



**Consultation –**  
**The Draft Waste (Amendment) (NI) Order 2006 &**  
**Explanatory Memorandum**

**Introduction**

Arc21 is a collaborative legal public sector entity embracing eleven Councils located along the Eastern Region of Northern Ireland which covers 25% of the land base, populated by 57% of the national population and accounts for 54% of the national municipal waste arisings.

The establishment of arc21 together with its functionality is enshrined in legislation i.e. The Local Government (Constituting a Joint Committee a Body Corporate) Order (NI) 2004.

In essence, it is primarily responsible for activities associated with the production, ongoing development and implementation of a Waste Management Plan within the Eastern Region Area.

The eleven constituent Councils of arc21 are Antrim Borough Council, Ards Borough Council, Ballymena Borough Council, Belfast City Council, Castlereagh Borough Council, Carrickfergus Borough Council, Down District Council, Larne Borough Council, Lisburn City Council, Newtownabbey Borough Council and North Down Borough Council.

This response was formulated through an internal consultative process.

**Comments on the Consultation Paper**

Arc21 welcome the opportunity to respond to this consultation and would comment as follows;

A large proportion of the contents of the arc21 response submitted to the Department as a result of consultation undertaken last year, remain pertinent. A copy is attached for information (Appendix 1 – 2005 Submission).

It is surprising that the Department consider responses were received from only a small percentage of the total number of district councils when one considers arc21 embraces 11 Councils covering 54% of the population. It is disappointing that the Department primarily continue to only acknowledge the need to take a more complete and measured approach to illegal disposal of waste. One of many examples of the limited approach relates to the terms of Article 28 of the 1997 Order, with due regard to our comments in respect of last years consultation response. Indeed, one of our constituent Councils have expressed some concern that rigid application of the proposals could result in a disproportionate focus away from pursuing perpetrators onto unsuspecting and unfortunate land owners.

Equally, it is disappointing that no timescales are given to the exploration of such with Councils. Council concerns in this regard have been well documented on a number of previous occasions and subsequently it is not unreasonable to question the Department's commitment to address this issue, in contrast to the efforts of the legislators in Great Britain who have made significant progress in this regard. It is ironic that The Explanatory Memorandum claims "the prime objectives are to maintain parity with the rest of the United Kingdom in this important area of waste management".

Additionally, it is regrettable the Department has chosen to disregard the constructive suggestions relating to the issue of presentation of waste receptacles for collection as presently covered by Articles 21 & 22 of the 1997 Order. The outcome of the recent prosecution case in Exeter only highlights the difficulties being faced by Councils and the introduction of appropriate provisions will be a useful measure to assist Councils and Northern Ireland meet its targets.

Arc21 would urge the Department to initiate progress in respect of these issues as a matter of some urgency and in the interests of open transparent government announce an appropriate programme of work with timescales to address such.

## **Appendix 1 - 2005 Submission**

### **CONSULTATION PAPER ON PROPOSED AMENDMENTS TO THE WASTE & CONTAMINATED LAND (NI) ORDER 1997**

Arc21 welcome the opportunity to respond to the consultation paper.

In the introduction to the consultation paper, the Department make it clear it is taking the opportunity to amend some of the provisions of the 1997 Order to reflect the serious situation in Northern Ireland arising from the involvement of organised criminal gangs taking advantage of the increasing practice of illegal cross boundary transport and illegal management of waste. It is highly regrettable and disappointing that the Department is not taking full advantage of the opportunity to address all aspects of illegal disposal including local fly-tipping problems. Arc21, Councils and other Council bodies have consistently identified the deficiencies in the present arrangements and the problems this presents.

The Northern Ireland Affairs Committee report into the Waste Management Strategy published in February 2005 recognised the problem and in paragraph 96 of their Report (repeated in paragraph 33 of their Conclusions and Recommendations) they state:

“Fly tipping is a growing and insidious problem, and we are pleased that the Department of the Environment is considering a range of measures to deal with it more effectively. We urge the Minister to ensure that this work proceeds without delay and that the existing regulatory powers are enforced fully.”

It is unfortunate that the Department do not appear to have fully embraced such and thus the present unsatisfactory arrangements are allowed to continue unnecessarily. The significance assigned to the problem by the DOE in Northern Ireland is in direct contrast to the proactive approach adopted by its counterparts in GB. Arc21 would again reiterate that the lack of a clear and effective deterrent to fly-tipping should be addressed by the DOE as a matter of priority.

Notwithstanding the above, arc21 would support the general thrust of the proposals. However any benefit from introducing the new powers will only realised if sufficient resources are made available to undertake the necessary enforcement activities and these resources are efficiently and effectively managed.

Arc21 would particularly comment on the detail of the following proposals;

#### *Unlawful Deposit of Waste – Defence of Acting under One’s Employer’s Instructions*

This proposal offers little protection to those employees working for unscrupulous employers (e.g. employees who are following instructions of their employer in good faith or who are acting under orders in fear of losing their job). More consideration could be given to address this situation. One way to mitigate this could be to introduce a formal approval mechanism for waste drivers, included as a sub clause on their HGV licence, which would require that approved training on Waste Legislation be completed. This would impose a duty on drivers to comply with waste legislation, with non-compliance leading to the possibility of losing his/her HGV licence.

#### *Investigation, Enforcement and Clean-Up Costs*

The new provisions to enable the Court to make an Order requiring offenders to pay costs are seen as a progressive step. It is noted this would be at the discretion of the Court and Arc21 would support any measures to encourage the Courts to make full use of these provisions.

#### *Forfeiture of Vehicles*

It is not clear from the consultation paper as to the intended destination of any value accrued from the disposal of any forfeited vehicle, plant or machinery. There is merit in adopting a system that results in the funds being “ring fenced” for use in sustainable waste management projects but not for waste regulation purposes. This would result in these monies being utilised for legitimate purposes within waste management and deflect any potential criticism of creating an inappropriate and unfavourable culture within the waste regulation authority.

#### *Failure to Furnish Documentation; Fixed Penalty Notices*

This provision in relation to the requirement to furnish documents under regulations made under Article 5 of the 1997 Order is welcome. However this must be tempered by a concern about the level of resource likely to be available to the Department to tackle illegal waste practices employed by SME’s which is seen in some areas as being a particularly acute problem. This is linked to the prevailing unsatisfactory situation in respect of fly-tipping. One method of addressing this is to enable Councils to undertake local enforcement activities as agents of the Department through a Service Level Agreement.

#### *Offences relating to Waste Receptacle: Fixed Penalty Notices*

Arc 21 has previously identified the lack of effective powers to compel householders to comply with Council arrangements in relation to kerbside collection as requiring to be addressed. The suggested proposals by the Department are recognition that Councils will require the provision of stronger powers to assist in the attainment of meeting statutory targets. This is particularly pertinent in the case of household waste covered by Article 21 of the 1997 Order. However the proposals only address the end of a time consuming, impracticable and thus ineffective process. Arc21 would call upon the Department to address the complete process and introduce appropriate provisions to streamline the process. It is only by so doing, will the Department properly enable the Councils to utilise, where appropriate, effective powers in this regard.

It is suggested that the requirement to serve individual notices properly made out to named individuals etc be replaced by an obligation to generally advertise and make available and accessible to all residents, the relevant arrangements pertaining to their area. Details of what would be considered acceptable in relation to “generally advertise and make available and accessible” would be outlined in guidance issued by the Department and would include the use of websites, annual newspaper adverts advising of availability of arrangements, register of arrangements kept on Council Offices for public perusal etc. Arc21 would welcome the opportunity to assist the Department in the composition of such guidance. The offence would be not complying with Council arrangements duly advertised and made publicly available and accessible with the fixed penalty provision thereafter applying. The guidance should also cover a definition of “occupier” to facilitate proper application of the fixed penalty notice.

In addition it would be helpful if the provisions explicitly permitted Councils to refuse to collect waste material inappropriately presented with the discretion to make a subsequent reasonable charge to thereafter collect inappropriately presented waste material. Councils would also require powers of investigation to ensure that residents that have had inappropriately waste material refused for collection have subsequently disposed of such properly, with the onus of prove resting with the resident.

Under Article 25 Councils must provide places at which persons may deposit their household waste for disposal free of charge. Historically this has been through the provision of civic amenity sites. Most Council’s have either upgraded or in the process of upgrading this type of facility to recycling centres with the emphasis being placed on recycling as much of the household waste brought to the site as possible. Arc21 would call upon the Department to introduce specific legislative provision giving effective and expedient powers to Councils to take action on householders who do not properly segregate their waste deposited at the recycling centres e.g. disposing of recyclable materials into the residual waste stream. This is an important issue for Councils given the targets placed upon Councils and in some cases, the potential penalties for not meeting the relevant targets.

In addition, commercial waste being deposited at these sites, without Council permission, by commercial operators seeking free disposal remains a problem which is very difficult to address under present arrangements. Arc21 would also call upon the Department to introduce specific legislative provision giving effective and expedient powers to Councils to take action (where appropriate) against persons depositing, without Council permission, commercial waste at household recycling centres.

#### *Power to Require Removal of Waste from Unlawfully Deposited*

It is unfortunate that the Department do not offer any discussion on the most applicable body with whom to invest the powers available under Article 28. The circumstances that trigger the use of the Article 28 powers entail the contravention of Article 4(1), the supervision and enforcement of which lies with one body i.e. the Department. Therefore there is a compelling case for the powers under Article 28 to be invested with the waste regulation authority i.e. the Department. This has the advantage of being administratively simple, clean and unambiguous as well as acting as a driver for the waste regulation authority to provide an effective deterrent for all illegal disposal incidents including localised fly-tipping.

The situation on GB effectively confers dual powers on both Councils and the waste regulation authority. However this arrangement is not perfect as it demands clarity and agreement on demarcation relevant to differing circumstances. It has not prevented occasional tensions between relevant parties in GB. It is contended that the public would be best served by one body being invested with the powers and that body should be the waste regulation authority. However, as earlier indicated, Councils may be able to assist in this regard through service level agreements.

Regardless of the above, the introduction of landowners into the legislative loop could be beneficial. It is likely to give rise to debate in one particular area and that is in relation to waste material dumped at the side of the public road. Councils will expect the Roads Service as landowners, with respect to the amended Article 28 to either remove or pay the Council's costs for removal of the waste. Equally, it is anticipated the Roads Service will resist such citing the litter legislation and this will give rise to a debate as to the applicable legislation.

Arc21 would suggest this needs to be further explored and would welcome the opportunity to contribute to the process.

The consultation paper does not indicate that landowners will have any defence, similar to that available to an occupier; against any notice so served on them i.e. neither knowingly caused nor knowingly permitted the deposit. The introduction of these defences will effectively result in little change to the present prevailing situation and thus be predominantly a blunt instrument.

#### *Site Waste Management Plans*

In principle, arc21 support the proposal and as suggested will comment in more detail as part of the review of the Waste management Strategy for Northern Ireland.

### **Conclusion**

The majority of the proposals which the Department intend to introduce are specifically aimed to assist the Department tackle the large illegal operations presently being experienced. As expressed earlier it is regrettable that the problem of fly-tipping as it affects Councils and the public does not receive the same attention and it is strongly recommended that the complete issue of illegal disposal of waste be considered rather than the "patchwork" approach being pursued by the Department.

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