

Sheila Mawhinney and Sean McCann  
Committee for the Environment  
Northern Ireland Assembly

11<sup>th</sup> November 2013

Dear Ms Mawhinney and Mr McCann

**LOCAL GOVERNMENT BILL [AS INTRODUCED]**

As a local government stakeholder, arc21 welcomes the opportunity to provide evidence to the Committee for the Environment on the Local Government Bill, and, if called upon, to elaborate on our comments, which attached to this covering letter.

**Background**

arc21 was established by our current 11 Constituent Councils in July 2003 with the approval of our Terms of Agreement. Subsequently, an application was made under Section 19 of the Local Government Act (Northern Ireland ) 1972 to the Department of the Environment to establish the Joint Committee as a Body Corporate and the organisation was given Statutory status in 2004 under The Local Government (Constituting a Joint Committee a Body Corporate) Order (NI) 2004.

The current Constituent Councils of arc21 are:

1. **Antrim Borough Council**
2. **Ards Borough Council**
3. **Ballymena Borough Council**
4. **Belfast City Council**
5. **Carrickfergus Borough Council**
6. **Castlereagh Borough Council**
7. **Down District Council**
8. **Larne Borough Council**
9. **Lisburn City Council**
10. **Newtownabbey Borough Council**
11. **North Down Borough Council**

arc21 is one of three Waste Management Groups established in Northern Ireland by the 26 Councils, the other two being Swamp2008 and the North West Region Waste Management Group, in order to collaborate in the development of a Waste Management Strategy, the Waste Management Plan (WMP), and then assist Councils with the effective implementation of the plan, procuring waste infrastructure to meet the long terms needs for waste management.

In the case of arc21, we are the Contracting Authority, meaning that, on behalf of our Constituent Councils, we not only procure waste management contracts, we also enter into contractual relations with the successful waste contractors and are then responsible for management of the waste contracts over the entire contract period.

The services entered into by arc21 with waste contractors is backed up financially through the provision of waste materials from Councils for which a unitary charge is applied to enable arc21 to meet its financial obligations under the contracts.

Given the nature of the procurement for waste contracts the waste management contracting process, there will be a number of obligations entered into by arc21 which will extend beyond the April 2015 period, when the new Council structures will be operational.

Our single largest project to date, the development of long term major waste infrastructure facilities to treat residual waste is at the final stages of procurement./This involves a capital investment of circa £300m and will provide facilities to further enhance Councils capability to divert waste from landfill , retrieve recyclates and recover energy.

We feel it is important that the proposed legislation takes account of the activities of arc21, and the other two Waste Management Groups, to ensure that there is a smooth transition from the current Council arrangements to the new ones and beyond.

It is noted that, as with the current legislative framework, the Local Government Bill has made provisions for similar collaborative arrangements on a Body Corporate basis. Given the evolution of arc21 to date, this is to be welcomed.

### **Specific Comments On The Local Government Bill**

arc21 recognises that the Bill is enabling legislation and that much of the detail will be contained in subordinate legislation, such as Statutory Instruments under which arc21 is established and regulated, and other guidance which will be published in due course.

Please find attached our specific comments on the Bill for your consideration.

We hope that the comments made are helpful to the Committee. As stated, we are happy to elaborate if the Committee deems it appropriate, at a future date.

Yours sincerely

A handwritten signature in black ink that reads 'George Craig'.

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GEORGE CRAIG  
Corporate Services Director



RESPONSE TO

## **LOCAL GOVERNMENT BILL [AS INTRODUCED]**

### **Introduction**

arc21 welcomes the opportunity to provide comments to the Committee for the Environment on the proposed Local Government Bill and our response is set out below as follows.

### **Part 1 - Councils**

2(2) - Given the developments in technology and the fact that all Councils now have websites, then there should be the flexibility to publish the Council Constitution, and other documents, on the website and other social media outlets.

2(3)(b) - Given the practical experience of Councils in relation to the Freedom of Information Act 2000, it would be useful if there were enshrined in legislation the indicative charges that could be applied by Councils, even minimum charges.

Our experience has been that the FOIA is being used mainly by third parties who have a commercial interest in seeking information. Councils could also be empowered to refund charges to FOIA applicants, in certain circumstances.

In any case, it is normal practice for Councils to make available to the public a substantial volume of information. However, there needs to be more of a deterrent to enable information of a contractual or commercially sensitive nature to be protected.

### **Part 2 - Councillors**

8(2)(a)(ii) - the “six month” non attendance

It is noted that the “six month” non attendance rule appears to be applicable to Joint Committee. This matter should be clarified so that guidance can be provided to take account of circumstances whereby a Councillor who, for example, has been able to attend the Council meetings but has been unable to attend the Joint Committee meetings. Circumstances may arise in which the Councillor may have to prioritise in favour of attending the main Council meetings.

### **Part 3 - Positions of Responsibility**

In general the proposals appear to be too prescriptive, leaving little for councils to make decisions on a local basis to suit local needs and political representation.

10(1)(f) - It would be helpful if the legislation confirmed that Special Responsibility allowances should be made to those nominated to the positions set out in 10(1) (a) to (f).

#### **Part 4 - Discharge of Functions**

13(2)(a) - It is noted that the new proposals maintain the provision to allow Councils to arrange for the discharge of functions by way of a Joint Committee. However, reference should be made to 18(2)(a) which enables Councils to form Joint Committees as Bodies Corporate, similar to the position with arc21.

#### **Part 5 - Permitted Forms of Governance**

arc21 is generally supportive of the provisions set out in this Part.

#### **Part 6 - Executive Arrangements**

39(3)(a) - access of the public to meetings of Joint Committees. Provision should be made to allow Joint Committees to seek requests, from the public to attend, in writing for logistical reasons and in order that the business of the Joint Committee can be structured to better accommodate those wishing to attend.

For example, it is our normal practice, during a meeting, to formally go “In Committee” to deal with matters of a confidential or commercially sensitive nature. If members of the public are seeking to attend then arrangements can be made, for example, to deal firstly with Agenda items of a non confidential manner.

#### **Part 7 - Meetings and Proceedings**

43(4) - “simple majority” - In the case of a Joint Committee further clarification needs to be given in this regard. For example, it could be the majority of Councils in attendance or be based on the number of Councillors in attendance. The regulations could also state that it is a matter for each Council, when forming a Joint Committee to determine the methodology for *Decision Making*.

44 - Qualified Majority - The level of 80% mandatory appears to be quite a high bar to adopt and given that Clause 43 takes into account a situation which has been well tried and tested it would appear that there is not a need to include this clause. In terms of our Joint Committee, full consensus of all our Councils is required but, based on almost ten years of practical experience is subject to review as part of the development of a new Constitution for the new Council Structures. Applying a mandatory Qualified Majority clause would restrict our flexibility to produce an updated Constitution to meet the needs of the new organisation post 2015.

#### **Part 8 - Access to Meetings and Documents**

46(6) - as outlined above in Part 6, arc21 would suggest that members of the public, including the media, be required to request in writing should they wish to attend meetings, primarily for practical reasons.

47 - Provision should be made to enable Non Council Committees i.e. Joint Committees, to be exempt from making reports open to inspection to the public at least 5 days in advance of meetings. In our experience it would not be practical to do so, particularly given the nature of one of our main activities, public procurement, which often involves the collation of information which is received within a shorter time scale and includes tabling data at meetings.

50(3)(a) - application to Joint Committees - our comments have been incorporated above in relation to access to meetings and information by the public.

## **Part 9 - Conduct of Councillors**

65- disclosure and registration of councillor's interests – provision should also be made for “conflicts of interest” declarations to be formally made at the commencement of meetings to ensure that the register is kept as up to date as possible.

65(4)(a) - in an environment in which one of the key economic drivers to reform is to enable councils to be more efficient, then this additional expense to publish in one or more newspapers circulating in the district is an unnecessary expense. Councils should be able to publish their Registers on their own websites and other social media without having to incur the cost of advertising.

## **Part 10 - Community Planning**

arc21 is generally supportive of Councils being empowered with Community Planning in order that local needs can be considered and determined more effectively than the current process allows.

However, we agree with the general NILGA response that there is widespread concern within the local government sector that the proposed legislation is not strong enough to compel partners to fully participate, ensuring investment of time and budget by senior decision makers in order to fulfil the identified objectives. Whilst Community Planning is, of course, about building relationships and working together, financial resources will inevitably be required to deliver on the full range of necessary actions. Colleagues in Scotland with longstanding experience of operating a council-led community planning system have identified the omission of **a clear reference to resources as a particular weakness in the Bill.**

Accordingly, we urge that the Bill is strengthened through the insertion of appropriately worded clauses to provide the required reassurance to councils that Partners will have to attend, sending senior officials, and, where may be required, to realign their budgets accordingly. For example, stating that the determination and implementation of a Community Plan requires specified and relevant partners to invest the human and financial resource to achieve a key performance target within the Plan, would be a good approach, and would put plans on a business like footing with the community as custodians, through council, of a local, public purse.

At present, Departments are tucked away under a miscellaneous heading, rather than grouped with Councils and partners who also have duties. The wording of the proposed duties of Departments needs strengthening to ensure that all parties relevant to the success of Community Planning have strong obligations placed upon them.

It is considered vital to the success of the community planning process that partners are compelled to attend relevant meetings, and align plans and budgets to the community plan, but there is no indication that the forthcoming order will be any more than a specified list of organisations. This is why NILGA asserts that the wording must emphasise the need for human and financial resource investment in a community plan. The success of this key initiative will be dependent upon the sum of the parts. The Bill must therefore offer no ability for partners to avoid their responsibilities or, worse still, suggest that such responsibilities and costs could be borne by others.

### **Part 11- General Power of Councils**

arc21 is generally supportive of the provisions set out in this Part.

### **Part 12 - Performance Improvement**

In general arc21 supports the thrust of this Part but would urge the Committee to adopt a flexible approach to enable local government bodies to better address performance issues on a local or Joint Committee area basis. Also, caution is recommended regarding the role of the Local Government Auditor as the proposals would appear to have the potential to undermine the democratic process.

88(1) - Improvement Objectives – It is recommended that these be set out in a Corporate plan extending over a longer period, at least 3 years, rather than one year as proposed. Also provision could be made for regular Performance Reports against the Corporate plan to be required (say on an annual basis as set out in 95(2)(a)).

95(3)(a) - Given the focus of the Local Government Auditor in finalising the annual statutory accounts information for Councils by 31 October, it is suggested that the performance information be required to be published after this date – say by 30 November, particularly given the LGA requirements set out in Clause 100 – Annual Improvement Reports.

### **Part 13 - Partnership Panel**

arc21 is generally supportive of the provisions set out in this Part.

### **Part 14 - Control of Councils by Northern Ireland Departments**

It is suggested that these provisions are co-ordinated through one Government Department in order to prevent, for example, a similar issue being sought by more than one Government Department at the same time. Also, arc21 is of the opinion that the Clauses in this Part appear to be more prescriptive leaving little room for consultation and co-operation between both parties.

## **Part 15 - Amendment of the 2005 Order**

arc21 is generally supportive of the provisions set out in this Part.

## **Part 16 - Miscellaneous**

arc21 is generally supportive of the provisions set out in this Part.

In particular, arc21 would like to ask the Committee to consider the position of local government bodies such as arc21 in relation to **Clause 121 - Schemes for transfers of assets and liabilities**. In order to better manage the smooth transition of a Body Corporate, such as arc21, it is important that the assets remain intact in support of the confirmation that its contractual liabilities, will continue to be met, up to and beyond the period of transition.

## **Schedules**

arc21 is generally supportive of the provisions set out in this Part.

In particular, in respect of Schedule 7 - Meetings and Proceedings:

1(1) - it is suggested that Councils take into account the need for continuity in membership of Councillors serving on Joint Committees and therefore are empowered to nominate Councillors to serve for more than one year. In our experience, the introduction of new blood is important but we need to have a balance of longer serving Members and new Members given the capacity building that is acquired , in dealing with often highly complex technical matters, over a time span which exceeds one year. Continuity, in this regard, is important to the effective delivery of our services.

In particular, in respect of Schedule 10 - Transfer Schemes :

arc21 would recommend that the comments set out in Part 16 above be taken into account.

## **Explanatory and Financial Memorandum**

arc21 is generally supportive of the provisions set out in this Part but would ask the Committee to take into account our comments in each of the Parts of the Bill, as set out above.

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**11 November 2013**