



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Clean Neighbourhoods and Environment
Bill**

25 November 2010

NORTHERN IRELAND ASSEMBLY

**COMMITTEE FOR THE
ENVIRONMENT**

Clean Neighbourhoods and Environment Bill

25 November 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Thomas Buchanan
Mr Trevor Clarke
Mr Willie Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Alastair Ross
Mr George Savage
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Ms Hazel Bleeks)
Mr Robert Gray) Department of the Environment
Mr Jackie Lambe)

The Chairperson (Mr Boylan):

I welcome Robert Gray, Hazel Bleeks and Jackie Lambe from the environmental policy division in the Department of the Environment. We will start with clause 2, which is about exposing vehicles for sale on a road. I remind members that the clause was generally welcomed but

clarification was sought on the following points: the potential confusion between the new powers and those in the Street Trading (NI) Act 2001; potential loopholes in proposals, such as parking cars that are for sale far apart; the lack of prescribed periods for objections to removals and disposals; the length of notice periods for removal and disposal — some suggested that seven days is sufficient; powers to recover costs of removal, storage and disposal; the inclusion of caravans in the definition of a vehicle; and selling a car on private property. Who wants to comment on that?

Mr Robert Gray (Department of the Environment):

Should I go through the issues that are raised in the table?

The Chairperson:

Yes, briefly. I will open the session up for members' comments thereafter.

Mr Gray:

Clause 2 is about cars that are sold on the road through commercial businesses. They can cause problems and annoyance and can blight an area. The clause makes it an offence to expose two or more vehicles for sale on a road. The clause will not target individual sellers. Therefore, a person will not be convicted if he or she can prove that they are not acting as part of a business.

Many views were expressed, some of which were observations. We have noted those and, if a clause has been generally welcomed, we have noted that too. The activities may not only be a nuisance to local residents but may take up valuable parking spaces; we also noted that response. Some people mentioned the need to consult on guidance; we will, of course, consult fully on all guidance. The importance of guidance and subordinate legislation came up several times. There will be full consultation on all that.

There was a concern that clause 2 may cause confusion in the enforcement of the Street Trading Act (Northern Ireland) 2001. However, the provision will merely give councils an additional tool to deal with “mock showrooms” where businesses place a car for sale on a street. The Street Trading Act deals with a range of offensives that are more to do with street trading. Clause 2 is primarily designed to deal with nuisance parking and with businesses using streets as mock showrooms. The fixed penalty that may be given for those offences is higher than the fine available under the Street Trading Act. That is our response to the issue. Do members have any comeback on that? It is simply an additional tool to help district councils. If there is a problem, they can choose to use that tool, but it is up to them.

The Chairperson:

Is it up to councils? Is the power there if they wish to use it?

Mr Gray:

Yes, and if they prefer to use the Street Trading Act, they may do so. However, clause 2 addresses the specific issue of nuisance parking.

A couple of points were made about prescribed periods for landowner objections and so on. The positions stated in the relevant part of the table relate to clause 8. I will, therefore, deal with those later when we deal with clause 8. The provision of adequate resources was raised. As we said before, the Department has no plans to provide additional resources for the implementation of the provisions in the Bill.

The point was made that similar powers to recover costs as per article 32 of the Pollution Control and Local Government (Northern Ireland) Order 1978 should be available to councils. However, district councils will still be able to continue to recover the costs of removing, storing and disposing of vehicles. However, that relates more to abandoned vehicles than nuisance

parking. That point has been mixed with the comments and views expressed in the table about the clause. Therefore, those cost recovery powers will still be available to district councils.

It was proposed that the definition of “vehicle” be wide enough to cover abandoned caravans and trailers, but the definition is extensive and already covers caravans. However, that will be made clear in the guidance to avoid any doubt.

We were asked whether there was a difference between “street” and “drive” and whether it may be specified in the legislation that cars may not be sold on a street but may be sold from private property. Clause 2 deals with the sale of two or more motor vehicles parked within 500 m of each other on a “road”. The Street Trading Act defines a “road” as including a public road and any street, carriageway, highway or roadway to which the public has access. Clause 2 is not intended to cover all situations. Existing legislation, such as the Street Trading Act, may still be used where appropriate. There is nothing in the Bill or the street trading legislation to prevent someone from selling a car from their driveway.

Mr W Clarke:

I am happy enough. Most councils will welcome those additional powers. As you say, this is not being forced on the councils; rather, it a useful additional tool. Are we talking about people who park a car for sale at the junction of a road with a “for sale” sign and a contact mobile number in the window?

Ms Hazel Bleeks (Department of the Environment):`

That is one example. It could also cover a situation on a street. A guy close to where I live sells cars that he parks just outside the front of his house. It could also cover a situation that was recently encountered in the Belfast City Council area whereby a car showroom that had cars on the forecourt allowed them to spill out over the forecourt onto the street.

The Chairperson:

Are members content with that explanation, or do we need any more information from the Department? Are members content with the clause?

Members indicated assent.

The Chairperson:

Clause 3 is about repairing vehicles in the road. I remind members again that the clause was generally welcomed but clarification was sought on the detrimental impact on some businesses; the exclusion of cars awaiting repair; and the exclusion of taxis operating from domestic premises. I have fixed the odd car on the side of the road myself.

Mr Gray:

We are not targeting you in this legislation.

The Chairperson:

I would like to think not. *[Laughter.]*

Mr McGlone:

Whom does it target?

Mr Gray:

Cars repaired at the side of the road can take up valuable car-parking spaces, look unsightly and pollute the environment. Clause 3 makes it an offence to carry out restricted works to vehicles on a road as part of a business, for reward or gain, or in a way that gives reasonable cause for annoyance to people nearby. There is an exemption for repairs resulting from a breakdown or

accident provided that they are carried out within 72 hours or such time as a district council authorises.

The Chairperson:

Are members content with the clause?

Members indicated assent.

The Chairperson:

Clause 4 contains the power to give fixed-penalty notices. I remind members that no issues were raised by stakeholders on this clause. However, clause 4(9) provides a power for the Department to substitute a new amount of a fixed-penalty payment as specified in the Bill. The Examiner of Statutory Rules suggests that the power should be subject to the draft affirmative procedure in keeping with other Bills that are going through the Assembly and as amended by the Committee in the Waste and Contaminated Land (Amendment) Bill. Are there any comments on that?

Mr Gray:

Our remit on this Bill was to use Westminster's, Clean Neighbourhoods and Environment Act 2005 as an example. Negative resolution procedures were used for those regulations, and we have no evidence that there has been any problem with that. That is why we have done it. Our parliamentary draftsman was content to draft it in that way.

The Chairperson:

We want consistency. We are following the line of the Waste and Contaminated Land (Amendment) Bill, and we would like draft affirmative procedure for the purpose of scrutiny.

Mr Gray:

Will you put that forward as an amendment?

The Chairperson:

It will be easier for you.

Mr Gray:

We will consider that point.

The Chairperson:

I would like you to consider it, but the Committee would like to see the draft affirmative procedures. Are members content with the clause?

Members indicated assent.

The Chairperson:

Clause 5 is the power to require name and address. No issues were raised on this clause. Are members content with the clause?

Members indicated assent.

The Chairperson:

Clause 6 is the use of fixed penalties. No issues were raised in relation to this clause. Are members content?

Members indicated assent.

The Chairperson:

Clause 7 is the offence of abandoning a vehicle and fixed-penalty notices. I remind members that this clause was generally welcomed with just one respondent suggesting that problems with abandoned vehicles are more significant than those created by vehicles parked on the road that are for sale or being repaired. In addition, clause 7(9) provides a power for the Department to substitute a new amount of fixed-penalty payment as specified in the Bill. As with clause 4, the Examiner of Statutory Rules suggested that the power be subject to draft affirmative procedure in keeping with other Bills. Would members like to comment?

Mr Gray:

It is as before.

The Chairperson:

Are members content with that change?

Members indicated assent.

The Chairperson:

Clause 8 deals with the notice of removal of a vehicle by a district council. I remind members that two concerns were raised on this clause. Both were addressed at clause 2, and they relate to the length of time that is given for the removal of a vehicle and the lack of prescribed periods. I know that you have covered that already.

Mr Gray:

The Department undertakes to prescribe, in regulations, the relevant periods under the Pollution Control and Local Government (Northern Ireland) Order 1978. Those regulations will be consulted on as soon as possible. The Department for Regional Development undertakes to prescribe, in regulations, the relevant periods under the Road Traffic Regulation (Northern

Ireland) Order 1997, and those will also be consulted on as soon as possible.

The Chairperson:

Are members content?

Members indicated assent.

The Chairperson:

Clause 9 covers the disposal of a removed vehicle by a district council. No issues on that were raised.

Are members content with the clause?

Members indicated assent.

The Chairperson:

Clause 10 deals with guidance, and I remind members that no issues were raised.

Are members content?

Members indicated assent.

The Chairperson:

Clause 11 deals with the notice of removal of a vehicle. Again, no issues were raised on this clause.

Are members content?

Members indicated assent.

The Chairperson:

Clause 12 covers the disposal of a vehicle by a police officer. No issues were raised.

Are members content?

Members indicated assent.

The Chairperson:

Clause 13 covers the disposal of a vehicle by the Department. Again, no issues were raised about this clause.

Are members content?

Members indicated assent.

The Chairperson:

Clause 14 deals with the offence of dropping litter in a lake, pond or watercourse. I remind members that two major concerns were raised: first, the definition of litter; and secondly, the assumption that article 3 of the Litter Order 1994 and this clause sufficiently cover all littering offences, including those related to smoking and chewing gum.

Mr Gray:

The Department is satisfied that article 3 of the Litter (Northern Ireland) Order 1994, together with the amendment to that article that clause 14 would make, gives a very comprehensive definition of litter. It covers the dropping of litter in any place, including water. The Department is satisfied that the definition of litter is so robust that it does not require any clarification or amendment. The legislation in England and Wales, on which the Bill is based, did not have a definition of litter. It simply included a definition to say that litter includes chewing gum and smoking-related matter. We have a definition that was drafted before I became involved, but it was obviously drafted with the intention of covering everything. The guidance document that supports the Bill will make it abundantly clear that litter includes cigarettes and chewing gum. However, the Department is satisfied that there is no technical need to amend the definition.

Mr Kinahan:

At the recent litter convention in Craigavon, a man by the name of David Armstrong from Mallard Consultancy said that the definition of litter should include dog fouling. If included, that would provide a stronger means of dealing with dog fouling and would mean that, if an owner allowed the dog to foul the pavement rather than bagging the droppings, a fixed penalty notice could be imposed, and the matter could be dealt with more quickly.

Mr Gray:

It is an offence for a dog to foul. That is a separate offence from a litter offence. I am sorry; it is an offence to permit a dog to foul.

The Chairperson:

Thank you for that clarification — we would have trouble putting that in the Bill.

Mr Gray:

The definition of litter does not include animal droppings. However, regulations were made under the Litter (Northern Ireland) Order 1994 many years ago to make it clear that district councils' duty to clear up litter extends to dog droppings. There is no need for the definition of litter to have a separate inclusion to refer to that.

Mr Kinahan:

You mentioned the guidance that you will send. Will it be included in that?

Mr Gray:

Yes.

The Chairperson:

Are you requesting dog toilets as well, Mr Kinahan?

Mr Dallat:

I thought that the litter was the pups that come after the dog. If a bale wrap, which is the polythene material that farmers use to wrap around their bales, comes down a watercourse and floods half of Portrush, which has happened in the past, is it considered litter?

Mr Gray:

There is litter and there is fly-tipping. A distinction has to be made between when something can be defined as litter and when it becomes more than litter. The guidance document on litter states that a full bin liner is not regarded as litter; that is more serious than dropping a cigarette butt or a piece of wrapping paper. That attracts the more serious levels of fines and so on. I regard that large polythene sheet that you talked about as a waste issue. It could be regarded as litter, but the

purpose of the guidance is to try to differentiate.

Mr Dallat:

The farmer may have been fly-tipping, but what about somebody if was careless and dropped a wrapper, which then went down the watercourse, blocked the pipe and caused a flood?

Mr Gray:

The definition could be interpreted. It says that litter means any refuse, filth, garbage or any other nauseous, offensive or unsightly waste, or any waste that is likely to become nauseous, offensive or unsightly. That could be treated as litter, but is it appropriate to deal with that as litter or as waste? I think that that would be quite a serious matter. However, the debate on this is long and ongoing.

Mr Dallat:

As long as we have the dogs sorted out.

Mr W Clarke:

I do not want to be dogmatic about this, but I want to ask about biodegradable waste. I want to clarify whether it will be an offence to throw down bread for birds and so forth. Some people could constitute that as waste. I imagine that orange peel, banana skins and apple cores would be waste. Obviously, they will decompose.

Mr Gray:

We would regard that as litter.

Mr W Clarke:

Does that include bread and everything?

Mr Gray:

Yes.

Mr W Clarke:

Does that mean that a person who feeds the ducks could be prosecuted? There needs to be clarity on that. If someone brings their child to the council park and they feed the ducks, could they get prosecuted?

Mr McGlone:

Did you ask whether the ducks could get prosecuted?

Mr Weir:

They would be the witnesses.

Mr W Clarke:

There needs to be clarity on the matter. There may need to be an amendment about that.

Mr Gray:

If the dogs ate up everything, and there was not a trace of anything left on the ground, I think that the council officer would have to use a reasonable approach.

The Chairperson:

If the dogs ate up everything, there would be consequences later.

Mr Weir:

That would not be litter, however.

The Chairperson:

It is a very valid point, Mr Clarke.

Mr Weir:

Common sense will apply. Ultimately, people will have a degree of discretion in how that provision will be used. What about a piece of bread that is thrown to a duck? I have seen people chuck a sandwich on the ground, because they do not like it. That would mean that they have created litter.

Mr W Clarke:

From a moral point of view, I would prefer to give the bread to an animal than to throw it into a waste bin. Please clarify that and come back to us. Will such a common-sense approach be in the guidance?

The Chairperson:

Thank you for livening up the meeting after the hour and a half that was spent on the Local Government (Finance) Bill.

Mr Buchanan:

Common sense is very uncommon today.

Mr W Clarke:

A Hitler of an enforcement officer will be prosecuting everybody.

The Chairperson:

Will there be a different level of fine, depending on the colour of the bread?

Mr Weir:

That would not pass section 75.

The Chairperson:

Clause 15 deals with the penalty for failing to provide a name. Three issues were raised about the clause. Several councils suggested that it would be better to introduce fixed penalty notices for people who give false information about their name and address when being questioned for litter offences, as the courts did not give weight to the issue. One group suggested that such a penalty should be applied under all the relevant enforcement powers in the Bill. The youth groups opposed the notion that it should be an offence to give an inaccurate name and address.

Mr Gray:

Clause 15 empowers a district council officer to require someone to whom he proposes to give a fixed penalty notice to give his name and address, and it makes the failure to do so or the giving of an inaccurate name and address, when demanded, an offence. The Northern Ireland Local Government Association (NILGA) welcomed the first point, which was the councils' comment.

We talked about the second point yesterday in the office. It has been said that it would be quicker and cheaper to introduce fixed penalty notices for giving false information about a name and address when questioned for a litter offence than to bring it to court. I am trying to think that through in practice. If a litter warden tells an individual that he is going to issue him with a fixed penalty notice because he saw him dropping litter, and the person fails to give him his name and address, the litter warden now has the ability to say that that is an offence. This is primarily of a deterrent value. If the person still refuses to give the name and address, how can you issue him with a fixed penalty notice? There is no name and address.

Mr McGlone:

They could give the wrong name and address.

Mr Gray:

The clause would primarily be a tool with a deterrent value to give the litter warden's requirement added weight. He can now say that it is an offence not to give a name and address or to give an inaccurate name and address.

Mr Weir:

I agree with what is being said, and I think that it is right that someone should be liable to the law. You are proposing that anybody who does not give a name and address or who gives a false name and address will be subject to a fine in court. How will you bring them to court, if they have given a false name and address? There was a famous case in the South, where it was thought that there was a serial road traffic offender, but then a clever cop in the gardaí realised that 47 Polish drivers had given the Polish word for driving licence. That was taken down as the name of the person. If you do not have a name and address, or if you give something such as "Mickey Mouse c/o Disneyland", how do you realistically take that person to court? You will not know who the person is.

I am not saying that there should not be something in the Bill about that, because I think that there is some deterrent value in it. From a practical point of view, however, how will it be enforced? Will it be cost-effective to enforce, given that tracing would have to be done to get somebody to court for the sake of a £20 fine, for instance?

Mr Gray:

There is already a general information-gathering power in the Litter Order. Obviously, under that Order, councils have been able to issue fixed penalty fines for litter offences since 1994. It allows councils to obtain information, and there is no restriction on that. It can be done under the heading of any other functions. If, for example, a council officer were to see litter being thrown from a vehicle, they could take a note of the car registration number and obtain the person's details that way. I accept that this is not easy and that there will be circumstances where the power will primarily have a deterrent value. In some cases, if someone were to refuse point-blank to give a name and address, the council officer could not arrest the person or anything like that, so that is a difficult one.

Mr Jackie Lambe (Department of the Environment):

The power to take a person to court has been available to councils for a number of years. We all accept that practical difficulties, as well as costs, are involved in doing so. However, at the end of the day, quite often a rather lenient fine is imposed. The provision for introducing fixed penalties is an alternative way of allowing councils to deal with offenders. Councils still have the ability to take a person to court, but there are significant difficulties with obtaining sufficient information to do so. It is a matter of judgement for councils as to whether they feel that the costs of taking court action are justified.

Mr Gray:

We are referring to low-level environmental offences, and the legislation is framed proportionately to deal with them. However, I accept that there will be circumstances when

people refuse to co-operate.

Mr Dallat:

I know what is meant by the term “low level”, but, when it is all multiplied, the cost runs to hundreds of millions of pounds for every council. I am not sure whether you have watched any documentaries on how different countries have tackled litter, but those that have been the most successful are those that have imposed draconian fines. People then begin to realise that tackling litter is a serious business that costs the country a lot of money. I know that we have to do it and that it is not a reflection on you, but we are discussing fines of £75 when no one who I know takes seriously the threat of such a fine, particularly when they can give a false name and walk away anyway. It is a waste of space, and I believe that is why the environment is in such a state.

Mr Kinahan:

Can we not put something in the Bill to say that people have to go to the council to give their name and address, with verification, within a particular time period if there is some doubt about their name and address? I do not know whether that is possible from a legal point of view.

Mr Gray:

How could you force someone to go to the council?

Mr Kinahan:

If they refused, they would have to pay a fixed fine.

Ms Bleeks:

If a person who had been stopped by council officer were to give a false name and address, the council officer might have some doubt about it and say that the person had to report with proof of

their name and address. However, that person could disappear, and the council would be left with only the false name and address.

Mr Kinahan:

The council officer would know what the person looked like. We need to find some mechanism that makes it possible to enforce, or else it needs to be linked to the police.

Mr Dallat:

You cannot demand ID.

The Chairperson:

Is there no way of giving more powers to wardens? Perhaps we can get a bit of research on what happens in other jurisdictions.

Mr Gray:

The Bill follows the approach that is taken in England and Wales.

The Chairperson:

I can imagine Willie Clarke giving Trevor Clarke's name to get out of it.

Mr Weir:

In either case, the accent might give it away.

Mr Gray:

It is still a fact that over 3,500 fixed penalty notices were issued last year. Therefore, councils are able to point to the deterrent value of such notices. They are used primarily as a deterrent. I was at a meeting last week in London where there was a talk about litter from chewing gum and a survey on how best to deal with that. One of the issues that came out of that survey was that, in all the regions in England where it was carried out, not one fixed penalty notice was issued by any local authority for a chewing gum offence because they are too hard to detect. Someone can spit out chewing gum, and no one will notice.

The Chairperson:

That would mean that half the population would be fined.

Mr Gray:

The councils are relying on the deterrent value of a poster campaign that refers to an £80 fine.

Mr Dallat:

Does that mean that the council will fly-post to tell people not to put chewing gum on the ground? That is what happens.

Mr McGlone:

It is a sticky one.

Mr Weir:

I was about to make that same pun. I appreciate what has been said, and, in one sense, it may be less a direct question of legislation. However, although it might not be possible to answer the question today, we need to find out whether the Department can do any research on whether local

authorities elsewhere have used best practice forms of methodology or better methodology to ensure that culprits are caught or, at least, fined. If a system has worked elsewhere, there may be some practical lessons to learn. That may not be done through legislation; it may be done through action.

Mr Gray:

The issue of guidance comes up all the time. A comprehensive guidance document will be prepared that covers the practicalities of the enforcement of issuing fixed penalty notices. That is perhaps the time to get into that issue in detail. We will have to consult on that specifically, and that is when we will hear all the ideas on and practical examples of how best to enforce this provision.

The Chairperson:

First and foremost, we need stronger powers to deal with the issue than those that are available to us.

I will wrap the session up now, as I am conscious of time constraints. We will leave it at that and come back to this subject. Thank you very much.