



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Clean Neighbourhoods and Environment
Bill: Departmental Briefing**

30 September 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Roy Beggs
Mr Trevor Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Mr Robert Gray)
Mr Jackie Lambe) Department of the Environment
Mr Denis McMahan)

The Chairperson (Mr Boylan):

I welcome Denis McMahan and Robert Gray.

Mr Denis McMahan (Department of the Environment):

We have another colleague joining us. I thank the Committee for the opportunity to speak about the Bill. We have been receiving a lot of feedback, and it was interesting to hear the research briefing

refer to some of the responses, which we have also been picking up on as we have been going through the process.

The Bill is a high priority for the Minister. One issue about detail is that, in order to move as quickly as possible, we are doing as much as possible in parallel. Therefore, we are trying to move the primary legislation and the subordinate legislation at the same time. However, we cannot go out to consultation until we know exactly where we are with the primary legislation.

With your permission, Chair, Robert will take the Committee through the main sections of the Bill and give members a chance to raise issues.

Mr Robert Gray (Department of the Environment):

As I am sure members are aware, this is a large and complex Bill. It has 76 clauses and four schedules, and it is intended to strengthen the powers of district councils to enable them to deal more effectively with a wide range of what we would call low-level environmental crime issues and, in so doing, to help to improve the quality of life for everyone in Northern Ireland.

I say that it is a complex Bill, because, although many of the issues dealt with by the Bill sound straightforward and non-technical, they are given effect by having to make detailed amendments to numerous pieces of existing law. To fully understand those parts of the Bill, it is necessary to have an understanding and sight of the law that is being amended. Other parts of the Bill are stand-alone provisions: for example, chapter 1 of Part 6 that deals with audible intruder alarms; Part 7 that deals with statutory nuisances; and Part 5 that deals with dogs. Those Parts do not amend existing law and are, perhaps, easier for the reader to follow.

Following on from some comments that were made earlier, I want to make the point that the Bill is, essentially, an important first step in the Department's clean neighbourhoods agenda programme. Key interests, who will mainly be district councils, will welcome the fact that the Department intends to follow up the Bill with an extensive subordinate legislation programme, together with a series of supporting guidance documents that cover all the various issues dealt with in the Bill. That additional information will inform district councils about the new legislation in much greater detail. We have identified a need to produce 11 substantive sets of statutory rules when the Bill becomes law, together with two codes of practice and 14 separate guidance documents. The Department will have to consult on all that material in due course.

The Bill is divided into eight distinct Parts. I will briefly run through each Part's main provisions. Part 1, which deals with gating orders, gives district councils new powers to deal with alleyways that

are affected by antisocial behaviour. Part 2 concerns vehicles. It gives district councils the power to remove abandoned cars from streets immediately. It also creates two new offences to help district councils to deal with nuisance parking. Those apply when a business offers for sale two or more vehicles and has them parked on the street or road, or when a vehicle is being repaired on a road as part of a business.

Part 3 deals with litter. It makes a number of detailed amendments to the Litter (Northern Ireland) Order 1994. It amends the offence of dropping litter in a lake, pond or watercourse. It gives district councils new powers to issue litter clearing notices to require businesses and individuals to clear litter from their land. It strengthens the existing powers of district councils to require local businesses to help to clear up litter that they generate. It enables district councils to restrict the distribution of flyers, handouts and pamphlets — free literature that can end up as litter. That Part of the Bill also contains provisions to deal with abandoned shopping trolleys. It gives district councils the power to recover the cost of dealing with such trolleys from their owners.

Part 4 concerns graffiti and other defacement. It enables district councils to serve defacement removal notices that require the removal of graffiti and fly-posters. It gives district councils the power to tackle the sale of spray paints to children. It strengthens existing legislation to make it harder for the beneficiaries of fly-posting to evade prosecution.

Part 5 deals with dogs. The main point to make about Part 5 is that we are aiming to replace the existing dog by-laws system with a new simplified system that enables district councils to deal with fouling by dogs; to ban dogs from designated areas; to require that dogs be kept on a lead; and to restrict the number of dogs that can be walked by one person.

Part 6 deals with noise. It gives district councils powers to deal with burglar alarms and to impose fixed penalty fines on licensed premises that ignore warnings to reduce excessive noise. Generally, it creates greater flexibility in dealing with noise nuisance. Part 7 concerns statutory nuisances. Existing law on statutory nuisances is archaic. It is over 130 years old. The Bill restates and updates the law. It brings it into line with that which applies in England and Wales. Part 8 contains miscellaneous and supplementary provisions, the most important of which is that it increases the maximum fine and summary conviction that may be provided for in regulations that are made under pollution prevention and control provisions.

Throughout the Bill, much greater use is made of fixed penalty notices as an alternative to prosecution. That theme runs throughout the Bill. District councils are given the power to retain the money that they receive from fixed penalties. In most cases, they are given the flexibility to set their

own rates, subject to upper and lower levels.

The future detailed clause-by-clause analysis of the Bill will give members the opportunity to explore the wide range of issues covered by the Bill in much more detail. We look forward to engaging with the Committee on those matters over the coming months.

The Chairperson:

Thank you very much for your presentation. This Committee scrutinised the Bill that led to the Taxis Act 2008. The subsequent roll-out of all its subordinate legislation took a long time. Will that happen in this case? We do not want to get to a point where it takes two years to roll out the subordinate legislation for this Bill. With respect to the issue of dogs, it was commented that it takes time to make by-laws under the current system. Are we saying that this legislation will start to roll out fairly quickly? Are we using that as an example?

Mr Gray:

As Denis said, we have been working on the subordinate legislation and guidance programme in parallel with taking this Bill forward. We have a team that is preparing draft documents. We cannot consult on those, because the Bill might change during the Committee process. However, we will have those documents ready to go to consultation as soon as possible after the Bill becomes law. There will not be a long, drawn-out period of two or three years for the roll-out, because we already have that work prepared.

The Chairperson:

I will not mention cars, the use of cars, or cars on pavements. We are not getting into that. *[Laughter.]*

Will you expand a bit on the subject of children and fixed penalty notices, which was touched on in the briefing paper? What are the proposals?

Mr Gray:

Our remit with this Bill was to bring Northern Ireland into line with improvements brought about in this type of legislation in England and Wales — the Clean Neighbourhoods and Environment Act 2005 and antisocial behaviour legislation. We will be bringing forward guidance on issuing fixed penalty notices to juveniles. That will make it very clear that councils need to think very carefully before issuing such notices to juveniles. A lot of issues have to be considered. That guidance will be subject to full consultation. The Bill is a skeleton, in a way, and a lot of it will be fleshed out. There will be specific guidance.

Mr McMahon:

The paper also touched on the importance of common sense in the application of the legislation. I heard that said in the previous discussions. There are variations from council to council in how the previous legislation was applied and how effective it was, which shows that, if the right approach is taken, it can lead to the right results.

The Chairperson:

I agree, and I hope that there is a common sense element to it all. However, that needs to be prepared now, as opposed to later on. I have another question, but Mr Weir wants to ask his.

Mr Weir:

Gentlemen, thank you for your presentation. We all welcome the general thrust of the Clean Neighbourhoods and Environment Bill. However, there is a massive amount of meat in it. You have been working on it, and I am sure that you will acknowledge that it is important that we get the detail right.

I want to ask about two issues. First, this is meant to be cost neutral from a council's point of view. On a range of issues such as fly-posting, you have mentioned that the cost of enforcement will be recouped through fixed penalty notices and so on. Where is the cost neutrality for councils in relation to alley-gating? What opportunity do councils have to recoup money from that? Will it not just be a drain on council resources?

Mr Gray:

The first point that I need to make is that alley-gating is a Department for Regional Development (DRD) responsibility. We are carrying that provision in this Bill on behalf of DRD. As I understand it, an alley-gating scheme will be introduced in a particular area only after extensive consultation with the residents of that area. The introduction of an alley-gating scheme will reduce costs, as the problems that are caused in that alleyway by littering and so on will be reduced. It will be up to a council to decide whether it wants to bring forward an alley-gating scheme. In making that decision, the council will have to take into account the costs involved. That is one of the issues to be considered.

Mr Weir:

I am somewhat sceptical about that. With respect, it sounds a bit as though DRD is asking you to take a teddy bear through customs. Clearly, there will be a small saving on littering costs. However, we heard in the research briefing that, according to Belfast City Council, gating is quite expensive. Although there may be social benefits to be had from alley-gating, there is no way that I can see

councils recovering the costs. I appreciate what has been said about it being a matter for councils to decide in consultation with residents. However, I am concerned that an expectation will be created among residents that it is an instant solution to a range of things, which will then end up costing a large amount of money without any way of recouping the cost. That may be more of a comment than a question. I am cautious about the cost.

Secondly, anyone who has had experience of any issue involving dogs, through their council or elsewhere, will know the massive emotional problems involved. I know that the idea is to have a degree of read across with what exists in England. However, the Kennel Club believes that, although it could accept various elements, a slightly more nuanced approach may be needed for Northern Ireland. For example, the number of dogs that may be walked by one person is not so much of an issue in Northern Ireland. With regard to the changes to finesse the legislation that the Kennel Club has suggested, has the Department met representatives from the Kennel Club and considered changing what it has put forward to take account of the genuine points that have been made by responsible dog owners?

Mr Gray:

The Kennel Club met the Minister and officials in the past few weeks. It was reassured by the fact that a lot of the detail concerning dog control orders will be subject to subordinate legislation and accompanying guidance. The Kennel Club was happy that it would have the opportunity to comment on that. It was almost coming to us a bit too soon, because the issues that concern the Kennel Club will be the issues for the subordinate legislation and the guidance. The guidance documents are likely to throw up more issues than the Bill, because they go into a lot of detail. Councils will have to decide on the number of dogs walked on a lead. They will take into account the benefit of the experience in their own areas and may decide on two, three or four dogs on a lead. It will all be subject to local considerations by the councils.

Mr Beggs:

I welcome the thrust of the Bill. We all have to look at the details. Nevertheless, it looks quite positive to date.

My question relates to the wide-ranging additional powers and responsibilities that will fall on local government, and I declare an interest as a councillor. What has been the experience elsewhere in adopting those powers? The additional responsibility could incur additional man-hours and costs. At the same time, however, there will be a much more efficient means of dealing with the situation, particularly through the method of issuing fixed penalties rather than going straight to court. I was involved in a case that included eight police officers, two council officers and a barrister, all of whom

were paid for a full day in court, only to have to come back a few months later to do the same at the Court of Appeal. Then, the defendant, who, of course, had legal aid, dismissed his barristers, so we all had to come back a third time a few months later — all at public expense. That was a blatant case in which some 90 vehicles had been disposed of in a public area. It is essential that there is a means more efficient than anti-social behaviour orders (ASBOs) to deal with problems such as that.

What has been the experience elsewhere? Is it generally considered to be cost neutral or are there additional burdens on councils? It is essential that we take this route to enable communities and environments to be improved.

Mr Gray:

We have found it difficult to obtain evidence of experience elsewhere. That is probably because there are so many local authorities in England and Wales to which those powers have been given. There is no central source of evidence. In the Cleanliness National Indicator, the DEFRA Minister stated that, some five years after the introduction of the Clean Neighbourhoods and Environment Act 2005, there have been significant improvements in dealing with litter and so on. However, there has been nothing more than that. There is evidence of an increase in the number of fixed penalty notices issued by local authorities in England and Wales following the legislation's introduction. Apart from that, no study or evaluation is available on the effectiveness of the Clean Neighbourhoods and Environment Act 2005. It has not happened yet.

Mr Beggs:

Do you believe that issues are tackled at an earlier stage because of fixed penalty notices, which are a lower-level deterrent, rather than having to wait until a large amount of evidence has been gathered in order to go to court? Can problems be nipped in the bud earlier?

Mr McMahon:

There is no doubt that there is variation between councils in England in respect of fixed penalty notices. As recently as about three weeks ago, a programme was shown on UTV that looked at that issue in England. I am struggling to remember its title. A range of councils were applying fixed penalty notices quite vigorously. Anecdotally, they said that those powers were a useful way to ensure that the problem was being addressed. Others found it more difficult and said that it was too costly. There is tremendous variation.

I return to Robert's point. There is not a straightforward, objective, central database that shows how many orders have been applied, how much that cost, and the quantified benefits. Unfortunately, we do not have that.

Mr Gray:

It is up to the various councils to decide whether they want to use those powers. We are not imposing a duty. We are imposing discretionary powers on councils for them to choose to use as they see fit based on the circumstances in their areas.

The Chairperson:

Obviously, we encourage all of that. However, you do not want those powers to be misused. If fixed penalties are issued, it must be for good reason. We need to try to find out some information on how other councils are operating.

Mr Kinahan:

Thank you for your presentation. The point has been made that when it comes to noise nuisance, the Bill is aimed at urban, rather than rural, areas. Are you looking at any way of dealing with rural noise? Will any of the guidance explain how nuisance noise is measured and clarify how to deal with it?

Mr Jackie Lambe (Department of the Environment):

The new provisions apply to noise across the board. Noise that is created in a rural area will be treated in exactly the same way as noise that is created in an urban area. There will be no reference in the legislation to noise from specific locations other than from certain premises or in the streets.

Mr Kinahan:

How will noise be measured? There are problems with regard to measurement. Will any guidance be provided on that?

Mr Gray:

The Department has just made legislation on permitted noise levels.

Mr Lambe:

The specific permitted levels of noise at night are governed by the Noise Act 1996. The Department, with effect from 8 July this year, significantly reduced the thresholds below those that exist in England and Wales to address concerns put to us by Belfast City Council. I think that we are now on a par with the noise levels that apply in Scotland.

Mr Dallat:

My teddy bear is in the roof space and is staying there, unless things change badly.

Mr Weir:

Did you get it through customs?

The Chairperson:

It all depends what is in the teddy bear.

Mr Dallat:

I have two questions. Alley-gating is already done successfully in certain places in the North. However, a disabled person in Coleraine brought a case to the Equality Commission, and there was an out-of-court settlement. Is there provision in the Bill to ensure that people with disabilities are not restricted unnecessarily?

Mr Gray:

DRD has advised us that, if there are proposals for an alley-gating scheme to be introduced in an area, they must undergo a thorough section 75 equality screening exercise, which would cover that issue.

Mr Dallat:

My second question is about fly-posting, which is epidemic. Does the Bill clearly identify the culprit? Is it the organiser or the premises in which the event takes place?

Mr Gray:

The Bill tries to tackle all those issues. It enables a council to issue an on-the-spot fine to the person affixing the poster if they are caught in the act.

Mr Dallat:

That is not easy at 2.00 am.

Mr Gray:

It is also bringing forward a provision that makes it much more difficult for the beneficiary of the fly-posting to escape prosecution. In response to the negative feedback that the Department received about Part 4 of the Bill on graffiti and fly-posting, we are looking at ways to strengthen those provisions even further to help district councils to take forward prosecutions. We are undertaking that work at the moment and will bring it to the Committee in due course.

Mr Dallat:

That is welcome news. That aspect has to be crystal clear if the legislation is to be worth the paper that it is printed on. I know of no area that has not been systematically destroyed. It is soul

destroying for local councils to clear up bus shelters and other places only to find posters back up the next day.

The Chairperson:

I take Mr Dallat's valid point. At the opposite end, however, we have to look at small business advertising.

Mr Dallat:

That is a valid point, and I would certainly not want to cease small business printing. Does the Bill provide for posters that are, say, put on sticks and stuck in the ground, and which are very much temporary, rather than pasted on to public property?

Mr Gray:

It provides for placards or posters. It depends whether they are viewed as defacing the amenity of the area and so on. It would depend on the circumstances of each case.

Mr Dallat:

I am glad that the Chairperson brought up that point, because the Planning Service's enforcement division is going around like sniffer dogs, up and down lanes trying to find those things, and it certainly does not deliver a balanced view of what is genuine promotion of a small business and what is vandalism, really.

Mr Gray:

We are primarily interested in fly-posters rather than the bigger sort of advertisement, which is a matter for the Planning Service to deal with under existing law.

Mr B Wilson:

I declare an interest as a local councillor. The Bill is obviously very welcome, because we have been waiting for a lot of the things in it for years. One issue that has caused considerable concern over the past few years is that of houses — for example, in a housing estate — that have been allowed to become derelict. Such houses attract a lot of graffiti and have grass overgrowing. People start dumping stuff in the garden and all that sort of thing. The consultation summary refers to:

“powers for district councils to deal with any element of land/premises considered to be detrimental of the amenity of an area”.

Our environmental health officers have tried in many ways to get something done on those issues, but we cannot do so with the present legislation. Is there anything in the proposed legislation that will

help us?

Mr Gray:

Yes, there is. The Bill deals with litter in the gardens of unoccupied houses. Neglected areas of land, such as gardens of unoccupied houses, can attract a lot of litter. Under the present legislation, district councils can designate areas of land as litter control areas, and the occupier of certain types of land within a litter control area has a duty to clear the land of litter. If that person fails to do so, the council has to serve a litter abatement notice requiring the occupier to clear the land. That current system is complicated, particularly in the circumstances that you just described, and we understand that little use is made of it because it is not very effective. The Bill replaces that system with a much simpler one. District councils will be given the power to issue those notices, and they will require the occupier or, if there is none, the owner to clear the land of litter within a notice period of not less than 28 days. If the person fails to do so, it will be a criminal offence, and councils will then have the power to issue a fixed penalty notice in lieu of prosecution. Where the person fails to remove the litter, the council can do so and then recover the cost.

Mr B Wilson:

Is there anything that we can do to stop somebody letting a house become derelict and fall apart? I know of a house that fell apart over 20 years, and the next door neighbour could do absolutely nothing about it.

Mr Lambe:

I would have thought that there were powers under existing environmental health legislation.

Mr B Wilson:

Our environmental health officers took the person involved to court two or three times, and they could do nothing.

Mr Gray:

There is a statutory nuisance ...

[The next five minutes of proceedings were not recorded due to technical difficulties.]

Mr Gray:

There are no powers of prosecution in the Bill. As I said, the aim of the defacement removal notices is to encourage the owners of what is called in the Bill “street furniture”, which includes walls, buildings and so on, to keep the streets free from litter and defacement. That is what we are trying to

do.

[The next minute of proceedings was not recorded due to technical difficulties.]

Mr McGlone:

... I am not saying that that person is entirely innocent in every case. However, it is usually someone who does not have a clue who is doing the defacement. I am sure that you could take me to more than enough locations throughout Belfast where that is being done. Although prosecution powers are not there, you do have enabling powers for the council to go ahead and do it and then to slap the person with the bill for that.

Mr Gray:

That is the sort of issue that will need to be fleshed out in the guidance on how the system of defacement removal notices will operate, which will guide district councils on such issues. The guidance will be subject to full consultation.

Mr McMahon:

That guidance will need to reflect the key principle that it is about ensuring that the person who is responsible pays and not *[Inaudible.]*.

Mr Beggs:

Does the Bill enable the innocent party to recoup the cost of removal from those who have benefitted from the advertising? It is very difficult to get evidence of who puts up a poster in the middle of the night, because all that remains is an advertisement for a disco or a dance. The premises and the DJ or group who organise the event will benefit, but, presently, it is very difficult to take civil action against them. Therefore, does the Bill allow for the cost of removing fly-posting to be passed on to the beneficiaries of the advertising? That would be a simpler route to recouping costs.

Mr Gray:

I will come back to you on that one in writing. It is the first question that I have not been able to answer. There were so many issues, but I will check on that one and get back to you.

The Chairperson:

Thank you very much, gentlemen. No doubt we will see you again in the coming months.