

Buan Ionadaíocht  
na hÉireann  
chuig an Aontas Eorpach  
03 February 2011



Permanent Representation  
of Ireland  
to the European Union

Ms Catherine Day,  
Secretary General,  
Secretariat General,  
Commission of the European Communities,  
Rue de la Loi 200,  
B1049 Brussels,  
Belgium.

**Re ECJ Case C-188/08**

Dear Secretary General,

I have been asked by my authorities to refer to the Commission's letter of formal notice dated 24 November 2011 concerning the European Court of Justice judgement in case C-188/08.

Draft primary legislation has been prepared by my authorities and this will be presented to Government at the earliest possible date for its formal approval. The policy approach and operational framework which underpins the legislation is set out below.

The draft legislation provides for the amendment of provisions of the Water Services Act 2007 to establish a system of monitoring and inspection of the standards of performance of on-site systems. Section 70 of the 2007 Act, as it currently stands, places a duty of care on owners of properties served by septic tanks and other on-site wastewater treatment systems to ensure that their on-site systems are kept so as not to:

- (a) cause, or be likely to cause, a risk to human health or the environment, including to waters, the atmosphere, land, soil, plants or animals, or
- (b) create a nuisance through odours.

The draft legislation proposes amendments to section 70 to provide that septic tanks and other on-site waste water treatment systems and the waste water discharges from such systems should be operated and maintained to prescribed standards. It also provides for the establishment of a system of inspection and monitoring of treatment systems in order to comply with EU Waste Directive requirements. The Environmental Protection Agency (EPA) will be the supervisory body for the new system of inspection and monitoring.

The draft legislation will also augment the existing duties and responsibilities of owners of properties served by septic tanks and other on-site wastewater treatment systems. The legislation will set out a statutory timeline by which all owners of such properties must have their systems inspected by an authorised person. Owners of systems that are found



not to be compliant with the relevant standards will be obliged to carry out the necessary improvements or will be guilty of an offence.

The draft legislation provides the Minister for the Environment, Heritage and Local Government with the power to make regulations regarding the establishment of registers for (i) the ownership and location of all on-site treatment systems and of (ii) competent persons to carry out the monitoring and inspections. While it is intended that there will be one national register each for both of these issues, it is also likely that there will be sub-registers at regional or local level. The legislation provides that inspections of septic tanks and other on-site systems can only be carried out by competent persons who will be approved by the EPA. There will be strict criteria regarding the professional qualifications, training and experience, along with professional indemnity insurance requirements, to be met by those seeking approval. The EPA's overall supervisory role will also involve developing an audit methodology which will require local authorities to verify a representative sample of inspections carried out including the remediation works recommended for systems that did not comply with the performance standards. The Agency will also monitor reports submitted to it by the local authorities on the numbers of inspections carried out in their functional areas and the findings of those inspections.

My authorities have been engaged in intensive work in developing an appropriate response to the ECJ judgment. As previously advised, the EPA and the Department of the Environment, Heritage and Local Government has established a technical group to develop appropriate performance standards (and criteria for the carrying out of inspections) which will form an integral part of the overall response to the judgment and the measures required to achieve compliance. The work of this group took somewhat longer than anticipated as the group concluded that it would be necessary to develop a range of criteria against which the various types of systems employed in Ireland can be inspected.

Given the significant implications of the proposed primary legislation, a Regulatory Impact Analysis (RIA) was required. As part of the RIA it was deemed necessary to undertake consultations with key stakeholders – indeed there has been significant interest in the judgment and the required response from a wide range of interested groups, including public bodies and representative groups (including professional bodies, environmental organisations and from businesses involved in waste-water treatment systems). As one of the main objectives of the consultations was to get stakeholder input on the draft performance standards (and the criteria for the carrying out of inspections), the stakeholder consultations could only be initiated following the conclusion of the work of the technical group.

The consultation process commenced on 19 October last. Approximately 190 interested parties were invited to make submissions regarding the draft performance standards and the implementation of an inspection and monitoring system for septic tanks and other on-site wastewater treatment systems. A total of 52 submissions were received and have been reviewed by my authorities. The draft legislation has been updated following the review and the performance standards document is also being updated to take account of

the submissions (this work is being overseen by the EPA). My authorities are in the process of completing the RIA with a view to submitting it to Government along with the draft legislation.

In addition to the draft legislation, my authorities are also continuing to work on a number of operational elements of the new system. These include the following:

- Mechanisms for the compilation of a national register of all properties served by septic tanks and other on-site wastewater treatment systems. The Department is addressing this in parallel with other projects which also require information on the location of properties and the identity of owners/occupiers.
- A public information campaign to advise owners of properties served by septic tanks and other on-site wastewater treatment systems of their current and future responsibilities regarding such systems and to alert them to the risks to public health and the environment, and the penalties which apply, if those responsibilities are not observed. The Department, together with the National Rural Water Services Committee, is working on this aspect and it is expected that the campaign will be launched later this year.
- Specialised training for competent persons who could then seek approval to be placed on panels of approved assessors to carry out the inspections in due course. The Water Services Training Group is developing a training programme on behalf of the Department for roll-out to applicants in the second half of 2011.

My authorities remain fully committed to developing and implementing the legislation and policy approach necessary to ensure full compliance with the requirements of the Waste Directive and the Court Judgment. My authorities will engage with the Commission services in DG Environment on the draft legislation and will aim to formally communicate it to the Commission in the near future following Government approval. Our aim is to finalise all measures necessary to satisfy the judgment as early as possible this year.

Yours sincerely



Paul Lemass  
Environment Counsellor