

**Ballymoney Borough Council
Council Meeting No 941 – 7th March 2011**

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BALLYMONEY BOROUGH COUNCIL

Minutes of Council Meeting No 941 held in the Council Chamber, Riada House, Ballymoney on Monday 7th March 2011 at 6.34 p.m.

IN THE CHAIR: Councillor B Kennedy, Mayor

PRESENT: **Aldermen**

H Connolly
C Cousley, MBE, Deputy Mayor
F Campbell

Councillors

A Cavlan
J Finlay
R Halliday
M McCamphill
P McGuigan
T McKeown
C McLaughlin
A Patterson
E Robinson
I Stevenson

IN ATTENDANCE: Chief Executive
Director of Borough Services
Director of Central & Leisure Services
Head of Corporate & Development Services
Deputy Director of Borough Services
Committee Clerk

Press (2)

NI Water (Item 1)

S McAleese
I Graham

* **Councillor Robinson and Alderman Cousley joined the meeting at 6.35 p.m.**

**941.1 PRESENTATION – NI WATER
SEVERE WEATHER EMERGENCY**

Mr McAleese and Mr Graham presented to Council, regarding NI's Water Response to the Freeze/Thaw Incident (26 Dec 2010 to 5 Jan 2011) – (See attached Appendix 1).

* **Councillor Patterson and the Director of Borough Services joined the meeting at 6.37 p.m. and 6.38 p.m. respectively during the presentation.**

The Mayor thanked the representatives for the presentation and referred to the Utility Regulator and OFMDFM 's report which had highlighted specific weaknesses.

The representatives responded to members' questions on:

- Difficulty contacting the call centre despite being given special elected numbers.
- Poor service provided by the call centre.
- Problems accessing and limited information on the NI Water website.
- Elected representatives not being furnished with the proper information, if relayed to their constituents; may have resulted in reducing the amount of calls made to the centre.
- Water taken from the Tullaghan's reservoir.

* **Councillor Finlay arrived at the meeting at 6.56 p.m.**

A number of Councillors voiced their concerns regarding the poor service provided during this time, however, Alderman Simpson stated that he had had no problems contacting the NI Water call centre.

The representatives responded to further questions from members relating to:

- Burst water pipes in homes that were not being occupied over the holiday period.
- Adequacy of recent blue water pipes laid.
- Assistance being refused from England.

* **Councillor McGuigan left the meeting at 7.05 p.m and returned at 7.07 p.m.**

Mr McAleese acknowledged that the two key issues which NI Water wish to address in the event of a future similar crisis happening are: communications and the customer contact.

The Mayor again thanked the representatives for their presentation which concluded at 7.14 p.m. Mr McAleese and Mr Graham left the meeting at this time.

* **The Deputy Director of Borough Services left the meeting at 7.15 p.m.**

941.2 MINUTES – MEETING NO 939 – 7TH FEBRUARY 2011

It was proposed by Councillor Finlay, seconded by Alderman Connolly and **AGREED:**

that the minutes of meeting no 939 – 7th February 2011, as circulated be confirmed as a correct record.

941.3 MINUTES – NO 940 (RATES) – 9TH FEBRUARY 2011

It was proposed by Councillor Finlay, seconded by Councillor McCamphill and **AGREED:**

that the minutes of meeting no 940 (Rates) – 9th February 2011, as circulated be confirmed as a correct record.

941.4 CONSULTATION COMMITTEE NO 59 – 21ST FEBRUARY 2011

Alderman Connolly presented the report.

It was **AGREED:**

that the minutes of meeting No 59 on 21st February 2011, as circulated, be tabled.

* **Councillor Cousley arrived at 7.15 p.m.**

941.5 DEVELOPMENT COMMITTEE NO 223 – 21ST FEBRUARY 2011

Councillor Finlay presented the report to Council and Addenda as outlined at 5.3, 5.4 and 5.5 below was presented by Head of Corporate and Development Services at Chair's request.

Matters Arising:

5.1 Northern Regional College (223.13)

Councillor Finlay advised that the matter of retaining a Campus in Ballymoney could be discussed further at the next committee meeting.

5.2 Giants Causeway Visitor Centre (223.16)

Councillor Finlay stated that there appears to be a great deal of difficulty regarding car parking facilities at the visitor's centre. Councillor Kennedy agreed that this matter needs to be considered further at the next committee meeting.

5.3 Rural Development - Village Renewal Programme (223.11)

Reference item 233.11 in minutes of 21 February 2011 the following applications from community associations for funding towards village action plans approved under the village renewal measure of the Rural Development Programme have been examined and contributions are **recommended** as follows:

Community Association	Village Plan Tender. £.	RDP Grant. £.	CA Contribution £.	Council Contribution £.
Dervock & District Community Association	5940.00	4455.00	745.00	740.00
Stranocum & District Community Association	4425.00	3318.75	556.25	550.00
Dunloy Development Association	*6000.00	4500.00	750.00	750.00
Rasharkin Community Association	*2500.00	1875.00	425.00	200.00
Ballybogey & District Community Association	*7000.00	5250.00	1750.00**	DC to review

*- Estimates (contribution to be revised when tender amount and letter of offer confirmed.)

** - Big Lottery Awards for All (awaiting confirmation)

Prices include VAT

Budget provision for the contributions is available in 2011/12 estimate.

It is **recommended** that Council contributions as detailed in table above be approved and authority granted to Development Committee to review and agree contribution, if required, to Ballybogey & District Community Association following Awards for all decisions.

5.4 NI Executive Priorities for Sustainable Growth Consultation

The Association of Town Centre Management (NI) (ATCM) commissioned a consultant to prepare a response to the NI Executive's consultation on Priorities for Sustainable Growth. The response was drafted using the ATCM manifesto. A copy of the response to the consultations questions was presented by Head of Corporate and Development Services and circulated. Committee invited to endorse the ATCM response, attached as Appendix 2.

It was proposed by Councillor Finlay, seconded by Councillor Stevenson and **AGREED:**

that the Association of Town Centre Management Consultation response prepared on behalf of ATCM to the NI Executives priorities for Sustainable Growth be endorsed.

5.5 Business Improvement Districts and Licensing of Pavement Cafes

The Department of Social Development consultation on the above subjects was tabled at a previous meeting.

A response prepared by the Association of town Centre Management (NI) (ATCM) to the consultation questions, circulated, was presented by Head of Corporate and Development Services and Committee invited to endorse the ATCM response, attached as Appendix 3.

It was proposed by Councillor Finlay, seconded by Councillor Stevenson and **AGREED:**

that the consultation response to the Business Improvement Districts and Licensing of Pavements Cafes prepared by the Association of Town Centre Management (Northern Ireland) be endorsed by Council.

5.6 Adoption of Minutes

It was proposed by Councillor Finlay, seconded by Councillor Stevenson and **AGREED:**

that the minutes of Development Committee Meeting No 223 on 21st February 2011, as circulated, be adopted and the recommendations therein approved, including addenda at 5.3, 5.4, and 5.5 above.

941.6 LEISURE AND AMENITIES COMMITTEE NO 381 – 15TH FEBRUARY 2011

The report was presented by Alderman Campbell together with Addendum as outlined at 6.1 below.

6.1 Irish Power Lifting Competition – Request for Financial Assistance

The Organiser of the Powerlifting Competition has written to the Mayor advising that the Powerlifting Competition will be held in the Joey Dunlop Leisure Centre on Saturday 26th March 2011. This event will be a qualifier for the European Championships to be held in Hungary later in the year. The event will be the best display of powerlifting ever to be staged in Northern Ireland and will include names like, Gerry McNamara, Andy Bolton, Glen Ross, Kyle Vauls and Bill Crawford. The organizer is requesting financial support towards the costs of running the competition. The Council has previously contributed towards the cost of hiring the Leisure Centre for the competition.

It is recommended that council contribute £380.00 to Sam Graham, Organiser of the Powerlifting Competition, towards the cost of hiring the Leisure Centre.

Matters Arising:**6.2 Amenities Electricity (381.17)**

The Director of Borough Services advised that 3 No companies: Airtricity, Energia and NIE had submitted tenders to supply amenities electricity in 2011-2012. All companies had advised that due to the volatility of the energy market that they would only price for one year. Following the evaluation of tenders the most competitive tender received across the range of properties and facilities was from Airtricity and the Director recommended acceptance.

*

Councillor Cavlan and Councillor McGuigan left the meeting at 7.40 p.m.

6.3 Sport NI – Stadium Safety Urgent Work Funding (381.16)

In response to Councillor Stevenson the Director of Borough Services advised that the contract work at Riada Stadium was progressing and when complete it would increase ground capacity as the funding obtained via Sport NI was being used to improve spectator safety arrangements including additional turnstyle access to the ground

6.4 Adoption of Minutes

It was proposed by Alderman Campbell, seconded by Councillor Finlay and
AGREED:

that the minutes of Leisure and Amenities Committee Meeting No 381 on 15th February 2011, as circulated, be adopted and the recommendations therein approved including addendum at 6.1 above.

941.7 HEALTH & ENVIRONMENTAL SERVICES COMMITTEE NO 369 – 22ND FEBRUARY 2011

Councillor Robinson presented the report to Council.

Matters Arising:**7.1 Flytipping (369.39)**

The Director of Borough Services asked members to review comments prepared in relation to the DoE Flytipping Consultation, circulated, which Council are asked to endorse. The consultation closes on 18th March, 2011.

The suggested response seeks to ensure that, similar to Scotland the responsibility of NI district councils will be limited to less than 6 cubic metres of flytipped waste as opposed to the present DoENI proposal to follow the England & Wales model – 20 cubic metres. The lesser figure greatly reduces Council exposure and responsibility. Were the DoENI proposal to prevail then it is inevitable that there would be greater resource implications for Council and much more work for which Council would have to provide additional staff resources to undertake investigations of illegal dumping which have been the responsibility of NIEA [a DoENI agency] since 2004.

The Director of Borough Services presented the response paper and recommended that Council endorse the proposed consultation responses. Councils need to persuade the Department to accept the legal position used in Scotland as opposed to the one used in England and Wales.

It was proposed by Councillor Robinson, seconded by Councillor Stevenson and **AGREED:**

that Council endorse the consultation responses to the DoE framework for a flytipping protocol, attached as Appendix 4.

7.2 Public Holiday Arrangements for Refuse Collection in 2011 (369.22)

Councillor Robinson asked that this be brought back to Committee for further discussion.

Alderman Simpson raised the issue regarding staff receiving enhanced payments for both Bank Holidays and Public Holidays and suggested that this matter be looked at again as it was an expensive operation to cover Bank/Public holidays.

It was proposed by Councillor Robinson, seconded by Councillor Stevenson and **AGREED:**

that the matter of service delivery for waste collection for both Bank Holidays and Public Holidays be brought back to committee for further consideration.

Councillor Robinson pointed out that budget provision was included to cover delivery of the service on Bank/Public holidays in the 2011/12 year and the arrangements would continue unless changed by Council.

- * **Councillor McKeown arrived at the meeting at 8.00 p.m.**
- * **Alderman Campbell left the meeting at 8.00 p.m.**

7.3 Landfill Closure Update (369.38)

The Director of Borough Services advised that there was a need to update Council following the meeting of officers of the five Councils affected which he had attended earlier in the day.

It was proposed by Alderman Cousley, seconded by Councillor Robinson and **AGREED:**

that Council discuss the matter of landfill closure in committee.

- * **Press x 2 left the meeting at 8.04pm.**

The Director explained that whilst the draft of the Departments proposed Landfill Amendment Regulations to be scrutinized by the Environment Committee later in the week [Thursday] had been changed from the version the Department had consulted on back in June 2010, the DoE had not made this known or furnished a copy of the latest version to the affected Councils until it had been formally requested by the Councils legal adviser. The Director also explained that in the latest version of the Framework Agreement the Department was asking Councils to sign up to, the reference to 'licence' had been changed to 'compliance notice' to reflect the changes made to the re-drafted Landfill Amendment Regulations. The Director then gave an update as to the position of the other four Councils affected from an officer perspective and how they viewed the present situation; it being concluded that the affected Councils ought to make representations to the Environment Committee on the legislation now proposed and its possible consequences.

Councillor Robinson questioned why a meeting with the DoE Minister had not been arranged as had been agreed would be the case at the Councils January meeting. The Chief Executive intimated that he had requested such a meeting but the Minister had refused to again meet with the nominated representative of the five affected Councils. Councillor Robinson stated that it was her understanding that it had been decided at the Councils meeting in January that it was this Councils representatives - The Mayor, herself and officials, who were to meet with the DoE Minister. The Chief Executive responded to Councillor Robinson that this was not his understanding.

Councillor Finlay asked if the DoE Ministers offer of assistance as regards the part funding of necessary site closure plans were Council to sign up to the Framework Agreement still on the table and was advised that it was.

- ***Councillor Finlay left the meeting at 8.35pm**
- ***Councillor Stevenson left the meeting at 8.35pm**

The Director advised that following contact with the Clerk of the Environment Committee the legal adviser to the five affected Councils had secured a commitment that were she to submit written representation on behalf of her clients by 12.00 noon, tomorrow then this would be considered by the Environment Committee as part of the scrutiny of the DoE's legislative proposals.

***Councillor Finlay returned to the meeting at 8.44pm**

Councillor Robinson requested through the Chair a five minute recess to discuss the matter with her colleagues.

**The Mayor consented to a recess taking place, which commenced at 8.45pm.
Councillors returned to the chamber at 8.55pm.**

Councillor Robinson again referred to her recollection of what Council had decided when this issue had been discussed in January; that a meeting with the DoE Minister with the Councils representatives ought to have been arranged but had not been and that what had been requested and refused by the Minister was a meeting with the representatives of all five affected Councils.

The Director reminded members as to the reason the Department was amending the 2003 Landfill Regulations and wanting a Framework Agreement with affected Councils, namely that the Department was responding to the initiation of EU Infraction Proceedings. He explained, as previously, that the initiation of EU Infraction Proceedings and the position Councils now found themselves in were a direct consequence of the Departments failures in that it was the DoE's responsibility to give effect to the EU Landfill Directive by transposing it into Northern Ireland legislation but it had been late in doing so and had therefore not done so properly. Its officials had also proffered advice to Councils which had proven to be both incorrect and misleading.

Councillor Robinson reiterated her understanding of the outcome of the Councils meeting in January as regards the request for a meeting with the DoE Minister. The Chief Executive clarified what the relevant minutes of the meeting held on 19th January stated, adding that Council had at a subsequent meeting adopted the minute. Councillor Robinson requested that her recollection of the Councils decision regarding the request for this Council to meet with the DoE Minister be noted.

***Councillor Patterson left the meeting at 9.19pm.**

The Director of Borough Services responding to Alderman Simpsons questions stated that he had only become aware of the latest DoE proposals at the beginning of March. In response to Councillor Finlay, the Chief Executive advised that the Department had indicated that it may be possible to borrow in order to undertake the necessary work to close the Councils former landfill site to the required standard, but that costs such as monitoring would have to be found from revenue.

The Director asked members to determine what action they wanted to take; in particular would Council endorse maintaining the joint approach adopted by the affected Councils thus far by consenting to the Council's legal adviser making a submission to the Environment Committee by tomorrow's deadline.

It was proposed by Councillor McCamphill, seconded by Alderman Connolly:

that Council, via its legal adviser, submit written representation to the Environment Committee on the DoE proposed Landfill Amendment Regulations.

The Mayor put the motion to the meeting and voting was as follows:

IN FAVOUR [4]

AGAINST [0]

ABSTAINING [1]

The Mayor declared the motion carried.

It was proposed by Councillor Finlay, seconded by Alderman Connolly and
AGREED:

that Council resolve itself out of committee.

7.4 Adoption of Minutes

It was proposed by Councillor Robinson, seconded by Councillor Stevenson and
AGREED:

that the minutes of Health & Environmental Services Committee Meeting No 369 on 22nd February 2011, as circulated, be adopted and the recommendations be approved.

941.8 CORPORATE & CENTRAL SERVICES COMMITTEE NO 398 – 28TH FEBRUARY 2011

Alderman Simpson presented the report to Council together with Addendum as at 8.2 below.

- * **Councillor Kennedy left the meeting at 9.40 p.m, whereby the Deputy Mayor took the Chair.**

The Chief Executive drew members attention to details of electoral identification documents, for the incoming poll, copy provided by electoral office, circulated.

Matters Arising:

8.1 International Links – Vanves (393.12)

In response to Councillor Finlay, the Chief Executive clarified that Council will write to the Mayor of Vanves, thanking him for his kind invitation, however, on this occasion Council is unable to attend due to the local election timetable and would be happy to visit at a time later in the year.

- * **Councillor Kennedy returned to the meeting at 9.45 p.m. and resumed his position as Chairman.**

8.2 ICE Programme – Cluster Collaboration

The minutes of the Causeway Coast & Glens Transition Committee meeting on 24th February record that “the Transition Committee recommend the extension of the Transition Manager Post on a 3-day per week basis, to be reviewed after one year, subject to approval by the four Cluster Councils”. Council is asked to consider this recommendation.

A discussion ensued regarding covering the cost of the Transition Manager's post, as it is anticipated that he will now work on a three day week basis. Councillor Robinson advised that she had discussed with Alderman Campbell who had attended the Transition Committee meeting and that Council would not withdraw funds from reserves to meet cost of the post, and the anticipated savings made would be utilized to fund the post.

The Chief Executive clarified that the minutes stated, that the Transition Manager's salary would be covered by the savings made. Along with the other three Councils there are a number of proposals to achieve savings i.e. joint tendering, joint advertising and joint purchasing of equipment and materials. The cost of the post was £32k and if savings not achieved, cost per Council would be £8k.

It was proposed by Alderman Simpson, seconded by Councillor Robinson and
AGREED:

that Council agree to the Transition Manager's contract being renewed for another twelve months, working three days per week, with no funds being taken from reserves to cover the salary; the performance to be reviewed after 6 months.

8.3 Report on DOE Local Government Reform (LGR)

With regard to the draft response, on the Reform of Local Government, circulated to Committee, Councillor Robinson stated that she did not agree with Question No.19 procedure for investigation of complaints concerning accepted breaches of the code of conduct for Council members – that these should be sent as an employee of Council in first instance to Commissioner for Complaints, not that a Chief Executive as an employee of Council should have a role in the process, as this would exert a degree of influence which does not exist between an employee and employer.

It was proposed by Alderman Simpson, seconded by Councillor Halliday and
AGREED:

that Council adopt the response, on the Reform of Local Government with one amendment, namely deletion response to Question No. 19.

8.4 Adoption of Minutes

It was proposed by Alderman Simpson, seconded by Councillor Finlay and
AGREED:

that the minutes of Corporate & Central Services Committee Meeting No 398 on 28th February 2011, as circulated, be adopted and the recommendations therein approved including addendum at 8.2.

941.9 AUDIT COMMITTEE No 20 – 23RD FEBRUARY 2011

The Mayor presented the report.

It was proposed by Councillor McCamphill, seconded by Alderman Simpson and

AGREED:

that the minutes of Audit Committee No 20 on 23rd February 2011, as circulated, be confirmed as a correct record.

- * The Director of Central and Leisure Services left the meeting at 10.00 p.m.
- * The Director of Borough Services left the meeting at 10.00 p.m.

941.10 SEAL DOCUMENTS

It was proposed by Councillor Robinson, seconded by Alderman Cousley and
AGREED:

that the Seal of Council be affixed to Grave registration certificate numbers 1229 and 1230.

- * Councillor Kennedy left the meeting at 10.05 p.m, whereby the Deputy Mayor took over the Chair.

941.11 ICE DRAFT RESPONSE

A copy of response to ICE consultation questions prepared at Council workshop on 1st March, circulated, were recommended for Council adoption.

It was proposed by Alderman Connolly, seconded by Councillor Halliday and
AGREED:

that Council adopt the response to the ICE consultation questions recorded by the Council Workshop on 1st March be adopted.

941.12 ROADS SERVICE**12.1 Proposed Waiting Restrictions at Meetinghouse Street, off Rodeing Foot, Ballymoney**

Roads Service has advised, in response to Councils objections to these proposals that a valid objection must indicate the grounds of objection, which must be significant. Roads Service feel that the prohibition of parking on both sides of the road is warranted as it is only a single lane and if vehicles were to park on either side of the road it will restrict the flow of traffic. It should be noted that the matter was brought to Roads Service attention by commercial premises on Meetinghouse Street.

Following discussion it was **AGREED:**

that Council advise Roads Service that it is now content with the Department's proposals.

12.2 Traffic Calming Island, Main Street, Dunloy

Roads Service have advised, in response to Council's representations on this matter that the options for improving safety at this location have been considered and it has concluded that removal of the island is the best option. The work has been carried out.

941.13 APPLICATION FOR RENEWAL OF ROAD SERVICE LICENCE

The Driver and Vehicle Agency has given notice of applications to renew road service licences. Any representations should be referred to the Agency –
[a] – Licence B1336 – Glenshane Coach Hire
[b] – Licence B1557 – Causeway Coach Hire

No comments offered.

941.14 CONSULTATION – A FRAMEWORK FOR COLLABORATION – “SPATIAL STRATEGIES ON THE ISLAND OF IRELAND”

The Department of Regional Development is seeking views on this document. The deadline for comments is 11th April 2011.

The consultation is brought to members' attention as it links to the 10 year review of the Regional Development Strategy.

The document examines the key planning challenges faced by both parts of the Island and discusses the potential for collaboration in spatial planning. It sets out a framework for collaboration at different levels within the public sector which should result in mutual benefits. These benefits can be at the local border area level and at the larger Island level. The framework is a non-statutory approach to providing advice and guidance at relevant spatial or geographical scales. It should encourage policy makers in the public sector to take account of the wider impact of their work, to recognise and exploit opportunities for the wider perspective and to avoid “back to back” planning.

Since NILGA are considering the review of the Regional Development Strategy they have been alerted to the linkage with this consultation so that they can consider if a response should be made.

941.15 CLOSURE OF THE ENERGY EFFICIENCY AND LOW CARBON HOMES SCHEMES AND TRANSFER OF SAVINGS INTO THE GREEN NEW DEAL

The Department of Finance & Personnel, Rating Policy Division, have written regarding the energy efficiency homes and low carbon homes schemes, introduced by the Executive with the aim of improving the energy efficiency of the local housing stock. The energy efficiency homes scheme provides a one off rate rebate for those that bring an existing house up to modern standards of insulation (loft or cavity wall insulation installed to prescribed standards). In respect of this measure a number of councils took the decision this year to waive the fees associated with this, which we would hope would continue. The low carbon homes scheme provides a full rebate from rates (for up to two or five years respectively) for qualifying low and zero carbon homes.

The Finance Minister considers that although the aim of these schemes is a worthy one, take up so far has been disappointing. To date around 350 ratepayers have been awarded a rate rebate for cavity wall and/or loft insulation. Three ratepayers have qualified so far for the two year rates holiday, while none have qualified for the five year rates holidays (for low and zero carbon homes respectively).

The Executive has recently agreed that both schemes should be closed, with the transfer of the associated savings into funding of the Green New Deal, which will have a focus on delivering energy efficiency. It should be noted that closure of the schemes is not a cost cutting initiative; rather it is about making better use of available money in pursuit of the same aim.

No new application forms will issue for the energy efficiency homes scheme after 31 March 2011. For both this and the low carbon homes schemes, transitional arrangements will be put in place to ensure that those who have undertaken work (or are in the process of undertaking work) for either scheme, but have not yet received the benefit of the rates concession, will be protected for a period. Further information on this will be available on the NI Direct website (<http://www.nidirect.gov.uk>) shortly.

Legislation is currently being drafted to give effect to the Executive's decisions, which, subject to passage through the Assembly, will be operational from 1 April.

- * **Councillor Kennedy returned to the meeting at 10.10 p.m. and resumed his position as Chairman.**

941.16 REPORTS/NILGA REPORTS/UPDATES

The Chief Executive referred to the reports/NILGA reports/updates, with no comments from Council.

- * **The meeting ended at 10.14 p.m.**

Appendix 1 – NI Water Response to Freeze Thaw Incident (26 Dec to 5 Jan) – Ballymoney Borough Council Briefing

NI Water Response to Freeze/Thaw Incident (26 Dec to 5 Jan) – Ballymoney Borough Council Briefing: 07 March 2011**Background:**

- Northern Ireland Water (NIW) experienced an unprecedented water supply incident in the 10-day period, from 26th December 2010 to 5th January 2011. This followed a lengthy period of extremely cold weather in the lead-up to Christmas, with several consecutive days of daytime sub-zero temperatures and widespread night-time temperatures in excess of minus 12 degrees Celsius. The Met Office has reported that December 2010 was the coldest month recorded in Northern Ireland in the last 100 years.
- During that 10-day period, due to leakage from private supply pipes and from NIW's distribution network, there was insufficient water to meet demand at customers' taps. Overall, during the incident, it is estimated that over 80% of the bursts related to problems with customers' private service pipes and systems.
- The normal daily production of water across all of Northern Ireland is approximately 620 million litres of water per day. This is the volume of water which goes into the distribution system to supply customers. On 27 December 2010, NIW supplied some 1000 million litres of water to our customers, an increase of 60% above the normal daily water demand. NIW does not have the water production capability to sustain this level of demand and as a result, regrettably our water in storage was depleted and supplies to customers were restricted.

Emergency Planning:

- Northern Ireland Water's Major Incident Plan, and its Winter Contingency Plan, formed the basis for the response to this major incident. The Major Incident plan is well-established, incorporating best practice across the water industry, and is designed to provide the framework for dealing with a wide range of potential incidents which may affect the company.
- On Call Teams are available to NIW on a 24/7 basis throughout the year. From 17th December 2010, in the lead-up to Christmas, NIW staff and contractors were placed on high alert as a result of a significant increase in 'No Water' calls due to frozen supply pipes.
- On 26th December 2010, as a result of the marked increase in customer calls and ongoing monitoring of reservoir levels, a Category 1 incident was called, commencing 27 December, and Gold, Silver and Bronze Command Incident Management Teams were mobilised on the morning of 27th December 2010.
- The Gold Command Team was located at NIW Head Office in Belfast. A Silver Command Incident Management Team was established in the NIW offices at Belt Road, Altnagelvin. The purpose of this team was to manage and co-ordinate all incident management activities in the North West area.
- The Silver and Bronze Command Teams remained in place, dealing with the operational response to the incident across the entire North West and North East area, until 5th January 2011. During this period NIW had approximately 500 staff and contractors mobilised on the ground across NI engaged in responding to the incident along with support from other agencies and public bodies.

Customer Call Handling and Communication:

- The NIW customer call centre is located in Capital House, Belfast and normally processes approximately 1,000 customer calls per day, covering a range of issues including service requests, appointments and water and sewerage complaints.
- In the week leading up to Christmas 2010, the number of call handlers in the customer call centre was increased, to deal with the higher than normal level of customer calls. Many of these calls were related to frozen private supply pipes.
- Between 26 December and 4 January almost 775,000 attempted calls were made to our call centre. We answered 30,500.
- It is acknowledged that the call centre was totally overwhelmed by the number of calls being received and that many callers, trying to contact the Waterline number, received a busy tone due to all the lines being engaged.
- The problems with the call centre and receipt of customers' calls, and communication with customers, are being addressed in order to improve call handling and information flow to the customer during any future emergency incidents.

Situation in the Ballymoney Borough Council Area:

- Two Supply Zones, 'Altnahinch-Bushmills' and 'Ballinrees-Ballymoney' feed the Ballymoney Council area. In the Ballymoney Council area water is stored in 8 Service Reservoirs which in turn supplies approximately 12,600 properties via 550km of watermains. The average normal daily production of water into these two supply zones is approximately 13 million litres of water/day.
- In the days and weeks leading right up to Christmas, demand for water remained at normal levels. However, there was a very sharp rise in water demand on 27th December 2010, coinciding with a dramatic swing in temperature which marked the onset of a very rapid thaw.
- The distribution input figures for the resource zones which serve the Ballymoney Council area reached a maximum of 17.7 million litres on 30 December. This equated to almost a 36% increase on normal water production levels.
- Despite this unprecedented increase in water demand, and throughout the duration of the incident, the vast majority of the key service reservoirs, supplying customers in the Ballymoney Council area, remained fully operational supplying water into the distribution network. However, a small number of Service Reservoirs did reach critical levels. These included: Ballyknock-Ballymoney SR, Galdanagh SR, Tullaghans SR, Ballylagan SR and Trienaltenagh SR.
- There were customers in the Ballymoney Council area who experienced interruptions to supply due to problems with their own internal pipe work (e.g frozen pipes and burst service pipes). However, the vast majority of customers continued to receive a water supply from the NIW distribution network.
- The scale and extent of private supply leakage on domestic, commercial, industrial and agricultural premises was a major contributory factor in the widespread loss of supply across Northern Ireland. The number of leaks on customers' private pipe-work, the number of bursts in Housing Executive properties, and the associated water losses from these, were unprecedented.

- The Utility Regulator's investigation has concluded that the volume of water lost as a result of leakage on domestic and business consumers' premises across NI was at least 80%. Applying this situation to the Ballymoney Council area, based on the average distribution input during December 2010, this equates to more than 4 million litres of water/day being lost through bursts and leaks on private supply systems, outside of the NIW network. Losses of this magnitude create an incredible strain on the network and on NIW's ability to maintain supplies to all customers.
- Rotational cuts to supplies to customers were implemented in the Greater Belfast area, and in other areas such as Cookstown, L'Derry and Enniskillen. These supply interruptions, normally lasting up to 10hrs and mainly overnight, were introduced in these areas as an essential measure to enable storage levels in service reservoirs to build overnight – these affected tens of thousands of customers in the Belfast area. Thankfully, no rotational cuts were required in the Ballymoney Council area due to the adequate storage levels in the supplying service reservoirs.
- During the incident, NI Water delivered bottled water directly to customers on our Critical Care Register. A number of static tanks, which provided a temporary supply of water, were deployed to Armoy and Dunloy. NI Water would like to thank Ballymoney Council for providing shower facilities for the public in the Joey Dunlop Leisure Centre.
- **NIW would wish to sincerely thank the Council and its officers for all the assistance provided throughout the incident.**

Next Steps:

- The Utility Regulator and OFMDFM published their reviews into the water supply interruptions on Thursday 3 March 2011.
- NIW is fully committed to taking forward all the recommendations proposed by the NIAUR review. NIW fully accept that many lessons need to be learnt from what was an exceptionally difficult time for many of our customers. The report does highlight the fact that much good work was done by our staff on the ground in conjunction with other Government Agencies and local Councils who assisted in providing resources. It remains the case however, that on a number of fronts, in particular in relation to communicating with our customers, we fell far short of what they expect and what we as an organisation are determined to provide. Our focus therefore is very much on learning and embedding those lessons going forward in order to ensure that we provide the best possible service to our customers. Many of the steps recommended within the report have already been put in place and we will press forward to implement those remaining as quickly as possible.
- NI Water has also put in place a resilience plan to deal with any such incidents in the future, and for the remainder of the winter season NI Water will remain on high alert. A number of amendments have also been made to our major incident plan.
- From the incident we have already adopted early learning's and implemented a number of actions including: increasing stocks of bottled water and strategic location of static tanks; maximising drinking water production; improved communications with customers and stakeholders; establishment of a council liaison officer; improved website functionality; maximising call handling resources; and reviewing arrangements for providing temporary supplies to vulnerable customers, nursing homes and critical livestock.

Northern Ireland Executive
Economic Strategy
Consultation on Priorities for Sustainable Growth and Prosperity
Response on behalf of Association of Town Centre Management

Business Improvement Districts and Licensing of Pavement Cafés

Association of Town Centre Management (Northern Ireland)

Consultation Response

**CONSULTATION WITH LOCAL GOVERNMENT ON THE FRAMEWORK FOR A FLYTIPPING
PROTOCOL****INDEX**

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PURPOSE OF CONSULTATION

The aim of this consultation paper is to seek the views of the local government sector on the framework for a Flytipping Protocol.

RESPONSES AND ENQUIRIES

We would be grateful if responses could be sent to the Department by **Friday 18 March 2011**.

Responses can be sent using any of the following means of communication:

By e-mail: ian.troy@doeni.gov.uk

By post:

Ian Troy
Environmental Policy Division
Department of the Environment
6th Floor
Goodwood House
44-58 May Street
Belfast BT1 4NN

Or by fax: 028 9025 4732.

Please send your response using **only one** of these options.

Enquiries regarding the content of this consultation paper should be made to Ian Troy (telephone 028 9025 4917).

FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

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

This means that information provided by you in response to the 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 (or see web site at: <http://www.informationcommissioner.gov.uk/>). For further information about this particular consultation please contact Ian Troy at the address above.

PART 1**CONTEXT****The current statutory framework for the management of waste on land**

Under existing legislation – Article 4 of the Waste and Contaminated Land (Northern Ireland) Order 1997¹ (“the 1997 Order”) - the Department of the Environment (“the Department”) is responsible for dealing with illegally deposited waste in Northern Ireland, and has powers to prosecute offenders. However, under the 1997 Order, the Department’s clean-up powers are confined to instances where there is imminent danger of serious pollution.

On the other hand, under Article 28 of the 1997 Order, district councils can require an owner or occupier of land to take remedial action in relation to illegally dumped waste. In the event of failure to do so, councils themselves can take remedial action, and seek cost recovery through the courts. Unlike the Department however, councils do not have specific powers to prosecute offenders.

To date, while discussions have been ongoing for a number of years, the Department and councils have been unable to reach agreement over respective responsibilities for dealing with flytipped waste within this existing legislative framework.

The Department's enforcement body - the Northern Ireland Environment Agency (NIEA) - currently focuses on large-scale commercial dumping and has argued that its existing resource levels would not permit it to deal with flytipped waste deposited from domestic sources. On the other hand, the local government sector has also expressed resource concerns and contends that the role of NIEA should be greater than at present.

These conflicting views have led to an impasse, which needs to be resolved as soon as possible. Failure to reach agreement to date has meant that substantial quantities of illegally dumped waste in NI have not been tackled effectively.

Discussions involving both parties have made clear that resolution of the issue will require both **legislative change** to tackle the weaknesses in the current legislative framework and the development of a **working protocol**.

The Waste and Contaminated Land (Amendment) Bill

In March 2010 the Department introduced the Waste and Contaminated Land (Amendment) Bill² (“the Waste Bill”) to the Assembly. The Bill contains a broad range of measures aimed at strengthening the enforcement framework governing waste activity in Northern Ireland.

¹ SI 1997 No. 2778 (NI 19)

² The Bill was introduced in the Assembly on 22 March 2010 and can be found on the Assembly's website at: http://www.niassembly.gov.uk/legislation/primary/2009/nia10_09.htm

Assuming the Bill is enacted in its current form, investigation and enforcement powers under Article 4 of the 1997 Order will be extended to all district councils and remedial action powers under Article 28 of the Order will be extended to the Department.

Furthermore, it will enable a notice under Article 28 to be served in the first instance on the person believed to have illegally deposited the waste, where such a person can be identified. This person will have the same rights of appeal as those currently provided to owners and occupiers and the existing penalties will apply in the event of failure to comply with such a notice.

A partnership approach

Enactment of the Waste Bill will therefore mean that district councils and the Department will have largely the same investigative and enforcement powers to deal with illegally deposited waste. This is in line with the Department's underlying objective: to legislate for **an effective partnership between the Department and the local government sector in tackling illegal waste activity**³.

However, as already outlined, it has always been clear that legislative change alone will not resolve the problem. Both district councils and NIEA have limited resources available for tackling flytipping. It is therefore vital to establish effective partnership working arrangements and to provide best value for money. A formal protocol is required to clearly define the respective roles and responsibilities of NIEA and councils 'on the ground' in dealing with flytipped waste. Otherwise, the legislative change will only lead to confusion over "who does what".

A first step in developing this protocol is to resolve the roles and responsibilities of key stakeholders, in particular councils and the NIEA. Where appropriate, the final detailed operational protocol will need to reflect the roles of other key stakeholders, including other Government Departments that have an interest and involvement in addressing the problem of fly tipping.

Position in other jurisdictions

In **England and Wales**, local authorities take the lead role in tackling most flytipping in their areas. This entails investigation and appropriate enforcement action for flytipped waste up to and including a single tipper load of waste deposited at one time (i.e. **up to approximately 20 m³**). Local authorities will normally remove all flytipped waste on public land, including a road or other public highway.

In addition, where flytipping on private land has an adverse effect on the environment, local authorities are encouraged to take steps to ensure that the waste is removed, appropriate enforcement action taken and costs recharged wherever possible.

Local authorities in England and Wales will normally remove, investigate and take appropriate enforcement action with regard to lesser amounts of illegally dumped or abandoned hazardous wastes.

The Environment Agency tackles illegal waste activities across geographical boundaries that may present more of a difficulty for local authorities. It normally deals with illegal waste activities such as illegal transfer stations, unpermitted landfill sites and large-scale flytipping (**i.e. tipping of more than 20 m³ or a lorry load**). The Agency will normally only deal with (that is, investigate,

³ The Department has taken the view that until a protocol is in place, the relevant provisions in the Waste Bill extending investigative and enforcement powers to councils and clean-up powers to the Department will not be commenced.

arrange for the removal of and take appropriate enforcement action) waste giving rise to a flood risk or an imminent threat to human health or serious harm to the environment.

In relation to **hazardous waste**, the Agency will normally focus its resources on investigating and taking appropriate enforcement action in relation to incidents involving hazardous waste in drums or other containers with a capacity of **75 litres or greater**. The Agency will also normally investigate, arrange for the removal of and take appropriate enforcement action with regard to any such waste that is dumped in a way that is giving rise to an imminent threat to human health or of serious harm to the environment.

In **Scotland**, final agreement on a Flytipping Protocol has not yet been reached. However the Department understands that agreement is imminent on a protocol similar to that operational in England and Wales although the quantitative threshold may be set at a lower level.

In relation to **hazardous waste**, it is anticipated that the Scottish Environment Protection Agency (SEPA) will normally focus its resources on investigating, and where there is sufficient evidence, taking appropriate enforcement action on the illegal dumping of certain special wastes including clinical waste, oil, drums of chemicals, fibrous asbestos and hazardous waste. Where possible, removal costs will be recovered from the individual responsible. It is anticipated that there will be no local authority involvement in clean-up activity except in an emergency situation.

In **Ireland**, there is no agreed protocol for dealing with flytipping. The local authorities, who employ dedicated waste enforcement staff, have enforcement responsibility and investigate all flytipping incidents, irrespective of the quantity of waste. Where incidents are reported to the Environmental Protection Agency (EPA) in the first instance, these are passed on to the local authority.

The EPA has a supervisory role in respect of local authorities and if not satisfied with action being taken, can direct a local authority to carry out particular actions. The EPA would not itself be involved in clean up of flytipped waste.

PART 2**THE FRAMEWORK****1. GENERAL PRINCIPLES**

The Department suggests that the following general principles should underpin the development of a Flytipping Protocol:

- (i) Both district councils and NIEA recognise the limits of each other's resources, statutory powers, duties and responsibilities and their respective ability to act in the event of a flytipping incident. Both parties will use best endeavours at all times to mitigate the effects of flytipping through a partnership approach.
- (ii) In determining responsibilities for dealing with flytipping, distinction needs to be drawn between public land, public sector land and private land (see section 3 below).
- (iii) District councils will take the lead on investigating and taking appropriate enforcement action against smaller-scale dumping of waste and on clearing up smaller amounts of flytipped waste on public land. District council activity will be prioritised by individual councils to take account of an actual or imminent threat to human health and/or the environment, and subject to resource constraints.
- (iv) NIEA will focus its resources on investigating and taking appropriate enforcement action against larger-scale illegal dumping of waste, organised criminal involvement in waste crime, cross-border illegal waste activity and on clearing up larger amounts of flytipped wastes on public land. NIEA activity will be prioritised to take account of an actual or imminent threat to human health and/or the environment and subject to resource constraints.
- (v) Where appropriate, both NIEA and district councils will seek to recover any costs associated with tackling illegal waste activities and flytipping, including any costs associated with the clean up of illegally deposited waste. Ideally, this will be from the polluter but may also include the landowner or occupier of the affected land, depending on the specific circumstances including the extent to which the landowner or occupier has taken reasonable measures to prevent fly tipping on their land.

Once a basis for partnership working has been established, it is likely that the Department will need to engage with a wide range of public sector bodies in the development of detailed operational policy. Bearing this in mind, as well as the fact that these are intended to be general overarching concepts:

Q1. Do you agree with these broad principles as a framework for the development of a Flytipping Protocol?

We agree with the broad principles stated but emphasis should be placed upon the reasons for preventing and cleaning up fly-tipping and these should reflect the strategic objectives of the partner organisations and the concerns held by the public, for example, for the protection of soils, water and habitats and to protect the amenity of local areas.

We support the principle of a clear quantitative threshold to demark the responsibilities of Councils and other agencies.

In order to effectively tackle illegal dumping in Northern Ireland adequate resources will have to be made available to Councils. We believe the proposed function will place an additional resource burden on Councils at a time when other new legislative provisions are also coming to Councils.

Whilst acknowledging the likely resource constraints of both NIEA and the Councils, it will be necessary to agree a minimum level of service that will be delivered in relation to every reported incident. As a minimum it is suggested that an initial investigation will take place in relation to every alleged fly-tipping incident notified to either NIEA or the Councils. Councils would wish to secure commitment from the NIEA that each referral to them is investigated and that the Council would be informed of, or have access to, the outcome in each case that is referred to them via the Council.

Further action, potentially involving enforcement and / or clean-up will depend upon available resources. By ensuring a minimum level of service it will be easier to convey to offenders and the public in general that action is being taken; it will be easier for both Councils and NIEA to be assured that referrals between agencies will be investigated; and it will eliminate the potential that some fly-tipping in excess of the threshold is not being investigated whilst other incidents of lesser amounts are being subject to an investigation. If unresolved this would perversely encourage the fly-tipping of larger amounts of waste and would likely be exploited by fly-tippers.

Councils welcome the polluter pays principle in relation to the recovery of costs, however, it would be expected that the costs recovered would in no way meet the costs incurred by Councils in tackling illegal waste activities and fly-tipping. It is likely that in the majority of cases there will be no possibility of successful enforcement action being taken against the depositor, and the landowner will be able to successfully defend action on the basis of not knowingly permitted. Furthermore, whilst the option of use of fixed penalty notices is welcomed, the investigation costs could commonly exceed the £400 maximum proposed. Therefore the issue of adequate resources to deliver the function is critical.

Finally, it is noted under subsection (iii) of the general principles that Council involvement should be prioritised to take account of “an actual or imminent threat to human health and/or the environment.” Under such specific circumstances NIEA may also be required to be involved, for example in their Hazardous Waste role. It may be more appropriate to consider that Councils would prioritise on the basis of “risk to human health and/or the environment”.

Q2. Are there any other principles which need to be included?

Both the Department and Councils have recognised that a working protocol is required and we would re-iterate the importance of such a protocol being developed and agreed before the commencement of any new roles.

It is acknowledged that this framework does not comprise detailed operational policy; however, Councils will need to consider the relationship between existing litter provisions and waste powers and clarify under what circumstances each will be used.

Furthermore, operational policy when developed will need to include close liaison arrangements and information sharing between NIEA and Councils to avoid duplication of investigations and to ensure a consistency of approach.

Councils have not been actively engaged in this type of investigative and enforcement activity since 2003 and as such the relevant skills and knowledge has been eroded. The issue of capacity building within Councils will be critical. We believe that the recent experience and working practices of the NIEA will be an important starting point for Councils. Any future partnership arrangement should include a training programme in incorporating the NIEA's experience to assist Council to skill up for their role.

The proposed framework document has made a distinction between "public land" and "public sector land" which may lead to unnecessary confusion. We take the view that there should not be any difference between different types of land which are in the overall public ownership. Further justification is provided in the response to Question 6.

2. QUANTITATIVE THRESHOLD – INVESTIGATION AND ENFORCEMENT ACTION

The establishment of a quantitative threshold is of critical importance in determining the respective responsibilities of NIEA and councils in dealing with flytipped waste. However, in previous discussions between the Department and the local government sector, it has proved difficult to reach a consensus on this issue. Resolution has been further complicated by the lack of reliable and accurate statistics on smaller-scale flytipping in Northern Ireland.

Proposal

The Department proposes that the quantitative threshold to determine the respective responsibilities of the Department and councils in Northern Ireland should be set at **20 m³**. This is consistent with the model operating in England and Wales and reflects early discussions with local government colleagues in Northern Ireland.

Q3. Do you agree that councils in Northern Ireland should have responsibility for investigating, and, where appropriate, for taking enforcement action with regard to illegally deposited waste of up to 20 m³?

As previously articulated it is expected that these duties will require significant resource input from Councils in order to effectively deliver on their role. It is understood that resources in relation to waste enforcement are limited. Therefore, in the event that appropriate resources will not be made available to Councils we would recommend that the quantitative threshold is reviewed in light of the recently published guidance "Flytipping in Scotland; A Guide to Prevention and Enforcement (December 2010)." This document advises that SEPA are responsible for all deposits greater than 6m³ (a standard skip load). This lower threshold has benefited from recent analysis by a devolved administration similar to Northern Ireland. On the presumption that funding will not be made available to Councils and in the interest of minimizing costs to local ratepayers, it is recommended that a similar threshold be considered in Northern Ireland.

Q4. Do you agree that NIEA should have responsibility for investigating, and, where appropriate, for taking enforcement action with regard to illegally deposited waste of more than 20 m³?

We agree in principle subject to the threshold review, however, we believe that all pieces of ground to which a Waste Management Licence applies, or should apply, should be dealt with by NIEA irrespective of the threshold involved.

Q5. If you disagree with either of the above, what alternative(s) would you suggest? If possible, please provide evidence in support of your proposal(s).

3. CLEAN UP OF FLYTIPPED WASTE

The Department acknowledges the need to establish the respective responsibilities of councils and NIEA in dealing with the clean up of flytipped waste. For clarity, there is a need to distinguish between various categories of land; it is therefore proposed that the Protocol should distinguish between public sector land, public land and private land.

Proposal

Public Sector Land

In developing a Flytipping Protocol, the Department accepts that there is a need to distinguish not only between public and private land, but also between **public land** (such as footpaths, roads and alleyways and any land owned by councils) and **public sector land** (that is, land owned by Government Departments, the NIHE etc – but not councils).

As a general principle, it is suggested that, in line with current practice, in instances where waste is flytipped on public sector land, the public body which owns the land should be responsible for its clean up.

It is anticipated that there will be further work with the bodies concerned in order to reach agreement on the detailed operational aspects required for the final protocol.

However in some cases, the public body which owns the land will have no powers of investigation and enforcement. If therefore the body feels that circumstances warrant further action it should refer the incident to either NIEA or the appropriate council (in line with the suggested threshold in section 2 above) prior to taking any clean up action. The decision on further investigation and enforcement action will then rest with either the Agency or the council. However if for any reason further action cannot be taken, responsibility for clean up of the incident will continue to rest with the public body which owns the land.

Q6. Do you agree with the Department's proposal with respect to the clean up of public sector land?

We agree in principle that each “public sector” and “public” land owner should be responsible for cleaning up instances of fly-tipping. Councils in Northern Ireland already remove large quantities of illegally deposited waste on their land at significant cost. However, in instances where fly-tipping occurs on the road surface, the DRD Roads Service will normally assume responsibility for its clean up and removal. This arrangement works and Councils would not wish to take over for this responsibility as is proposed in the Consultation without adequate resourcing.

Therefore the distinction between “public sector land” and “public land” is confusing and unnecessary. Having a single category would mean that Councils are not responsible for removing fly-tipped material from land owned by public sector authorities such as, for example, the Department for Regional Development - Roads Service.

It is Councils' experience that some public sector land owners are pro-active and assume responsibility for cleaning up fly-tipped material on their own land. However there are also occasions when public sector authorities have refused to co-operate regarding the

removal of fly-tipped waste. This situation will need further consideration through an agreed partnership / protocol approach when determining how public land clean up operations can be achieved in cases of reluctant public land owners.

The Council would like to be involved in the discussion process with the public sector bodies that the Department intends to engage as there are already some local arrangements in place to address these issues and these may offer a useful contribution to the process.

Furthermore, it is noted that the use of Article 28 powers is 'encouraged' for private land, but in accordance with the polluter pays principle, we believe that the use of Article 28 should be encouraged, where appropriate, for all land ownership types.

Q7. If you disagree with the above, what alternative would you suggest? If possible, please provide evidence in support of your proposal.

Public Land

The Department believes that councils are best-placed to deal with the clean up of most smaller-scale flytipping on public land. This reflects their position as locally-based organisations with local intelligence, local political accountability and the appropriate waste infrastructure already in place.

However, given the more limited remit of district councils in Northern Ireland as well as their more restricted resource base compared to local authorities in England and Wales, the Department believes that NIEA should take lead responsibility for the clean up of larger-scale dumping on public land, particularly that of a commercial nature.

The Department therefore suggests that the proposed quantitative threshold of 20 m³ for investigation and enforcement action (see 2 above) should also be used to determine the respective responsibilities of the Department and councils in Northern Ireland for the clean up of illegally deposited waste on public land. This will include roads⁴ and footpaths.

Q8. Do you agree that councils in Northern Ireland should have responsibility for the clean up of illegally deposited waste of up to 20 m³ on public land?

It is noted that the wording of this framework goes beyond the discretionary powers in the proposed Waste and Contaminated Land (Amendment) Bill; in that an expectation is created that Councils will have a mandatory duty to clean up illegally deposited waste of less than 20m³ on public land.

As previously stated Councils in Northern Ireland already remove large quantities of illegally deposited waste on their own land and in instances where fly-tipping occurs on the road surface, the DRD Roads Service will normally assume responsibility for its clean up and removal. This arrangement works and Councils would not wish to take over for this responsibility as is proposed in the Consultation without adequate resourcing.

Q9. Do you agree that NIEA should have responsibility for the clean up of illegally deposited waste of more than 20 m³ on public land?

⁴ Roads Service may take action under the Roads (NI) Order 1993 to remove obstructions or other solid or liquid matter that might cause a substantial inconvenience or danger to the road/footway user. In all other cases of flytipped waste on roads, Roads Service will inform the relevant district council.

Q10. If you disagree with either of the above proposals, what alternative(s) would you suggest? If possible, please provide evidence in support of your proposal(s).

Private Land

The Department suggests that the same quantitative thresholds should apply in relation to private land as for public land but with the crucial difference that neither councils nor NIEA should be held responsible for cleaning up illegally deposited waste on privately-owned land.

It is therefore suggested that where flytipping on private land has an adverse effect on the environment or public health, or has the potential to do so, the relevant enforcement body (i.e. either the relevant district council or NIEA in line with the proposed quantitative threshold of 20 m³) should be encouraged to use their powers under Article 28 of the 1997 Order to effect the removal of the waste and/or the remediation of the area and to take appropriate enforcement action. The Article 28 notice could be served on the person who deposited the waste, the occupier of the land or the landowner, depending on the circumstances of the case.

However, there will be cases where flytipped waste on private land is giving rise to an actual or imminent threat to human health or of serious harm to the environment and the relevant enforcement body cannot effect its removal or remediation by any other party. In those instances the Department suggests that the enforcement body should ensure that the waste is removed even if this means that they have to take the necessary action themselves. Again, it is envisaged that responsibility would usually be apportioned in line with the proposed quantitative threshold of 20 m³, provided that this does not delay early action in an emergency situation.

Q11. Do you agree with the Department's proposals with respect to private land?

Bearing in mind our comments in relation to resourcing and the quantitative threshold to be applied, we support in principle the proposals in relation to private land.

Q12. If you disagree with the above, what alternative(s) would you suggest? If possible, please provide evidence in support of your proposal.

4. HAZARDOUS WASTE

The Flytipping Protocol needs to include arrangements for dealing with illegal deposits of hazardous waste. This will include waste such as contaminated cat litter which has been used in a fuel laundering process.

Particular attention needs to be paid to the category of hazardous waste given the greater expertise and expense involved in its handling and the potential risk to human health and the environment which could arise from incorrect disposal.

Proposal

Hazardous waste must be dealt with in accordance with the Hazardous Waste Regulations (NI) 2005⁵ and disposed of at an authorised facility in compliance with the Waste Management Licensing Regulations (NI) 2003⁶.

The Department suggests that, in the absence of any evidence to suggest an appropriate alternative, that the following position should be adopted in Northern Ireland:

Public Land

NIEA should be responsible for the investigation, enforcement and clean up of all illegally deposited hazardous waste on public land – including roads and footpaths – where this exceeds a specified quantity.

District Councils should be responsible for the investigation, enforcement and clean up of all illegally deposited hazardous waste on public land – including roads and footpaths – where this is less than a specified quantity.

Public Sector Land

As a general principle, it is suggested that in instances where hazardous waste is flytipped on public sector land, the public body which owns the land should take lead responsibility for its clean up. Enforcement action will be in line with the proposed quantitative threshold.

Private Land

Where the illegal disposal of hazardous waste on private land has an actual or a potential adverse effect on the environment or on human health, either the relevant district council or NIEA (in line with the proposed quantitative threshold) will take steps to effect the removal of the waste and to ensure that appropriate enforcement action is taken. In instances where the adverse effect is considered severe, the council/NIEA will normally step in to remove the hazardous waste.

Q13. Do you agree with the Department's proposals with

We do not agree with the Department's proposals in respect of hazardous waste.

Q14. If you disagree with the above, what alternative(s) would you suggest? If possible, please provide evidence in support of your proposal(s).

The recently published guidance in Scotland advises that SEPA are responsible for clinical waste, oil, drums of chemicals, asbestos and hazardous waste. In addition the NIEA already have an enforcement role in relation to the Hazardous Waste Regulations (NI) 2005. Therefore, on balance and given the nature of the material in question, we would favour the approach adopted in Scotland. The one exception to this would be incidents involving fridges and freezers where Councils could take responsibility.

Q15. What do you feel would be an appropriate threshold for determining responsibility for hazardous waste (both in m³ for solid waste and litres for liquid/drummed waste)?

⁵ SR 2005 No. 300

⁶ SR 2003 No. 493

Q16. Are there any specific hazardous wastes that you feel should be singled out in the Protocol for specific handling arrangements? If so please give your reasons.

Q17. Have you any other comments on this issue?

We believe that the protocol should address mixtures of waste which includes hazardous waste and that in the event of a mixture the entire quantity should be deemed hazardous and dealt with accordingly.

5. DATA COLLECTION AND MONITORING

There is currently an absence of accurate and reliable statistics on flytipping in Northern Ireland, particularly on smaller-scale incidents.

The lack of such data has proved problematic in devising a strategy for dealing with the problem of illegal waste disposal, particularly, as outlined above, in setting a quantitative threshold to determine the respective responsibilities of NIEA and councils.

A database of accurate and reliable data will provide a NI-wide picture of the scale of the problem and will enable comparisons to be made between council areas. Councils, NIEA and the Department will be able to use the information to inform the development of policy and strategy and to see how effective their approaches have been. In addition, quantitative data on the scale of the problem can be used to inform any future bids for additional resources.

Position in other Jurisdictions

In **England and Wales** the Flytipping Protocol requires local authorities and the Environment Agency to collate and submit summary data to the national database (Flycapture). This data includes the number and type of flytipping incidents dealt with over the preceding period and the enforcement action taken.

This provides a national picture of the scale of the problem and, through a series of standardised reports, enables comparisons to be made between local authorities and between Agency areas based on comparable data.

Flycapture also includes the ability to enter registration details of vehicles involved in flytipping to determine whether they have been involved in similar crimes elsewhere in the country. This enables the appropriate local authority or Agency officer(s) to make contact with each other and plan how to tackle the offender.

In **Scotland**, as stated previously, final agreement on a Flytipping Protocol has not yet been reached. However, indications are that it will require both SEPA and local authorities to 'endeavour' to provide data on flytipping incidents.

Proposal

The Department suggests that the Protocol should require both district councils and NIEA to collate and submit data on illegal waste disposal in an agreed format to a central database. The Department envisages that, as a minimum, this will include the number, scale and type of flytipping incidents dealt with over a particular period and any enforcement action taken.

Q18. Do you agree that a requirement to collect and submit data on all reported incidents of flytipping in Northern Ireland should form part of the Flytipping Protocol?

We disagree with this proposal. The requirement to subscribe to a fly-capture programme as outlined will have significant resource implications as well as logistical challenges for Councils.

Q19. If so, do you have any suggestions on what data should be collected, who should collate the data or any other aspect of the data collection process?

We accept that a data collection system will be required. We believe that a pilot should be set up and funded by the Department to determine the requirements of such a system and to determine if the effort and resources involved can be justified by obtaining information that will inform policy and hopefully result in attracting more resources from central Government. Such a pilot should involve all bodies expected to utilize the system.

Q20. What are your views on the possible use of Flycapture in Northern Ireland?

A fly-capture scheme has been in operation in the UK for 4-5 years. It would be beneficial to establish what research has been undertaken to determine the benefits of the process and to establish if there has been a cost/benefit analysis undertaken of the scheme.

Q21. Have you any other comments on this issue?

Any pilot should recognise that in addition to a system for the collation of raw statistics a shared data system would be preferable to avoid duplication of effort in relation to alleged fly-tipping / waste incidents. Duplication is more likely when the quantity is near the demarcation threshold. Furthermore, it will help reduce the same deposit being complained of by more than one individual and new complaints about existing deposits that have been investigated but are yet to be cleaned up, from being double-counted.

Ideally such a shared system would be able of receiving referrals to and from each enforcement body thereby reducing the time spend in phone calls or other communications means. In addition, in order to minimise running parallel systems the fly-tipping database or other such system would be able to integrate with existing council and NIEA systems.

6. GENERAL

It is hoped that this consultation paper has addressed the main issues which will underpin the development of a Flytipping Protocol between NIEA and councils in NI. However, consultees should feel free to comment on any other relevant matters which may not have been covered in the paper.

Q22 What are your views on the provision of a freephone flytipping helpline for Northern Ireland?

We agree it would be helpful providing that there are no cost implications for Councils associated with the provision and administration of this facility.

Q23. What are your views on the need for and possible composition of a national flytipping group for Northern Ireland?

We believe that a National Flytipping Group would be beneficial in developing the liaison arrangements essential to the effective working of the protocol and to share practice and learning between enforcement bodies.

Q24. Are there any other issues which you wish to bring to the Department's attention?

We believe that a set of consolidated regulations would be of significant benefit, particularly to council staff who will be developing new knowledge and skills in relation to waste enforcement. Furthermore, Councils would wish to see the development of operational guidelines in relation to the enforcement of Article 5 (Duty of Care) provisions. Councils would also benefit from any training that could be provided by the NIEA in relation to the enforcement of the Article 5 provisions.

Additionally, it is not clear why the Waste and Contaminated land (Amendment) Bill does not repeal Art 72 (13) as its retention would appear to retain restricted powers of entry for Art 28 purposes for Councils, i.e. Councils could not enter land at any reasonable time under Art 72(2), but would have to give notice under Section 92(2) of the Local Government Act (NI) 1972.

The situation is further confused in that the restriction does not appear to apply to Art 28 B

Article 28 powers are to become available to the NIEA, but all Art 72 powers of an authorised person are to be available to this enforcing authority for all its functions including Art 28 purposes.

In order to provide clarity and consistency, the Department is asked to consider repealing Art 72 (13) and then ensuring all Art 72 powers are available to Councils for all of their functions (including Art 28, 28A and 28B, and Arts 21 and 22) under the Order.

Prepared by the CEHOG NI Pollution Sub-Group
16th February 2011

SUMMARY OF QUESTIONS**General Principles**

Q1. Do you agree with these broad principles as a framework for the development of a Flytipping Policy?

Q2. Are there any other issues which need to be covered?

Quantitative Threshold

Q3. Do you agree that councils in Northern Ireland should have responsibility for investigating, and, where appropriate, for taking enforcement action with regard to illegally deposited waste of up to 20 m³?

Q4. Do you agree that NIEA should have responsibility for investigating, and, where appropriate, for taking enforcement action with regard to illegally deposited waste of more than 20 m³?

Q5. If you disagree with either of the above, what alternative would you suggest? If possible, please provide evidence in support of your proposal.

Clean up

Q6. Do you agree with the Department's proposal with respect to the clean up of public sector land?

Q7. If you disagree with the above, what alternative would you suggest? If possible, please provide evidence in support of your proposal.

Q8. Do you agree that councils in Northern Ireland should have responsibility for the clean up of illegally deposited waste of up to 20 m³ on public land?

Q9. Do you agree that NIEA should have responsibility for the clean up of illegally deposited waste of more than 20 m³ on public land?

Q10. If you disagree with either of the above, what alternative would you suggest? If possible, please provide evidence in support of your proposal.

Q11. Do you agree with the Department's proposal with respect to private land?

Q12. If you disagree with the above, what alternative would you suggest? If possible, please provide evidence in support of your proposal.

Hazardous Waste

Q13. Do you agree with the Department's proposals with respect to hazardous waste?

Q14. If you disagree with the above, what alternative(s) would you suggest? If possible, please provide evidence in support of your proposal(s).

Q15. What do you feel would be an appropriate threshold for determining responsibility for hazardous waste (both in m³ for solid waste and litres for liquid/drummed waste)?

Q16. Are there any specific hazardous wastes that you feel should be identified for an individual response? If so please give your reasons.

Q17. Have you any other comments on this issue?

Data Collection and Monitoring

Q18. Do you agree that a requirement to collect and submit data on all reported incidents of flytipping in Northern Ireland should form part of the Flytipping Protocol?

Q19. If so, do you have any suggestions on what data should be collected, who should collate the data or any other aspect of the data collection process?

Q20. What are your views on the possible use of Flycapture in Northern Ireland?

Q21. Have you any other comments on this issue?

General

Q22. What are your views on the provision of a freephone flytipping helpline for Northern Ireland?

Q23. What are your views on the need for and possible composition of a national flytipping group for Northern Ireland?

Q24. Are there any other relevant issues which you wish to bring to the Department's attention?

