation.*

### **Inspection Strategies**

Several respondents commented that the proposals called for the District Councils to adopt and publish inspection strategies within 12 months rather than the 15 months allowed under the GB regimes. However, they felt that the provision of a strategy “template” and a comprehensive suite of Soil Guideline Values would make the 12 month timeframe more achievable.

### ***Department’s Response***

*One of the options currently being considered is that service delivery should be via Belfast City Council and the four existing Environmental Health Groups. The Department believes that, if this “Group” approach to implementation is taken and an agreed strategy template is available in advance, the 12 month timeframe is feasible. NI will also have the benefit of lessons learned from experience in GB. It is the Department’s intention to make available in advance an Inspection Strategy Template, agreed by all parties, and drawing on best practice from GB.*

*With regard to Soil Guideline Values, the Department agrees this is an important issue and has participated fully in Defra’s SGV Task Force which has been set up to determine the way forward for SGVs.*

### **Resources**

Several respondents made the point that the provision of adequate funding to the enforcing authorities was essential. One of these respondents commented that the Casella Stanger report into the costs associated with implementation of the Part 3 regime failed to consider other costs such as overheads. They felt that this was an important issue for their organisation as office accommodation for additional staff was not readily available.

### ***Department’s Response***

*The Department is currently preparing a business case to support a bid for the necessary resources. This bid will include revenue and capital funding and aims to ensure that all regulators are adequately funded to provide a consistent and effective service. The Department would welcome the opportunity to further discuss these issues and, to that end, will be seeking further engagement with key stakeholders in the near future.*

### **Hardship Provisions**

One respondent suggested that the introduction of hardship provisions – in simple terms, a mechanism for determining appropriate persons’ ability to pay for remediation – should be mandatory rather than discretionary.

### **Department's Response**

*The Department notes this comment regarding hardship provisions and intends to discuss this issue further with key stakeholders.*

### **Building Regulations**

Several respondents recommended that the existing DOE Technical Booklet C should be updated to reflect the risk-based approach of the Part 3 statutory guidance.

### **Department's Response**

*The Department is no longer responsible for Building Regulations but this comment will be forwarded to, and discussed with, the Department of Finance and Personnel which is now the responsible Department.*

### **Existing Developments**

One respondent expressed concern that where land already developed is subsequently found to be contaminated the developer could be pursued for the costs of carrying out remedial action.

### **Department's Response**

*The Department recognises the concern regarding the potential for developers to be pursued for remediation costs. However, it must be recognised that public health takes priority over financial considerations. The aim of the regime is to give effect to the "polluter pays" principle but there may be circumstances whereby the original polluter cannot be determined or made amenable. In those cases, there is a potential liability for developers and others or the site may be declared an "orphan site" and remediation costs would then fall to the public purse.*

### **Consistency**

Two respondents expressed a hope that the regime would be applied consistently across Northern Ireland both in terms of risks to human health and the environment, and costs to industry.

### **Department's Response**

*The Department believes that its proposals will promote a consistent approach. The use of a common inspection strategy template should lay a firm foundation for consistency and the possibility of delivering the regime through the existing Group structure would address many of the potential problems.*

## **Performance Indicators**

Two respondents pointed out that proposals to develop performance indicators for enforcing authorities would require careful consideration.

## ***Department's Response***

*The Department is aware of the potential difficulties in developing meaningful targets for the operation of a contaminated land regime. Further consultation with key stakeholders will be needed before targets can be defined.*

## **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 statutory guidance. Further engagement with key stakeholders will take place in due course.