



## Belfast City Council

<b>Report to:</b>	Health and Environmental Services Committee
<b>Subject:</b>	<b>Consultation Document – Draft Guidance on the Legal Definition of Waste</b>
<b>Date:</b>	12th April, 2010
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### Relevant Background Information

The Northern Ireland Environment Agency (NIEA) has issued a consultation paper seeking views on new draft guidance produced to define more clearly what is and is not waste. It is intended that the draft guidance will replace definitions originally contained within DOE circular 11/94 and will identify principles arising from European Court of Justice (ECJ) case law which has now been established, the considerations which have to be taken into account and the criteria to be satisfied when deciding if a material is or is not waste.

It is important to note that this draft guidance is not changing the legal definition of waste or superceding any case law. Rather it is to provide guidance on the current case law on the topic at the time of publishing.

This consultation closes for comments on 12th April, 2010 and final guidance will be updated as necessary once published.

### Key Issues

The newly published draft guidance covers the following areas:

#### **I. A practical guide for businesses and other organisations.**

Key issues: This part of the guidance outlines the initial basic decision-making process and addresses a series of related issues in a relatively easy to understand format. It appears to adequately cover the wide range of aspects that require consideration and as such is helpful.

#### **II. Background and rationale.**

Key issues: This part contains reference to the Waste Strategy for England 2007 and the National Waste Strategy for Wales 2002, but does not make any reference to the Northern Ireland Strategy.

One of the objectives contained in Strand 5 of the NI Strategy, entitled “*Towards Resource Management*”, is to make “*producers of waste and waste management business aware of their legal responsibilities by providing them with timely, user friendly guidance and information to facilitate.*”

In the interests of completeness and equity, it is recommended that appropriate reference should be made to the NI Strategy to ensure consistency with the other administrations. There is a need to regularly review and update the guidance to ensure it reflects the prevailing position and this commitment is duly recognised in this section. It will be important to realise this commitment.

### **III. Detailed guidance on the legal definition of waste and its application.**

Key issues: This part of the draft guidance is comprehensive and covers the wide range of issues which could influence decision-making regarding waste.

arc21 and the constituent councils are in agreement with the proposals presented by the NIEA, and the explanations of the types of waste controlled under the EC Waste Framework Directive (WFD) and other legislation.

Furthermore, arc21 and the constituent councils welcome that, as well as dealing with the core subject, the draft guidance also takes the opportunity to address the perception of waste emphasising the continuing need to promote it as a resource.

The arc21 response to the draft guidance is attached in Appendix 1 for Members’ consideration.

#### **Resource Implications**

##### **Financial**

None.

#### **Recommendation**

The Committee is asked to endorse the arc21 response as attached, subject to ratification by full Council at its meeting on 4<sup>th</sup> May.

#### **Decision Tracking**

The Head of Service will liaise with Committee Services to ensure that the necessary documentation is forwarded to the NIEA following the Committee’s decision.

#### **Key to Abbreviations**

NIEA – Northern Ireland Environment Agency  
WFD – EC Waste Framework Directive  
DOE – Department of Environment for Northern Ireland  
ECJ – European Court of Justice

#### **Documents Attached**

The full consultation paper is available on-line at <http://www.ni-environment.gov.uk> or, if required, a paper copy can be obtained from the Waste Management Service Policy and Compliance Officer on Ext 3439 or 3497.

## **Arc21 Response to the NIEA Consultation on the Legal Definition of Waste and its Application**

### **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 with the original provision being 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.

### **Background**

In the majority of cases, taking a decision on whether or not something is waste is straightforward. However in some cases it is more difficult and the aim of the draft guidance is to help ensure that the right decision is taken in these more difficult cases.

It is intended that the draft guidance will supersede that originally provided in DoE circular 11/94 and will identify the principles deriving from the European Court of Justice case law that has now been established, the considerations that have to be taken into account and the criteria that needs to be satisfied when deciding that a substance or object is or is not waste.

The draft guidance does not change the legal definition of waste and it does not take precedence over the case law on the definition's interpretation.

The draft guidance is split into three distinct parts:

Part One – A Practical Guide for Businesses & Other Organisations.

Part Two – Background & Rationale.

Part Three – Detailed Guidance on the Legal Definition of Waste & Its Application.

### **Response**

arc21 welcomes the opportunity to respond to the consultation and would comment as follows:

#### **Part One – A Practical Guide for Businesses & Other Organisations.**

*Q1 – Do you consider that the practical guide provided in this part of the draft guidance accurately summarises the wide range of factors that need to be taken into account in determining when substances or objects are discarded and become waste; and when waste ceases to be waste? If not, what factors do you consider should be set out in this summary – replying by reference either to the detailed guidance in part 3 or your answers to questions 5- 13?*

Q2 – *Do you consider that the practical guide is helpful? If not, what do you suggest should be included to make it helpful?*

Q3 – *Do you consider it helpful to set out the practical guide in textual and/or diagrammatic formats?*

Answer - This particular part of the guidance outlines the initial basic decision-making process and addresses a series of related issues in a relatively easy to understand format. It appears to adequately cover the wide range of aspects that require consideration and as such is helpful.

The use of both textual and diagrammatic formats is particularly helpful and arc21 would suggest that reverting back to either one to the exclusion of the other would be a retrograde step.

It is important that the two formats consistently reflect each other with no scope for differences in the conclusion. An example where there is a slight difference can be found in question 3, which asks “Does the substance/object need to be disposed of?”

In the diagram if the answer is yes the conclusion is “likely to be waste”. However in the text the conclusion is “it is waste” which is more definitive than the diagrammatic conclusion.

## **Part Two – Background & Rationale.**

Q4 - *Do you consider that this part of the draft guidance fully explains the background to and the rationale for the guidance. If not, what further explanation do you think should be provided?*

Answer - It is suggested that the guidance document would benefit from this part being at the start of the document and therefore becoming Part One with the current Part One (A Practical Guide for Businesses & Other Organisations) becoming Part Two. This would allow the guidance to follow a more logical flow and would help readers in its application.

This part contains reference to the Waste Strategy for England 2007 and the National Waste Strategy for Wales 2002 but does not make any reference to the Northern Ireland Strategy entitled “*Towards Resource Management*”. One of the objectives contained in the Strand 5 of the NI Strategy is to make “*producers of waste and waste management business aware of their legal responsibilities by providing them with timely, user friendly guidance and information to facilitate.*”

It is suggested in the interests of completeness and equity; appropriate reference should be made to the Northern Ireland Strategy consistent with that of the other administrations.

The need to ensure the guidance is regularly reviewed and updated to ensure it reflects the prevailing position is important and this commitment is duly recognised in this section. It will be important to realise this commitment.

### **Part Three – Detailed Guidance on the Legal Definition of Waste & Its Application.**

*Q5 - Do you agree with the proposed answer to the question “Why Regulate Waste?” If not, what is the answer to this question and what are your reasons?*

*Q6- Do you agree with the proposed explanation of the types of waste controlled under (a) the WFD or (b) “other legislation” (i.e. the distinction between waste and Directive waste). If not, what issues do you consider need to be addressed to ensure the explanation is full and accurate?*

*Q7 - Do you consider that there are any issues that should be addressed in this section of the revised guidance?*

*Q8 - Do you consider that this section of the draft guidance fully and accurately identifies the principles established by the ECJ in its case law on the interpretation of the definition of waste?*

*Q9 - Do you consider that this section fully and accurately identifies the factors that need to be taken into account, and the criteria that needs to be satisfied, when deciding whether or not a substance or object is discarded?*

*Q10 - Do you consider that this section of the draft guidance (a) accurately analyses the concepts of (i) products, (ii) residues and (iii) by-products; and (b) accurately identifies and explains the principles set by the EJC to distinguish between (i) production residues classified as waste and (ii) production residues classified as non-waste by-products?*

*Q11 – Do you consider that this section of the draft guidance fully and accurately identifies the principles established by the ECJ and national courts to determine that the objectives of the WFD and other EU waste legislation have been achieved and, as a consequence, substances or objects cease to be waste?*

*Q12 - Do you consider that the draft guidance fulfils the Davidson Recommendation?*

*Q13- Are there any issues or factors other than those dealt with in the guidance that you think the guidance should cover?*

This part of the guidance document is comprehensive and covers the wide range of issues that could influence a decision. arc21 agree with the proposed answer to the question “*Why regulate waste?*” and the proposed explanation of the types of waste controlled under the WFD and other legislation.

The contents do not appear to have omitted any issue that would require to be addressed. It is particularly encouraging that the guidance as well as dealing with the core subject matter also takes the opportunity to attempt to address the perception of waste being a stigma emphasising the continuing need to promote it as a resource.

This part deals with a very complex matter in a rational and logical way stepping through the four specific sections: Background, General Principles of ECJ Case Law, By- Products and End –of-Waste.

Consequently, arc21 considers that the contents of the draft guidance are sufficient in regards to questions 8-11.

In regards to fulfilling the Davidson Recommendation, the use of examples is particularly helpful and perhaps could be enhanced through augmenting each textual explanation with a diagram outlining the various steps in the decision making process that resulted in the conclusion reached in the quoted examples.

Finally, one scenario that may be worthy of consideration for inclusion in the document is that relating to the on-site use of materials originating from that site during construction without the material going beyond the boundaries of the site (e.g. soil from excavation on one part of the site used in reconfiguration of another area within the site).