

SYNOPSIS OF CONSULTATION RESPONSES

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

New investigation and enforcement powers for councils

The Waste and Contaminated Land (Northern Ireland) Order 1997 (“the 1997 Order”) provided the Department with powers to investigate and prosecute waste offences. The consultation document proposed that these powers be extended to councils.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department’s Response</u>
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?	<p>The majority of respondents supported this proposal, subject to a number of conditions:</p> <ul style="list-style-type: none">(i) the establishment of a fly tipping protocol which clearly sets out the respective responsibilities of both the department and councils;(ii) the availability of adequate resources and training for councils to allow them to utilise the new powers.	<p>Work is already underway with the local government sector to develop a Flytipping Protocol. This work is at an early stage but it is planned that the protocol will be agreed before any new powers are made operational.</p> <p>The Department is working in conjunction with the local government sector to establish a data collection system to quantify the scale and geographical</p>

<p>2. Have you any other comments on these proposals or any alternative suggestions?</p>	<p>Proposal as drafted was widely accepted.</p>	<p>spread of flytipping in NI. If necessary, this data could be used to inform bids for additional resources.</p> <p>Noted.</p> <p>The Department has included these proposed amendments to the 1997 Order in the Waste and Contaminated Land (Amendment) Bill (“the Bill”), subject to Executive Committee approval.</p>
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Revisions to Article 28

Article 28 of the 1997 Order currently enables councils, in certain circumstances, to serve a notice on the owner or occupier of land, requiring him to remove illegal waste or take remedial action. It also provides for court action and fines in the event of failure to comply with a notice. The consultation document proposed amendments to Article 28 so that: (i) both the Department and councils can issue notices; (ii) both the Department and councils can serve a notice on a suspected offender in addition to the owner and occupier; and (iii) a notice can require the cessation of illegal keeping, treating and disposal of waste in addition to its removal/remediation.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
3. Do you agree with the proposed changes to Article 28 of the 1997 Order as outlined?	The majority of respondents supported these proposals.	Noted. Subject to Executive approval, a specific provision to require cessation of illegal dumping in a notice under Article 28 of the 1997 Order will not be included in the Bill. This is on the basis that the person on whom a notice is served may not always be the depositor, that illegal deposit of waste is already an offence under Article 4 of the 1997 Order, and that enforcement authorities will be able to refer to the cessation of waste in a notice where appropriate even if this is not included in the legislation.
4. Do you have any comments on the level of fines?	Most respondents were in favour of at least a modest rise in the level of fines to reflect the cost of enforcement.	The Department takes the view that the level of fines should remain at its current level i.e. a maximum fine of £5000 and a

<p>5. Have you any other comments on these proposals or any alternative suggestions?</p>	<p>The key points made were:</p> <ul style="list-style-type: none"> (i) The Department should take on the full range of powers in Article 28, not just the issue of a notice; (ii) The need to avoid duplication of action in relation to the same incident; (iii) The need to ensure that a notice is issued to the offender – and not simply served on the landowner, where he is an unknowing victim; (iv) Fly-tipped waste recovered by a council under an Article 28 notice should not be treated as municipal waste for the 	<p>continuing daily fine of £500. This is on the basis that more serious offences could be prosecuted as breaches of Article 4 of the 1997 Order (illegal deposit of waste) and therefore be subject to much higher penalties.</p> <p>In circumstances where the Department uses its proposed new powers to issue an Article 28 notice, it will follow the procedures through to their conclusion.</p> <p>The Flytipping Protocol (see comments on responses to Q1 above) will clearly set out the respective responsibilities of both the Department and councils in relation to flytipped waste.</p> <p>In the Department's proposed amendment to Article 28, a notice would be served on the person believed to be responsible for the illegal waste deposit, provided that person can be traced.</p> <p>NILAS defines waste which is in the possession of or under the control of councils, with certain exceptions, as</p>
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	purposes of NILAS compliance.	<p>collected municipal waste and counting towards EU Landfill Directive targets. The legal position is that if the flytipped waste is household or commercial in nature it should count for NILAS purposes and it is not intended to change this. However consideration will be given to whether NILAS penalties would be imposed in a situation where flytipped waste is solely responsible for a council exceeding its NILAS allowance.</p> <p>Subject to Executive Committee approval, the Department has included these proposed amendments to the 1997 Order in the Bill (with the exception of provisions allowing a notice to refer to the cessation of the illegal keeping, treating and disposal of waste and without fines being increased).</p>
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Fixed penalties for flytipping offences

Under current legislation all flytipping offences in Northern Ireland, regardless of scale, must be prosecuted through the courts. The consultation sought comments on the proposal that both the Department and councils be given the powers to issue fixed penalty notices for lesser waste offences.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
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?	The majority of respondents supported this proposal.	Noted.
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?	<p>On the whole, respondents were of the view that fixed penalty notices should apply for small scale non-hazardous offences.</p> <p>Several respondents felt that guidance would be needed to ensure consistency in determining when a fixed penalty notice was appropriate and the level of such a penalty.</p>	<p>The Department agrees with these comments.</p> <p>For consistency of approach, the Department proposes that it will set the level of fixed penalty notices for flytipping offences through the new legislation and issue general guidance for enforcement</p>

<p>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?</p>	<p>Two respondents suggested that such penalties would not be appropriate for repeat offences while another felt that they would not be appropriate in instances where the clean-up costs would be substantial.</p> <p>It was generally felt that a fixed penalty for flytipping should:</p> <ul style="list-style-type: none"> • be greater than the penalty for littering; • depend on the volume of waste; • reflect the clean-up costs; • increase for repeat offences; and • differ for domestic and commercial offences. <p>Amounts suggested ranged from £100 to £500 for domestic offences and £500 to £1,000 for commercial offences.</p>	<p>bodies on their use. However, there will be no compulsion on councils to use this system of enforcement; each council will be able to decide if the issue of fixed penalty notices is appropriate for its individual circumstances.</p> <p>While this appears a sensible approach, the Department is of the view that enforcement bodies should be free to decide if and how they use these notices.</p> <p>Fixed penalty notices are intended as a fast, cost effective means of penalising small-scale offences. It is important to ensure that the level of fine is sufficient to act as a deterrent but not so high as to lead to non-payment. Given that a fixed penalty notice for a litter offence is £50, the Department is of the view that the legislation should prescribe fixed penalty notices of between £100 - £200. This will give the issuing authority discretion in determining the amount of each fixed penalty notice - subject to these upper and lower limits - based on factors such</p>
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<p>9. Have you any other comments on these proposals or any alternative suggestions?</p>	<p>A number of respondents suggested that:</p> <ul style="list-style-type: none"> (i) Some consideration should be given to a tiered payment system to take account of early/late payments or an incremental scale for repeat offences. (ii) Fixed penalty receipts should be retained by the issuing authority to cover the cost of enforcement and clean up. (iii) Financial support should be made available to councils for training prior to implementation of a system of fixed penalties. 	<p>as those suggested by respondents (e.g. size of waste deposit, domestic or commercial offence, first or repeat offence etc). The Department also agrees that issuing authorities be given the freedom to offer discounts for early payment if they feel that this would be appropriate.</p> <p>See comments on responses to Q8 above. The Department feels that by allowing issuing authorities discretion in determining the amount of each fixed penalty notice - subject to upper and lower limits - various mitigating or aggravating factors can be taken into account.</p> <p>The Department agrees with these comments and the proposed legislation provides for councils to retain such receipts.</p> <p>See comments on Q1 above.</p>
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		<p>The Department has included the proposed amendments to the 1997 Order in the Bill, subject to Executive Committee approval. It is proposed that fixed penalty notices will be set at between £100 and £200 and that provision will be made for receipts to be retained by councils to cover costs. It is further proposed that each enforcement authority will have freedom to decide whether it wishes to issue fixed penalty notices.</p>
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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 is also the need for a formal protocol which clearly establishes the respective roles and responsibilities of the Department and councils in dealing with flytipped waste. The consultation document sought comments and suggestions on the proposed Flytipping Protocol.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
10. Do you have any comments or suggestions concerning the proposed Flytipping Protocol?	<p>The majority of respondents felt that an agreed Flytipping Protocol, clearly setting out the roles and responsibilities of both the Department and councils, was essential.</p> <p>Additionally, many respondents expressed the view that such a protocol must be in place prior to commencement of any legislative change and that it should be brought to the attention of members of the public.</p>	<p>The Department agrees with these comments. See comments on responses to Q1 and Q5 above.</p> <p>The Department recognises the need for an agreed Flytipping Protocol and work is already underway in conjunction with the local government sector to develop such a protocol.</p>

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

Article 72 of the 1997 Order allows enforcement officers investigating waste offences to bring machinery onto premises and enter the residential premises of those suspected of committing waste crimes. However, except in an emergency, enforcement officers must give 24 hours notice of their intention to do so and must also have either a court warrant or the permission of the occupier of the premises. This creates a risk of removal or destruction of evidence. The consultation document sought views on the proposed removal of the 24 hour notice period.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
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?	<p>The majority of respondents supported this proposal.</p> <p>A small number of respondents raised objections to the proposal, with one not accepting that there was any basis to justify the proposed change.</p>	Noted
12. If so, do you think that the requirement to obtain a court warrant provides sufficient safeguards for the public?	All respondents in favour of the proposal felt that the requirement to obtain a court warrant provided sufficient safeguards.	Noted.
13. Have you any other comments on these proposals or any alternative	No other comments were made.	Noted.

suggestions?

The Department has included the proposed amendments to the 1997 Order in the Bill, subject to Executive Committee approval.

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

To achieve a conviction under the current definition of Article 4, the Department must prove beyond a reasonable doubt that the accused knew about the illegal deposit of waste. The consultation document sought views on a shift of the burden of proof from the enforcing authority to the accused. Thus it outlined the proposal 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. It also sought views on the proposal that the amended legislation should provide for a possible defence where the accused can demonstrate that he exercised all reasonable care to prevent the incident.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
<p>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?</p>	<p>The majority of respondents supported this proposal, provided an appropriate defence (as noted above) is included in the legislation.</p> <p>A small number of respondents strongly opposed the proposal. Reasons cited for opposition included human rights grounds and concern that the burden of proof would shift from the enforcing authority to farmers/landowners – who may well be innocent victims.</p>	<p>Noted.</p> <p>The Department acknowledges that this was a controversial proposal. While the proposals are not without precedent (Article 7(1) of the Water (NI) Order 1999 also provides that a water pollution incident is an offence whether it was caused knowingly or otherwise unless the accused can provide an appropriate defence) and while the proposal would have provide a defence for those who are innocent of any offence, the Department has taken the concerns of respondents</p>

		<p>into consideration.</p> <p>The Department has therefore taken the decision that the proposed amendments to the 1997 Order should not be included in the Bill, subject to Executive Committee approval.</p>
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REVIEW OF REFERENCES TO LAND IN THE WASTE AND CONTAMINATED LAND (NORTHERN IRELAND) ORDER 1997

In the 1997 Order, references to land on which controlled waste is treated, kept or deposited are references to the surface of the land. This has caused difficulties in prosecution of illegal waste cases where it is not clear what the original surface of the land was, or in instances where waste has been buried, deposited in quarries or under water. The consultation document asked for comments on the proposal to amend references to in or on land to cover the illegal deposit of waste in, on, over or under land.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
15. Do you agree that the Department should review the legislative references as summarised in the consultation document?	All those who responded to this question were supportive of the proposal.	Noted.
16. Do you wish to highlight any specific references to land in the 1997 Order which have caused problems?	No comments were made.	Noted.
17. Have you any other comments on this proposal or any alternative suggestions?	Proposal as drafted was widely accepted.	Noted.

		The Department has included the proposed amendments to the 1997 Order in the Bill, subject to Executive Committee approval.
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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. An application to operate a waste management facility must be accompanied by a fee for determination of the licence required to run the site and if a licence is subsequently granted, the site operator is required to pay an annual subsistence fee. This fee covers the cost of inspections required to ensure that controlled waste is managed and disposed of in a way that does not harm the environment or human health. At present the Department is not in a strong position to recover subsistence fees if a business does not pay. It has the power to revoke a licence but this still presents an accountancy problem in that the facility still presents a risk to the environment and the Department still incurs costs in inspecting the site. The consultation document proposed both the creation of a new offence of failure to pay subsistence fees with respect to a waste management licence, and a daily penalty for continued non-payment.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
<p>18. Would you agree with the creation of 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?</p>	<p>The majority of respondents supported this proposal.</p> <p>Some respondents indicated that while they were agreeable to the proposal in principle, they were not fully convinced of the need for legislative change.</p> <p>Others favoured the concept of a fixed penalty notice for this offence – as an alternative to court action – and expressed varying views over the required level of such a penalty.</p>	<p>Noted.</p> <p>Noted.</p> <p>Due to the large sums involved, the Department is of the view that court action rather than fixed penalties would seem to be more appropriate for such offences. The Department therefore proposes that the Bill should specify that non-payment</p>

<p>19. Have you any other suggestions for possible means of encouraging payment of subsistence fees?</p>	<p>Suggestions included:</p> <ul style="list-style-type: none"> • making use of existing power to revoke a licence; • suspension of a licence until the subsistence fee has been paid; and • the possibility of the confiscation of assets. 	<p>of subsistence fees is an offence, punishable by a fine on the standard scale, with the court to determine the precise amount of the fine, based on the circumstances of each case. The Department also proposes that a daily fine for continued non-payment should be included in the legislation with appeals against any sentence to be made through the court in the usual way.</p> <p>The Department envisages that prosecution for non-payment of subsistence fees will only be undertaken after several reminders have been issued.</p> <p>Departmental enforcement officers have advised that revocation of a waste management licence may mean that the Department might lose any control over the licence holder – perhaps driving illegal activity underground and potentially leading to environmental damage. Moreover the Department would still incur costs in monitoring such sites.</p> <p>The Department also proposes that the Bill will include provisions that will allow</p>
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		<p>the court, on conviction, to make an order requiring the licence holder to pay the Department any subsistence charges due in respect of the licence at the date of conviction and any costs incurred in instances where remedial work has been required in an emergency situation.</p> <p>The Department has included the proposed amendments to the 1997 Order, and the additional measure outlined in the response to Q.19 above, in the Bill, subject to Executive Committee and the Secretary of State's approval.</p>
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POWER TO RETAIN SEIZED VEHICLES

Under current legislation, Departmental officials have the power to stop, search and seize vehicles suspected of involvement in the illegal transport of waste. However, in the majority of cases these powers only permit the Department to hold seized vehicles for short periods. In certain circumstances, the Department believes that there is justification for retaining a seized vehicle until the case comes to court. The consultation document proposed amending the relevant legislation to allow for such extended retention, subject to an application being made to a Magistrates' Court, for retention beyond a prescribed maximum period.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
<p>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?</p>	<p>The majority of respondents supported this proposal.</p> <p>Only one respondent disagreed with the proposal on the grounds that there is a presumption of guilt. Another, while expressing support, felt that each case should be considered individually.</p>	<p>Noted.</p> <p>The Department recognises that seizing and retaining property is a serious matter, and that such powers must be used proportionately. However it believes that the proposals are justified in the public interest. Illegal waste activity is a major problem in Northern Ireland. Such activity has netted large profits for unauthorised waste operators and impacts negatively on legitimate waste businesses, as well as causing damage to the environment and posing a risk to public health.</p> <p>Under these proposals, the Department</p>

<p>21. If you do not agree with extended retention, do you have any alternative proposals?</p>	<p>The respondent who disagreed with the proposal on the grounds that there is a presumption of guilt suggested that, as an alternative to extended retention, if the vehicle has been sold and the operator subsequently found guilty, the court could simply issue an order to pay an amount equivalent to the value of the vehicle.</p>	<p>would still have to apply to Court for permission to retain a vehicle beyond a prescribed period, which would allow the individual whose property has been seized to make their case for the return of the vehicle(s) in question.</p> <p>The Department would be wary of returning seized vehicles in every instance, - it can prove very difficult to recover such monies – even with a Court Order.</p> <p>The Department has included the proposed amendments to the 1997 Order in the Bill, subject to Executive Committee approval.</p>
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PROPOSED AMENDMENTS TO PART 3 OF THE WASTE AND CONTAMINATED LAND (NORTHERN IRELAND) ORDER 1997 – CONTAMINATED LAND

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 proposed a number of amendments to the existing legislative framework, mainly to reflect lessons learned through operational experience in England and Wales: (i) all appeals should be heard by the Planning Appeals Commission (PAC); (ii) amendment to the current definition of ‘contaminated land’ to more accurately reflect the definition of ‘controlled waters’ applicable in England and Wales; (iii) introduction of the notion of ‘significant’ pollution of waterways or underground strata or the ‘significant possibility’ of such pollution; and (iv) preclusion of 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.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department’s Response</u>
22. Have you any comments on the Department’s proposals in this section?	<p>The majority of respondents supported the proposals.</p> <p>Several respondents, while welcoming the proposal to introduce the concept of “significant” pollution, were concerned that such a term would need to be properly defined to avoid future legal wrangling.</p> <p>Several respondents made reference to the need for a technically competent, fully trained and</p>	<p>Noted.</p> <p>It is not possible to provide a legal definition of “significant”. However, the commencement of Part 3 of the 1997 Order would be accompanied by guidance to enable the appropriate professionals to make a judgement on its meaning.</p> <p>The Department suggested the PAC because of its existing role and</p>

<p>23. Are there any circumstances where you feel the use of the Part 3 regime should be precluded?</p>	<p>properly resourced appeals body. None opposed the proposal for the PAC to take on this role, though the Council for Nature Conservation and the Countryside restated its long-standing belief in specialist environmental courts.</p> <p>Two respondents asked about transitional arrangements from the current system to any new regime.</p> <p>One respondent suggested that clear guidance would be essential to accompany any legislation and that provision must be made to support councils in their interpretation and implementation of legislation.</p> <p>No comments were made.</p>	<p>experience. The number of cases is likely to be relatively small, and in these circumstances the PAC is content to take on this role.</p> <p>The Department accepts the need for these sorts of issues to be addressed in bringing in any new regime.</p> <p>Again, the Department accepts the need for clear guidance to assist councils and others. However, there will be limits to the level of financial support that may be available.</p> <p>The Department has included the proposed amendments to the 1997 Order in the draft Bill, subject to Executive Committee approval.</p>
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PROPOSALS DESIGNED TO CLARIFY LOCAL GOVERNMENT POWERS TO ENTER INTO WASTE MANAGEMENT CONTRACTS

The EC Landfill Directive requires a reduction in the amount of biodegradable municipal waste (BMW) being sent to landfill. In order to avoid significant EU infraction fines for the UK, 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).

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. In order to address this issue, the consultation document proposed inclusion in the Waste Bill of provisions for: (i) councils to guarantee the waste management obligations of other councils in their group; and (ii) councils to guarantee the obligations of incorporated waste management joint committees to which they belong.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
24. Do you agree with the Department's proposal concerning the guarantee of waste management obligations?	<p>All those who responded to this question were supportive of the proposals.</p> <p>Several respondents requested that these provisions be included in the Local Government (Miscellaneous Provisions) Bill rather than incur unnecessary delay by waiting for the Waste Bill.</p>	<p>Noted.</p> <p>Accepted in principle.</p>
25. If not, why not?	Not applicable.	

		<p>The Department is of the view that the proposals outlined in the consultation document should be included in draft legislation. The process of moving these provisions to the Local Government (Miscellaneous Provisions) Bill is underway.</p>
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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. In order to address this issue, the consultation document proposed inclusion in the Waste Bill of 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.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
26. Do you agree with the Department's proposal concerning powers to provide warranties and indemnities for waste management purposes?	All those who responded to this question were supportive of the proposals. Several respondents requested that these provisions be included in the Local Government (Miscellaneous Provisions) Bill rather than incur unnecessary delay by waiting for the Waste Bill.	Noted. Accepted in principle.
27. If not, why not?	Not applicable.	The Department is of the view that the proposals outlined in the consultation document should be included in draft legislation. The process of moving these provisions to the Local

		Government (Miscellaneous Provisions) Bill is underway.
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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, the consultation document proposed inclusion in the Waste Bill of provisions for councils to accept joint and several liability for waste management purposes.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
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?	All those who responded to this question were supportive of the proposals. Several respondents requested that these provisions be included in the Local Government (Miscellaneous Provisions) Bill rather than incur unnecessary delay by waiting for the Waste Bill.	Noted. Accepted in principle.
29. If not, why not?	Not applicable.	The Department is of the view that the proposals outlined in the consultation document should be included in draft legislation. The process of moving these provisions to the Local Government (Miscellaneous Provisions) Bill is underway.

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. In order to address this issue, the consultation document proposed inclusion in the Waste Bill of 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.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
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?	All those who responded to this question were supportive of the proposals. One respondent commented that local authorities need to ensure that they invest in reliable waste infrastructure and not solely outsource one from private contractors	Noted. Noted.
31. If not, why not?	Not applicable.	The Department is of the view that it is not possible to legislate for this proposal at this time.

Borrowing

A council, in exercising its power to borrow money, 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 (e.g. in the case of unincorporated WMGs) for the purposes of developing waste infrastructure, and the consultation document proposed to address this issue in the Waste Bill.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
32. Do you agree with the Department's proposal to make provisions for constituent councils to borrow money on behalf of WMGs?	<p>All those who responded to this question were supportive of the proposals.</p> <p>Several respondents requested that the Department investigate whether such provisions would be sufficient to allow councils/WMGs to provide Senior Debt to reduce private finance requirements in PPP arrangements.</p>	<p>Noted.</p> <p>The legislative framework for local government finance is being reviewed and modernised under the Local Government (Finance) Bill.</p>
33. If not, why not?	Not applicable.	<p>The Department is of the view that the proposals outlined in the consultation document should be included in draft legislation. The process of moving this provision to the Local Government (Miscellaneous Provisions) Bill is underway.</p>

Payments from Strategic Waste Infrastructure Fund (SWIF)

The 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 Department is satisfied that it has the appropriate powers to make SWIF payments to the WMGs/councils through the SWIF offset mechanism. However, the consultation document sought views on the possible inclusion of clauses in the Waste Bill which will make explicit the vires of the councils and WMGs to implement the SWIF offset mechanism.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
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?	<p>All those who responded to this question were supportive of the Department's proposals in relation to the payment of SWIF to WMGs as detailed in the consultation paper.</p> <p>Several respondents queried the vires of local government to handle the SWIF monies in the way proposed. They have asked the Department to satisfy itself as to the legal robustness of this process.</p>	<p>Noted. The Department is content that it is not necessary to include clauses in the Waste Bill which will make explicit the vires of the councils and WMGs to implement the SWIF offset mechanism.</p> <p>The Department has been assured by local government that it has the power to handle SWIF monies in the way proposed in the consultation paper. It is therefore not necessary to make provision for this in the Waste Bill.</p>

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, the consultation document proposed that the following provisions are built into the Waste Bill where these provisions are specifically required for waste management purposes: (i) the right for local councils to delegate their powers to another council acting on their behalf; (ii) the right for a council to hold and acquire property for the benefit of all of the councils who have delegated authority to it; (iii) the right for a council to enter into Public Private Partnership (PPP) arrangements on behalf of other councils; (iv) 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; and (v) the right of a council to pay money to another council to pay for services provided under a PPP arrangement.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
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?	All those who responded to this question were supportive of the proposals.	Noted.
36. If not, why not?	Not applicable.	The Department is of the view that the proposals outlined in the consultation document should be included in draft legislation. The

		process of moving these provisions to the Local Government (Miscellaneous Provisions) Bill is underway.
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Other Vires Issues

A number of additional issues are being resolved through other legislative vehicles. These include: (i) 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; (ii) 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: (iii) 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.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
37. Are you content with the Department's proposals to legislate for these additional issues, as summarised above?	The majority of respondents were in agreement with the Department's proposals.	Noted.
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.	Several respondents requested that the Department (a) is provided with the power to vest and (b) investigates the feasibility of underwriting contracts.	Consideration has been given to the request at (a) and the Department is of the view that it should not take these powers for the following reasons:- <ul style="list-style-type: none">• It would be unreasonable for the Department to vest land which it does not need and then to transfer it to another public body to enable it to carry out its functions;

	<p>One respondent asked for explicit powers which address the various issues identified by local government rather than have to rely on interpreting the Local Government Act (NI) 1972 i.e. covering lead councils.</p>	<ul style="list-style-type: none">• Vesting powers for waste management purposes are being clarified through the Local Government (Miscellaneous Provisions) Bill. As district councils have the legal responsibility for the collection and disposal of household waste it is more appropriate that vesting powers are provided to them. <p>In relation to (b), the Department has sought advice from the Department of Finance and Personnel and there are no implications for draft legislation.</p> <p>This will be addressed in the proposed legislation.</p>
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SINGLE WASTE DISPOSAL AUTHORITY

The Waste Infrastructure Task Force was established to consider how best to facilitate the future delivery of new waste infrastructure and its subsequent report recommended “...the preparation of legislative proposals that allow for the creation of one or more waste disposal authorities within local government”. The Department sought views on the creation of a Single Waste Disposal Authority as it believes that there is strong justification for the establishment of such a body at an appropriate time following the completion of the current procurement process.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
<p>39. What are your views on the need for, and timing of, a single Waste Disposal Authority for Northern Ireland?</p>	<p>Respondents to this question expressed a variety of views.</p> <p>Several respondents supported the proposal, suggesting it offered potential for efficiency savings.</p> <p>A number of respondents expressed a preference for “permissive powers” - in the absence of consensus for a Single Waste Authority, this would allow councils to voluntarily establish an Authority on a sub-regional basis.</p> <p>In relation to the timing, those in favour of a Single</p>	<p>Noted. The potential for efficiency savings is a key driver for this policy proposal, which will in effect take the form of a single waste management joint committee.</p> <p>Noted. However the Department believes that the creation of a Single Waste Authority - with full participation by all councils - offers maximum potential for benefits, including a more strategic approach to waste management and future efficiency savings.</p> <p>Noted. The Department is determined to</p>

	<p>Waste Authority suggested a medium-term approach, to avoid interference with the current procurement process.</p> <p>Opposition to the Authority mainly centred around the following themes:</p> <ul style="list-style-type: none"> • Preference for “more than one” authority; the councils should decide on the most appropriate formation in due course. • No need for a Single Waste Authority in Northern Ireland - the three existing Waste Management Groups are already committed to and progressing long term infrastructure procurements. • The creation of a Single Waste Authority would seem to contradict the ethos of the Review of Public Administration (i.e. stronger local government delivering services locally). 	<p>avoid interference with the ongoing procurement process.</p> <p>As noted above, the Department believes that a single joint committee offers maximum potential for benefits in waste management, offers maximum potential for benefits, including a more strategic approach to waste management and future efficiency savings.</p> <p>Noted. The existing Groups have already demonstrated their commitment, and are making excellent progress. However the Department believes that there is potential for further benefits / efficiencies when the planned infrastructure is in place.</p> <p>Noted. However an integral part of the reform of local government is to examine potential for shared service delivery; this offers maximum scope for a strategic, approach, efficiencies and economies of scale. The creation of a single joint committee would fulfil a critical support role on behalf of councils, but would be</p>
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	<ul style="list-style-type: none">• The role, function, and competencies of the proposed Authority would need to be clearly defined, as well as how it would be resourced and any potential impact on local authority funding, before any such enabling legislation was considered.	<p>accountable to them.</p> <p>Noted. However the enabling legislation will only provide the broad framework for the future creation of a Single Waste Authority. Subject to Executive and Assembly approval, the detailed provision will be delivered through subordinate legislation, which will be subject to public consultation and debate in the Assembly.</p> <p>The Department remains committed to the introduction of legislation which would enable the future creation of a Single Waste Authority, responsible for waste disposal and recovery – this will be based on the current Joint Committee model. The Department has therefore included enabling legislation for the establishment of such a body in the Bill, subject to Executive Committee approval. Significantly however, the Bill will only carry the enabling legislation; any subsequent policy development will also be subject to full consultation and debate in the Assembly.</p>
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PROPOSED AMENDMENT TO THE PRODUCER RESPONSIBILITY OBLIGATIONS (NORTHERN IRELAND) ORDER 1998

The consultation sought comments on the proposal to make a minor amendment to the 1998 Order to provide an inclusive definition of the Department's powers of entry and inspection.

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
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?	All those who responded to this question were supportive of the proposal.	Noted.
41. Have you any other comments on this proposal or any alternative suggestions?	Not applicable.	Noted. The Department has included the proposed amendment to the 1998 Order in the Bill, subject to Executive Committee approval.

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

<u>Question</u>	<u>Summary of Responses</u>	<u>Department's Response</u>
<p>42. Have you any comments on the Department's preliminary conclusions in relation to equality screening, human rights or regulatory impact assessment (RIA), or rural proofing?</p>	<p>The majority of respondents made no comment on the Department's preliminary conclusions.</p> <p>However at various points in their responses a small number of respondents raised concerns in relation to the following proposals:</p> <ul style="list-style-type: none"> • removal of the 24 hour notice period currently required before enforcement officers can bring machinery onto premises or enter residential premises; • shift of the burden of proof from the enforcing authority to the accused; • power to retain seized vehicles. <p>One respondent also stressed the potential impact of several of the proposals on rural landowners, especially farmers.</p>	<p>Noted.</p> <p>See comments on these proposals already set out above.</p> <p>As already stated, the Department has decided not to proceed with the proposal to shift the burden of proof from the enforcing authority to the accused, subject to Executive Committee approval. However, in relation to the other two proposals, the Department considers that strong measures are needed to deter and prevent illegal waste activity and, on balance, it is believed that the proposals are justified in the public interest.</p> <p>In relation to the potential impact on landowners/farmers, it is planned that appropriate safeguards will be included in the legislation.</p>

	<p>A number of respondents queried why a RIA did not reflect the impact on councils of additional enforcement powers.</p>	<p>The Department has not completed a RIA on the basis that such an assessment is only required in relation to costs or savings to business, charities, social economy enterprises and the voluntary sector.</p>
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RESPONDENTS

The Department received 31 substantive responses to the Consultation Document on the proposals for a Waste Bill:

Antrim Borough Council	Larne Borough Council
arc21	Limavady Borough Council
Armagh City and District Council	Lisburn City Council
Arthur Cox	Moyle District Council
Ballymena Borough Council	Newry & Mourne District Council
Banbridge Borough Council	Newtownabbey Borough Council
Belfast City Council	Northern Ireland Local Government Association (NILGA)
Castlereagh Borough Council	North Down Borough Council
CBI Northern Ireland	Northern Ireland Court Service
Chief Environmental Health Officers Group (CEHOG)	Northern Ireland Environment Link
Cleaver Fulton Rankin Solicitors	North West Region Waste Management Group
Coleraine Borough Council	SWaMP2008
Cookstown District Council	TIDY NI
Council for Nature Conservation and the Countryside	Ulster Farmers' Union
Craigavon Borough Council	Ulster Society for the Protection of the Countryside
Environment Committee of the Northern Ireland Assembly	