

FAO Mr Sean McCann
Northern Ireland Assembly
Committee for the Environment
Environment Committee Office
Room 247
Parliament Buildings
Belfast
BT4 3XX

28th May 2010

Dear Mr McCann

Re Waste and Contaminated Land (Amendment) Bill

I refer to your letter of 27th April 2010 which, on behalf of the Committee invites views from arc21 in connection with the above.

As requested, our submission is structured to address the specific clauses of the Bill:

Waste

Clause 1 – Fixed penalty notices for offences under Article 4.

arc21 is supportive of the introduction of fixed penalties as an alternative to prosecution with Councils being able to use any funds raised through these fixed penalties to help cover the costs of enforcement and clean up of illegally deposited waste. In the interests of consistency of approach throughout Northern Ireland, there may be merit in developing guidance outlining the circumstances upon which greater consideration should be given to the use of fixed penalty notices.

Clause 2 – Detention of seized property.

arc21 is supportive of the powers introduced in this clause.

Clause 3 – Offence of failing to pay charge for subsistence of licence.

arc21 have no objection to this clause.

Clause 4 – Powers to require removal of waste unlawfully deposited.

arc21 is supportive of this clause in principle. However given the duplication of powers it will be necessary for agreement to be reached on the appropriate organisation to use the powers in any given circumstances.

arc21 would have some concern in relation to landowner liability particularly that unwitting landowners should not suffer financially to clean up waste illegally deposited on their land.

Clause 5 – Councils to enforce Articles 4 and 5 of 1997 Order.

The problem of fly-tipping has been well documented and one of the main ways of addressing this is the existence of an effective and efficient “policing” regime. Giving Councils powers to carry out prosecutions under articles 4 & 5 of the 1997 Order may not in itself be sufficient to ensure the provision of an effective and efficient policing regime. We would be fully supportive of the proposal subject to:

- 1) The development of a protocol, the contents of which all “policing” agencies are in agreement with; and
- 2) Councils are given an adequate level of resource from central government to enable them to properly implement any new “policing” powers in this regard.

In addition and subject to the above, it will be necessary to ensure that Councils have similar powers as the Department in connection with enforcement of the articles and in particular parity with regards to subsequent enforcement powers under the Article 5(7) pertaining to the regulations made thereunder, with particular reference to the furnishing of documents or copies of documents.

Clause 6 – Right of entry with heavy equipment or to domestic premises.

arc21 is supportive of the powers introduced in this clause.

Contaminated Land

Clause 7 – Contaminated land: pollution of waterways and underground strata.

arc21 is supportive of the powers introduced in this clause.

Clause 8 – Appeals against remediation notices.

arc21 is supportive of the powers introduced in this clause.

Clause 9 – Interaction with other provisions.

arc21 is supportive of the powers introduced in this clause.

Producer Responsibility Obligations

Clause 10 – Producer responsibility obligation regulations.

arc21 is supportive of the powers introduced in this clause.

Financial Effects of the Bill

The new enforcement powers for Councils, although discretionary, will inevitably have costs implications for councils which is unlikely to be fully absorbed by the potential for some cost recovery. Councils should be given an adequate level of resource from central government to enable them to properly implement any new policing powers.

The Joint Committee considered the issue at its meeting on the 25th May 2010 and reaffirmed the position articulated above.

I trust this is of assistance.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'R Burnett', written over a horizontal line.

R BURNETT
Policy & Operations Director