

**COMPLAINT  
TO THE COMMISSION OF THE EUROPEAN COMMUNITIES  
CONCERNING FAILURE TO COMPLY WITH COMMUNITY LAW**

1. Surname and forename of complainant:

Friends of the Earth (Northern Ireland)

2. Where appropriate, represented by:

Mr John Woods

3. Nationality:

British and Irish

4. Address or Registered Office:

7 Donegall Street Place, Belfast Northern Ireland BT1 2FN

5. Telephone/fax/e-mail address:

(+44)028 90233636, Fax:(+44) 028 9024 7566, e-mail: [johnw@foe.co.uk](mailto:johnw@foe.co.uk)

6. Field and place(s) of activity:

Environmental campaigning organisation working throughout Northern Ireland as part of Friends of the Earth England, Wales and Northern Ireland.

7. Member State or public body alleged by the complainant not to have complied with Community law:

The UK Government acting through the Department for Regional Development (DRD), and the Department of the Environment in Northern Ireland (DOE) control of which comes under the remit of the Secretary of State for Northern Ireland.

8. Fullest possible account of facts giving rise to complaint:

In Northern Ireland, the provision of water and sewerage services is the responsibility of a Government Department – known as the “Department for Regional Development” (DRD). Water and sewerage services are carried out by the Department’s Water Service (an executive agency within the Department).

Because Water Service is located within a UK Government Department, it is legally immune from all forms of normal environmental regulation. In effect, DRD and its Water Service, enjoy Crown Immunity. As a result of Crown Immunity, the Department of the Environment in Northern Ireland, which is responsible for the local enforcement of environmental law, is legally prevented from taking any regulatory action against DRD or its Water Service. Thus far, the Department of the Environment has only taken nominal steps towards regulation – issuing Water Service

with what are referred to as “registered standards”. These registered standards are not equivalent to discharge consents, which are the normal form of prior authorisation applied to others discharging in to water. Registered standards effectively contain standards that can be reached by Water Service, but do not require discharges to be made in compliance with EU environmental Directives.

Despite constant pressure from NGOs and other polluters, and despite the fact that discharges from DRD waste water treatment plants are in a state of endemic breach of the EU Urban Waste Water Treatment Directive and also contribute to widespread breaches of other EU water quality Directives, the Government in Northern Ireland has consistently refused to lift Crown Immunity for Water Service.

Friends of the Earth believe that Crown Immunity for DRD’s Water Service represents a breach of the EU laws outlined in the next section below.

As you are already aware, the Department for Regional Development is currently committed to a major process of capital investment in Northern Ireland’s water treatment works. As part of this process of reform, it is intended that DRD’s Water Service would be externalised outside Government and that Crown Immunity would then be removed. DRD have announced that Crown Immunity would be lifted in 2006.

Friends of the Earth have strong grounds to believe that the official deadline for lifting Crown Immunity will not be met by DRD. Consequently, we are very concerned that a major polluter in Northern Ireland will be able to continue discharging in flagrant breach of EU Directives for potentially years to come and that no regulatory action can be taken to enforce the rule of law.

9. As far as possible, specify the provisions of Community law (treaties, regulations, directives, decisions, etc.) which the complainant considers to have been infringed by the Member State concerned:

Friends of the Earth take the view that Crown Immunity represents a breach of the following EU obligations:

- It has been clearly established by the European Court of Justice that Member States are required to ensure the effective enforcement of rights and obligations contained in EU legislation. Crown Immunity prevents any regulatory action being taken against a major polluter by either the domestic authority responsible for environmental regulation or by private individuals. Private parties may only seek a court declaration of the fact of breach following judicial review proceedings. Judicial review remedies do not equate with effective enforcement of EU environmental law, and also places an undue burden on private parties to take action to ensure some level of enforcement of EU measures.
- In addition, under Article 10(5) of the EC Treaty it is clearly stated that ‘Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the Institutions of the Community. They shall

facilitate the achievement of the Community's tasks. They shall abstain from any measures which could jeopardise the attainment of the objectives of the Treaty'. Friends of the Earth takes the view that by allowing the NI Government to retain Crown Immunity for a major polluter, the NI Government has failed to take all appropriate steps to: (a) ensure fulfilment of EU Directives on the environment and (b) the effective enforcement of rights and obligations contained in EU environmental law.

10. Where appropriate, mention the involvement of a Community funding scheme (with references if possible) from which the Member State concerned benefits or stands to benefit, in relation to the facts giving rise to the complaint:

Northern Ireland had Objective 1 status under the 1994 – 1999 Structural Funds programme. While that status no longer applies for 2000 – 2006, Northern Ireland is eligible for transitional funding.

11. Details of any approaches already made to the Commission's services (if possible, attach copies of correspondence);

N/A

12. Details of any approaches already made to other Community bodies or authorities (e.g. European Parliament Committee on Petitions, European Ombudsman). If possible, give the reference assigned to the complainant's approach by the body concerned:

N/A

13. Approaches already made to national authorities, whether central, regional or local (if possible, attach copies of correspondence):

- Letter to Stephen Quinn, Department for Regional Development, dated 7<sup>th</sup> January 2003.
- Letter to John Woods from Angela Smith MP, Minister of the Environment, dated 30<sup>th</sup> July 2004
- Letter to Stephen Quinn, Department for Regional Development, dated 14 November 2003.
- Letter to Stephen Peover, Department of the Environment. Dated 17 November 2003.
- Letter to John Woods from Stephen Quinn dated 4<sup>th</sup> December 2003.
- Letter to John Woods from Stephen Peover dated 2<sup>nd</sup> January 2003.
- Letter to John Woods from Stephen Quinn dated 9<sup>th</sup> January 2004.
- Letter to John Woods from Stephen Peover dated 8<sup>th</sup> April 2004
- Letter to Stephen Peover, Permanent Secretary, Department of the Environment dated 3 March 2004.

14. Specify any documents or evidence which may be submitted in support of the complaint, including the national measures concerned (attach copies):

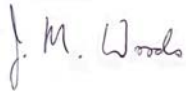
N/A

15. Confidentiality:

- a. "I authorise the Commission to disclose my identity in its contacts with the authorities of the Member State against which the complaint is made."

16. Place, date and signature of complainant/representative:

Signed

A handwritten signature in blue ink that reads "J. M. Woods". The signature is written in a cursive style with a large initial 'J'.

John Woods, Director

Date 28 September 2004