

Committee for the Environment

Report on
the Clean Neighbourhoods and Environment Bill
(NIA 31/09)

Together with the Minutes of Proceedings, Minutes of Evidence and
Written Submissions Relating to the Report

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Session 2010/2011

Fourth Report

Membership and Powers

The Committee for the Environment is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

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- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister of the Environment

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5. The membership of the Committee since 9 May 2007 has been as follows:

Mr Cathal Boylan (Chairperson) 9
Mr Thomas Buchanan 7, 8, 13
Mr Trevor Clarke 15
Mr Willie Clarke 14
Mr John Dallat 5
Mr Danny Kinahan 3, 4
Mr Patsy McGlone (Deputy Chairperson) 6, 9, 10, 12
Mr Alastair Ross 1
Mr George Savage 2, 16
Mr Peter Weir
Mr Brian Wilson 11

- 1 On 21 January 2008, Alastair Ross was appointed as a Member and Mr Alex Maskey ceased to be a Member.
- 2 On 15 September 2008 Mr Roy Beggs replaced Mr Sam Gardiner.
- 3 On 29 September 2008 Mr David McClarty replaced Mr Billy Armstrong.
- 4 On 22 June 2009 Mr Danny Kinahan replaced Mr David McClarty.
- 5 On 29 June 2009 Mr John Dallat replaced Mr Tommy Gallagher.
- 6 On 3 July 2009 Mrs Dolores Kelly replaced Mr Patsy McGlone as Chairperson.
- 7 On 14 September 2009 Mr Adrian McQuillan replaced Mr Trevor Clarke.
- 8 On 1 February 2010 Jonathan Bell replaced Mr Adrian McQuillan.
- 9 On 12 April 2010 Mr Cathal Boylan was appointed as Chairperson and Mrs Dolores Kelly ceased to be a Member.
- 10 On 12 April 2010 Mr Dominic Bradley was appointed as Deputy Chairperson.
- 11 On 13 April 2010 Mr Brian Wilson was appointed as a Member and Mr David Ford ceased to be a Member.
- 12 On 21 May 2010 Mr Patsy McGlone replaced Mr Dominic Bradley as Deputy Chairperson
- 13 On 13th September 2010 Mr Thomas Buchanan replaced Mr Jonathan Bell
- 14 On 13th September 2010 Mr Willie Clarke replaced Mr Daithi McKay
- 15 On 13th September 2010 Mr Trevor Clarke replaced Mr Ian McCrea
- 16 On 1 November 2010 Mr George Savage replaced Mr Roy Beggs

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Executive Summary

Purpose

1. This report sets out the Committee for the Environment's consideration of the Clean Neighbourhoods and Environment Bill.
2. Members sought a balanced range of views as part of their deliberations on the Clean Neighbourhoods and Environment Bill and requested evidence from interested organisations and individuals as well as from the DOE.
3. The Committee made eight recommendations in relation to the Bill and the Department agreed to amend three clauses to address some of these. In addition the Committee accepted the advice of the Examiner of Statutory Rules relating to seven powers in the Bill which allow the Department to make orders to alter the amount of a Fixed Penalty Notice. The Department agreed to amend these in accordance with the Committee's recommendation.
4. Although the Committee was broadly supportive of the Bill and agreed the large majority of the clauses without dissent, a number of key issues were identified which are highlighted below.

Key Issues

- Delegated powers of the Bill
- Fixed penalty notices
- Gating orders

- Parking 2 or more motor vehicles on the road side for sale within 500 metres of each other
- Repairing vehicles on a road
- Prescribed periods for landowner objections
- Definition of litter
- Penalty for failing to provide name
- Fixed penalty notices for litter
- Notice period for clearing litter
- Exemption of Crown Land
- Legislation for unsightly and unkempt gardens
- Street litter
- Free distribution of printed matter
- Fly-posting
- Flags and emblems
- Maximum number of dogs on leads
- Exclusion of private land from Dog Control Orders
- Delineating between responsibilities of local authorities and the PSNI
- Differentiating between intruder alarms and smoke alarms
- Informing of alarm designation areas and their withdrawal
- Obtaining details of key holders
- Powers of entry
- Liability for damage caused to alarms by councils
- Noise from illegal motor sports tracks
- Silting up of water courses
- Including pigeons as a statutory nuisance
- Definition of 'owner'
- Vacant land
- Guidance
- Phased implementation
- Cost of the Bill
- Overcrowding
- Child Poverty
- Multi-agency approach
- Anti-social behaviour orders
- Rural proofing

Delegated powers of the Bill

5. In relation to concerns about seven powers in the Bill which relate to altering fixed penalty payments the Committee agreed with the Examiner of Statutory Rules that these should be subject to draft affirmative procedure and the Department agreed to make these amendments.

Fixed penalty notices

6. A suggestion was made that incentives to encourage payment within a shorter timeframe should be in the Bill. The Department indicates that the draft legislation already includes this provision.

7. A lack of consultation with the business community on the proposals was highlighted despite the proposals having serious consequences on small businesses.

8. Opposition to introduce Fixed Penalty Notices to children and young people came from groups representing this section of the community. Some Members also expressed concern at this. The Department acknowledged that a different approach may be required in relation to children and that guidance on this issue will be consulted on.

Gating orders

9. On the issue of Gating Orders the Committee received a range of opinions. Local councils for example welcomed their introduction as a means to resolve anti-social behaviour and illegal dumping while children's organisations raised serious concerns that Gating Orders had the potential to restrict the ability of children to have free access in their home environment and therefore inhibit their independence. These organisations also questioned the value of such orders to reduce crime or anti-social behaviour suggesting that these would simply be displaced to another area where Gating Orders have not been implemented and also reduce adult supervision of children. Yet another concern was the possibility that this provision would raise the expectations of residents for alleyways to be gated.

10. The Committee acknowledged these legitimate concerns and reflected this in a recommendation that the Department should remind councils to engage in a comprehensive consultation with all stakeholders prior to making a Gating Order.

Vehicles

Parking two or more vehicles on the road side for sale within 500 metres of each other

11. Although the clauses relating to vehicles were generally welcome, clarification was required to distinguish between selling a car on the road and from a driveway. The Committee was satisfied that the clause did not prevent anyone selling a car from their driveway but was intended to deal with nuisance parking such as businesses using the road as a "mock showroom" and allowed councils to issue a fixed penalty and keep the receipts.

Repairing vehicles on a road

12. Submissions received by the Committee on the issue of businesses using roads to repair cars were largely supportive of the Bill. The Committee acknowledged that while there might be a detrimental impact on some businesses it was necessary to create a level playing field and encourage all small businesses to operate more responsibly. The Committee was reassured that

the provision would not apply to owners of broken down vehicles who, in any case, had 72 hours to remove their vehicle and accepted that further amendments to the Bill, to address taxi businesses operating from domestic premises for example, were not achievable within the legislative timeframe.

Prescribed periods for landowner objections

13. Some councils advised that there should be further clarification on the period for objections from landowners on vehicle removal and from vehicle owners on disposal of vehicles. However the Committee was content that these periods would be prescribed in other DOE and DRD regulations which would be consulted on as soon as possible.

Litter

Definition of litter

14. Although some consultees advocated a broader definition of litter and suggested amendments to provide definitions comparable to legislation in England and Wales the Committee accepted the Department's position that the definition is comprehensive. They also agreed that 'littering in water' was covered by the dropping of litter 'in any place'.

Penalty for failing to provide a name

15. The issue related to failing to provide a name was whether this should be addressed by a fixed penalty or whether this should be an offence considered by the court. Children's organisations opposed making this measure an offence citing limited consultation with them and suggesting it contravened Section 75 obligations. The Committee ultimately did not see any advantage in introducing a fixed penalty system because in the absence of a correct name it could not be administered plus the Department advised that on summary conviction for giving false information or failing to give information, the fine would rise from £200 to £1000.

Fixed penalty notices for litter offences

16. Although current proposals bring the level of fixed penalty notices on par with England concern was expressed that this was still too low. The Department explained that the suggested level (£75) was the default level but that local councils, like their counterparts in England, could specify their own level. The Department maintained that fixed penalty notices are an effective way to deal with littering offences and councils still had the option to prosecute offenders where they deemed such action appropriate.

Notice period for clearing litter

17. The notice period for and exemptions to Litter Clearing Orders were felt by some respondents to the Committee's call for evidence to be too long. However the Committee accepted that the notice period relates to the length of time allocated to making an appeal.

Exemption of Crown Land

18. Some respondents were concerned at the proposed exemption for Crown Land or land of an educational institution but the Committee accepted that these were already covered under a statutory duty to be kept clear of litter.

Legislation for unsightly and unkempt gardens

19. Several councils called for the Bill to make provisions for them to address unsightly and unkempt gardens and the Department advised that this is addressed through the new 'litter clearing notice' in Clause 17.

Street Litter

20. Concerns were raised about litter generated by offices and commercial multi-occupancy tenancy premises as a result of new smoking legislation. The Department confirmed that this will be addressed through subordinate legislation which will be put out to consultation.

Free distribution of printed matter

21. Distribution of free literature is possible in areas designated for this purpose. However the concern of some councils that it would be necessary to prove that the person distributing literature was aware that an area was not designated for this purpose was countered by the Department which referred to the requirement of the councils to make this information available to the public. Importantly there are exemptions for material distributed for charitable, religious and political purposes. The Committee also accepted the Department's response on how this issue extends to Crown Land.

22. The Committee recognised the reliance of small businesses on fly-posting and free distribution of printed material to advertise their services and made a recommendation to address this.

Graffiti and other defacement

Fly-posting

23. It was suggested that it would be impossible for councils to administer the proposals relating to fly-posting due to the time-consuming and costly nature of removing fly-posters. However, there is provision for councils to administer a fee to cover these costs.

24. Despite Committee concerns the Department acknowledged that under this Bill the owners of buildings defaced by fly-posters could not recover the costs from the beneficiaries of the fly-posting.

25. The Committee agreed to make a recommendation that councils should be encouraged to provide spaces where small and medium sized businesses could place advertising material for free or a small administration charge.

Flags and Emblems

26. This was raised by one organisation that felt the Bill should be used to address these issues. The Committee accepted the Department's response that flags and emblems are being addressed in the Executive's inter-agency 'Joint Protocol in relation to the Display of Flags in Public Areas'.

Dogs

Maximum number of dogs on leads

27. Some concerns were raised regarding the maximum number of dogs to be walked by one person and the requirement for authorised officers to undergo training in dog behaviour in order to be able to recognise when to use the Dogs on Leads Direction Order. The Department was clear that the number of dogs to be walked by one person could be managed by local councils who would be given the power to create their own exemptions.

28. The Committee agreed to make a recommendation that councils adopt a balanced approach to the maximum number of dogs to be walked by one person and that officers tasked with enforcing the legislation undergo training in dog behaviour.

Exclusion of private land from Dog Control Orders

29. In response to councils' concerns the Department clarified that land in private ownership such as sports grounds and leisure parks would be included under Dog Control Orders as they are areas to which the public is entitled to access.

Noise

Delineating between responsibilities of local authorities and the PSNI

30. In response to concerns about delineating between the responsibilities of councils and the PSNI in respect of road use regulations, the Department stressed that the new provisions relating to alarm notification areas are aimed at premises fitted with audible intruder alarms not vehicle alarms.

Differentiating between intruder alarms and smoke alarms

31. Several respondents were concerned about the difficulties of determining between intruder and smoke alarms and suggested the inclusion of provisions for both within this Bill. The Department indicated that the new provisions are to deal with intruder alarms and supplement rather than replace existing council powers for audible alarms.

Informing of alarm designation areas and their withdrawal

32. Councils were concerned that the requirements for notifying about alarm designations would be onerous and costly. The Department indicated it would be issuing guidance making it clear that existing council publications would be an acceptable form of communication for this requirement.

Obtaining details of key holders

33. Councils were concerned about the difficulty of obtaining details of key holders but the Committee was content with the Department's response indicating that the new powers will make it mandatory to notify councils of nominated key holders.

Powers of entry

34. Councils sought clarification between 'premises' and 'property boundaries' in relation to their powers of entry to silence an alarm. The Department clarified that a special warrant will not be required to enter property boundaries to silence an alarm.

Liability for damage caused to alarms by councils

35. The Committee sought confirmation that councils would not be held liable for damage to an alarm when trying to silence it. The Department confirmed this was the case provided their action was carried out 'in good faith'.

Statutory Noise

Noise from illegal motor sports tracks

36. The Committee asked if the new provisions would provide powers to councils to deal more effectively with noise emitted from land that is prejudicial to health or a nuisance. The Department confirmed that Clause 60 of the new Bill allowed councils to serve an Abatement Notice if they were satisfied that the noise from the illegal motor sports track is a statutory nuisance.

Silting up of water courses

37. The Committee sought confirmation that the natural silting up of water bodies could not be constituted a statutory nuisance under Clause 60(1)(l). The Department confirmed that case law in England has established that where a natural water course becomes silted up by natural causes the landowner is unlikely to be held liable.

Including pigeons as a statutory nuisance

38. Many submissions to the Committee called for the inclusion of pigeons under statutory nuisance provisions. However the Committee was content with the Department's response indicating that the Bill as drafted provides sufficient scope for councils to deal with pigeons.

Definition of 'owner'

39. The Committee agreed with the many respondents that suggested the definition of 'owner' should be extended to the whole of Part 7 and rather than being confined to Clause 65 as drafted and agreed to make a recommendation to this effect. The Department agreed to make the necessary amendments to Part 7 accordingly.

General

40. There was a general concern that more guidance was required from the Department on a range of issues addressed in the legislation.

41. Concerns about enforcing Litter Clearing Notices on vacant land were voiced but the Department noted that if vacant, then a notice could be served on the owner.

42. A phased implementation of the Bill was advocated by some organisations. In addition there were concerns that implementation of the Bill would present an additional cost to councils. However the Department viewed the Bill as cost-neutral.

43. Overcrowding in dwellings which also raised concerns is a priority of the Department of Social Development.

44. In relation to a suggestion that the Bill would impact on child poverty the Department stressed that it had consulted widely including taking account of the views of children's organisations.

45. The Department recognised the need to maintain close liaison with the Department of Justice to ensure a multi-agency approach to ensure safe neighbourhoods.

46. Concerns that Anti-Social Behaviour Orders were not included in the Bill were addressed by the Department which noted that they can already be used to deal with environmental crime. Furthermore, it is likely that the new Justice Bill will also deal with low-level environmental crime.

47. In addressing concerns about Rural Proofing the Department stated that the Bill had been subject to a Rural Proofing exercise and that it will not have a differential impact in rural areas.

Recommendations

Delegated powers (several clauses)

48. On the advice of the Examiner of Statutory Rules the Committee recommends that the seven powers in the Bill under which the Department may make orders to alter the amount of a fixed penalty payment specified on the face of the Bill are made subject to draft affirmative procedure with the following amendments:

Clause 58, Page 47, Line 36,

At end insert 'and after "section" insert "8A(7) or";

(b) after subsection (3) insert—

"(4) An order under section 8A(7) shall not be made unless a draft of the order has been laid before and approved by a resolution of the Assembly.".'

Clause 72, Page 63, Line 1

After '(3)' insert ', (3A)'

Clause 72, Page 63, Line 3

At end insert—

'(3A) An order under—

(a) section 4(9);

(b) section 27(5);

(c) section 42(6); or

(d) section 50(6),

shall not be made unless a draft of the order has been laid before and approved by a resolution of the Assembly.'

Schedule 3, Page 71, Line 11

At end insert—

'The Pollution Control and Local Government (Northern Ireland) Order 1978 (NI 19)

A1. In Article 86—

(a) in paragraph (1) at the beginning insert "Subject to paragraph (1A),";

(b) after paragraph (1) insert—

"(1A) An order under Article 29A(9) shall not be made unless a draft of the order has been laid before and approved by a resolution of the Assembly.'

Schedule 3, Page 71, Line 26

At end insert—

'(6) In Article 25—

(a) in paragraph (1) at the beginning insert "Subject to paragraph (1A),";

(b) after paragraph (1) insert—

"(1A) An order under Article 18A(3) shall not be made unless a draft of the order has been laid before and approved by a resolution of the Assembly."

Gating Orders (Clause 1)

49. The Committee recommends that in conjunction with the commencement of the Bill the Department should issue a reminder to all councils of the need for comprehensive consultation of all representative bodies and authorities prior to making a Gating Order.

Issuing fixed penalty notices for litter offences to minors (Clause 16)

50. The Committee recommends that the Department issues guidance to councils requiring them to adopt special procedures for issuing notices to young offenders that will ensure that their functions with regard to issuing fixed penalty notices for litter offences to juveniles, are discharged in a way that safeguards and upholds the welfare of children. The Committee agreed Clause 16 subject to an amendment to this effect.

Penalty notices for graffiti and fly-posting (Clause 26)

51. The Committee recommends that councils are encouraged to provide sites where small and medium enterprises can place advertising literature for free or for a nominal not-for-profit administration charge. Procedures put in place for using such sites should be straightforward and flexible allowing for a quick reaction to market conditions. They should also include measures to ensure those using the sites keep them and the surrounding areas tidy and up-to-date.

Lower age limit for selling aerosols spray paint (Clause 36)

52. The Committee recommends that the lower age limit under which it should be an offence to sell aerosol paints is raised from 16 to 18 with the following amendments:

Clause 36, Page 32, Line 35

Leave out '16' and insert '18'

Clause 36, Page 33, Line 5

Leave out '16' and insert '18'

Differentiating between flyposting and illegal advertising (Clause 37)

53. The Committee recommends that in order to ensure that councils are able to implement the new fly-posting powers provided in this Bill effectively, Planning Service should tighten up its control of advertising.

Maximum number of dogs on leads (Clause 38)

54. The Committee recommends that councils adopt a balanced approach to limiting the maximum number of dogs on leads and that officers tasked with enforcing the legislation hold or are required to undergo training in dog behaviour so that they can enforce the legislation equitably.

Definition of 'owner' (Clause 65)

55. The Committee recommends that the definition of 'owner' in Clause 65 is extended to the rest of Part 7 with the following amendments:

Clause 60, Page 50, Line 15

At end insert—

"owner", in relation to any premises consisting of land, means a person (other than a mortgagee not in possession) who, whether in that person's own right or as agent trustee for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if they were so let;

Clause 60, Page 51, Line 7

After '1981 (NI 4)' insert '(except for the definition of "owner")'

Clause 65, Page 58,

Leave out lines 4 to 8

Introduction

56. The Clean Neighbourhoods and Environment Bill was referred to the Committee for the Environment for consideration in accordance with Standing Order 33(1) on completion of the Second Stage of the Bill on 30 June 2010.

57. The Minister of the Environment (the Minister) made the following statement under section 9 of the Northern Ireland Act 1998:

'In my view the Clean Neighbourhoods and Environment Bill would be within the legislative competence of the Northern Ireland Assembly'.

58. The Bill aims to improve the quality of the local environment by giving district councils additional powers to deal with litter, nuisance alleys, graffiti and fly-posting, abandoned and nuisance vehicles, dogs, noise and statutory nuisance.

59. During the period covered by this Report, the Committee considered the Bill and related issues at meetings on 11 February 2010, 4 March 2010, 10 June 2010, 1 July 2010, 16 September 2010, 30 September 2010, 7 October 2010, 4 November 2010, 11 November 2010, 18 November 2010, 25 November 2010, 2 December 2010, 9 December 2010, 16 December 2010, 13 January 2011, 26 January 2011 and 27 January 2011. The relevant extract from the Minutes of Proceedings for these meetings are included at Appendix 1.

60. The Committee had before it the Clean Neighbourhoods and Environment Bill (NIA 31/09) and the Explanatory and Financial Memorandum that accompanied the Bill.

61. On referral of the Bill to the Committee after Second Stage, the Committee inserted advertisements on 5 July 2010 in the Belfast Telegraph, Belfast Telegraph North West edition, Irish News and News Letter seeking written evidence on the Bill.

62. A total of 21 organisations responded to the request for written evidence and copies of the submissions received by the Committee are included at Appendix 3.

63. The Committee was first briefed by officials about the consultation stages and policy development of the policy areas covered by the Bill on 30 September 2010. The Committee was also briefed by Pubs of Ulster, Children's Law Centre, PlayBoard, Children in Northern Ireland, Include Youth, Tom Ekin, NILGA, Tidy NI, Countryside Alliance and The Kennel Club.

64. The Committee began its formal clause by clause scrutiny of the Bill on 16 December 2010 and concluded this on 26 January 2011.

Extension of Committee Stage of the Bill

65. On 11 October 2010, the Assembly agreed to extend the Committee Stage of the Bill to 28 January 2011.

Report on the Clean Neighbourhoods and Environment Bill

66. At its meeting on 27 January 2011 the Committee agreed its report on the Bill and agreed that it should be printed.

Consideration of the Bill by the Committee

67. The Bill consists of 76 clauses and 4 Schedules and is divided into 8 distinct Parts.

Departmental briefing on the Clean Neighbourhoods and Environment Bill, 30 September 2010

68. Departmental officials briefed the Committee on the Bill at its meeting on 30 September 2010.

69. The Department stated that the Bill is, essentially, an important first step in the Department's Clean neighbourhoods agenda programme. Throughout the Bill, much greater use is made of fixed penalty notices as an alternative to prosecution and district councils are given the power to retain the money that they receive from fixed penalties. The remit of the Bill is to bring Northern Ireland into line with improvements brought about by this type of legislation in England and Wales — the Clean Neighbourhoods and Environment Act 2005 and antisocial behaviour legislation.

70. The main areas of discussion with the officials were the cost neutrality of the Bill, fly-posting, the experience of similar legislation elsewhere, the use of fixed penalty notices, noise levels and alleygating.

Pubs of Ulster briefing on the Clean Neighbourhoods and Environment Bill, 7 October 2010

71. A representative from the Pubs of Ulster briefed the Committee on the Bill at its meeting on 7 October 2010.

72. The Pubs of Ulster stated that they welcomed the Bill but had concerns as to the impact some of the proposals would have on the commercial viability of its members' businesses if no cost-effective alternative is put in place in relation to penalty notices for fly-posting and controls on free distribution of printed material.

73. These methods often provide the only way a small business can afford to advertise and the resulting economic impact would be the loss of jobs and income. Therefore the Pubs of Ulster would seek an amendment to the proposed bill. In regards to fly-posting the Pubs of Ulster suggested that a district council would be required to provide legal poster sites on which small local businesses can advertise for a not-for-profit fee, which covers the operational cost to the Council. In relation to the distribution of printed material the organisation felt that the Bill should be amended to specify a nominal fee for a licence to distribute printed material.

NILGA briefing on the Clean Neighbourhoods and Environment Bill, 4 November 2010

74. NILGA representatives briefed the Committee on the Bill at its meeting on 4 November 2010.

75. NILGA's view is that much of the Bill is a new burden on local government in Northern Ireland. NILGA disagreed with the Department's view that the implementation of the legislation

would be cost-neutral across local government and also believed that fixed penalty funding will not be nearly enough to resource the powers that are included in the Bill and that the full cost should not have to be met by ratepayers.

76. NILGA also stated that it strongly believed that there is a need for a lead-in period for the legislation and a need for clear guidance, which is required to allow councils to adapt to, or prepare for, new and additional powers as many of the proposals will require clear and concise technical guidance to enable consistent and satisfactory implementation.

77. NILGA stated that it felt there was one serious omission from the Bill, which is the ability to deal with derelict property which it feels is a massive issue and that the Bill merely puts a sticking plaster on. NILGA feels the problem is increasing due to the current economic situation and that guidance to councils on this issue is needed.

78. The additional powers that will allow councils to more effectively deal with and tackle issues such as littered pieces of land and leaflet distribution were welcomed by NILGA. NILGA also welcomed the use of fixed penalties powers in relation to litter, particularly for some of the offences that have been cited in the Bill, but also sought their extension to other areas such as the giving of false names and addresses.

79. NILGA feels that powers to prosecute the perpetrators and beneficiaries of fly-posting are needed and are encouraged by the fact that the Department seeks to amend the Bill to ensure that those key powers are available to councils as well as the Planning Service.

80. In relation to dog control enforcement NILGA stated it had two concerns, the first was the adoption of legislation that is in practice in England and Wales, so, in having to resort to prosecution for failure to pay a fixed penalty, the council does not recover costs due to the Northern Ireland Magistrate's Court rules. The charges are limited to £75 and will, therefore, in NILGA's opinion, incur great costs on Northern Ireland councils.

81. The second concern related to the repeal of Article 4 of the Litter (Northern Ireland) Order 1994 and how that would diminish the ability to obtain information as in Article 20 of the same Order. NILGA felt that the new dog control order regime should ensure the retention of powers equivalent to those in Article 20 of the Litter Order, particularly in relation to the ability to obtain information from any person.

82. The additional powers in relation to noise were welcomed by NILGA but the organisation felt that they will introduce an additional workload for councils, as new types of noise complaints will require a thorough investigation as opposed to the current arrangements, which allow only for advice and informal action to be taken.

83. One of NILGA's major concerns in relation to noise is the lack of clarity surrounding the definition of an owner as this has implications for actions on landlords and agents, particularly those who live in the Republic of Ireland.

Northern Ireland Environmental Quality Forum (NIEQF) on the Clean Neighbourhoods and Environment Bill, 4 November 2010

84. NIEQF representatives briefed the Committee on the Bill at its meeting on 4 November 2010.

85. The NIEQF stated that it warmly and wholeheartedly welcomed the legislation as a big step forward in Northern Ireland. The group want a no-nonsense approach to enforcement, which requires the legislation to be in place.

86. The group also stated that it wanted to be sure that any legislation that comes into

87. force means that all landowners will adhere to the same standards. At the moment, the Bill focuses on councils, and councils take all the flak when there is a problem. There is a concern that the Bill does nothing to bring about improvements in what the public already see on other landowners' property, particularly those who might have Crown immunity, even if they are statutory undertakers, where litter is not seen as an issue that needs to be dealt with.

88. NIEQF feel that fixed penalty notices have to be set at a level that would be a proper deterrent and that there needs to be a lot of thinking about the level of fines and deterrents.

89. In relation to enforcement, NIEQF stated that the legislation needs to be enabling of the enforcement officers which links through to ASBOs, which the group feels are also an important element that can be in the armoury of the enforcement officers. This is mentioned in the English legislation and the group feel that if Northern Ireland is going to have parity, it needs to be brought into the legislation here.

Briefing by children and youth groups on the Clean Neighbourhoods and Environment Bill, 4 November 2010

90. The Committee was briefed on the Bill at its meeting on 4 November 2010 by representatives from PlayBoard, Children in Northern Ireland, Children's Law Centre and Include Youth.

91. Although the groups support the proposed legislation's broad aims, they struggle to see how some of its actions — as they relate to children, young people and their families — will achieve the desired outcomes. The groups believe that the aims of the Bill run the risk of further alienating, even criminalising, some of the already excluded young people.

92. The groups further stated that the Bill does not specifically address some of the criminal justice legislation as it relates to the fining of children and young people. They feel that there is no recognition that imposing a fine on or issuing a notice to a child may have child protection or safeguarding implications. In the groups' view, the Bill does not seem to take cognisance of the impact of fixed penalty notices on already economically and socially deprived families and does not sufficiently consider how punitive actions may result in the criminalising of children and young people.

93. In relation to gating orders within the Bill, the groups stated that the Bill needs to consider the importance of children's ability to roam and to have free access in their home environment. The groups feel that children and young people should be able to travel actively and independently when visiting friends or going out to play. Furthermore, the groups stated that it is perceived that gating orders will deter crime and antisocial behaviour but, although they will improve crime rates in some areas, so-called nuisance behaviour among young people will not be put right by the mere installation of gates or barriers. In fact, children will see that as a challenge or simply congregate somewhere else. The groups felt that the root cause of children and young people being labelled as disaffected and antisocial must be addressed to reduce and eradicate any perceived annoyance caused. A Gating Order must give consideration to compensating children and young people for the displacement and restriction of play spaces previously accessible to them.

94. The groups felt that the Department failed to consult properly on the Bill and failed to take children's views on board and strongly advocated that the Department respond to and engage with children and young people as equal citizens and primary stakeholders in their

neighbourhood environments so that all residents feel a sense of ownership and can deliver on the issues that affect the local community in ways that respect and value their contribution.

95. There were also concerns raised that a full equality impact assessment was carried out on the draft Bill in the initial consultation phase. The children's organisations stated that they were extremely puzzled as to how and why that happened as they believe that children do have different needs and experiences in relation to the issues that the Bill raises.

Briefing by Kennel Club and Countryside Alliance Ireland on the Clean Neighbourhoods and Environment Bill, 11 November 2010

96. Representatives from the Kennel Club and Countryside Alliance Ireland briefed the Committee on the Bill at its meeting on 11 November 2010.

97. The Kennel Club stated that, although it generally favours approaches that place greater emphasis on informal management of land, it views a national framework of dog control orders as a means of ensuring consistency and fairness in managing access, provided that accompanying guidance is followed.

98. The organisation feel that, without good management, Dog Control Orders can simply displace problems, pushing dog owners onto farmland and other areas where they have not been before, potentially leading to increased conflict with livestock, farmers and wildlife. The Kennel Club acknowledged that a case can be made for restrictions in certain instances, but to ensure that that makes things better for dog owners and landowners alike, the group asked that an objective, proportionate and evidence-based approach is adopted in each case.

99. The Kennel Club stated its support for the use of Dog Fouling Orders and Dogs on Leads by Direction Orders, and appreciated that there will at times be justification for the use of Dogs on Leads and Dog Exclusion Orders, though it wanted those to be used as frugally as possible. The group support the use of maximum number of dog's orders, as it considers them to be arbitrary.

100. Furthermore, the Kennel Club believes that the other orders introduced in the Bill — the Dogs on Leads by Direction Orders and the Dog Fouling Orders — would be adequate to deal with the potential negative consequences of anyone struggling to control a large number of dogs.

101. The organisation stated that it is seeking the introduction of a right of appeal against the types and extent of orders implemented or an obligation to review orders after a certain period; for instance, two years. Although it envisaged appeal being an absolutely last resort, the group feel that it is necessary to ensure that a fair process is followed, which takes into account the needs of all access users. The group felt that, under the current Bill, once orders are implemented there is no mechanism to challenge the fairness of them, even if they are clearly disproportionate to the problem that they seek to address.

102. The Kennel Club stated that it wants local authorities to be required to specify the land to which any proposed orders will apply as it views that information as absolutely integral to ensuring that meaningful public consultation can take place, because without it consultees would find it impossible to give an informed response. The group also called for a requirement for authorised officers tasked with enforcing legislation to hold or undergo training in dog behaviour, to enable them to adequately determine when to use the dogs on leads by direction order.

103. Countryside Alliance Ireland stated that it fully supported the Kennel Club's position but that it had a few problems with Clause 38. The organisation believes that for the order to be

implemented successfully there needs to be proper disposal facilities and education on dog fouling.

104. The group further believe that believe that the exclusion of dogs from lands is excessive and will unnecessarily reduce the freedom of movement and the public access allowed for dog owners. If both the dog fouling and Dogs on Leads by Direction Orders are enforced adequately and adhered to, the group feel there should be no reason to exclude dogs from lands. Furthermore, the group stated that there needs to be a clear exemption for working dogs and packs of hounds or beagles as without the exemption, there is a possibility of persecuting country sports groups that are carrying out their normal activities.

Briefing by Mr Tom Ekin on the Clean Neighbourhoods and Environment Bill, 11 November 2010

105. Mr Tom Ekin briefed the Committee on the Bill at its meeting on 11 November 2010.

106. Mr Ekin stated that time was of the essence and that he wished to see the legislation introduced as soon as possible. One of the main issues that needed to be addressed was that of ownership of buildings and Mr Ekin felt that the Bill must have open enough powers that enable the authorities to determine ownership

107. On fly-posting, Mr Ekin felt that it might be an idea for councils to provide legal poster sites on which small local businesses could advertise.

108. Mr Ekin also stated that more needed to be done in relation to derelict buildings as the problem is increasing due to the current economic situation.

Key Issues

109. During its consideration of oral and written evidence from interested individuals and organisations the Committee identified a number of key issues on which further advice was sought from the Department, the Examiner of Statutory Rules, Assembly Research and Library Service and external organisations.

Relating to several clauses

- Delegated powers of the Bill
- Fixed penalty notices

Part 1 – Gating Orders

Relating to Clause 1

- Gating orders

Part 2 – Vehicles

Relating to Clause 2

- Parking 2 or more motor vehicles on the road side for sale within 500 metres of each other

Relating to Clause 3

- Repairing vehicles on a road

Relating to Clause 8

- Prescribed periods for landowner objections

Part 3 – Litter

Relating to Clause 14

- Definition of litter

Relating to Clause 15

- Penalty for failing to provide name

Relating to Clause 16

- Fixed penalty notices for litter

Relating to Clause 17

- Notice period for clearing litter
- Exemption of Crown Land
- Legislation for unsightly and unkempt gardens

Relating to Clause 18

- Street litter

Relating to Clause 21

- Free distribution of printed matter

Part 4 – Graffiti and Other Defacement

Relating to Clause 26

- Fly-posting
- Flags and emblems

Part 5 – Dogs

Relating to Clause 38

- Maximum number of dogs on leads

Relating to Clause 39

- Exclusion of private land from Dog Control Orders

Part 6 – Noise

Relating to Clause 45

- Delineating between responsibilities of local authorities and the PSNI
- Differentiating between intruder alarms and smoke alarms

Relating to Clause 46 and 47

- Informing of alarm designation areas and their withdrawal

Relating to Clause 47

- Obtaining details of key holders

Relating to Clause 53

- Powers of entry
- Liability for damage caused to alarms by councils

Statutory Nuisance

Relating to Clause 60

- Noise from illegal motor sports tracks
- Silting up of water courses
- Including pigeons as a statutory nuisance
- Definition of 'owner'

General

- Vacant land
- Guidance
- Phased implementation
- Cost of the Bill
- Overcrowding
- Child Poverty

- Multi-agency approach
- Anti-social behaviour orders
- Rural proofing

Delegated powers of the Bill (several clauses)

110. The Committee sought advice from the Examiner of Statutory Rules in relation to the delegated powers within the Bill. The Examiner advised that the Bill contains a number of powers to make subordinate legislation including some vested in the Department for Regional Development, e.g. in amendments to the Roads (Northern Ireland) Order 1993 in respect of gating orders, Part 1 of the Bill.

111. Most of the powers to make regulations and orders within the Bill are subject to negative resolution which the Examiner of Statutory Rules felt is an appropriate level of scrutiny. Regulations under Clauses 38(4) and 39(1) are subject to draft affirmative procedure which again the Examiner felt was appropriate given that these involve the creation of criminal offences.

112. However there are seven powers in the Bill under which the Department may make orders subject to negative resolution to alter the amount of a fixed penalty payment specified on the face of the Bill. These are in:

- Clause 4(9)
- Clause 7 (new Article 29A(9) of the Pollution Control and Local Government (Northern Ireland) Order 1978)
- Clause 22 (new Article 18A(3) of the Litter (Northern Ireland) Order 1994)
- Clause 27(5)
- Clause 42(6)
- Clause 50(6)
- Clause 58(2) (new section 8A of the Noise Act 1996)

113. These powers allow for direct amendments of penalty provisions set out on the face of the Bill and the Examiner of Statutory Rules argues that there are precedents for draft affirmative procedure in such circumstances in other Bills currently before the Assembly.

114. The Committee accepted the Examiner's advice as it had previously when presented with a similar argument in relation to the Waste and Contaminated Land Bill, and asked the Department to make amendments to these seven powers which it did as follows:

Clause 58, Page 47, Line 36,

At end insert 'and after "section" insert "8A(7) or";

(b) after subsection (3) insert—

"(4) An order under section 8A(7) shall not be made unless a draft of the order has been laid before and approved by a resolution of the Assembly."

Clause 72, Page 63, Line 1

After '(3)' insert ', (3A)'

Clause 72, Page 63, Line 3

At end insert—

'(3A) An order under—

(a) section 4(9);

(b) section 27(5);

(c) section 42(6); or

(d) section 50(6),

shall not be made unless a draft of the order has been laid before and approved by a resolution of the Assembly.'

Schedule 3, Page 71, Line 11

At end insert—

'The Pollution Control and Local Government (Northern Ireland) Order 1978 (NI 19)

A1. In Article 86—

(a) in paragraph (1) at the beginning insert "Subject to paragraph (1A),";

(b) after paragraph (1) insert—

"(1A) An order under Article 29A(9) shall not be made unless a draft of the order has been laid before and approved by a resolution of the Assembly.'

Schedule 3, Page 71, Line 26

At end insert—

'(6) In Article 25—

(a) in paragraph (1) at the beginning insert "Subject to paragraph (1A),";

(b) after paragraph (1) insert—

"(1A) An order under Article 18A(3) shall not be made unless a draft of the order has been laid before and approved by a resolution of the Assembly."

115. The Committee accepted the relevant clauses subject to these Departmental amendments.

Fixed Penalty Notices (several clauses)

116. The issue of fixed penalty notices throughout the Bill provoked a mixed reaction.

117. Councils welcomed the flexibility to set the levels of fines under the proposed changes but NILGA strongly encouraged the Department to set out the minimum and maximum ranges for fixed penalties. The Department stated that it intends to consult on this issue prior to issuing regulations.

118. In relation to fines for fly-posting, Mr Tom Ekin stated that any sensible solution is to fine the beneficiaries in the event of the perpetrator not being found in action. Ards Borough Council were in support of this stating that the ability to fine, within certain controls, a person whose business or service is advertised would act as a much greater deterrent and would have a much greater effect in eliminating indiscriminate fly-posting.

119. Other respondents urged the Department to allow incentives to be used to encourage compliance such as the fine costing less if paid in a shorter time. The Department agreed and indicated that the draft legislation already allows councils to treat a fixed penalty as having been paid if a lesser amount is paid before the end of a specified period.

120. Pubs of Ulster were concerned at the lack of consultation with the business community with regard to these proposals and the subsequent lack of balance within the responses. In particular they stated that there was no consultation with the small business sector and their representative bodies, both within and outside their own sector, despite the fact that these proposals will have severe consequences on the sustainability of their businesses.

121. The children and young people's groups that responded were against the proposal to introduce Fixed Penalty Notices to children and young people as they felt it was unacceptable that these penalties can be applied directly onto children under 16 years of age.

122. Children in Northern Ireland stated that although it did not underestimate the detrimental impact which issues including graffiti and litter can have on communities, they believed that these issues should be tackled pro-actively through approaches which engage all members of the community in identifying local solutions. Some members of the Committee were also concerned that fixed penalty notices could, as a result of this legislation, be served on juveniles as young as 10 while others were content with the proposals.

123. The Department explained that the age of criminal responsibility was established in different legislation. However it accepted that a different approach in terms of fixed penalty notices is required in respect of children and guidance on this issue, which will be subject to full consultation before publication, will form an important part of the overall clean neighbourhoods agenda. The Department provided the Committee with the guidance for issuing fixed penalty notices to juveniles already in force in England and Wales (Appendix 6).

Part 1 – Gating Orders

Gating Orders (Clause 1)

124. There were mixed views on gating orders from the submissions to the Committee's call for evidence.

125. Organisations such as NILGA, the Northern Ireland Environmental Quality Forum, Armagh City Council and Ballymena Borough Council welcomed the introduction of gating orders. Their views were that the orders would provide an alternative means to resolving noise disturbance and disorder, crime prevention and illegal dumping although there were some concerns about expectations being raised among residents that all alleyways should be gated when there is no necessity to do so. There was also a feeling that clear guidance was needed to address concerns

such as access for emergency services, the Department for Regional Development's role and neighbourhood approval.

126. Some respondents were concerned that the new powers would raise expectations among residents for gating orders to be put readily in place. The Department indicated that publication of clear and transparent council policy should help address this concern and in addition noted that gating orders may only be made in respect of relevant roads and provided that the Department for Regional Development approves the proposal and the conditions specified in the new powers. It was also stressed that councils will need to be satisfied that section 75 implications have been considered prior to making a gating order.

127. The children and young people's groups that replied to the Committee were opposed to gating orders as they felt that the orders would have a potentially adverse impact not just on young people but on parents with young children, older people, the disabled and the socially excluded who are less likely to be able to afford cars. There were also concerns that gating orders may shift anti-social behaviour from one area to another and that the orders may result in children being moved further from their homes and adult supervision.

128. The Department stressed that the new powers provided in the Bill were not imposing a duty on councils and should not be seen as the primary or only measure to address these issues. They provide an extra tool that councils can consider when trying to address anti-social behaviour and the Department suggested that proof that other measures have been considered may be required as part of the application process.

129. The Committee felt it was important that councils viewed gating orders as a last option and that full consultation with all affected parties should take place in advance of any decision being made. It agreed a recommendation to this effect.

130. The Committee for Regional Development was content with the provisions relating to Gating Orders and welcomed the powers for local councils to make orders to erect gates where a need was identified. In particular the Committee acknowledged the positive impact this will have in relation to reducing the time required to make orders although some concern was raised that there was no maximum time limit for councils to make orders i.e. the process should be time-bound. The Committee also felt that greater clarity was required on the "reasonable charge" to be applied in respect of 69(E)(2).

Part 2 – Vehicles

131. The clauses in the Bill relating to vehicles were generally welcomed by most respondents however the following concerns were raised and/or discussed.

Parking two or more motor vehicles on the road side for sale within 500 metres of each other (Clause 2)

132. Measures to prevent the sale of two or more motor vehicles on the road side within 500 metres of each other were welcomed in principle but several respondents suggested there were a number of loopholes in the proposals. Some organisations suggested that in England/Wales these loopholes have been closed by street trading legislation and similar provisions would be welcome in Northern Ireland along with a Level 4 penalty.

133. The Committee requested clarification on the difference between 'street' and 'drive' and if the Bill should specify that cars cannot be sold on the street, but can be sold from private property.

134. The Department's reply stated that Clause 2 deals with the sale of 2 or more motor vehicles parked within 500 metres of each other on a "road". The Street Trading Act (NI) 2001 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 and existing legislation such as the Street Trading Act (NI) 2001 can still be used where appropriate. There is nothing in the Bill or in the street trading legislation to prevent someone from selling a car from their driveway.

135. The Department stressed that this is an additional power being given to district councils to deal with a particular type of nuisance parking i.e. it is intended to specifically target businesses using the road as a "mock showroom". In these circumstances, it gives councils the flexibility to deal with the offence by way of a fixed penalty and allows the councils to retain the receipts. There is also a stiffer penalty on summary conviction for this offence i.e. Level 4 as opposed to Level 3 for an offence under the Street Trading Act (NI) 2001. Guidance will be consulted on as soon as possible.

136. NILGA also wanted assurance that the definition of a vehicle is wide enough to cover abandoned caravans and trailers and the Department stated that the current definition of "motor vehicle" in the Pollution Control and Local Government (NI) Order 1978 already covers caravans.

137. The Committee was content with the explanations.

Repairing vehicles on a road (Clause 3)

138. This clause was generally acceptable to respondents even though it was acknowledged that there might be some detrimental impact on some businesses whose space for car sales will be reduced. The Department justified this stating that such practices cause nuisance and businesses use roads to avoid overheads which provides unfair competition for other small businesses operating more responsibly and the Committee accepted this argument.

139. Several respondents also suggested the clause should have gone further to include vehicles awaiting repair and taxi businesses operating from domestic premises. The Department replied that these are significant proposals which would require detailed consideration and amendment which was not possible within the legislative timetable.

140. Conversely, the Committee was concerned that broken down vehicles might inadvertently find themselves in breach of this clause and sought reassurance from the Department that this would not be the case. The Department advised that owners of motor vehicles that break down have 72 hours to repair or remove their vehicle and this alleviated the Committee's concerns.

Prescribed periods for landowner and vehicle owner objections (Clause 8)

141. Some councils were keen to see clarity provided on the prescribed periods for land owner objections for removal and vehicle owner objections for disposal of vehicles and suggested that a 7-day notice system would be suitable. The Department advised that the relevant periods would be prescribed in regulations by DOE under the Pollution Control and Local Government (NI) Order 1978 and by the Department for Regional Development (DRD) under the Road Traffic Regulation (NI) Order 1997. These will be consulted on as soon as possible and the Committee accepted this response.

Part 3 - Litter

Definition of litter (Clause 14)

142. Some respondents to the Committee's call for evidence felt that the Bill needed to give a broader definition of litter and others felt that the proposed changes to the litter legislation will have little impact as an Article 3 offence remains unchanged.

143. NILGA felt that, contrary to the Department's assertion, the definition of litter and the offence of littering in water are not well provided for in the Bill but that some rewording would provide a much more robust piece of legislation for councils to enforce. The organisation also felt that The Litter (NI) Order 1994 should be amended to ensure the definitions are as comprehensive as the Clean Neighbourhoods and Environment Act in England and Wales regarding litter deposited into water and smoking-related/chewing gum.

144. The Department however is satisfied that Article 3 of the Litter (NI) Order 1994 together with the amendment inserted by Clause 14 of this Bill is very comprehensive covering the dropping of litter in 'any place' including water. It is also satisfied that the definition of litter is very comprehensive and does not require any further amendment.

Penalty for failing to provide a name (Clause 15)

145. This clause creates an offence for failing to give the correct name and address details when questioned for a litter offence. Several respondents felt that it would be quicker and cheaper to introduce fixed penalty notices for giving false information relating to name/address when questioned rather than bringing to court. There is a perception that Magistrates do not give weight to environmental offences and councils would not be able to recoup their legal costs.

146. However, not everyone was in favour of making it an offence for failure to provide a name and address to an authorised person or to give a false name. Representatives of the youth sector were strongly opposed to the measure and felt that there had been extremely limited consultation with children's organisations during the initial consultation process and suggested this contravened section 75 obligations to consult directly with those likely to be affected by the policy.

147. The Department argued that the introduction of fixed penalty notices instead of making it an offence to provide incorrect details was a significant proposal that would require detailed consideration and amendment to the Bill. Members of the Committee failed to see any advantage in introducing a fixed penalty system for questioned individuals who refused to provide information or who provided incorrect information. The Department noted that this clause of the Bill included a disincentive to provide inaccurate information in that failure to give information or giving false information will result in an increase to the maximum fine, on summary conviction, from £200 to £1000.

Fixed penalty notices for litter offences (Clause 16)

148. The Northern Ireland Environmental Quality Forum (NIEQF) strongly believed that the upper level of fines should be raised beyond the £75 in the draft Bill. The organisation accepted that the current proposals bring parity with legislation in England but at a level of £75 the fines would leave Northern Ireland issuing fixed penalties that are lower than in the Republic of Ireland where leaving or throwing litter in a public place is an offence that can be subject to an on-the-spot fine of €150 or a maximum fine of €3,000 upon conviction.

149. In its response, the Department states that the aim of the Bill is to provide councils in Northern Ireland with broadly the same powers as their counterparts in England and Wales. It

also pointed out that many councils in England have chosen to have higher fixed penalty fines (~£80) and that the £75 proposal in this bill is the default position should a council choose not to specify its own fine level.

150. The Department also notes that as a fixed penalty notice is offered as an alternative to prosecution the district council could deal with repeat offenders by ceasing to issue an individual with fixed penalty notices and instead go down the prosecution route. Upon conviction it would be for the courts to decide on any appropriate punishment.

151. One organisation expressed concern that the introduction of a fixed penalty approach would remove the public stigma that accompanies prosecution which acts as an added disincentive not to drop litter. In response the Department argued that fixed penalty notices are an effective way of dealing with environmental offences and if used properly, provide an effective deterrent and avoid the cost of court action. The option to prosecute is also available to district councils and the Committee accepted this.

152. The Committee remained concerned about the issuing of fixed penalty notices for litter offences to juveniles and agreed to recommend that this clause should be amended to address those concerns.

Notice period for clearing litter (Clause 17)

153. Some respondents felt that the proposed 28 day notice period for allowing a landowner/occupier to comply with a Litter Clearing Order was too long. The Department argued that this new provision replaces existing procedures and makes them simpler. The length of time reflects that a person served with a Litter Clearing Order is allowed 21 days to make an appeal and the Committee accepted this rationale.

Exemption of Crown Land (Clause 17)

154. Some respondents and members of the Committee were concerned at the proposed exemption of Crown Land or land of an educational institution from being served with a Litter Clearing Order. There was also a perception that there is a big disparity between what councils have to do in relation to litter and what other landowning bodies have to do. The Department replied that by virtue of Article 7 of the Litter (NI) Order 1984 the bodies listed in Clause 17 are already under a statutory duty to ensure that their land is kept clear of litter.

Legislation for unsightly and unkempt gardens (Clause 17)

155. Several councils suggested that current powers would be strengthened if unsightly and unkempt gardens and properties in residential areas were legislated for. Under current powers it is not possible to establish that statutory nuisance conditions exist from these unless they are dangerous or harbourage for pests. Councils have no redress to formal action and can only use informal approaches to property owners. By contrast such powers are available to English and Welsh councils through the Town and Country Planning Act 1990, to require land to be cleaned up when its condition adversely affects the amenity of the area.

156. The Department responded that this is addressed through the new 'litter clearing notice' provisions in this clause of the Bill

Street Litter (Clause 18)

157. This clause was generally welcome but several stakeholders suggested that further powers were necessary to require offices and commercial multi-occupancy tenancy premises to control waste being left outside as a result of new smoking laws. In response, the Department indicated that it will handle this through subordinate legislation, on which it will consult, bringing Northern Ireland into line with England.

Free distribution of printed matter (Clause 21)

158. In relation to this clause NILGA made the point that the proposals make a distinction in the offence of distributing leaflets without consent between those who distribute the leaflets and those who cause another person to distribute. In determining if an offence has been committed in the first instance by the person who is distributing the leaflets, a council must prove that the person distributing the leaflets knew that the area was or was not designated. They felt that in practice this will be difficult to prove and envisage that few fixed penalties will be issued for this offence.

159. The Department responded that every council is required to keep a copy of street litter control notices and orders designating land where free literature cannot be distributed without consent, on a register that must be available at all reasonable times for public inspection. In addition, each council will need to ensure that they adequately publish details of land in their areas which has been designated and it will be providing guidance on this in due course.

160. Some respondents suggested that the Department should make it an offence for failure to adhere to conditions set in respect of leaflet distribution which could be addressed through the use of a fixed penalty notice. The Department's response indicated that the Bill provides for a district council to revoke consent if the person to whom the consent was granted fails to comply with the conditions imposed. With consent removed an offence would be committed if distribution takes place in a designated area and fixed penalty notices may be issued as an alternative to prosecution. It also stressed that material distributed for charitable, religious and political purposes is exempted from offence.

161. The Committee requested more information on the extent of this clause, specifically if it extends to Crown property. In its reply the Department indicated that the power in Clause 21 to enable councils to control the free distribution of printed matter does not extend to Crown land. However under existing law, where a council is satisfied that Crown land is defaced by litter it can serve a litter abatement notice requiring that the litter be cleared. The Committee accepted this response.

Part 4 – Graffiti and other defacement

162. The clauses in the Bill relating to graffiti and other defacement were generally welcomed by most respondents however the following concerns were raised and/or discussed.

Fly-posting (Clause 26)

163. The proposal from the Department to make current Planning Service powers available to councils to deal with fly-posting was supported by most respondents.

164. Several respondents were of the opinion that those whose goods or services were advertised on fly-posters should also be included in any penalties being imposed, particularly if the distributor cannot be found.

165. NILGA felt that the Planning Service does not enforce its legislation in respect of fly-posting activity and stated that it has refused to enter into partnership with councils to proactively pursue beneficiaries of fly-posting. NILGA also stated that serving removal notices in respect of fly-posters would be onerous, costly, time-consuming and in realistic terms, impossible to administer.

166. In relation to costs, the Department noted that councils would be able to charge a fee to cover the administrative costs of issuing consents. It recognised that this would impact on businesses that rely on literature distribution for their main source of income but does not foresee any additional cost implications for those acting with district council consent.

167. The Committee was also concerned about the powers of the Bill in relation to fly-posting and asked the Department if the Bill provided the power for an innocent party to recoup costs for the removal of posters that have been fly-posted from the beneficiaries of the advertisement. The Department stated that under clause 31 a council may serve a Defacement Removal Notice, however privately-owned buildings such as shops would not normally be covered by this provision.

168. The Pubs of Ulster were concerned about a lack of consultation on proposals on this issue with the business sector, especially small to medium enterprises (SMEs). The organisation suggested an amendment that would require councils to provide legal poster sites on which SMEs can advertise for a not-for-profit fee.

169. The Department suggested that it was for individual councils to consider if they wished to provide legal sites for posters to be displayed. The Committee considered the option of making this compulsory among councils but concluded that while councils should be encouraged to provide such sites, they should have the discretion to make the decision that best suited their area. The Committee agreed to make a recommendation to this effect.

Flags and emblems (Clause 26)

170. One organisation suggested the Bill should include measures to address flags and emblems. The Department responded that this is a cross-cutting issue that it does not believe can be solely addressed by DOE. It indicated that the Executive has commenced a review of the inter-agency 'Joint Protocol in relation to the Display of Flags in Public Areas'. This protocol was launched in April 2005 and it set out an agreed partnership approach to deal with flags issues. The main aim of the protocol has been to work proactively with communities to address the removal of flags and emblems from arterial routes and town centres and to remove all paramilitary flags and displays.

Notice period for defacement removal notices (Clause 31)

171. Several councils felt that allowing 28 days for the recipient of a defacement removal notice to act was too long and suggested that the equivalent period of 2 days in English legislation was much more appropriate. The Department clarified that the proposed 28 days is exactly the same as that provided in England and explained that defacement removal notices are meant to enable district councils to address situations in which relevant surfaces are defaced by graffiti or fly-posting.

172. The Committee was advised that it is the Department's view that the owners of street furniture, such as telecommunication companies and utilities, should share the responsibility with councils for the condition of their structures. The Department stressed that privately owned property would not be affected by this clause.

Recovery of expenditure (Clause 32)

173. In response to suggestions that the Bill should include powers to prosecute persons responsible for a surface which has been defaced, the Department considered this inappropriate and argued that the power to issue Defacement Removal Notices provided in this clause of this Bill – giving powers to district councils to act and recover costs where necessary – is a more appropriate course of action.

174. The Committee asked the Department if innocent parties would be provided with powers to recoup expenses incurred in cleaning their street furniture from the beneficiaries of the advertising. The Department responded that such a provision would not be provided and that it would be difficult to operate such a system in practice. The Committee accepted this explanation.

Lower age limit for selling aerosols spray paint (Clause 36)

175. The Bill proposes to introduce a lower age limit of 16 below which it will be illegal to sell aerosol paints. Many councils and organisations suggested that this limit should be raised to 18 bringing it on a par with other restricted products such as tobacco and butane gas. Arguments for this included removing the need to introduce a separate test-purchasing exercise solely for this purpose and the Committee was in support.

176. The Department initially suggested that many 16 to 18 year olds might have legitimate reasons for needing such paints, they might be householders in their own right or own a vehicle that needs repair. It also suggested that introducing a different age limit to GB could cause difficulties and confusion. The Committee did not accept these arguments as having sufficient merit for keeping the lower age limit at 16 and therefore welcomed the Minister's agreement to bring forward an amendment raising it to 18 as follows:

Clause 36, Page 32, Line 35

Leave out '16' and insert '18'

Clause 36, Page 33, Line 5

Leave out '16' and insert '18'

Differentiating between fly-posting and illegal advertising (Clause 37)

177. Most organisations welcomed the proposed new powers for councils to address fly-posting. However, the Committee was concerned that councils were likely to experience difficulty in practice trying to disentangle fly-posting from wider advertising which comes under the control of Planning Service and is generally considered to be poorly enforced. The Committee accepted that the Bill could not be amended to address this concern but agreed to recommend that Planning Service should tighten up its control of advertising to ensure councils are able to implement their new fly-posting powers effectively.

Part 5 – Dogs

178. The introduction of the proposed powers in this part was welcomed by most councils and their representative body as they felt they would provide councils with the necessary measures to manage dogs more effectively.

Maximum number of dogs on leads (Clause 38)

179. Whilst the Kennel Club and Countryside Alliance Ireland stated their support for the introduction, use and promotion of Dog Fouling/Dogs on Leads Orders as a basic principle of responsible dog ownership they opposed proposals for the maximum number of dogs to be walked by one person. Keen to see a balanced approach, they suggested instead the establishment of a permit scheme to help regulate this group.

180. The Kennel Club and Countryside Alliance Ireland also called for a requirement for authorised officers tasked with enforcing legislation to hold or undergo training in dog behaviour enabling them to adequately determine when in use the 'Dogs on Leads by Direction' Order.

181. The Committee asked the Department about the feasibility of a permit scheme and were advised that it would be cumbersome, costly and over bureaucratic. However they stressed that councils could create their own exemptions where they saw appropriate, for example for 'assistance' dogs.

182. The Committee accepted the argument regarding a permit scheme but agreed to recommend that councils adopt a balanced approach to limiting the maximum number of dogs on leads and that officers tasked with enforcing the legislation hold, or are required to undergo, training in dog behaviour so that they can enforce the legislation equitably.

Exclusion of private land from Dog Control Orders (Clause 39)

183. Some councils were concerned that Dog Control Orders would only apply to land which is open to the air and to which the public are entitled or permitted to have access and that land in private ownership, such as sports grounds, would be excluded.

184. The Department responded that legal guidance clarified that land in private ownership such as sports grounds, playing fields and recreation grounds would be covered as they would be areas to which the public are entitled to have access. The Committee accepted this response.

Part 6 – Noise

185. Most respondents to the Committee's call for evidence welcomed the additional powers introduced by the Bill as a means of addressing local noise problems and therefore assisting in improving quality of life and health.

Delineating between responsibilities of local authorities and the PSNI (Clause 45)

186. Respondents called for clear guidance to delineate the responsibilities between councils and the PSNI in respect to The Road Vehicles Construction and Use Regulations. The Department noted this but stressed that the new provisions relating to Alarm Notification Areas are aimed at premises fitted with audible intruder alarms, not vehicles which are addressed under statutory nuisance.

Differentiating between intruder alarms and smoke alarms (Clause 45)

187. Several respondents expressed concerns that it is often impossible to determine whether a sounding alarm is associated with an intruder system or a heat/smoke system until having gained access to the premises. They felt that differentiating between an alarm and an intruder alarm weakened the order and that the Department should consider including noise associated with other alarm types within the provisions.

188. The Department indicated that the new provisions dealing with audible intruder alarms supplement rather than replace existing council powers to deal with audible alarms and councils will still be able to use these.

Informing of alarm designation areas and their withdrawal (Clauses 46 and 47)

189. Councils felt that the requirement to send a copy of the notice to all premises in the area informing of an alarm designation area or the withdrawal of that designation would be an unnecessary cost. They suggested that an amendment should be made to allow an advertised public notice to be sufficient cover, similar to other statutory advertisements.

190. The Department replied that guidance will make it clear that utilising existing news-letters and magazines will be an acceptable form of communication regarding Alarm Notification Areas.

Obtaining details of key holders (Clause 47)

191. NILGA and several individual councils were concerned that obtaining the details of a named key-holder and responsible person for shared housing, flats and houses of multiple occupancy was costly and difficult, if at all feasible.

192. The Department indicated that the new powers will make it mandatory to notify the council of a nominated key-holder. Failure to do so will be an offence liable on summary conviction to a fine not exceeding Level 3. The requirement for those in Alarm Notification Areas will be specifically targeted at those premises which have an audible intruder alarm.

Powers of entry (Clause 53)

193. Several councils sought clarification on the powers of entry. Whilst they felt the legislation was clear regarding the entering of property per se to silence an alarm, they wanted more information regarding entry within a property boundary. The Department specified that a warrant will not be required to enter a property boundary in order to silence an alarm.

Liability for damage caused to alarms by council (Clause 53)

194. The Committee asked the Department to clarify to what extent a council would be liable if it caused damage to an alarm when silencing it. The Department replied that Clause 55(9) of the bill states that "nothing done by, or by a member of, a district council or by an officer of or another person authorised by a district council, if done in good faith is subject to the council or any of those persons personally to any action, liability, claim or demand". Council officers, and those authorised by a council, are therefore indemnified from any damage caused in exercising their powers of entry to silence an alarm, provided the action is exercised in good faith. The Committee was content with this response.

Part 7 – Statutory Nuisance

Most respondents to the Committee's call for evidence welcomed the extended list of statutory nuisances in this part. However the following key issues were discussed:

Noise from illegal motor sports tracks (Clause 60)

195. The Committee asked the Department to consider an amendment that would ensure councils could address noise from illegal motor sports tracks.

196. The Department's response indicated that the improved procedures for dealing with statutory nuisances brought about in this part of the Bill will enable councils to deal more effectively with noise emitted from land that is prejudicial to health or a nuisance. Clause 60(1)(i) of the Bill specifies a statutory nuisance as noise emitted from premises so as to be prejudicial to health or a nuisance. By virtue of Clause 60(10) "premises" includes land. If a council is satisfied that noise from an illegal motor sports track is a statutory nuisance the council shall serve an abatement notice requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence. It also provides a council, where it is satisfied that a statutory nuisance in respect of noise emitted from land is likely to occur or recur, with a seven day period to take such steps as it thinks appropriate for the purpose of persuading the person responsible for the nuisance or the landowner to abate the nuisance or prohibit or restrict its occurrence or recurrence. A person failing to comply with an abatement notice is liable on summary conviction to a fine not exceeding Level 5 (currently £5,000) on the standard scale.

197. Accordingly, the Department was of the view that an amendment to the Bill in relation to noise from illegal motor sports tracks is not required as the situation is already adequately covered by the Bill and the Committee accepted this response.

Silting up of water courses (Clause 60)

198. The Committee was concerned that the inclusion of obstructed water courses due to silting up in the definitions of statutory nuisances (Clause 60(1)(i)) could be used to impede the natural progression of water systems and asked the Department for further details.

199. The Department replied that as regards this sub-section ("any part of a watercourse ...which is so choked or silted up as to obstruct or impede the flow of water"), English case law has established that the range of potential recipients of abatement notices under this provision is subject to an important limitation. Where a natural watercourse becomes silted up by natural causes and causes a nuisance by flooding, the landowner is unlikely to be held liable under this provision. By contrast, if a watercourse is created or substantially altered by humankind, then the landowner or occupier is responsible for its design, construction and maintenance and may be "in default" in respect of their inadequacies. The Committee was content with this explanation.

Including pigeons as a statutory nuisance (Clause 61)

200. In response to several submissions from councils, the Committee asked the Department to consider the inclusion of pigeons within the definitions of statutory nuisance.

201. In response the Department maintained that the Bill as drafted provided sufficient scope for councils to deal with pigeons as follows:

'...the Department considers that the existing powers available to councils in Clause 61(1)(a) "any premises in such a state as to be prejudicial to health or a nuisance" and 61(1)(e) "any accumulation or deposit which is prejudicial to health or a nuisance" are sufficient to allow councils to serve an abatement notice where there are problems associated with pigeons. Councils also have powers under Article 71 (Reduction of numbers of pigeons and other birds in built-up areas) of the Pollution Control and Local Government (NI) Order 1978 "to take any steps for the purpose of abating or mitigating any nuisance, annoyance or damage caused by the congregation in any built-up area of feral pigeons..."

202. The Committee accepted this argument.

Definition of 'owner' (Clause 65)

203. Several councils called for the definition of 'owner' used in Clause 65 to be extended to the rest of Part 7 and the Committee supported this call. The Department agreed and indicated that it would table the following amendments at consideration stage of the Bill:

Clause 60, Page 50, Line 15

At end insert—

"owner", in relation to any premises consisting of land, means a person (other than a mortgagee not in possession) who, whether in that person's own right or as agent trustee for any other person, is entitled to receive the rack rent of the premises or, where the premises are not let at a rack rent, would be so entitled if they were so let;'

Clause 60, Page 51, Line 7

After '1981 (NI 4)' insert '(except for the definition of "owner")'

Clause 65, Page 58,

Leave out lines 4 to 8

204. The Committee accepted these amendments.

Vacant Land (General)

205. Respondents to the Committee's call for evidence raised concerns about how and if the powers being given to councils by the Bill could be used in relation to vacant land. Organisations such as Banbridge District Council and the Northern Ireland Environmental Quality Forum stated that they had concern that the provision of Clause 17 to amend the Litter (NI) Order 1994 with Article 12A(10) exempts Crown land or land of an educational institution or statutory undertaker. They felt that retaining this exemption will not assist in improving general amenity and does not allow for efficient management of vacant, derelict land or open spaces in relation to litter, that are owned by other bodies.

206. The Department's reply stated that, under the Bill, litter clearing notices can be served on the occupier of the land to which it relates or, if the land is not occupied, the owner.

Guidance (General)

207. Most respondents to the Committee's call for evidence emphasised the need for clear guidance on the legislation.

208. In particular, guidance was requested on Gating Orders to address concerns such as access for emergency services, the Department for Regional Development's role and neighbourhood approval.

209. In addition NILGA and the several councils that responded also called for guidance on nuisance parking, issuing fixed penalty notices, enforcement powers, Dog Control Orders, on assessing if artificial light is causing a nuisance and on delineating the responsibilities between councils and the PSNI with respect to The Road Vehicles Construction and Use Regulations.

Phased implementation (General)

210. Due to the complexity and wide ranging nature of the Bill several respondents stated that a lead-in period will be necessary for the implementation of the legislation. Ballymena Borough Council recommended 3 months between the making of the legislation and the commencement order date to allow councils to prepare.

Cost of the bill (General)

211. There were concerns expressed by several local government respondents that the Bill and the additional powers it would introduce would require additional resources at an additional cost to councils. NILGA felt that the powers would incur considerable additional cost to councils and should be appropriately resourced, yet there appeared to be no process for doing so and the organisation urged the Department to consider this as a 'new burden'.

212. In terms of fixed penalty notices, the concern was expressed by several local government organisations that if councils had to resort to prosecution for failure to pay a fixed penalty they would not have the ability to recover costs due to the Northern Ireland Magistrates rules' where charges are limited to £75, so any costs in excess of this would have to be borne by the Local Authority.

213. The Department maintained its view that the Bill is cost-neutral with limited exceptions. It suggested that the provisions contained in the Bill do not generally impose a duty on councils to act but provide a range of powers which councils may decide to use where there is a net benefit in doing so in the local context. In relation to statutory nuisance and noise, an area where several councils will have new duties and were particularly concerned about resources, the Department feels it should be possible for them to deal with it through existing and well established structures.

Overcrowding (General)

214. Several councils expressed disappointment that unlike equivalent legislation in England and Wales, there is no proposal to introduce a Northern Ireland standard for overcrowding in a dwelling. The Department indicated that this issue had been brought to the attention of the Department for Social Development which has policy responsibility in Northern Ireland for housing matters, including overcrowding. The Department also indicated to the Committee that it was aware this issue was being treated as a priority by DSD.

Child Poverty (General)

215. The organisations representing children and young people were concerned the Bill would have a detrimental impact on child poverty and suggested its progress should be halted pending the Review of Children and the Criminal Justice System promised within the Hillsborough Review.

216. They wanted to see the Department respond to and engage children and young people as primary stakeholders and make reference within the legislation to the best interest of the child.

217. The Department stressed that it had consulted and taken account of the views of children's organisations and that the legislation is designed to improve the quality of life for everyone in Northern Ireland including children and future generations. It also noted that the Bill enjoys cross-party support and aims to bring it into force as soon as possible

Multi-agency approach (General)

218. One respondent stressed the need for multi-agency approaches that embrace prevention and early intervention as the key to ensuring neighbourhoods and communities are safe areas where everyone can feel secure and meet their diverse needs.

219. The Department stated that it understood that it is a key priority for the Department of Justice (DOJ) to develop a new Community Safety Strategy for Northern Ireland and the Department maintains close liaison with DOJ concerning the development of this strategy and its linkages with the Clean Neighbourhoods Agenda.

Anti-social behaviour orders (General)

220. One organisation wanted to see environmental crime incorporated into social behaviour strategies and indicated that Anti-Social Behaviour Orders were a significant and powerful weapon in this area. Section 1 in the Clean Neighbourhood and Environment Act in England includes such measures and it was felt that a similar inclusion in this Bill would be beneficial.

221. The Department replied that Anti-Social Behaviour Orders can already be used to deal with environmental crime. Both DOJ and the Department recognise how the developing Community Safety Strategy and clean neighbourhoods agenda complement each other. By virtue of section 1 of the Clean Neighbourhoods and Environment Act, Crime and Disorder Reduction Partnerships in England and Wales have to take anti-social and other behaviour adversely affecting the local environment into account when developing their strategies. This mandatory approach was possible because the formulation and implementation of crime and disorder strategies is a legislative requirement under the Crime and Disorder Act 1998. This is not currently the case in Northern Ireland. However, the Department understands that the new Justice Bill contains provisions to establish Policing and Community Safety Partnerships and will consider the likely impact and potential the proposals in the Justice Bill have in terms of helping to deal with low-level environmental crime issues.

Rural proofing (General)

222. NILGA was keen to see that appropriate rural proofing of this legislation takes place as rural councils can have a very different experience of some issues to urban councils particularly regarding the source of nuisance noises and smells. Rural dwellers also have potentially different needs than those of the urban population.

223. In reply, the Department indicated that a Rural Proofing screening exercise was carried out on the draft Bill. It was concluded that it will not have a differential impact in rural areas and does not affect accessibility to public services in rural areas.

Clause by Clause Consideration of the Bill

224. The Committee conducted its clause by clause scrutiny of the Bill on 16 December 2010 and 13 January 2011– see Appendix 2. The Committee recommended several amendments which are outlined below.

Clause 1 - Gating orders

225. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 2 - Exposing vehicles for sale on a road

226. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 3 - Repairing vehicles on a road

227. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 4 - Power to give fixed penalty notices

228. At the meeting on 16 December 2010 the Committee was content with the Clause subject to the amendment proposed by the Department to make orders under sub-section 9 subject to draft affirmative procedure.

Clause 5 - Power to require name and address

229. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 6 - Use of fixed penalty receipts

230. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 7 - Offence of abandoning a vehicle: fixed penalty notices

231. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 8 - Notice of removal of vehicle by district council

232. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 9 - Disposal of removed vehicle by district council

233. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 10 – Guidance

234. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 11 - Notice of removal of vehicle

235. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 12 - Disposal of vehicle by police officer

236. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 13 - Disposal of vehicle by Department

237. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 14 - Offence of dropping litter in lake, pond or watercourse

238. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 15 - Penalty for failing to provide name

239. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 16 - Litter offence: fixed penalty notice

240. At the meeting on 16 December 2010 the Committee decided that a formal decision on this Clause was deferred until the meeting on 13 January 2011 when the Department provides the Committee with the guidance on the issuing of fixed penalty notices.

241. At the meeting on 26 January 2011 the Committee clarified its position on this Clause as agreed subject to an amendment that reflects the Committee's position on issuing fixed penalty notices to juveniles.

Clause 17 - Litter clearing notices

242. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 18 - Street litter: control notices

243. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 19 - Street litter: supplementary provisions

244. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 20 - Failure to comply with notice: fixed penalty notices

245. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 21 - Controls on free distribution of printed matter

246. At the meeting on 16 December 2010 the Committee decided that a formal decision on this Clause was deferred until the meeting on 13 January 2011 when the Department provided the Committee with an answer to queries on the impact of this Clause on Crown land.

247. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 22 - Fixed penalty notices: supplementary

248. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 23 - Exclusion of liability

249. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 24 - Abandoned shopping and luggage trolleys

250. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 25 - Section 24: transitional provision

251. At the meeting on 16 December 2010 the Committee was content with the Clause as drafted.

Clause 26 - Penalty notices for graffiti and fly-posting

252. At the meeting on 13 January 2011 the Committee was content with the Clause subject to the amendment proposed by the Department to allow councils to deal more effectively with graffiti and fly-posting.

Clause 27 - Amount of penalty

253. At the meeting on 13 January 2011 the Committee was content with the Clause subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure.

Clause 28 - Penalty notices: power to require name and address

254. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 29 - Penalty receipts

255. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 30 - Guidance

256. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 31 - Defacement removal notices

257. At the meeting on 13 January 2011 the Committee was content with the Clause subject to the amendment proposed by the Department to allow councils to deal more effectively with graffiti and fly-posting.

Clause 32 - Recovery of expenditure

258. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 33 - Guidance

259. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 34 - Appeals

260. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 35 - Exemption from liability in relation to defacement removal notices

261. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

New Clause

262. At the meeting on 13 January 2011 the Committee was content with the New Clause to be inserted after Clause 35 to allow councils to deal more effectively with graffiti and fly-posting.

Clause 36 - Sale of aerosol paint to children

263. At the meeting on 13 January 2011 the Committee was content with Clause 36 as amended by the Department to raise the limit below which it is illegal to sell aerosol paints to 18.

Clause 37 - Unlawful display of advertisements

264. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

New Clause

265. At the meeting on 13 January 2011 the Committee was content with the New Clause to be inserted after Clause 37 to give councils more information-gathering powers.

Clause 38 - Power to make dog control orders

266. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 39 - Dog control orders: supplementary

267. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 40 - Land to which this Part applies

268. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 41 - Fixed penalty notices for contravention of dog control order

269. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 42 - Amount of fixed penalties

270. At the meeting on 13 January 2011 the Committee was content with the Clause subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure.

Clause 43 - Power to require name and address

271. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 44 – Byelaws

272. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

New Clause

273. At the meeting on 13 January 2011 the Committee was content with the New Clause to be inserted after Clause 44 to give councils more information-gathering powers.

Clause 45 - Designation of alarm notification areas

274. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 46 - Withdrawal of designation

275. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 47 - Notification of nominated key-holders

276. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 48 - Nomination of key-holders

277. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 49 - Offences under section 47: fixed penalty notices

278. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 50 - Amount of fixed penalty

279. At the meeting on 13 January 2011 the Committee was content with the Clause subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure.

Clause 51 - Use of fixed penalty receipts

280. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 52 - Fixed penalty notices: power to require name and address

281. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 53 - Powers of entry

282. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 54 - Warrant to enter premises by force

283. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 55 - Powers of entry: supplementary

284. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 56 - Interpretation of this Chapter

285. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 57 - Dealing with noise at night

286. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 58 - Noise offences: fixed penalty notices

287. At the meeting on 13 January 2011 the Committee was content with the Clause subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure.

Clause 59 - Extension of Noise Act 1996 to licensed premises etc.

288. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 60 - Statutory nuisances

289. At the meeting on 13 January 2011 the Committee was content with the Clause subject to the amendments proposed by the Department to expand the definition of 'owner' in Clause 65 to the whole of Part 7.

Clause 61 - Duty of district council to inspect for statutory nuisance

290. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 62 - Summary proceedings for statutory nuisances

291. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 63 - Abatement notice in respect of noise in the street

292. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 64 - Supplementary provisions

293. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 65 - Expenses recoverable from owner to be a charge on premises

294. At the meeting on 13 January 2011 the Committee was content with the Clause subject to the amendment proposed by the Department to expand the definition of 'owner' in this clause to the whole of Part 7.

Clause 66 - Payment of expenses by instalments

295. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 67 - Summary proceedings by persons aggrieved by statutory nuisances

296. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 68 - Application of this Part to Crown

297. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 69 - Use of penalty receipts

298. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 70 - Offences relating to pollution etc.: penalties on conviction

299. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 71 - Offences by bodies corporate

300. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 72 - Regulations and orders

301. At the meeting on 13 January 2011 the Committee was content with the Clause subject to the amendments proposed by the Department to make the powers to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure.

Clause 73 – Interpretation

302. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 74 - Minor and consequential amendments and repeals

303. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 75 – Commencement

304. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Clause 76 - Short title

305. At the meeting on 13 January 2011 the Committee was content with the Clause as drafted.

Schedule 1

306. At the meeting on 13 January 2011 the Committee was content with the Schedule as drafted.

Schedule 2

307. At the meeting on 13 January 2011 the Committee was content with the Schedule as drafted.

Schedule 3

308. At the meeting on 13 January 2011 the Committee was content with the Schedule as drafted.

Long Title

309. At the meeting on 13 January 2011 the Committee was content with the Long Title as drafted.

Appendix 1

Minutes of Proceedings Relating to the Report

**Thursday 11 February 2010,
Room 144, Parliament Buildings**

Present: Mr Roy Beggs
Mr John Dallat
Mr David Ford
Mrs Dolores Kelly (Chairperson)
Mr Danny Kinahan
Mr Ian McCrea
Mr Alastair Ross
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Jonathan Bell
Mr Cathal Boylan (Deputy Chairperson)

5. Departmental briefing on draft Clean Neighbourhood and Environment Bill - Outline of Policy Proposals

The following members declared an interest:

Roy Beggs – Member of Carrickfergus Borough Council

Ian McCrea – Member of Cookstown District Council

John Dallat – Member of Coleraine Borough Council

Dolores Kelly – Member of Craigavon Borough Council

Danny Kinahan – Member of Antrim Borough Council

Departmental officials briefed the Committee and answered members' questions on the draft Clean Neighbourhood and Environment Bill - Outline of Policy Proposals

The main areas of discussion were enforcement, collection of fines and fixed penalty notices.

Dolores Kelly

Chairperson, Committee for the Environment
18 February 2010

[EXTRACT]

Thursday 4 March 2010, Room 144, Parliament Buildings

Present: Mr Jonathan Bell
Mr Roy Beggs
Mr John Dallat
Mr David Ford
Mrs Dolores Kelly (Chairperson)
Mr Danny Kinahan
Mr Alastair Ross

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Cathal Boylan (Deputy Chairperson)
Mr Ian McCrea
Mr Daithi McKay
Mr Peter Weir

Consultation on draft Clean Neighbourhood and Environment Bill

Agreed: That Committee staff draft an interim response to this consultation.

Dolores Kelly

Chairperson, Committee for the Environment
4 March 2010

[EXTRACT]

Thursday 10 June 2010, Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Cathal Boylan (Chairperson)
Mr John Dallat
Mr Danny Kinahan
Mr Ian McCrea
Mr Patsy McGlone

Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Jonathan Bell

12. Consultations

The following members declared an interest:

Mr Beggs – Carrickfergus Borough Council

Mr McCrea - Cookstown District Council

Mr McGlone – Cookstown District Council

Mr Weir – North Down Borough Council

Mr Wilson – North Down Borough Council

Draft Clean Neighbourhoods and Environment Bill – synopsis of responses to consultation

Agreed: That the Committee is content for the Department to proceed with the policy.

Cathal Boylan

Chairperson, Committee for the Environment
17 June 2010

[EXTRACT]

Thursday 1 July 2010, Room 144, Parliament Buildings

Present: Mr Roy Beggs
Mr Jonathan Bell
Mr Cathal Boylan (Chairperson)
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Ian McCrea
Mr Daithi McKay
Mr Alastair Ross
Mr Peter Weir

10. Clean Neighbourhoods and Environment Bill

The Chairperson informed members that they had been provided with a draft motion to extend the Committee Stage of the Bill up to Christmas Recess, a draft public notice and a draft stakeholder list and a copy of the delegated powers of the Bill.

Agreed: That the motion to extend is lodged with the Business Office.

Agreed: That the public notice is placed in the 3 main newspapers.

Agreed: That letters asking for submissions on the Bill are sent to the main stakeholders.

Agreed: That the delegated powers memorandum is forwarded to the Examiner of Statutory Rules for comment.

Agreed: That a memo is sent to the Committee for Regional Development and Department of Regional Development asking for comments on the Bill.

Cathal Boylan

Chairperson, Committee for the Environment
2 September 2010

[EXTRACT]

Thursday 30 September 2010, Room 144, Parliament Buildings

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

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Willie Clarke
Mr Alastair Ross

7. Assembly Research briefing on Clean Neighbourhoods and Environment Bill

12.01p.m Mr McGlone left the meeting.

An Assembly Researcher briefed the Committee and answered members' questions on the Clean Neighbourhoods and Environment Bill.

12.15p.m Mr Wilson rejoined the meeting.

Agreed: That the Research paper is published on the Assembly website.

8. Departmental briefing on Clean Neighbourhoods and Environment Bill

12.21p.m Mr McGlone rejoined the meeting.

The following members declared an interest:

Mr Beggs –Member of Carrickfergus Borough Council.

Mr Wilson –Member of North Down Borough Council.

Departmental officials briefed the Committee and answered members' questions on the Clean Neighbourhoods and Environment Bill.

12.40p.m Mr Trevor Clarke rejoined the meeting.

The main areas of discussion were the purpose of each clause of the Bill and its implications.

12.42p.m Mr Dallat left the meeting.

Agreed: That Departmental officials provide a written response to a question on whether the Bill provides the power for an innocent party to recoup costs from the beneficiaries of an advertisement for removal of posters that have been flyposted.

Cathal Boylan
Chairperson, Committee for the Environment
7 October 2010

[EXTRACT]

**Thursday 16 September 2010,
Room 144, Parliament Buildings**

Present: Mr Roy Beggs
Mr Cathal Boylan (Chairperson)
Mr Thomas Buchanan
Mr Trevor Clarke
Mr Willie Clarke

Mr Danny Kinahan
Mr Patsy McGlone
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr John Dallat

8. Clean Neighbourhoods and Environment Bill

Members noted copies of the submissions received on the Bill.

The Chairperson informed members that the following organisations/individuals have been invited to provide oral evidence:

Agreed: That the following organisations are invited to give oral evidence to the Committee on the bill:

- Tom Ekin
- Children in NI/Include Youth/Children's Law Centre/Playboard – joint delegation
- NILGA
- Countryside Alliance/Kennel Club – joint delegation
- Tidy NI
- Pubs of Ulster

Cathal Boylan
Chairperson, Committee for the Environment
23 September 2010

[EXTRACT]

Thursday 07 October 2010, Carrickfergus Castle

Present: Mr Roy Beggs
Mr Cathal Boylan (Chairperson)
Mr Thomas Buchanan
Mr Willie Clarke
Mr John Dallat
Mr Patsy McGlone
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Trevor Clarke
Mr Danny Kinahan
Mr Alastair Ross

10.10 a.m. The meeting began in public session

7. Pubs of Ulster briefing on Clean Neighbourhoods and Environment Bill

A representative from Pubs of Ulster briefed the Committee and answered members' questions on the Clean Neighbourhoods and Environment Bill.

The main areas of discussion were the potential implications for small businesses from the Bill's proposals on dealing with fly posting and the distribution of leaflets.

Agreed: That more information is sought in relation to a communal fly posting area in Coleraine.

Cathal Boylan
Chairperson, Committee for the Environment
14 October 2010

[EXTRACT]

Thursday 04 November 2010, Room 144, Parliament Buildings

Present: Mr Cathal Boylan (Chairperson)
Mr Thomas Buchanan
Mr Trevor Clarke
Mr Willie Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Alastair Ross
Mr Brian Wilson

5. NILGA briefing on the Clean Neighbourhoods and Environment Bill

Mr Weir declared an interest as a member of the Executive of NILGA

Mr Willie Clarke declared an interest as a member of Down District Council

Representatives from NILGA briefed the Committee and answered member's questions on the Clean Neighbourhoods and Environment Bill.

The main areas of discussion were fixed penalty notices, the need for guidance in relation to the Bill, the need for a lead in period on the Bill, the need for the Bill to include derelict buildings and the cost to councils of alleygating.

10.41a.m Mr Buchanan joined the meeting.

11.20a.m Mr McGlone left the meeting.

Agreed: That NILGA provides the Committee with further information in relation to derelict property, suggestions on the lead-in times required for the Bill, future actions that are needed in relation to the Bill but that there is not enough time to include, clarification of equality proofing, breakdown of costs on alleygating, other costs that they anticipate are likely to fall to councils as a result of the Bill, their perception of the successes of alleygating, the range of fixed penalty notices that are needed and clarification about the concern for the need for keyholders in relation to house alarms.

6. The Environmental Quality Forum (NIEQF) briefing on the Clean Neighbourhoods and Environment Bill

11.26a.m Mr McGlone rejoined the meeting.

Representatives from The Environmental Quality Forum briefed the Committee and answered member's questions on the Clean Neighbourhoods and Environment Bill.

The main areas of discussion were litter, the level of fines in relation to fixed penalty notices and guidance on selling vehicles at the roadside.

7. Children and youth groups briefing on the Clean Neighbourhoods and Environment Bill

Representatives from children and youth groups briefed the Committee and answered member's questions on the Clean Neighbourhoods and Environment Bill.

The main areas of discussion were fixed penalty notices, the implications the Bill has on children and young people, gating orders and shared space for children to play safely.

12.46p.m Mr McGlone left the meeting.

Agreed: That a letter is sent to the Department asking the length of the consultation period and which children and youth groups were consulted on the proposals for the Bill.

Agreed: That a letter is sent to the Department asking why it was decided that an Equality Impact Assessment was not needed on the Bill.

Agreed: That the 4 groups would provide the Committee with information on the negative experiences of similar legislation already in operation in England and Wales.

Cathal Boylan
Chairperson, Committee for the Environment
11 November 2010

[EXTRACT]

Thursday 11 November 2010, Room 144, Parliament Buildings

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

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Danny Kinahan

4. Countryside Alliance/Kennel Club briefing on the Clean Neighbourhoods and Environment Bill

10.27a.m Mr Savage joined the meeting.

Mr Willie Clarke declared an interest as a member of Down District Council.

10.34a.m Mr Trevor Clarke joined the meeting.

Representatives from Countryside Alliance Ireland and the Kennel Club briefed the Committee and answered member's questions on the Clean Neighbourhoods and Environment Bill.

The main areas of discussion were access to land, dog walking, the dog order, the cost of training council officers and fixed penalty notices.

Agreed: That Assembly Research is asked to provide statistics on stray dogs within each council area in the past year.

Agreed: That a letter is sent to the Department asking how the Bill will impact on rural sports, particularly in relation to sporting dogs and their freedom of movement and asking for further information on how the issue of derelict buildings will be dealt with by the Bill.

The Chairperson suspended the meeting at 10.45a.m. to allow members to attend the Remembrance Service in the Senate Chamber.

11.14a.m. The meeting continued with the following members present:

Mr Boylan, Mr Buchanan, Mr Dallat, Mr Ross, Mr Trevor Clarke and Mr Willie Clarke.

5. Briefing on the Clean Neighbourhoods and Environment Bill – Tom Ekin

Mr Wilson declared an interest as a member of North Down Borough Council.

11.16a.m Mr Savage rejoined the meeting.

11.17a.m Mr McGlone rejoined the meeting.

11.20a.m Mr Weir rejoined the meeting.

11.21a.m Mr Wilson rejoined the meeting.

Mr Ekin briefed the Committee and answered member's questions on the Clean Neighbourhoods and Environment Bill.

The main areas of discussion were the necessary powers to councils to deal with issues outlined in the Bill, the need to introduce the Bill quickly, fly posting and derelict sites.

Cathal Boylan
Chairperson, Committee for the Environment
18 November 2010

[EXTRACT]

Thursday 18 November 2010, Senate Chamber, Parliament Buildings

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

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Willie Clarke

10.09a.m. The meeting began in public session.

6. Clean Neighbourhoods and Environment Bill

Members deferred discussion of this item until its meeting on 25 November 2010.

Cathal Boylan
Chairperson, Committee for the Environment

25 November 2010

[EXTRACT]

Thursday 25 November 2010, Room 144, Parliament Buildings

Present: Mr Cathal Boylan (Chairperson)
Mr Thomas Buchanan
Mr Willie Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Alastair Ross

6. Clean Neighbourhoods and Environment Bill – informal clause by clause consideration

Departmental officials briefed the Committee and answered members' questions on clauses 2-15 of the Clean Neighbourhoods and Environment Bill.

Agreed: That the Department considers the possibility of amending Clauses 4 and 7 to ensure that subordinate legislation is subject to the draft affirmative procedure.

Cathal Boylan
Chairperson, Committee for the Environment
02 December 2010

[EXTRACT]

Thursday 02 December 2010, Room 144, Parliament Buildings

Present: Mr Cathal Boylan (Chairperson)
Mr Thomas Buchanan

Mr Trevor Clarke
Mr Willie Clarke
Mr John Dallat
Mr Danny Kinahan
Mr Patsy McGlone
Mr George Savage
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies:

4. Clean Neighbourhoods and Environment Bill – informal clause by clause consideration – Parts 1, 3 and 5

10.55a.m Mr Trevor Clarke joined the meeting.

Mr Willie Clarke declared an interest as a member of Down District Council.

The main areas of discussion were fixed penalty notices for litter offences, gating orders and the possibility of expectations being raised within communities, litter clearing exemptions, liaison with the Department of Justice and the distribution of printed material.

Agreed: That Departmental officials provide clarification on Clause 17 in relation to exemptions for Crown land and educational establishments and information on enforcement action that has been taken to date under the Litter Order in relation to Crown land.

Agreed: That Department provides it with legal opinion, on Clause 21, on the grounds on which a council may base a decision to approve or refuse consent to distribute printed material on the street and more information on how the Department envisages this working in practice.

Agreed: That Officials agreed to consider an amendment to Clause 22 to make it subject to draft affirmative procedure.

Agreed: That the Department advises the Committee if there is legal advice in relation to Clause 1, gating orders, as there was a feeling that the introduction of the Bill will lead to a situation where expectations are raised in relation to installing gates and the possibility of councils having a duty to install them when communities ask for them.

Cathal Boylan
Chairperson, Committee for the Environment
09 December 2010

[EXTRACT]

**Thursday 09 December 2010,
Radisson Blu Roe Hotel, Limavady**

Present: Mr Cathal Boylan (Chairperson)
Mr Trevor Clarke
Mr Willie Clarke
Mr John Dallat
Mr Peter Weir

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Thomas Buchanan
Mr Danny Kinahan
Mr Patsy McGlone
Mr Alastair Ross
Mr George Savage
Mr Brian Wilson

6. Clean Neighbourhoods and Environment Bill – informal clause by clause consideration – Parts 4, 5, 6, 7, 8 and schedules

The Committee continued informal consideration of the Clean Neighbourhoods and Environment Bill.

12.31p.m Mr Weir rejoined the meeting.

The Departmental officials agreed to provide the Committee with further information on the following:

Clause 28 –Departmental officials agreed to provide the Committee with an example of the guidance on how the Bill will deal with the issuing of notices to juveniles.

Clause 36 – Department officials agreed to provide the Committee with the age limit on sale of aerosols in Scotland and also agreed to consider amending the Bill to raise the age limit to 18.

Clause 53 - Department officials agreed to clarify the situation in regards to damage to alarms caused by Council officials.

Clause 60 - Department officials agreed to consider an amendment in relation to noise from illegal motor sports tracks.

In relation to Clause 60(1) (l), Departmental officials agreed to reconsider this Clause and provide the Committee with NIEA's views on it.

Clause 61 - Department officials agreed to consider an amendment in relation to pigeons.

Cathal Boylan
Chairperson, Committee for the Environment
16 December 2010

[EXTRACT]

Thursday 16 December 2010, Room 144, Parliament Buildings

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

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

4. Clean Neighbourhoods and Environment Bill – formal clause by clause consideration –Parts 1, 2 and 3

The Chairperson informed members that they had been provided with a Departmental response to Committee queries on Parts 1 and 3 at Tab 3R, information on gating orders from Belfast City Council at Tab 3S and information from NILGA on the costs of the Bill also at Tab 3S.

Agreed: That the responses are incorporated into the final Committee report.

10.54 am Mr McGlone rejoined the meeting.

CLAUSE 1 – Gating Orders

Agreed: That the Committee is content with Clause 1 as drafted.

CLAUSE 2- Exposing vehicles for sale on a road

Agreed: That the Committee is content with Clause 2 as drafted.

CLAUSE 3 – repairing vehicles on a road

Agreed: That the Committee is content with Clause 3 as drafted.

CLAUSE 4 – power to give fixed penalty notices

Agreed: That the Committee is content with Clause 4 subject to the amendment proposed by the Department to make orders under sub-section 9 subject to draft affirmative procedure.

CLAUSES 5 and 6 – power to require name and address and use of fixed penalty receipts

Agreed: That the Committee is content with Clauses 5 and 6 as drafted.

CLAUSE 7 – offence of abandoning a vehicle: fixed penalty notices

Agreed: That the Committee is content with Clause 7 as drafted.

CLAUSES 8 - 13 – Notice of removal of vehicle by district council, Disposal of removed vehicle by district council, Guidance, Notice of removal of vehicle, Disposal of vehicle by police officer and Disposal of vehicle by department

Agreed: That the Committee is content with Clauses 8 - 13 as drafted.

CLAUSE – 14 – Offence of dropping litter in lake, pond or watercourse

Agreed: That the Committee is content with Clause 14 as drafted.

CLAUSE 15 – penalty for failing to provide name

Agreed: That the Committee is content with Clause 15 as drafted.

CLAUSE 16 – litter offence: fixed penalty notice

Agreed: That a formal decision on Clause 16 is deferred until the meeting on 13 January 2011 when the Department provides the Committee with the guidance on the issuing of fixed penalty notices.

Mr W. Clarke wished it to be noted that he was totally opposed to the Clause.

CLAUSE 17 – litter clearing notices

Agreed: That the Committee is content with Clause 17 as drafted.

CLAUSE 18 – street litter: control notices

Agreed: That the Committee is content with Clause 17 as drafted.

CLAUSES 19 and 20 – street litter: supplementary provisions and failure to comply with notice: fixed penalty notices

Agreed: That the Committee is content with Clauses 19 - 20 as drafted.

CLAUSE 21 – controls on free distribution of printed matter

Agreed: That a formal decision on Clause 21 is deferred until the meeting on 13 January 2011 when the Department provides the Committee with an answer to queries on the impact of this Clause on Crown land.

CLAUSES 22 and 23 – fixed penalty notices: supplementary and exclusion of liability

Agreed: That the Committee is content with Clauses 22 - 23 as drafted.

CLAUSE 24 – abandoned shopping and luggage trolleys

Agreed: That the Committee is content with Clause 24 as drafted.

CLAUSE 25 – Section 24: transitional provision

Agreed: That the Committee is content with Clause 25 as drafted.

Cathal Boylan
Chairperson, Committee for the Environment
13 January 2011

[EXTRACT]

Thursday 13 January 2011, Room 144, Parliament Buildings

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

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

4. Clean Neighbourhoods and Environment Bill – formal clause by clause consideration –Parts 4 – 8 and schedules

10.35 am Mr McGlone left the meeting.

The Chairperson informed the Committee that at the meeting on 16 December 2010 the Committee agreed Clauses 4, 7 and 22 in Parts 2 and 3 of the Bill subject to amendments making the regulations in these clauses to alter the level of fixed penalty fines subject to draft affirmative procedure. The Committee had been provided with a copy of the amendments.

Agreed: That the Committee is content with the proposed amendments to Clauses 4, 7 and 22.

The Chairperson informed members that he would ask them to come to a decision on Clauses 16 and 21 which had been deferred from the meeting on 16 December 2010.

Clause 16 – litter offence: fixed penalty notice.

The Chairperson asked members if they were content with the Clause as drafted.

The Committee divided.

AYES NOES

Peter Weir Cathal Boylan
Thomas Buchanan Willie Clarke
Alastair Ross John Dallat
George Savage Brian Wilson

Agreed: That the Committee is content with the Clause as drafted.

Clause 21 – controls on free distribution of printed matter

Agreed: That the Committee is content with Clause 21 as drafted.

The Chairperson informed members that the Committee now needed to formally consider Parts 4 – 8 of the Bill starting at Clause 26.

Clause 26 - Penalty notices for graffiti and fly-posting

Agreed: That the Committee is content with Clause 26 subject to the amendment proposed by the Department to allow councils to deal more effectively with graffiti and flyposting.

Agreed: That the Committee makes a recommendation in its report that councils are encouraged to provide flyposting sites.

Clause 27 - Amount of penalty

Agreed: That the Committee is content with Clause 27 subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure.

Clause 28 – Penalty notices: power to require name and address

Agreed: That the Committee is content with Clause 28 as drafted.

10.45 am Mr McGlone rejoined the meeting.

Clauses 29 - 30 – Penalty receipts and Guidance

Agreed: That the Committee is content with Clauses 29 -30 as drafted.

Clause 31 – Defacement removal notices

Agreed: That the Committee is content with Clause 31 subject to the amendment proposed by the Department to allow councils to deal more effectively with graffiti and flyposting.

Clauses 32 - 35 – Recovery of expenditure, Guidance, Appeals and Exemption from liability in relation to defacement removal notices

Agreed: That the Committee is content with Clauses 32 - 35 as drafted.

The Chairperson informed members that the Department had indicated its intention to strengthen Part 4 of the Bill to allow district councils to deal more effectively with graffiti and flyposting and that it intends to achieve this by inserting a new clause after Clause 35.

New Clause

Agreed: That the Committee is content with the New Clause to be inserted after Clause 35 to allow councils to deal more effectively with graffiti and flyposting.

Clause 36 – Sale of aerosol paint to children

10.55 am Mr Dallat left the meeting.

Agreed: That the Committee is content with Clause 36 as amended by the Department to raise the limit below which it is illegal to sell aerosol paints to 18.

Clause 37 – Unlawful display of advertisements

Agreed: That the Committee is content with Clause 37 as drafted.

10.55 am Mr Weir left the meeting.

10.55 am Mr Wilson left the meeting.

10.57 am Mr McGlone left the meeting.

The Chairperson informed members that the Department had indicated its intention to strengthen Part 4 of the Bill to give councils improved information-gathering powers and that it intends to achieve this by inserting a new clause after Clause 37.

New Clause

Agreed: That the Committee is content with the New Clause to be inserted after Clause 37 to give councils more information-gathering powers.

Clauses 38 – 41 - Power to make dog control orders, Dog control orders: supplementary, Land to which this Part applies and Fixed penalty notices for contravention of dog control order

Agreed: That the Committee is content with Clauses 38 - 41 as drafted.

Clause 42 – Amount of fixed penalties

Agreed: That the Committee is content with Clause 42 subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure.

Clauses 43 – 44 - Power to require name and address and Byelaws

Agreed: That the Committee is content with Clauses 43 - 44 as drafted.

The Chairperson informed members that the Department had indicated its intention to strengthen Part 5 of the Bill to give councils improved information-gathering powers. It intends to achieve this by inserting a new clause after Clause 44.

New Clause

Agreed: That the Committee is content with the New Clause to be inserted after Clause 44 to give councils more information-gathering powers.

Clauses 45 – 49 - Designation of alarm notification areas, Withdrawal of designation, Notification of nominated key-holders, Nomination of key-holders and Offences under section 47: fixed penalty notices

Agreed: That the Committee is content with Clauses 45 - 49 as drafted.

Clause 50 – Amount of fixed penalty

Agreed: That the Committee is content with Clause 50 subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure.

Clauses 51 and 52 - Use of fixed penalty receipts and fixed penalty notices: power to require name and address

Agreed: That the Committee is content with Clauses 51 and 52 as drafted.

11.08 am Mr Weir rejoined the meeting.

Clause 53 – Power of entry

Agreed: That the Committee is content with Clause 53 as drafted.

Clauses 54 – 57 - Warrant to enter premises by force, Powers of entry: supplementary, Interpretation of this Chapter, Dealing with noise at night

Agreed: That the Committee is content with Clauses 54 - 57 as drafted.

Clause 58 – Noise offences: fixed penalty notices

Agreed: That the Committee is content with Clause 58 subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure.

Clause 59 – Extension of Noise Act 1996 to licensed premises etc.

Agreed: That the Committee is content with Clause 59 as drafted.

Clause 60 – Statutory nuisances

Agreed: That the Committee is content with Clause 60 subject to the amendments proposed by the Department to expand the definition of 'owner' in Clause 65 to the whole of Part 7.

11.15 am Mr McGlone rejoined the meeting.

11.15 am Mr Dallat rejoined the meeting.

Clause 61 – Duty of district council to inspect for statutory nuisance

Agreed: That the Committee is content with Clause 61 as drafted.

Clauses 62 – 64 Summary proceedings for statutory nuisances, Abatement notice in respect of noise in the street and Supplementary provisions,

Agreed: That the Committee is content with Clauses 62 - 64 as drafted.

Clause 65 – Expenses recoverable from owner to be a charge on premises,

Agreed: That the Committee is content with Clause 65 subject to the amendment proposed by the Department to expand the definition of 'owner' in this clause to the whole of Part 7.

Clauses 66 - 68 - Payment of expenses by instalments, Summary proceedings by persons aggrieved by statutory nuisances and Application of this Part to Crown

Agreed: That the Committee is content with Clauses 62 - 68 as drafted.

Clause 69 - 71 - Use of penalty receipts, Offences relating to pollution etc.: penalties on conviction and Offences by bodies corporate

Agreed: That the Committee is content with Clauses 69 - 71 as drafted.

Clause 72 – Regulations and orders

Agreed: That the Committee is content with Clause 72 subject to the amendments proposed by the Department to make the powers to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure.

Clauses 73 - 76 -, Interpretation, Minor and consequential amendments and repeals, Commencement and Short title.

Agreed: That the Committee is content with Clauses 73 - 76 as drafted.

Schedules 1 – 4 Application of the Noise Act 1996 to licensed premises etc., Statutory nuisances: supplementary provisions, Minor and consequential amendments and Repeals

Agreed: That the Committee is content with Schedules 1-4 as drafted.

Long title

Agreed: That the Committee is content with the Long Title as drafted.

The Chairperson informed members that this concluded formal clause by clause consideration of the Clean Neighbourhoods and Environment Bill and that a draft Committee report would be brought back to the Committee for consideration at the meeting on 27 January 2011.

Cathal Boylan
Chairperson, Committee for the Environment
20 January 2011

[EXTRACT]

Wednesday 26 January 2011, Room 29, Parliament Buildings

Present: Mr Cathal Boylan (Chairperson)
Mr Trevor Clarke
Mr Willie Clarke
Mr Danny Kinahan
Mr Alastair Ross
Mr George Savage
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)
Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Thomas Buchanan
Mr John Dallat
Mr Patsy McGlone
Mr Peter Weir

2. Clean Neighbourhoods and Environment Bill

The Chairperson informed members that at the meeting on 13 January 2011 the Committee divided on Clause 16 of the Bill - Litter offence: fixed penalty notice. In the minutes of the meeting the decision was recorded as the Committee being content with the clause as drafted. This was incorrect as the vote was tied thus meaning that the Committee did not agree the clause as drafted. The Committee now needed to reconsider the clause.

Agreed: That the Committee is content with the Clause subject to a Committee amendment to address its concerns about issuing fixed penalty notices to minors.

Cathal Boylan
Chairperson, Committee for the Environment
27 January 2011

[EXTRACT]

Thursday 27 January 2011, Room 144, Parliament Buildings

Present: Mr Cathal Boylan (Chairperson)
Mr Trevor Clarke
Mr Danny Kinahan
Mr Patsy McGlone
Mr Alastair Ross
Mr Peter Weir
Mr Brian Wilson

In Attendance: Dr Alex McGarel (Assembly Clerk)
Mr Sean McCann (Assistant Clerk)

Mr Nathan McVeigh (Clerical Supervisor)
Ms Antoinette Bowen (Clerical Officer)

Apologies: Mr Thomas Buchanan
Mr Willie Clarke
Mr John Dallat
Mr George Savage

3. Clean Neighbourhoods and Environment Bill

The Committee noted further Departmental amendments to the Bill.

The Chairperson informed members that they now needed to consider the draft report on the Clean Neighbourhoods and Environment Bill which included a change to reflect the Committee's decision, at the meeting on 26 January, to agree an amendment to Clause 16.

Agreed: That the report is ordered to be printed.

Cathal Boylan
Chairperson, Committee for the Environment
3 February 2011

[EXTRACT]

Appendix 2

Minutes of Evidence

16 September 2010

Members present for all or part of the proceedings:

Mr Fred Cobain (Chairperson)
Miss Michelle McIlveen (Deputy Chairperson)
Mr Cathal Boylan
Mr Allan Bresland
Mr Danny Kinahan
Mr Billy Leonard
Mr Fra McCann
Mr McCrea
Mr Conall McDevitt

Witnesses:

Mr Des McKibbin Assembly Research and Library Services
Mr Gerry Anketell
Mr Chris Galbraith Department of Regional Development
Mr Brian O'Neill
Mr Robert Grey Department of the Environment

1. The Chairperson: We will move on quickly to briefings on the Clean Neighbourhoods and Environment Bill.
2. The Committee Clerk: Members, there will be two briefings on the Bill. The first is from Research Services. Hansard is present to record the meeting. The Committee's views will be relayed to the Committee for the Environment because it is the Department of the Environment's Bill.
3. Mr Des McKibben (Assembly Research and Library Services): The presentation is based on research that was requested by the Committee on the alley-gating provision that is included in the Clean Neighbourhoods and Environment Bill and crosses over into the Department for Regional Development's remit.
4. Alley-gating schemes are community driven. They are used to limit access to alleyways behind houses, usually to residents who hold keys. Although the process has existed for some time, particularly in Belfast, the Bill gives all councils statutory powers to erect alley gates where and when need has been identified. It is of particular interest to the Committee because an alley is a public right of way. Naturally, the erection of an alley gate would require that right of way to be restricted. The Bill gives power directly to councils to issue a gating order that eliminates the need to go through normal channels that are associated with getting a stopping-up order to extinguish the right of way.
5. As I said, alley-gating has been going on in Belfast for some time. That will give a clear idea of how those schemes work with regard to establishing need, the processes that are involved in getting them going, costs and funding. Alley-gating schemes incur various costs. Belfast City Council states that a gate for an average-sized alleyway costs around £3,000. The council explains that the cost is high due to the specification that is needed for gates to be certified as safe for their purpose. Other technical costs cover engineering, insurance and gate maintenance.
6. As I said, the process is community driven. It is initiated by residents. Belfast City Council provides an 11-step guide for residents who wish to avail themselves of alley-gating in their area. It includes extensive consultation with all those who will be affected by gates. The process can be laborious for residents. However, schemes have, undoubtedly, shown benefits. In a review of alley-gating schemes that was carried out by Belfast City Council and the Belfast Community Safety Partnership, 73% of residents reported a positive impact on litter reduction and dumping, while 87% believed that gates had a positive impact on crime reduction.
7. Similar benefits have been experienced elsewhere. In Salford, England, alley-gating has had a dramatic effect and has significantly reduced burglaries by up to 50%. The alley-gating process in Salford is very similar, with the emphasis on consultation with all parties.
8. It is down to residents to pull together money for alley-gating costs. However, Belfast City Council notes that if communities follow its manual guidelines and install gates to the council's specifications, they can apply to assume the long-term responsibility for maintenance and insurance. In comparison, Salford City Council does not offer that facility but does offer grants in the region of £1,000 towards technical and planning costs at the start. I welcome any questions.
9. The Chairperson: Thank you very much.
10. Mr Gerry Anketell (Department for Regional Development): I will start by introducing the team. I am accompanied by Robert Gray, who is the Department of the Environment's Bill team leader for the Clean Neighbourhoods and Environment Bill; Chris Galbraith from Roads Service's parking enforcement unit; and Brian O'Neil from Roads Service network services. Brian has some

expertise in alley-gating as it currently stands. It might be useful for Robert to give an overview of the Bill and a little background on the consultation and reactions to the Bill.

11. Mr Robert Gray (Department of the Environment): The Bill is largely based on legislation that is already in force in England and Wales, namely the Clean Neighbourhoods and Environment Act 2005. Since that Act was introduced, the Department has received ongoing requests from MLAs, MPs, district councils and organisations such as Tidy Northern Ireland for similar legislation to be introduced here. Therefore, last year, Minister Poots decided to start this process.

12. We completed a consultation exercise on the Bill at the end of April this year. The Bill received its introduction in the Assembly in June, its Second Stage at the end of June and is now with the Environment Committee. Basically, the Bill tries to strengthen the laws to enable district councils to deal more effectively with a wide range of low-level environmental crime issues. Therefore, each isolated issue in the Bill, such as dog control orders, graffiti or litter, may not be viewed as major issues. However, as a complete package, the Bill is substantial and important legislation and means something to people on the street who recognise that those issues degrade their local neighbourhoods.

13. The Bill is designed to help district councils to deal with those issues more effectively. It deals with litter, fly-posting and graffiti, dog control issues, noise nuisance issues, statutory nuisance issues, gating orders, nuisance parking and abandoned vehicles, and even abandoned shopping trolleys. It also gives councils a greater remit to issue fixed penalty notices as an alternative to prosecution. Will I say any more about that?

14. The Chairperson: The only aspect that this Committee deals with is alley-gating. We need to be careful to not transgress into another Committee's business. However, as you say, the complete package is extremely important.

15. Mr Anketell: The alley-gating aspect would result in district councils becoming responsible for making gating orders to facilitate alley-gating. The Department for Regional Development's role in the alley-gating process is largely to make statutory rules to facilitate that process.

16. The Chairperson: Mr Boylan is the Chairperson of the Committee for the Environment, so we have to be sensitive.

17. Mr Boylan: Nuisance parking is an issue. In the Chamber, I raised the issue of cars parking on the footpath. It is a difficult issue, but it is something that we need to look at when discussing the Bill, if possible. Have you given the matter any consideration? The removal of nuisance vehicles is a matter for councils already, and perhaps we could strengthen those powers.

18. The Chairperson: That is a matter for the Department of the Environment (DOE).

19. Mr Boylan: I know that it is a matter for the DOE. However, DRD also has responsibility for roads issues. We cannot just shy away and say that it is a matter for the DOE or DRD. If there is an opportunity for something to be included in the Bill, I would like it to be given some consideration. It is a nuisance issue. There is no point in putting in new footpaths, many of which are nearly 3 metres wide, if we give people license to drive lorries and cars on them.

20. The Chairperson: It is not really an issue for us.

21. Mr Boylan: It is partly a DOE and partly a DRD matter because of the footpath issue.

22. Ms McIlveen: The information provided states that a gating order restricts a public right of way. The research briefing relating to Cardiff states that gating requires a stopping-up order, which permanently extinguishes a right of way. What is the difference here?

23. Mr Anketell: The difference here is that the proposal would be to restrict access. The gating of alleys would come into effect at different times or different periods. For example, the Bill provides that, in certain circumstances, gating should not take place if the road in question is the sole means of access to premises or dwellings or is used for business premises or leisure centres and the like, in which case the gating would take place only at times when businesses or leisure facilities would not be affected. The gating orders have the effect of restricting access to the road in question. The road does not become abandoned. If we were to adopt a process of extinguishing the right of way, Roads Service would abandon the road and would no longer be responsible for its maintenance. The gating orders in the Bill would restrict access, rather than extinguish the right of way.

24. Ms McIlveen: I can see a proliferation of requests coming through for that, even from a constituency point of view. What restrictions will be put in place or what criteria will have to be met in order for gating orders to come into force?

25. Mr Anketell: The working out of the detail will take place through non-statutory guidance. It will be prepared jointly by DOE and DRD, and it will be issued for consultation to the councils. The criteria already established for alley-gating is likely to form part of the backbone of the future processes.

26. Ms McIlveen: So we just work to progress it?

27. The Chairperson: A lot of those back entries are unadopted and are not maintained by DRD. DRD says that they are unadopted. People who have tried to have alley-gating carried out have run into that problem.

28. Mr Anketell: DRD has no interest or involvement in those unadopted alleys.

29. The Chairperson: So this legislation would not apply to those alleys?

30. Mr Anketell: No.

31. Mr McDevitt: I welcome the alley-gating scheme. The experience of it in Belfast and in urban areas has been positive. I understand that the Belfast scheme is funded by the council and that NIO money — now Department of Justice money — goes into it. Does any DRD money go into it?

32. Mr Anketell: No.

33. Mr McDevitt: Will the Bill change that? Will it place a duty on DRD to become a contributor to schemes, or will the same cocktail of funding be envisaged?

34. Mr Anketell: There is no provision for funding in the Bill.

35. Mr Leonard: The paper says that district councils, to get through any administrative orders, will be subject to the approval of the Department for Regional Development. When going through the process at ground level, time is of the essence in a lot of those situations. Is there any way that we can include an optimum recommended time for the process to be completed and approval given?

36. Mr Anketell: Certain aspects of the process are likely to involve a time element, such as the publication of notice of intention to make a gating order and to allow responses to be received. However, the fact that gating orders would be made by an administrative order, rather than by statutory rule as is currently the case, will improve the amount of time that elapses in making a gating order.

37. Mr Leonard: But you would not envisage putting an exact time in which that process has to be completed?

38. Mr Anketell: No; not as things stand.

39. Mr Leonard: Is there not some way to get round the issue of unadopted alleys, because it does come up?

40. The Chairperson: Financially, the Department will not touch it.

41. Mr Anketell: The Department has no responsibility for back alleys that are not roads.

42. Mr Leonard: Yes, but it is a matter of responsibility versus dealing with a problem for people in a community. Can we not go over to the people's side and find ways to get round that?

43. Mr Anketell: I can only repeat that DRD has no involvement because it has no interest in the premises running along the back alley or the alley itself. It is not responsible for the maintenance of the alley, and, therefore, it would be up to the owner of the premises and the owner of the alley to reach an agreement.

44. Mr Leonard: Therefore, there is no way that a council will give an administrative order for such a matter?

45. Mr Anketell: No. At present, the Bill relates to only roads.

46. Mr Boylan: Obviously, DRD's role in the Bill is very narrowly featured. Ninety per cent of it will apply to Belfast, so the rest of us do not have to worry. [Laughter.] I know that the Chairperson said that it is outside our remit, but can you just comment about parking on footpaths? It is a nuisance, and I would like a comment for reference, for the Hansard report at least.

47. Mr Gray: The Bill is quite specific in how it deals with nuisance parking. It focuses on businesses that use the street or road to park vehicles for sale or businesses that repair vehicles, thereby causing oil leaks and so on, on the road. Therefore, the Bill is quite specific in dealing with nuisance parking and is restricted to those areas. District council officers will enforce that legislation.

48. Mr Boylan: Therefore, it does not apply at all to people who stop people with disabilities using the footpath, and we are not going to look at it. Is that what you are saying to me, Robert? That is an issue, let us be honest.

49. Mr Gray: I understand that parking a car on a footpath is in breach of parking legislation, which —

50. Mr Boylan: We see them every day of the week.

51. Mr Chris Galbraith (Department for Regional Development): May I give a summary of the situation in relation to parking enforcement on footways as it stands, just so that everyone is clear? There is no specific law to prevent vehicles from parking on footways, but there are circumstances in which they may be committing an offence by parking on a footway. It is an offence under article 30 of the Road Traffic (Northern Ireland) Order 1995 to park a heavy commercial vehicle on the footway. That is an offence that the PSNI can enforce. They can also enforce legislation when a vehicle is parked on a footway and causes an obstruction or a danger to other road users. If a vehicle is parked on a footway in contravention of a waiting restriction, DRD can enforce that.

52. Mr Boylan: I dare say that Mr Kinahan and I will have to bring that through the Environment Committee, but thank you.

53. Mr Kinahan: At airports, one finds a mix of roads, which start off as a Roads Service matter and then move into being owned by the airport, and there is nuisance parking. Has anyone sat down and discussed with those authorities how we link that up? Do you understand where I am coming from?

54. Mr Anketell: Yes, there is a —

55. The Chairperson: This is a briefing around alley-gating not nuisance parking.

56. Mr Anketell: Chairperson, I can respond to the question if you wish.

57. The Chairperson: Go ahead. [Laughter.] These people are members of the Environment Committee. [Laughter.]

58. Mr Anketell: There is a similar theme in terms of DRD responsibility there, because it depends on whether your interest lies in roads that are maintained by DRD or which form part of the airport estate, and would therefore become the responsibility of the airport authority. In certain cases, airport authorities have powers to make by-laws, which may or may not cover the parking of vehicles. If they are public roads, and there are parking restrictions, the parking enforcement unit would certainly aim to enforce those restrictions. However, on the airport authority's roads, the responsibility lies with the airport constabulary.

59. The Chairperson: OK. Thank you very much.

30 September 2010

Members present for all or part of the proceedings:

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

Witnesses:

Ms Suzie Cave Assembly Research and Library Service

60. The Chairperson (Mr Boylan): I welcome Suzie Cave from the Assembly Research and Library Service.

61. Ms Suzie Cave (Assembly Research and Library Service): I shall give as brief a summary of the research paper as possible. The paper looks at the Clean Neighbourhoods and Environment Bill by comparing it with legislation and similar provisions in other jurisdictions, such as England, Wales and the Republic of Ireland. It also looks at possible areas of contention in relation to the responses to the consultation exercise. Finally, it considers possible lessons from the implementation of the Clean Neighbourhoods and Environment Act 2005 in England and Wales.

62. The aim of the Northern Ireland Bill is to give district councils a range of powers to assist them in managing their local environments efficiently and effectively by introducing tougher, clearer and more flexible powers to facilitate district councils in dealing with irresponsible individuals and specific nuisances.

63. The first part of the paper looks at comparisons with other jurisdictions, which can be seen in the table that starts on page 9, and I will give a brief overview. Similar legislation exists in the Clean Neighbourhoods and Environment Act 2005 in England and Wales in relation to alley-gating; vehicles, by making it an offence to offer for sale two or more vehicles or to repair a vehicle on the road as part of a business — the 2005 Act allows for the immediate removal by local authorities of abandoned cars; litter, with respect to the dropping of litter in lakes and waterways and the issuing of litter clearing notices and litter control notices to businesses; fly-posting and graffiti, in relation to removal notices and the selling of spray paints to minors; controls on dogs with dog control orders; and noise from alarms and private and licensed premises.

64. In the Republic of Ireland, there is not a sole piece of legislation that is similar to the Northern Ireland Bill. However, similar provisions can be found in various pieces of legislation. The Protection of the Environment Act 2003 includes the issuing of fines for dog-related offences. The Control of Dogs Act, 1986 and the Control of Dogs (Amendment) Act, 1992 empower local government to make by-laws for the control of dogs. The Litter Pollution Act, 1997 and the Criminal Damage Act, 1991 deal with graffiti and defacement. The Litter Pollution Act, 1997, as amended by the Waste Management (Amendment) Act, 2001, and the Protection of the Environment Act 2003 deal with litter and fly-tipping, whereby the throwing of litter can be subject to an on-the-spot fine of €150 and a fine of €3,000 on conviction in the District Court. The Waste Management Act, 1996 and the Road Traffic (Removal, Storage and Disposal of Vehicles) Regulations, 1983 deal with abandoned vehicles and allow for unlawfully parked cars to be removed. According to the Oireachtas, there is no similar legislation in the Republic of Ireland in relation to alley-gating orders.

65. The next section of the paper looks at some contentious areas of the Bill with regard to the responses from the consultation exercise. Some of those include issues that relate to a tight legislative framework. The Department states that the Northern Ireland Bill is on a tight legislative timetable and that it may not be possible to bring forward additional provisions. The concern is that it would delay the Bill's progress through the Assembly and prevent it becoming law before dissolution. Many of the responses from stakeholders requested further guidance on issues that they consider to be not clearly defined in the Bill. In some cases, the Department's response to suggestions made has been that greater detail will be provided in forthcoming subordinate legislation and guidance. That could also result in delays down the line due to the need for consultation on so many pieces of subordinate legislation.

66. That can be seen in greater detail in the table that starts on page 18 of the paper, which highlights that roughly 14 areas mentioned by respondents to the consultation will be dealt with at a later stage through guidance, subordinate legislation and regulations, subject to a

consultation exercise in due course. Roughly 11 proposals were made by respondents who were told that, although their proposal was significant, it would require detailed consideration and amendment to the Bill and that, given the tight legislative timetable, it was not possible to bring forward significant new provision at this point. The matter will be clarified through guidance or regulations, subject to consultation at a later date, thereby making the task of commenting on the detail of the Bill at this stage all the more difficult.

67. In relation to the partial regulatory impact, the Department is of the view that:

"taken as a whole, the proposals would be cost-neutral to district councils and could lead to overall savings in district council costs through increased efficiency and effective, well-publicised enforcement."

68. Yet respondents to the consultation expressed general concerns about the perceived cost implications. The Department remains of the view that, having regard to the full regulatory impact assessment on the corresponding Clean Neighbourhoods and Environment Act 2005 in England and Wales, the Bill, taken as a whole, will be cost-neutral to district councils. However, the cost implications will not be fully understood until the Department draws up a full regulatory impact assessment in relation to Northern Ireland's circumstances.

69. Concerns were expressed about equality of opportunity. Several responses to the consultation exercise from children's organisations disagreed with the Department's view that the provisions in the Bill do not impact on equality of opportunity. Concerns were expressed about restrictions on children's movement with regard to gating orders, the possibility of issuing fixed penalty notices to children, and the impact of banning the sale of spray paint to children under the age of 16. There were also concerns about the effect of gating orders on the needs of those who are disabled, the consultation process itself and the absence of a formal policy development phase prior to the drawing up of the Bill.

70. It is worth noting that the Department has stated in response that it will take a different approach to fixed penalty notices for children and will develop detailed guidance on the issue, which will be subject to further consultation. The Department finalises its response by stating that it does not accept that the Bill has a significant negative impact on equality of opportunity on any of the groups specified in section 75 of the Northern Ireland Act 1998. Unfortunately, until further guidance is consulted on, this issue may remain inconclusive.

71. The main concerns expressed about the proposed provisions on gating orders were about the funding of the process. According to Belfast City Council, under its alley-gating scheme, an average-sized alleyway gate costs around £3,000. The council explains that the cost is high due to the specifications needed for the gates to be certified as safe and fit for purpose. In its response, the Department for Regional Development (DRD) states that it does not have any budgetary allocation for alley-gating schemes. According to DRD, in 2002, the Minister at the time announced that it would be for the local community to obtain funding before such a scheme would advance.

72. During discussion of the Northern Ireland Bill by the Committee for Regional Development in September 2010, the fact that unadopted back alleys are not covered by the legislation was brought up. DRD explained that unadopted alleys are not covered by the legislation, as DRD is not responsible for back alleys that are not roads. In those circumstances, it is up to the owner of the premises running along the back of an alley and the owner of the alley to reach agreement.

73. With regard to graffiti and fly-posting, it is worth noting that a number of respondents suggested that district councils should be given responsibility for taking prosecutions in respect

of fly-posting offences. The Department agreed with that and said that it will include an amendment to the Bill during its progress through the Assembly to ensure that Planning Service powers to prosecute, both against the perpetrators and the beneficiaries, are made available to district councils.

74. Northern Ireland Environmental Link highlights that the Northern Ireland Bill, unlike the 2005 Act in England and Wales, does not allow for the use of anti-social behaviour orders (ASBOs). ASBOs have been used in England under the 2005 Act, which allows strategies such as ASBOs to be used against acts of antisocial and other behaviour that is adversely affecting the local environment. An example of the successful use of ASBOs comes from Camden, which became fly-posting free due to an ASBO conviction against the area's main perpetrator, Tim Horrox, managing director of Diabolical Liberties, which is considered to be the UK's largest fly-posting firm. He was ordered to pay Camden Council £46,000 in court costs.

75. With regard to provisions for the control of dogs, the Kennel Club is concerned that provisions unfairly penalise responsible dog owners and could lead to a major reduction in public access for dog owners. Its chief concern is the lack of a dog control order to require an owner to put his or her dog on a lead. In its opinion, that approach would allow those with control of their dogs the freedom to enjoy off-lead access, while ensuring that local authorities have the powers to deal with irresponsible owners. According to the Kennel Club, the 2005 Act in England and Wales already has provision for that in operation, and it states that that provision is one of the most sensible aspects of the Clean Neighbourhoods and Environment Act in England and Wales.

76. Some respondents wish to retain the power to make by-laws in relation to dogs. The Department advises that the current system for making by-laws is very time consuming and unwieldy, and that the dog control order system will be more streamlined and easier for councils to operate. That area will need to be reviewed in due course, as it is not possible to assume how the new system will operate at this stage.

77. On the subject of vehicles, the PSNI suggested a reduction in the period of time before a vehicle can be disposed of under articles 51 and 52 of the Road Traffic Regulation (Northern Ireland) Order 1997 from 21 days to seven days. The Department agreed with that and stated that new provisions will be included in the Bill to allow for the reduction of the period of time by regulations. That suggests that, although the period will be reduced, the amount of reduction is not certain until a consultation exercise has been completed on the proposed regulations.

78. During a briefing from DRD to the Committee for Regional Development, issues were discussed in relation to nuisance parking. As it stands, the Bill focuses on businesses that use the street or road to park vehicles for sale or businesses that repair vehicles causing oil leaks on the road. Members commented on the restriction of the Bill to those areas and suggested the need to include provisions to deal with parking on footpaths, which can obstruct their use, causing particular nuisance to those with disabilities.

79. According to DRD, there is currently no specific law to prevent vehicles from parking on footways, but under certain circumstances it does constitute an offence. For example, article 30 of the Road Traffic (Northern Ireland) Order 1995 makes it an offence to park a heavy commercial vehicle on the footway. The PSNI can enforce legislation when a vehicle is parked on a footway and causes an obstruction or a danger to other road users under article 88 of the Roads (Northern Ireland) Order 1993. However, that can be enforced only if the owner is present at the time, and the police do not have the powers to take note of the licence to follow up the case should the owner not be present.

80. One of the aims of the Northern Ireland Bill is to bring Northern Ireland up to date with legislation in England and Wales, yet there are provisions in the 2005 Act that are not included in

the Bill. Those include provisions that deal with statutory nuisances such as artificial lighting, for example, from domestic and commercial security lighting, sports facilities, domestic decorative lighting, laser shows, etc; and insects coming from all premises other than domestic, to include poultry houses or farms, sewage treatment works, etc.

81. Respondents requested that guidance should be issued in respect of the new noise and statutory nuisance regime in England and Wales. Production of guidance in relation to that will have to take account of the above differences in provisions between the Northern Ireland Bill and the 2005 Act for England and Wales.

82. The final part of the paper from page 26 considers possible lessons from the operation of the 2005 Act in England and Wales. One of the concerns expressed by Keep Britain Tidy relates to the utilisation of powers. There are still questions as to whether local authorities are fully utilising those new powers, and it is unclear whether public space management is a strategic consideration by the majority of local authorities.

83. Keep Britain Tidy has also suggested that Government should review the legislative framework surrounding littering from vehicles and the potential for introducing a penalty point on driving licences for littering offences. The current Act does not allow the owner of the vehicle to be issued with a fixed penalty notice when the identity of the person who is littering from a vehicle is unclear.

84. The long-term impact of the indoor smoking ban is still to be determined, but Keep Britain Tidy states that circumstantial evidence from local authorities suggests that smoking-related litter problems have increased around pubs, clubs and restaurants. In places such as Australia, Scotland, Ireland and America, where indoor no-smoking policies have been longer in existence, there are reports of increased cigarette litter, according to a report by R W Beck for Keep America Tidy in 2007.

85. According to the 'Chewing Gum Position Paper' by the Keep Wales Tidy campaign, the 2005 Act does not put any requirements on local authorities to clean impacted gum or stains. The paper also cites that a Keep Wales Tidy public opinion survey in the summer of 2003 showed that chewing gum staining on pavements was the fourth-worst local environmental quality factor in Wales out of 14 options. Only litter, dog fouling and fly-tipping were more reviled by the Welsh public.

86. Before the 2005 Act had passed through Parliament, the introduction of a gum levy of 1p on each pack of chewing gum, which would be fed back to local authorities, was suggested. That was based on evidence from a survey of the 33 London boroughs by the London Assembly Liberal Democrats group, which stated that 81% of people believe that chewing gum companies should concentrate on developing biodegradable gum and 53% did not believe that fines alone would reduce the amount of chewing gum discarded. It also stated that London Underground spent £2 million a year and councils £2.3 million a year on cleaning up gum.

87. Dog fouling remains a problem as regards the way in which it is disposed of. According to the latest local environmental quality survey of England report, there is an increase in the amount of bagged dog fouling, which suggests that the provision of facilities and education for the appropriate disposal of bagged dog fouling is important.

88. A report by R W Beck for Keep America Beautiful investigated the issue of deliberate and accidental litter. Accidental litter is material that is deposited unintentionally through poor management practices, such as items that fly out of open bed trucks. Beck points out that a review of 31 American litter surveys from 1986 found that 65% of litter was deliberate and 36%

was unintentional. Therefore, the paper argues that a drop in overall littering in the USA could be masking a suspected increase in unintentional litter over the past 15 years.

89. The increase in segmented waste collection through separate waste and recycling collection may also have had an impact on litter levels over the past 20 years. Beck argues that recycling programmes, which proliferated between 1988 and 1994 in the USA, have created twice the number of vehicles collecting materials from residential areas. In response to that, Keep Britain Tidy has suggested that, while there may be difficulties in identifying accidental and deliberate litter:

"it would seem prudent to utilise this approach in future surveys of England to investigate the impact of the increase in household recycling schemes on litter levels in England."

90. The Chairperson: Thank you very much, Suzie. I think that you drew the short straw. That provides clarification of the Bill. Do members have any comments to make? We will be receiving a briefing from the Department.

91. Mr Kinahan: It was very thorough.

92. Mr Beggs: I want to make one point. I am incensed by the comment that is reported —

93. The Chairperson: Be careful, because the comment is simply reported by the researcher.

94. Mr Beggs: I am not incensed with the researcher but with the comment in the consultation that some children's organisations are opposing gating orders. From my constituency work, I am aware of single parents who have been literally forced out of their houses due to antisocial activity. The only way that those people can reclaim their neighbourhoods is through something such as a gating order being applied with the support of the community. People who think that this is restricted to children must have no idea as to the conditions that others must live in, in some situations.

95. Mr Weir: I seek some clarification on that point —

96. The Chairperson: Be very careful. It is only the researcher. Now, settle down.

97. Mr Weir: I share Mr Beggs's concerns. Where did the complaints about the impact on children come from? You mentioned children's organisations. Was that the Northern Ireland Commissioner for Children and Young People (NICCY) or charities?

98. Ms Cave: There were four organisations.

99. The Committee Clerk: The Children's Law Centre, PlayBoard —

100. The Chairperson: Include Youth. The Committee will receive briefings on this over the next couple of weeks, so members will have an opportunity —

101. Mr Weir: I was just looking for clarification on where the responses came from.

102. Ms Cave: An Internet link at the bottom of the research paper will take you directly to the responses.

103. Mr Weir: Thanks, that is very useful.

104. Mr Beggs: To make it easier for us, perhaps you could e-mail the response paper.

105. The Chairperson: Thank you very much. The members behaved themselves OK.

30 September 2010

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 McMahon

106. The Chairperson (Mr Boylan): I welcome Denis McMahon and Robert Gray.

107. Mr Denis McMahon (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.

108. 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.

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

110. 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.

111. 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.

112. 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.

113. 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.

114. 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.

115. 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.

116. 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.

117. 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.

118. 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.

119. 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.

120. 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?

121. 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.

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

123. 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?

124. 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.

125. 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.

126. 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.

127. 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.

128. 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?

129. 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.

130. 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.

131. 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?

132. 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.

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

134. 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.

135. 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.

136. 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.

137. 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?

138. 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.

139. 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.

140. 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.

141. 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.

142. 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?

143. 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.

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

145. Mr Gray: The Department has just made legislation on permitted noise levels.

146. 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.

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

148. Mr Weir: Did you get it through customs?

149. The Chairperson: It all depends what is in the teddy bear.

150. 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?

151. 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.

152. 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?

153. 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.

154. Mr Dallat: That is not easy at 2.00 am.

155. 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.

156. 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.

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

158. 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?

159. 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.

160. 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.

161. 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.

162. 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?

163. 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.

164. 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.

165. Mr Lambe: I would have thought that there were powers under existing environmental health legislation.

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

167. Mr Gray: There is a statutory nuisance ...

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

168. 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.]

169. 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.

170. 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.

171. 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.].

172. 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.

173. 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.

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

7 October 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Patsy McGlone (Deputy Chairperson)
Mr Roy Beggs
Mr Thomas Buchanan
Mr Willie Clarke
Mr John Dallat
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Mr Colin Neill Pubs of Ulster

175. The Chairperson: We will now receive a briefing on the Clean Neighbourhoods and Environment Bill from Pubs of Ulster. I welcome Colin Neill, the chief executive of Pubs of Ulster. Colin will make his presentation before I open it up to members for questions.

176. Mr Colin Neill (Pubs of Ulster): Thank you very much, Chairperson. I thank the Committee for the opportunity to speak about the Bill. We recently rebranded from the Federation of the

Retail Licensed Trade Northern Ireland, and that is one reason why we changed our name to Pubs of Ulster. For those members who do not know who we are, we have been in existence since 1872 and represent the pub industry in the Province. The industry employs 35,000 people and contributes £1 billion to the Northern Ireland economy each year. Although not many people know it, ours is the biggest grossing sector for tourism, with 80% of tourists visiting a pub and 70% of tourists eating in pubs. Our sector puts in around 33% of the lift in tourism, which is more than from bed nights.

177. The pub industry is not the major retailer of alcohol, as some may think. We sell around 25% of the alcohol in the Province, and our industry is now based on a very diverse product. For example, the third largest coffee chain in the UK is a pub group. Our industry has diversified greatly. Live entertainment is a big element of what we have to offer, particularly in a Northern Ireland context, where live entertainment is very much part of our culture. In the industry, we are not only the only alcohol retailer that pays rates with a built-in social levy but the only commercial operation to do so. Historically, we have a 30% higher property rate based on our turnover, because of the social impact of alcohol.

178. We fully support the Clean Neighbourhoods and Environment Bill, and are keen to see it rolled out without any delay. We have concerns about two elements that will have an economic impact on small businesses, not just our sector. I apologise: Andrew Irvine from the Belfast City Centre Management Company had planned to be here with me today. It supports our view on fly-posting, as it is referred to in the Bill, or the distribution of printed material, which is the formal term. Having talked to other trade bodies, there appears to have been a lack of consultation around the economic impact that that could have on small businesses. I do not speak for them, but other industry bodies tend to have the same opinion as us that there needs to be a closer look at the impact that the introduction of those penalties could have. That is not to take away from the fact that we agree that fly-posting is unsightly and a real problem, as is the uncontrolled or irresponsible distribution of printed material. Certain elements of our industry are guilty of fly-posting, with which we disagree totally. We try to take them to task in that regard. It is not the case that we want a free-for-all in those two areas.

179. The real impact will not hit only our sector. The ability to hand out flyers can impact on everyone from the hairdresser to the small butcher. The coach tours of Belfast use flyers to market their offers. Small businesses cannot afford to advertise in the 'Belfast Telegraph' or buy a billboard. It is about finding an avenue by which they can market their product and react very quickly, because if there is a lull in the middle of the day, many small businesses, whether it be a hairdresser, a pub or whatever, will tell some of their staff to go out and drum up some business. It is about having that flexibility and keeping it at a realistic cost for a small business. That is why, as an industry body, we are keen to see the opportunity for councils to provide legalised posting sites, which has happened in a number of different areas in England. That is not just to create a free-for-all; there should be a not-for-profit fee to post there. That should be supported by terms and conditions, supported by legislation to outlaw fly-posting elsewhere.

180. The same applies to handing out flyers. That could involve a registration fee or licence fee — call it what you like — again at a low level from councils to allow businesses to do that. There could be heavy penalties for those who breach the rules, who do not clean up after them or who do not go through the proper procedures. A very weighty fine would discourage anyone from abusing the system. I reiterate strongly that we fully support the Bill and its measures. Fly-posting is a pest. In a previous life, I was involved in town centre management in Ballymena and Belfast for more than eight years, and fly-posting was the bane of my life. The issue of the irresponsible use of flyers remains in our industry.

181. The Chairperson: Thank you very much for your presentation. You talked about the lack of consultation. Will you expand a wee bit on that? I agree with you about flyers and the fly-

posting issue. It seems sensible to consider using only one billboard, but there could be problems with that approach, because everybody could post there and it would be difficult to enforce. Do you have any thoughts on that?

182. Mr Neill: Companies can post on a number of different things. Across GB and Europe, boxes that are similar to huge postboxes are provided for fly-posting. Some local authorities use them to store some of their equipment. My understanding is that, when they apply for a registration or licence, people get a number, which appears on all their material. Anybody who fly-posts on those boxes without a number is treated as if they have fly-posted on a building or elsewhere, and is subject to all the illegal fly-posting penalties.

183. The Chairperson: Were you not happy with the consultation?

184. Mr Neill: It would appear that, because the Bill seems to be about clean neighbourhoods, economic and business issues were not recognised, and we and number of other industry bodies were not approached as part of the consultation. Indeed, we just caught the Bill, as it had slipped under our radar. I do not want to speak for other bodies, but having spoken to a number of them, I know that they felt the same. They were not made aware of the consultation, given the opportunity to come up with economic data, or consider the elements that affect them. However, we do not want to say anything that will delay the Bill, because it is important.

185. The Chairperson: Many small businesses rely on advertising through flyers, and so on. You have proposed the introduction of a licence for that type of advertising. Do you see that as being a licence that would require a fee, or more of a permit?

186. Mr Neill: We want to see the creation of a licensing or registration system. Sometimes, when a licensing system is created and fees are charged, it costs more to collect the money than the licence generates. Therefore, it would be a system of registration that could follow registered parties whose registration number would be on everything that they distributed.

187. As I said, some businesses, such as small bars or a hairdresser, may send their employees out when business is quiet to give out flyers. It would be very difficult for them to apply four weeks in advance to do that, because they would want to be able to react to the economic situation in which they find themselves on the day, never mind in the month. Therefore, the system created could be one in which businesses pre-register and submit something electronically when they are going out to advertise. That information would then at least be on file, and if something went wrong and they did not clean up after themselves, procedures would be in place to trace the business.

188. Mr McGlone: Thank you, Mr Neill. It would be useful if the Committee could get a list of consultees to see who the Department consulted on the Bill. I am trying to visualise your suggestion. In your submission you state:

"Pubs of Ulster fully support the control of ... illegal fly-posting and the irresponsible distribution of printed material."

I hope that it is just sleight of hand when you go on to say:

"both these methods often provide the only way a small business can afford to advertise".

189. You have clearly stated that you do not advocate either of those two methods.

190. Mr Neill: No; we do not.

191. Mr McGlone: I am trying to understand the practical outworkings of your suggestion. You dealt with local councils, and it would cost a considerable amount for them to start to provide advertising sites. You know as well as I do that the real prime sites have already been taken, and for councils to pitch for those sites would be very costly.

192. I am also trying to understand what volume of businesses would want to advertise. It would not just be pubs and clubs, and I know what those businesses are about at the minute. The volume of businesses that would want to participate would mean that either none or 1,000 businesses wanted to advertise on the site. Your suggestion would become impracticable in the cost to the councils because of the prime locations required to be of any use for advertising and in the volume of business that would want to advertise on the site, and the problems that that could create in adjudicating what businesses were permitted to do so. You may be aware of the huge issues with businesses advertising on telegraph poles and lamp posts, and of the problems that those businesses have with Roads Service or Roads Service has with them, depending on what way you look at it. I am therefore unsure about the practicalities of your suggestion. On reflection, do you have any further ideas about that?

193. Mr Neill: I agree with you that it is a complex issue. I am not suggesting that councils should go and purchase prime 48-sheet advertising sites, because the cost of those sites is prohibitive. The issue has been dealt with by councils in a number of European countries, including GB, installing what look like huge 12-foot-tall postboxes with a small storage room inside in pedestrian areas.

194. Again, I would look at control measures that have been introduced in others areas, in councils in England and in councils further afield to manage fly-posting. It is a complex issue. I appreciate that it is difficult to determine how to control the volume of advertising. My understanding is that other areas have measured the economics of applications to install those sites.

195. That may also involve looking at the cost to councils. It is not so much about allowing fly-posting as it is an economic measure. Economic development units are forever spending money to try to help business in the community. That is a wide element. Between the two, to take away fly-posting would have less economic impact than the flyer itself. Only certain types of industries and people fly-post. Usually, it is event-based rather than used to drum up business on a quiet day.

196. The Chairperson: If a council were to undertake that, what are the cost implications?

197. Mr Neill: To be honest, I am not sure. I am aware — digging into my previous life — that there are some models in which a commercial operation has installed advertising pillars. It uses part of them to advertise on and gives the other part to the council for use for fly-posting. Therefore, they can be cost-neutral.

198. Mr W Clarke: Thank you for your presentation, Colin. Have your members made you aware of difficulties that they have had with councils' provision of neutral advertising sites? Some councils, for example, oppose alcohol advertising. Therefore, they would not allow certain posters to be put up on their sites. Have any such difficulties occurred?

199. Mr Neill: That issue has not arisen. I am aware that councils take different views on alcohol advertising. When we look at our product base, we tend to find that no one goes to the pub for a drink any more. People may go for another reason and have a drink while they are there. The price differential between off-trade and on-trade is so great that if someone wants alcohol, he or she will not pay four or five times the price. Obviously, there would have to be a degree of

flexibility in a council's position, because it is an elected body and must represent the views of the community.

200. Mr W Clarke: Can you understand businesses' frustration? If a business, such as a nightclub, wants to put up advertising on a legal site but is refused by the council, that causes it an awful lot of difficulties.

201. Mr Neill: Again, if the business is promoting, say, a DJ or an event, that is different from putting up a poster that says, "All you can drink for 20 quid", which we are totally against. As an industry body, we fully support the ban on any alcohol price promotion.

202. Mr Dallat: First, I am not entirely opposed to councils providing sites for advertising. It has been done successfully in Coleraine. Its French twin town presented it with an advertising pillar, which has worked extremely well. It also sends out a message that the council is environmentally friendly. Therefore, I would not dismiss that suggestion at all.

203. I am sure that you agree that the business in which you are involved has failed miserably to tackle fly-posting voluntarily. My small town, which is extremely attractive and has almost won tidy town competitions, is plastered with fly-posters on phone boxes, bus shelters and telephone junction boxes. Many of those posters have been put there by third parties — people who have booked a pub and organised the entertainment. What happens in a case such as that when the fly-by-night boy who has organised an event and fly-posted in the area is gone?

204. Mr Neill: I agree fully that the industry is has failed totally to deal with fly-posting. Our position, as an industry body, is that that needs to be regulated because agreement cannot be reached. A large element of fly-posting is done by promoters who run events in venues.

205. It is a bit like the proposals on fly-posting and the feedback that I saw from the consultation. That basically says that we will probably have to pin responsibility on the venue, because, at the end of the day, that is the only body that one can get hold of. The onus will have to fall on venues to police whoever is running events in their properties.

206. Mr Dallat: I do not think that leaflets that are handed out are as big a problem as fly-posting. They are a feature of life in other countries. They can be found anywhere, and they are a useful aid to tourists who may be attracted to a particular venue or event. Therefore, I am certainly not totally anti-handouts. However, a great deal more could be done to make that element of advertising more attractive.

207. It is interesting that, when people go to countries that have only recently entered the tourist industry, they will see that people in those places go to enormous efforts to attract tourists. They may dress people up in traditional costumes and so forth, and they give out little perks and all sorts of things. They do that rather than use a bucket and paste to plaster the whole countryside with posters. There are some areas where people are not safe walking, because they might end up with one of those posters on their back.

208. Mr Neill: I totally agree with you. Although my sector fails miserably on fly-posting — and I say that with some shame — we are probably much better in the world of flyers. The cost of flyers to professional venues is quite expensive, so if promoters are worth their salt, they will train their people to hand the flyers to the target market. I was at a Belsonic event in Belfast, and I was almost offended when I was not handed a flyer on my way out because I was not young enough. I was not the target market.

209. Mr Dallat: I have been there.

210. The Chairperson: Is that the end of the "lordy, lordy, look who's 40" scene?

211. Mr Beggs: Do you agree that the artist or the venue should pay a penalty for fly-posting? The issue has to be incentivised to make sure that no one benefits from putting those adverts up on walls.

212. Mr Neill: I totally agree. We are keen for legislation and heavy penalties to be introduced to deal with anyone who fly-posts where they should not. If I go back to my town centre management days, I remember that we thought up a scheme whereby we would print cancel leaflets and stick them on to the original poster. However, that would have meant that we were fly-posting.

213. Mr Beggs: Fly-posting to attract tourists has just started to happen in a conservation area not far from here, adjacent to the historic town wall. That area just gets messy as a result of the fly-posting. Therefore, it is important to address such issues. Mr Dallat indicated that Coleraine Borough Council successfully provided a surface on which small businesses could advertise and that it has provided a method to allow them to do so. It would be useful to follow that up and get more information either through him or the council.

214. The Chairperson: That is something positive about Coleraine. That is excellent.

215. Mr Beggs: From your Province-wide experience, are you aware of any other councils or organisations that provide facilities for placing small adverts in town centres?

216. Mr Neill: That is quite limited here. I think that there is some such facility in Derry/Londonderry, but I am not aware of anything else. I knew the Newcastle town centre manager, so I know that attempts were made to introduce similar facilities there. However, there has always been an obstacle to putting small adverts in the public realm, because doing so would get into the world of the Department for Regional Development and a discussion of what can and cannot be in the public realm. Permission has always been an issue. I understand that Newcastle was offered some kind of a free deal but could not get permission for it.

217. Mr Beggs: Are there issues with the Planning Service? Perhaps there needs to be greater understanding of how such adverts form part of an overall package.

218. Mr Neill: I think that the issue falls into the Planning Service's remit.

219. Mr Beggs: Flyers are frequently all over windscreens in the car park in the harbour area next to the castle, where I suspect most of us parked. How will a good distributor of flyers operate compared with a bad distributor? People frequently have flyers posted on their windscreen, but they do not want them, so they may blow away. I am trying to understand what happens in that situation. Would the responsible distributor be required to go around and tidy up? I do not understand how that would work. Will you elaborate on that?

220. Mr Neill: Someone who is distributing those flyers properly gives them to someone else; they do not put them on a property. To be honest, anyone who places a flyer on a car might as well be fly-posting, because it is just a smaller poster stuck to a windscreen on a car, which becomes a mobile object. The people who distribute the flyers would normally target their market, because there is no point handing them out to the wrong people. They hand them out person to person, as opposed to sticking them in phone boxes or on cars. Distributors pick a geographical area in which to work, and after they have distributed the flyers, they stop and clean the area behind them.

221. The Chairperson: Mr Neill, thank you for your presentation. We look forward to adding your contribution and the issues that you raised to our deliberations on the Bill. In rural areas, some people use Masses as an occasion to advertise, which is something that we must take a serious look at, given the nature of rural and small businesses.

222. Thank you very much.

4 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 Peter Weir

Witnesses:

Mr Seamus Donaghy	
Ms Vivienne Donnelly	Northern Ireland Local Government Association
Mr Donal McLaughlin	
Ms Karen Smyth	
Mr Chris Allen	Northern Ireland Environmental Quality Forum
Dr Ian Humphreys	
Ms Elaine Conway	Children in Northern Ireland
Dr Linda Moore	Children's Law Centre
Ms Jacqueline O'Loughlin	PlayBoard
Ms Koulla Yiasouma	Include Youth

223. The Chairperson (Mr Boylan): I welcome Vivienne Donnelly from Belfast City Council; Donal McLaughlin from Lisburn City Council; Karen Smyth from the Northern Ireland Local Government Association (NILGA); and Seamus Donaghy from Armagh City Council.

224. Mr Weir: Chairperson, in the absence of Roy Beggs, I want to declare an interest as a member of NILGA's executive.

225. The Chairperson: I ask any member who wants to declare an interest to do so now.

226. Mr McGlone: Speaking of Roy, has he left us?

227. The Chairperson: Yes. We have sent a letter to thank Mr Beggs for his contribution. At the bottom of the letter, we stated that he must declare an interest wherever he goes. [Laughter.]

228. As normal, I invite the witnesses to provide a briefing for five to 10 minutes, after which I will invite members' questions. You are very welcome.

229. Ms Karen Smyth (Northern Ireland Local Government Association): Thank you, Chairperson, for the invitation to present to the Committee. I apologise that there are no elected members

with me today. Unfortunately, we were unable to bring an elected member. Our presentation might take slightly longer than you have asked, due to the complexity of the Bill and the details of what we want to cover. If you could indulge us, we would be very grateful.

230. The Chairperson: Sorry; I have my wee clock, but I will take that on board.

231. Ms Smyth: We will do our best.

232. NILGA has been working closely with the Department on the development of policy and guidance on clean neighbourhoods. That work is ongoing. Our oral evidence to the Committee will reflect that. However, local government broadly welcomes the legislation. We have a number of overarching concerns, which I will deal with before I pass over to my colleagues, who will deal with more technical issues.

233. NILGA's view is that much of the Bill is a new burden on local government in Northern Ireland. We disagree with the Department's view that the implementation of the legislation will be cost-neutral across local government. We believe that fixed penalty funding will not be nearly enough to resource the powers that are included in the Bill and that the full cost should not have to be met by ratepayers.

234. We strongly believe that there is a need for a lead-in period for the legislation and a need for clear guidance, which is required to allow councils to adapt to or prepare for new and additional powers. Many of the proposals will require clear and concise technical guidance to enable consistent and satisfactory implementation. We encourage the Department to work with us to produce appropriate new guidance or to revise existing guidance and to allow sufficient time for that vital activity.

235. More generally, NILGA is of the view that if the Bill provides discretionary powers, that may raise public expectations and will necessitate the provision of accurate and easily understood guidance so that those expectations can be managed. It will be up to each council to decide, in its corporate and community plan, which discretionary powers it intends to implement according to the limited resources that are available.

236. NILGA sees one serious omission from the Bill, which is the ability to deal with derelict property. Members will be aware that that is a massive issue. We believe that the Bill merely puts a sticking plaster on some issues and that there is an urgent need to provide powers to tackle derelict land, overgrown gardens and derelict premises. That problem is increasing, due to pressures arising from the current economic situation. The Department has commented at length on that issue in its synopsis of responses. However, we ask the Committee to note that we would welcome further discussion between local government and the Department, to work towards resolution of current difficulties with derelict premises and to develop guidance for councils on the matter. I have brought with me a paper prepared by environmental health officers in councils that looks at those issues. I am quite happy to furnish the Committee with that information.

237. The last main overarching issue is rural proofing of the legislation. We are keen to ensure that appropriate rural proofing takes place, as rural district councils can experience very different issues to urban councils, particularly regarding the source of nuisance noises and smells, with rural dwellers having potentially different needs to those of an urban population.

238. A few other key concerns will be highlighted further into the presentation, such as who should be responsible for addressing fly-posting concerns, and we have some concerns about the repeal of article 4 of the Litter (Northern Ireland) Order 1994, but my colleagues will deal with that.

239. Ms Vivienne Donnelly (Northern Ireland Local Government Association): I will deal with Parts 1 to 4 of the Bill. The proposals in Part 1, which relates to gating orders, are welcome. However, there are concerns that although those powers are discretionary, it may be that ratepayers will expect councils to enact them. The experience in Belfast City Council is that it is quite a resource-intensive process, so additional funding for that scheme would be welcome, bearing in mind that a gate costs about £4,000 to install and Belfast City Council's overall budget for administering alley-gating schemes throughout the city is £500,000.

240. We had highlighted that caravans had been omitted from the definition of vehicles. The Department acknowledged that and has said that it is already covered, and we ask that that be clarified in any guidance on vehicles that is issued.

241. In relation to the offence dealing with two vehicles for sale within 500 metres, members may be aware that the Street Trading (Northern Ireland) Act 2001 can also be used for that. Again, it would be helpful to have guidance on when it is appropriate to use which piece of legislation. One omission that we had highlighted is that vehicles awaiting repair that are parked on a street in a residential area has not been addressed in the Bill. The Department acknowledged that but has said that it cannot accommodate it in the current timescales. Therefore, we ask that that be considered at a later date.

242. We welcome the additional powers that will allow councils to more effectively deal with and tackle issues such as littered pieces of land and leaflet distribution, a particularly prevalent problem for some of us. Councils face criticism for pieces of land for which they are not responsible, and there exists a great disparity between what is done about litter by councils and other land-owning bodies, which leads to an overall degradation of the environment across Northern Ireland. The Committee may wish to consider that as an issue still to be addressed.

243. In relation to street litter control notices, I am aware that the Department is updating the legislation in Northern Ireland to bring us into line with the UK legislation to deal with, in particular, cigarette litter resulting from restaurants, cafes and bars. However, a particular problem for us is cigarette litter coming from office blocks. It is unclear to us whether that will be addressed when the legislation is updated.

244. In my opinion, it is not cost-neutral to fund a service through the issuing of fixed penalties. In Belfast we issue between 1,200 and 1,800 fixed penalties for littering a year, and in our experience the funding that we receive through the fixed penalties does not support the full delivery of the service.

245. We would welcome the use of fixed penalties powers in relation to litter, particularly for some of the offences that have been cited in the Clean Neighbourhoods and Environment Bill, such as the giving of false names and addresses. Currently there is a power of prosecution but, in our experience, when those types of offences are brought before the courts they are not given that much weight and would probably be more effectively dealt with through a fixed penalty provision.

246. The main issue in respect of Part 4, which deals with graffiti and other defacement, is fly-posting, which Karen alluded to at the start. Councils in Northern Ireland are unanimous in their concern about the blight of fly-posting and the detrimental impact that such activity has in both rural and urban settings. A thriving fly-posting industry operates in a vacuum in which councils are powerless to tackle the problem effectively. We operate in a vacuum in which we cannot deal with the problem due to a lack of robust legislation. The Planning Service has the necessary powers but does not enforce legislation because it is not regarded as a priority.

247. Under the Bill, councils will be given the power to pursue only those who physically affix posters to premises. Under the legislation that councils work to currently, we can only remove and obliterate posters and recover the costs of removal. That can necessitate the removal of 2,500 posters a month in Belfast and up to 200 posters a month in Derry. In addition to the untidy and unsightly appearance that fly-posting causes, there is an inevitable cost to the ratepayer for removal and obliteration. That currently costs Belfast City Council in the region of £90,000 a year.

248. We welcome the Department's response to the consultation. It recognises that councils need powers to prosecute the perpetrators and beneficiaries of fly-posting. We are encouraged by the fact that the Department seeks to amend the Bill to ensure that those key powers are available to councils as well as the Planning Service. We are pleased that the article that contains provisions to remove and obliterate fly-posters under the Local Government (Miscellaneous Provisions) Bill has now been retained; there had been a proposal to remove that article and replace it with clause 38. That retention will mean that we will not need to serve a notice in advance of removing or obliterating fly-posters. We are aware that the provisions could be improved and, indeed, have engaged in discussions with the Department about how they could be strengthened. We are happy to continue that engagement.

249. Our main concern in respect of clause 36, which relates to aerosols, is that it will require an additional resource. We also made representations that we would prefer the age limit to be increased to 18, although we recognise the Department's view that that could be difficult to enforce given that some 16- to 18-year-olds may require aerosols for work.

250. The final issue that I will draw to your attention is that of investigatory powers. It runs throughout the Bill and is common to some of the proposed powers. In the initial consultation response, we highlighted the fact that we felt that the Bill's overall powers needed to be reviewed to ensure that they are adequate to allow us to properly investigate the new proposed defences and bring them before the courts. The Department considered our view and responded by advising that it felt that the powers in article 20 of the Litter (Northern Ireland) Order 1994 were sufficient to allow us to obtain information. However, my experience of article 20 is that it is a much more protracted way of carrying out an investigation. If the powers could be made available to us without the need to go through a written process, that would lead to a much more effective and efficient way of enforcing and investigating offences under the Bill.

251. Mr Seamus Donaghy (Northern Ireland Local Government Association): I will deal with Part 5, which covers dog control enforcement. We welcome the new proposals, although we have a couple of concerns. The first is that we are adopting the legislation that is in practice in England and Wales, so, in having to resort to prosecution for failure to pay a fixed penalty, the council does not recover costs due to the Northern Ireland Magistrate's Court rules. The charges are limited to £75 and will, therefore, incur great costs on Northern Ireland councils.

252. The second concern relates to the repeal of article 4 of the Litter (Northern Ireland) Order 1994 and how that would diminish the ability to obtain information as in article 20 of the same Order. The new dog control order regime should ensure that we retain powers equivalent to those in article 20 of the Litter Order, particularly in relation to the ability to obtain information from any person. We know that the Department is aware of that concern, and we await clarification on that point.

253. Mr Donal McLaughlin (Northern Ireland Local Government Association): I will deal with Part 6 and Part 7 of the Bill. As has already been said, the additional powers are welcome, but they will introduce an additional workload for councils, as new types of noise complaints will require a thorough investigation as opposed to the current arrangements, which allow only for advice and

informal action to be taken. Councils will be required to establish detailed policies and procedures to ensure the successful implementation of the new provisions.

254. Local government has serious concerns about the cost to councils of carrying out works in default. An example of that is the removal of a vehicle that is causing noise in the street. We request that the Committee works with the Department to explore what, if any, additional resources can be made available for councils to successfully undertake the new and enhanced powers.

255. Moving on to audible intruder alarms, it is often impossible to determine whether the sounding alarm is associated with an intruder alarm or with some other type of alarm system. That can only be ascertained after gaining entry to the premises containing the alarm. The Department should consider including noise associated with other alarms in the provisions. We would like clarification on whether the power of entry means that a warrant is not required to enter a property boundary in order to externally silence an alarm, and that a warrant is only required to enter any buildings. A lead-in period will be necessary for the implementation of the legislation, and we recommend that there be three months between the making of the legislation and the commencement order date, to allow councils to prepare.

256. One of our major concerns about Part 7 is the lack of clarity surrounding the definition of an owner. We have alerted the Department to that issue, which has implications for actions on landlords and agents, particularly those who live in the Republic of Ireland. We will take this opportunity to highlight the problem with that definition and ask that the definition from the old Public Health Acts be included in the new legislation.

257. We also believe that clause 60(14) should be extended to include the reference to flies in clause 60(1)(g), particularly those emanating from landfill sites and waste transfer stations. There is a probability of double jeopardy there, as the Northern Ireland Environment Agency is the licensing authority and the councils are the enforcement authority outside that.

258. Ms Smyth: That is the end of our presentation. Thank you for being so kind in allowing us the extra time.

259. The Chairperson: You did very well. Thank you for your presentation. It is important for the Committee to have your contribution to our scrutiny of the Bill. I want to pick up on a couple of points: you mentioned some issues in Parts 6 and 7, and we will seek clarification on those. You also mentioned a lead-in period, and I want to tease that out. At present, we are dealing with primary legislation, and we have a problem with the secondary legislation and the follow-on to that. What do you mean by a lead-in period? How much time are you looking for to allow councils to roll out the process?

260. Mr D McLaughlin: As we said, we would like at least three months, but in the case of the noise provisions and the provisions for dogs, we would like to have as long as possible, whether that is three months or six months or whatever is relevant.

261. Mr Weir: You mentioned a three-month period in particular. A vast range of detail is involved, and I wonder whether you could provide us with a bullet-point summary outlining the lead-in time required for each of the different elements.

262. Ms Smyth: We will get that information to you.

263. The Chairperson: Thank you very much. You talked about the issue of fixed penalties and the need for recovery to be cost-neutral. Do you, as councillors, have any idea of the potential costs?

264. Ms Donnelly: We employ three litter wardens whose salaries total approximately £75,000. They are supported by an administrative officer and a supervising officer. Those are hidden costs, so to speak, on top of the legal costs. If it is assumed that we can take in approximately £45,000 in fixed penalties, the remainder will have to be pursued through the courts, so, already, there is a cost involved in providing that service.

265. The Chairperson: You mentioned the fixed penalty powers; will the lead-in period give you an opportunity to see what is working in that respect? You also mentioned that you wanted caravans to be included in the definition of vehicles. Mr Dallat, we are not talking about your area, where every caravan that visits is lifted off the street.

266. Ms Donnelly: We in Belfast have had a few problems with caravans that had been abandoned on private land. The residents were tortured with people going in and out of them and setting them on fire. We believed that we had no powers to lift them as we would an abandoned car. At the time, the opinion was that we could not deal with a caravan as an abandoned vehicle, but we note now that the Department is of the view that caravans can be included in that interpretation of the legislation. We want to make sure that that is clarified in guidance, because the Department has said that caravans can be included in the definition. However, we would like them be included in guidance just to clarify the point for future reference.

267. The Chairperson: Thank God it is not a parochial issue.

268. Mr T Clarke: Are caravans included in the definition of abandoned vehicles at the moment?

269. Ms Donnelly: They are not specifically mentioned. The Department has said that the guidance in England for the equivalent legislation mentions that caravans fall within that definition.

270. The Chairperson: Do you sit on Armagh District Council, Seamus?

271. Mr Donaghy: I do.

272. The Chairperson: You are lucky that you got in after I left it.

273. We have heard a lot about derelict buildings, and I want to address that issue. I know that you have touched on it. How do you propose that we get around that? Derelict buildings are an issue for local councils.

274. Mr D McLaughlin: The situation some years ago was that the planning legislation in England and Wales applied measures to deal with that issue. The same measures were not adopted in our planning Order here. At the moment, derelict sites where there are buildings are dealt with under the Pollution Control and Local Government (Northern Ireland) Order 1978. Where there is no building on a derelict site, we have no measures to deal with it. Some councils use the Rats and Mice (Destruction) Act 1919, but nothing else applies. We need a way to deal with the problem.

275. Ms Smyth: I want to emphasise to the Committee that we are aware of the time limitations on the passage of the Bill. There are things that we would like to see included in it but we know that, given the time limitations, that may not be possible. We want to alert the Committee to the issues that we are facing and that need to be addressed as priorities. However, we are anxious not to allow certain issues to hold up the Bill, and we are willing to wait for another opportunity. The Bill may not be perfect, but it is important that it goes through.

276. The Chairperson: Finally, I want to seek clarification on the gating orders. I do not know whether Armagh District Council has £500,000 to spare, but what are the average costs for alley-gating? You said that Belfast City Council has set aside money for that.

277. Ms Donnelly: My colleagues tell me that Belfast City Council looked for funding, but, in the end, used its own funds. It has set aside a budget of £500,000 to administer alley-gating. It has advised, as has been quoted in some of the literature, that a gate would cost £3,000, but that cost has gone up to £4,000. That covers only the physical erection of the gate; they are very sturdy structures that have to comply with strict guidance. The quoted cost does not cover the nine- to-12 month lead-in time that is required to administer a project, which involves getting all the residents on board and obtaining consent from Roads Service. There is a lot of work involved, as well as a lot of legal work.

278. The upside is that alley gates have reduced antisocial behaviour anywhere that they have been installed.

279. The Chairperson: Alley-gating has been a success.

280. Mr T Clarke: Why is alley-gating the responsibility only of councils? Some of the alleys will be on Housing Executive properties.

281. Ms Donnelly: The council took alley-gating on as part of its community safety remit. Any group of residents can come together to ask for it, and Belfast City Council has issued guidance on its website on how to work through that process.

282. Mr T Clarke: I have no problem with that idea. However, if antisocial behaviour among Housing Executive tenants in a Housing Executive area leads to a requirement for alley gates, why does the Housing Executive not pay for those alley gates?

283. Mr Weir: When you talk about alley-gating, you are probably talking about gates at either end of an alleyway. There is virtually nowhere left in Northern Ireland that could be described as 100% Housing Executive. If it is being done along 20 houses, you will find that a number of those houses are privately owned.

284. Mr T Clarke: Yes, but there is still a responsibility after the houses are sold. If it was primarily social housing to start with, the Housing Executive has a responsibility.

285. The Chairperson: To be fair, in my own area, it is not only the Housing Executive but community organisations and residents' groups that tend to ask for alley gates. A lot of groups are involved. The split is normally 50:50, and there are regulations in respect of what is owned and what is leased.

286. Mr Weir: Chairperson, you covered some of the points that I wanted to make. I have considerable nervousness about alley-gating. A general point was made about not being able to cover cost. I can see how some money might come in in a number of the aspects, but we may need to look at how to close the gap. It strikes me that, unless there is a subsidy from central government, alley-gating does not generate any income at all; that is the nature of it. I have grave concerns that councils could be left with massive public expectation but no money to cover it.

287. Perhaps you could send us details of how the £500,000 is broken down. I agree with you that derelict buildings are a major problem, and you will get back to us on the timescale of a lead-in period. The general point was made that there may not be enough money coming in to

cover this range of things. Perhaps you could send us a synopsis of how you see the finances in each of the areas and information on whether there are any other ways of closing the gap. Some of the legislation may need to be a bit less ambitious. To be brutally honest, I do not see the gaps in the various areas being filled through central government providing a subsidy to local government. Therefore, we may need to change other legislation to allow greater cost recovery, for example. Perhaps you could provide us with a paper on all of that.

288. There may be items that cannot be taken on board through amendments. I wonder whether we should keep those in mind and refer to them in the Committee Stage report. There is not enough time to incorporate certain aspects within the legislation, but we should flag up any further actions that may need to be taken. I know that you cannot respond to us with that information today, but perhaps you will send it to us in paper copy.

289. Ms Smyth: I thank Mr Weir for that very valuable contribution. We are beginning to look at the issue of cost recovery across a number of pieces of existing and new legislation. At the minute, we are limited by the magistrate's rules. We may need to seek an alteration to those, given the current economic situation.

290. Mr Kinahan: Most of my points have been covered. Thank you very much for the presentation. You said that alley-gating was successful. We will receive a presentation later that will claim that alley-gating forces youths into other areas and simply moves the problem around. Yet another group that I talked to said that it has worked wonderfully because it encloses communities and they can all go out. Will you expand on how successful it has been?

291. I agree entirely with Mr Weir: I would love to see the fixed penalty notice costs broken down to reveal what they cost councils. What increases do you think might be necessary? You implied that fixed penalty notices ought to be a bit stronger or higher to give councils a bit more money coming in to the coffers. I fully agree about the derelicts. A power is needed to identify who owns the building, because that often takes the longest time.

292. Mr W Clarke: Thanks for the presentation. I was a member of NILGA some time ago. You are very welcome. Most of my points have been covered. As regards fly-posting, local authorities need to provide display boards for people to advertise their businesses. In my constituency, in Newcastle in particular, there were major planning problems about the location of display boards. What is NILGA's experience of that? What work needs to be done in parallel with the legislation to ensure that display boards are erected?

293. In relation to alley-gating, has any work been done to benchmark the savings in police resources, council office resources and, obviously, people's well-being? That would be an interesting figure. If there is a reduction in police personnel resources, they should foot some of the bill, be it through community safety partnerships or district policing partnerships (DPPs). What is your view on that? I think that they have proven to work extremely well.

294. I agree that the dogs legislation should have been in the Dogs (Amendment) Bill. I am a member of the Committee for Agriculture and Rural Development, which is currently conducting clause-by-clause scrutiny of that Bill. It would not be feasible to include that in the Bill at this stage.

295. What would you like to see in the legislation regarding derelict buildings? What would make your job easier from an environmental health point of view? There are a number of examples in my area, but I will not go into them again. People do not want to be found, and the building could fall in to disrepair. It is a danger to people's health, with children running about and setting fire to it — the usual.

296. Ms Donnelly: I will respond to the fly-posting issue and the mention of designated sites. To address the issue, we had an inter-agency group in Belfast a few years ago. We brought a company over from England that makes pillars and identified 20 sites throughout the city. Our stumbling block was that, although the planners said that they could probably give agreement, Roads Service said that there was no provision in the legislation, when it was consulted by planners, to allow the pillars to be located at those sites. Our difficulty is that there are very few privately owned sites in Belfast that would satisfy the people who want to fly-post because they want them in locations where there is heavy footfall and heavy traffic passing by. It came unstuck at that point because we could not get the permission through the process to put them up.

297. Mr T Clarke: I am glad that you came across a stumbling block, because other businesspeople have to go through expensive means to advertise their businesses. Fly-posting has blighted the countryside and should not be allowed to happen, and we should not facilitate fly-posters by making it a cheap form of advertisement. People have gone to great expense to advertise their businesses or nightclubs and the services that they offer in other forms. Why anyone would put up some cheap form of totem pole so that it can be legitimately plastered with posters is beyond me.

298. Mr W Clarke: What I am talking about is high quality board, not just some tacky sort of board. There would be a cost associated with advertising on that display. If we are serious about discouraging people from fly-posting, we have to provide alternatives.

299. Mr T Clarke: We could send them a copy of the trade rates for the 'Belfast Telegraph' and 'The Irish News' and tell them to take out adverts in the newspapers.

300. Mr W Clarke: People might not —

301. The Chairperson: We could get into a debate on this. We should look at this in the round. We have seen in all towns that there is no point in going at 10.00 pm to advertise a disco. Mr Beggs has made a good suggestion that we should look into the cases of those who innocently have to deal with fly-posting and recoup the costs involved. The Committee should certainly look into that.

302. I agree that a board, properly managed, could be the answer, if people want to buy into it. We must also look at the smaller businesses that cannot afford to do so. They need other means and ways to advertise. Both points are valid and we will discuss it.

303. Mr Kinahan raised two points.

304. Mr Kinahan: My first question was about how successful alley-gating is.

305. Ms Donnelly: I would like to confer with colleagues who deal with alley-gating and get a comprehensive report for you on that, rather than commenting on it now.

306. Ms Smyth: I think the alley-gating point was very valid. It is one of those issues that, if we had the relevant community planning powers and the power of well-being, would be much easier to deal with, and that applies also to other legislation that is going through the Committee. Aside from the police, we would bring in Mr Clarke's point about the Housing Executive and look at things much more holistically.

307. The Chairperson: Generally speaking, all parties and agencies are involved in that, including housing, Roads Service, the community and residents' groups. It is happening in the Armagh Council area already.

308. Mr W Clarke: I asked a question about resources.

309. The Chairperson: We will see that after the next Budget process.

310. Mr Kinahan: I had one other question.

311. The Chairperson: Mr Clarke, are you finished?

312. Mr W Clarke: No. I asked about derelict buildings. What do you want to see in the legislation about that?

313. Mr D McLaughlin: The chief environmental health officers' group (CEHOG) produced a document on that with recommendations. As Karen said, we will furnish the Committee with that document.

314. Mr McGlone: Thank you all very much and good to see you again, Vivienne, though you are wearing a different hat.

315. You spoke earlier about caravans. Two or three things were mentioned, including the lack of definition coming from the Department, which was eventually sorted out. I thought about more rural areas, and it occurred to me that there are bits of articulated trucks abandoned throughout the countryside. I can think of one or two cases in which cat litter saturated with red diesel has been just dumped. Is there an argument for clarification or an extension of the definition to include caravans/trailers? Should that be added to the list?

316. Ms Donnelly: As far as I am aware, trailers are already included in the definition.

317. Mr McGlone: That is fine.

318. The second thing is audible intruder alarms. Those can be wild annoying, especially for someone living on an estate and working shifts. I do not know how someone can discern the difference between a smoke alarm and an intruder alarm, other than smoke coming out the windows. It is very difficult to do that. It is just an old hooter that goes off to alert people.

319. The nomination of keyholders would be extremely costly and difficult to the point of being impossible. That is completely undoable. You can go to a house one week, and find someone in it; go the next, and someone else would be in it; and go the following week to find absolutely no one in it. In the private rental sector in particular, you would find such as system catastrophic and totally unmanageable. To try to update it would be most unrealistic. The Electoral Office, with all its resources, has great difficulty in trying to update its information. As you well know, we have so many allegedly vacant properties that the resources required to do that, on what would become almost a monthly basis, would just be impracticable and undoable in the times that we are in, unless somebody has another solution. However, I really think that to get two nominated keyholders — who, like me, may lose keys now and again — is undoable. What are your views on that? Can someone tell me that it could be done with existing council or departmental resources? I honestly do not see it.

320. Mr D McLaughlin: To be honest, I really do not know what we could say to that, Mr Chairman. I accept that getting the identity of some people in certain properties is a difficult

task, and Mr McGlone gave a few examples of that. I agree that tenancies in the private sector change a lot, which would be difficult to follow up on. That sector is, probably, at times, one of the less responsible. I am not from the noise end of things, so I may have to speak to some people who are to see what the situation is. However, I know that some people run a voluntary scheme and some of them have come in to us with the details. I would work on a more comprehensive scheme that requires everyone to do it. I do not know how that would work.

321. Mr McGlone: Nor do I.

322. Mr D McLaughlin: I do not know how we will chase up details.

323. Ms Smyth: We will look into it and get back to the Committee.

324. The Chairperson: Have a look across the Department and come back to us.

325. Mr Dallat: Thanks for the presentation. It was a breath of fresh air, and the absence of elected representatives did not take away from it at all. [Laughter.]

326. The Chairperson: Trust me, there are enough of them here.

327. Mr Dallat: I have a couple of questions. To pick up a point concerning fly-posting: I do not want to sound parochial, but Coleraine is twinned with La Roche-sur-Yon in France, which sent over a gift. It was one of those circular things that you can put your —

328. Ms Smyth: A parasol.

329. Mr Dallat: It was the best thing ever happened, because it provided an alternative to fly-posting. That is one thing that we certainly learned from the French.

330. Election posters have to contain details of the agent responsible. Is it possible to require any type of public advertisement to have a contact on, so we at least know who put them up? Alternatively, should the venue where an event is held be responsible for the offence committed? It seems to me that that should be part of an agreement to hire a hall, hotel or whatever.

331. Ms Smyth: Yes.

332. Mr Dallat: I say that with all sincerity, because the town where I live, Kilrea, is obliterated with posters week after week. We get the council out to clean up the bus shelters, we leave the town tidy and, the next Monday, it is all undone again.

333. My second point concerns the term alley-gating, which scares the wits out of me. There was an interesting case, again in Coleraine, in which a wheelchair user took the council to the Equality Commission because alley-gating had been carried out, and the case was settled out of court. Is that something that is considered in every district? Does it have to be covered? As access could be an issue, must alley-gating be equality-proofed?

334. Ms Donnelly: As far as I know, a great degree of consultation takes place in Belfast. My colleagues advised me that they prefer to have 100% commitment before going forward with a gating scheme. In some cases where they have not secured 100% commitment, they have brought in mediation. That is their approach. I suppose that those types of issues would be addressed through such discussions and negotiations, but I will clarify how that is addressed.

335. On the fly-posting responsible person issue: I agree that it would be easier to make the venue responsible. At the minute, the venue blames the promoter and we go round in circles trying to identify who the responsible person actually is. I think that the legislation proposes that the person responsible will have to show that they took reasonable steps. That is the planning element that is proposed in the Clean Neighbourhoods and Environment Bill. The Department is looking at that, and I presume that it will go down the same route by giving us the same powers. The defence available will be to prove that reasonable steps were taken to avoid fly-posting.

336. Mr Dallat: That is great. Thanks.

337. Mr Kinahan: I asked about the scale of fixed penalty notices. What broader spread do you want?

338. Ms Smyth: Sorry. I suggest that we come back to the Committee with a paper on the financial issues.

339. The Chairperson: Mr Dallat raised the issue of alley-gating. Some people understand the concept, but I want you to put it down on paper. It is very valuable in some places. It is not a one-size-fits-all solution, nor does it suit every area, but we have seen the results of young people running up and down alleyways. They let off bangers, dump stuff and torture elderly people in particular. Sometimes, there are benefits, but alley-gating may not work in all areas. However, we are saying that the legislation contains an option for it, and if all the bodies get together and want it, that is good enough. We need to experience these things and then it might encourage others to look at it, at least. I want you to put on paper the advantages and the disadvantages, such as whether it restricts people's movements. Thank you very much.

340. Before I invite the next set of witnesses in, I want to refer to a letter from Roy Beggs. He wrote to ask whether the Bill provides the power for an innocent party to recoup costs from the beneficiaries of advertising for the removal of posters that have been fly-posted. He is talking about nightclubs and whoever else, and it is something that we need to look at.

341. Mr W Clarke: Recoup costs from who?

342. The Chairperson: Nightclubs, for example, go out and advertise. They get the benefit of that advertising, because whoever goes to the nightclub pays in. The local council has to recoup the money spent on removing fly-posted advertising. He was using that only as an example.

343. Mr W Clarke: We are back to the issue of whether the promoter is responsible. The nightclub might have asked the promoter to advertise the business and paid him to do that.

344. Mr T Clarke: It should be the nightclub's responsibility to go to the promoter.

345. Mr Weir: You do not want to have to go after someone who may be the smallest person in the chain. For the sake of argument, it may be that an Eastern European immigrant who has been given a load of posters to put up may be fined, while there are people further up the chain who are actually responsible for it.

346. Mr W Clarke: You can do that through the small claims court even now.

347. The Chairperson: We will look at it in the Bill and decide.

348. OK. We will move on to the next briefing on the Bill, which is from the Environmental Quality Forum. I welcome the chief executive of Tidy NI, Dr Ian Humphreys, and Chris Allen, Tidy NI's local environmental quality officer. Please make your presentation for up to 10 minutes, after which members will have an opportunity to ask questions.

349. Dr Ian Humphreys (Northern Ireland Environmental Quality Forum): Thank you for the opportunity to present evidence today. Chris Allen and I are employees of Tidy Northern Ireland, but we are here as members of the Northern Ireland Environmental Quality Forum, which is a relatively new body. It is about one year old and has met only four times so far. At the moment, it is made up of the councils of Northern Ireland and Tidy Northern Ireland, but it is open in future to including other bodies, such as landowning bodies, that may have a big interest in litter and other environmental crime issues.

350. We realise that the legislative approach to tackling those issues is one of a menu of things that need to be in place if we are to change behaviour in Northern Ireland. Ultimately, this is all about changing away from behaviour that costs us so much. Members have probably already been quoted the fact that 46% of people recently questioned said that they had dropped litter in the previous six months. That is the scale of the issue that we are dealing with.

351. The Environmental Quality Forum warmly and wholeheartedly welcomes the legislation as a big step forward in Northern Ireland. The Bill seeks to deal with an issue that has big social, environmental and economic impacts. The public see the issue much more broadly than the legislation tries to tackle it. People are out on streets and roads every day. Of streets that we surveyed, 97% had litter. This year, we have done more than 2,500 surveys. That is what the public are seeing, and they make no distinction between council land, Housing Executive land, Roads Service land or whatever.

352. That causes people concern, and they even feel less safe in neighbourhoods that are littered. Environmental crime of that nature can lead to other, more serious environmental crime. From the Tidy Northern Ireland perspective, we know that litter kills millions of animals every year, many of them marine species. Therefore, we are also trying to tackle that environmental issue. Of course, the Committee is well aware of the cost of £34 million. I apologise that I may have put £94 million in the literature that we sent out. Although that figure is a mistake, it is probably not far off the real cost. When we consider that £34 million is spent on street cleansing and that figures released yesterday showed that graffiti cost another £17.3 million, the bill for all the elements of the issues that we are tackling would add up to vast amount of money. By and large, we could save that money.

353. Many people tell me that the letters they receive from tourists show that the litter issue costs us money in another way. Tourists come here for the first time, we attract them to Northern Ireland, and they go home but do not come back. They tell their friends that this is a dirty country. I also know that companies coming here have refused to invest in Northern Ireland simply because they have seen the litter on the streets. Litter is a serious issue to us. We have to have the strongest legislation that we can to deal with it. To achieve that, we empower the people who enforce the regulations daily in the best way possible. We should not put up walls and barriers to enforcement action.

354. I said that we welcome the Bill, and we absolutely do. We want a no-nonsense approach to enforcement, which requires the legislation to be in place. I will now circulate a few graphs to make the point that we must get tough in using the legislation. Once it is in place, every council has to be willing and ready to use it and to enforce it.

355. The first of the graphs shows that in Southwark Council the public satisfaction with the street scene — what people go out and see on the streets — fell between 1997 and 2000. In the

next graph, members see that an explanation starts to appear. Southwark Council did then what, by and large, we in Northern Ireland do now: go and pick up after people. That is our way. Councils are all geared up, lots of staff are employed with lots of kit and gear, so, if a problem is identified, if councillors ask for their street to be sorted out, we go and clean it up. We do not put the same investment into prevention through enforcement and campaigning against littering.

356. Southwark Council had a policy of collecting rubbish from the streets. In 1997, that amounted to about 6,000 tons. People got to know that their rubbish would be collected, and more lorries were sent round to do so. By 2000, the amount collected had gone up to more than 9,000 tons.

357. However, as you saw in the first graph, people's satisfaction with street cleanliness was dropping, even though more and more litter was being collected off the streets and there were more and more bags of rubbish. The point was that people saw more rubbish on the streets and more people out trying to pick it up, and the perception was that it was a dirtier neighbourhood to live in. Therefore, the council then took a no-nonsense approach and started enforcing, and it found that the public perception quickly and greatly improved. That was the impact of enforcement.

358. Coming on to the Bill specifically, we want to be sure that any legislation that comes into place means that all landowners will adhere to the same standards. At the moment, the Bill focuses on councils, and councils take all the flak when there is a problem. There is a concern that the Bill does nothing to bring about improvements in what the public already see on other landowners' property, particularly those who might have Crown immunity, even if they are statutory undertakers, where litter is not seen as an issue that needs to be dealt with. The legislation, specifically clause 17(10), excludes any ability of councils to try and enforce on those lands where the bulk of other issues lie.

359. When we are surveying streets, we can pass streets on council land, and we often do because they have set very high standards. However, it may be that we would fail the transect just 2 ft behind, which may be held by the Housing Executive or Roads Service, because of the litter lying on it. That is what the public see. Therefore, we need something to address that. This legislation does not tackle that, yet it is a big part of public perception and of what the public here and visitors want to see improved.

360. Secondly, fixed penalty notices have to be set at a level that would be a proper deterrent, rather than people just thinking, "Well that is £50 gone here or £75 gone." For a lot of people that is nothing, and it is not going to be a deterrent. The cleansing costs are £34 million a year, and last year we issued about 3,500 fixed penalty notices for littering and dog fouling. If a "polluter pays" approach is taken, it would be a massive fee. For example, if, say, 10% of the cost of street cleansing is litter and dog fouling, the fixed penalty notice to cover that would be £1,000, rather than the £75 median range that we have now.

361. We need to strongly think about what level we are setting for the fines and what deterrents we want. Are we really going to be tough on this and make the improvements that we want, or are we just going to be careful to avoid upsetting people too much? If you drop litter in the USA, you face a \$500 fine or up to one year in jail, or both. If you drop litter in the harbour in Hong Kong, you face a £500 fine and up to six months in prison. I am not suggesting jail sentences for this, but I am suggesting that we increase the level of fines to something that is a proper deterrent and that will put people off doing it again.

362. We have already said a lot in our submission, but my final point is that we need to be sure that this legislation is, as I said at the start, enabling of the enforcement officers. That links through to ASBOs, which are also an important element that can be in the armoury of the

enforcement officers. That is mentioned in the English legislation and if we are going to have parity, it needs to be brought into the legislation here.

363. The Chairperson: Thank you for your presentation. I want to clarify something. Say that somebody is walking down the street or through a housing estate and they fire something into somebody's garden, normally most people would go out and lift it and put it in the bin. However, if it happens repeatedly and it is not lifted, obviously it is then up to the council to serve a fixed penalty notice; that is what the regulation says. Where is the comeback in that? I know that you mentioned ASBOs, and we have to be very careful when discussing ASBOs in case we are isolating a part of the community and a certain age group. Is the problem with the fixed penalty notice the £75 limit? Are you asking that we raise that?

364. Dr I Humphreys: The limit should be raised considerably. If people are fined for a second or a third time, those limits should be moved towards the upper level. That will have a deterrent effect. A lot of people can easily afford a £50 fine and not worry about it. To be honest, the fixed penalty notice is a pay-off; it is money in a brown envelope to forget about it. Therefore, there is no public knowledge of the offence and no deterrent for that person, whereas, if they go to prosecution, there is public knowledge that that person has been fined for littering, even if it is for the same amount. People do not want the public to have that knowledge, so that works as a deterrent. The fixed penalty notice is an easier and cheaper method of effecting a payment for a crime that has been committed.

365. Mr Dallat: The argument that is often made against that is that if a £1,000 fine is imposed on someone who has no means of paying it, the whole purpose of the penalty has been defeated immediately because although the person could be thrown in jail, the fine will never be paid, which could result in millions of pounds of unpaid fines.

366. Dr I Humphreys: We will never stop everybody dropping litter and we will never catch everybody. If we have high levels of fines and when people reoffend, go through the court system — I am not suggesting that people go to jail — and have their names put in print, the public perception will be that they will get caught littering and suffer the embarrassment of being named. Therefore, most people will stop. I agree that we cannot stop everybody dropping litter. We have an issue in that regard.

367. Mr Dallat: Surely enforcement is only one aspect. In this part of the country, there is, unfortunately, a culture of dropping litter. If you take the ferry over to Scotland, the first thing that you will notice is that the villages are tidy and neat. That is because people there simply do not drop litter. They feel very annoyed when they see other people doing it, but we are nowhere near that. Is there anything in the legislation that will positively encourage people to not litter?

368. Dr I Humphreys: Danny's party brought a motion to the Assembly proposing a clean-up week, for which there was cross-party support. I am not saying that it has to be restricted to a week. I totally agree with you. I said at the start that there has to be a menu. The legislation is an important element because there are people who will not listen to any campaign or message. Very soon, we will write to every councillor and MLA to ask for their support for the big spring clean campaign. We will then move to engage the public, celebrities and the media so that it becomes socially unacceptable to drop litter.

369. Members have probably heard about the litter summit that is taking place next week. We are bringing over somebody from Texas who has run a 25-year campaign called Don't Mess With Texas. That has been very successful; there has been a 72% reduction in litter, and the cost of it, although it is for the state of Texas, is \$2 million a year. It has not increased in budget for 25 years and it has paid for itself. I totally agree with what you are saying. We have to have a balance. The legislation should come down heavily on those who ignore the law, but we want

something that will positively encourage the goodwill of the other half of people who do not drop litter and get very frustrated and annoyed about littering. It is not an issue about which people sit on the fence.

370. The Chairperson: We will not regard this brochure about the summit as litter.

371. Obviously, we are going through the Waste and Contaminated Land (Amendment) Bill and we will look at the set of fines that it contains. Getting back to the point, legislation needs to specify a fine. We cannot impose fines on everyone who is walking down the street throwing litter, no matter how we go about it; it is about changing attitudes. However, a deterrent is needed, and we certainly support that. As the Bill stands, the limit is £75, and we will look at that as we go along.

372. I want to tease out the issue about the selling of vehicles. You say that there is an enforcement loophole.

373. Dr I Humphreys: We have received advice from people who have looked at trying to enforce that in England. A person can have 10 cars on sale, all of which are 500 metres apart, and they just meet the person who wants to buy a particular car. It is a difficult situation to deal with effectively; it will cause a little bit more of a problem for people who want to sell multiple cars off the street. We are not suggesting an easy solution.

374. The Chairperson: We will take that on board and ask the Department for clarification on that issue.

375. Mr T Clarke: I am not saying this because I am involved in the motor trade, because I do not sell cars off the street —

376. The Chairperson: It was a leading question; I am glad that you came in.

377. Mr T Clarke: You are saying that a person can place a car every 500 metres, but if you think of the consequences of that, where is that person going to get a place to park a car every 500 metres? That is a considerable distance.

378. Dr I Humphreys: That regulation has been circumvented in England by people who adhere to the legislation by having cars parked in that fashion. If it is your living, you will find a place.

379. Mr T Clarke: I know that it happens, and I would welcome something that would prevent it happening. In the Randalstown area, for example, it happens on the hard shoulder, but that would not be 500 metres long. That is not going to be extended, and I do not know any other locations that would allow cars to be parked every 500 metres.

380. Mr Weir: I think that there is a wee bit of a misunderstanding there.

381. Mr T Clarke: Is there?

382. Mr Weir: They are saying that the proposed legislation prevents cars being sold within a 500-metre limit; they are not advocating that it should happen.

383. Mr T Clarke: I thought that they were saying that it would allow cars to be sold every 500 metres.

384. Mr Weir: No. On that point, have you had any discussions with the Department whether, if it is a question of closing the loophole, why a 500-metre limit was picked?

385. Mr T Clarke: Why at all? Why not just ban it outright?

386. Mr Kinahan: I thought that it was illegal to sell a car at the side of the road.

387. Mr T Clarke: No, it is not. Instead of having a discussion about allowing cars to be sold every 500 metres, why not just say that vehicles should not be allowed to be sold on the side of the street?

388. Dr I Humphreys: I am not a legal expert, but my understanding is that if you or I were to sell our single car on the street, we would want to be able to do that, because that is about us moving the car on, and that is a legitimate thing to do. It is about tackling people who run their business off the street and have a dozen cars for sale.

389. Mr T Clarke: It is about the definition of "street". Someone who legitimately wants to sell their one car, which they change every four years, can sell it from their drive. They are not going to be prevented from doing that, but there is a difference between the street and one's drive. The blight is caused by people who park cars on the side of the road with "for sale" signs with contact numbers. That is what I deem to be "on the street". Why not just say that cars cannot be sold on the street, but they can be sold from private property, which is an entirely different argument? It is about on-street trading. When you go to Londonderry to go towards Bridgend, there are loads of parked cars being sold by people running businesses illegitimately. If they want to sell cars from premises or from a private house, which they are entitled to do, that is different. It is the on-street trading that is the problem.

390. The Chairperson: I agree; it is a valid point but, to be fair, not everyone has a drive. I do not know whether that was a plug for a dealer; perhaps they should be advertised in 'Auto Trader'.

391. Mr T Clarke: You cannot park on a public road anyway, but if you park your car in your drive, you can advertise it in a magazine. In order to make it a fair playing field, there should be no on-street trading for anyone.

392. The Chairperson: I totally agree with you, but it is the case that residents in older social housing estates can park only on the road outside the house, unless they concrete their front garden. However, it is a valid point and we need to look at whether there are exceptions in some respects, but you should be allowed to sell your car.

393. Dr I Humphreys: That is why you can. This is trying to stop more than one car being sold on the street within 500 metres of another, to prevent a business, operating with 10 cars in a row, blocking everyone else from parking near the house.

394. Mr T Clarke: Obviously you are not from the Antrim area, but if you go to Randalstown there is a legitimate garage on the right-hand side, John Mulholland Motors, the first garage you meet as you come off the roundabout. Just before you come to his garage, there are at least two cars every day, if not three, parked on the hard shoulder with "For Sale" signs. Why should John Mulholland pay commercial rates for all his advertising — on TV, press and whatever else — for his legitimate business, while other people can come up and park right beside his business and advertise their cars? We should remove that opportunity. Such cars should not be allowed to park in that public place.

395. Mr Kinahan: This is dealing with that.

396. Mr T Clarke: It is not, because one car can be parked every 500 metres.

397. The Chairperson: It is something that the Department should look at. You brought it up, and I wanted clarification on it. Obviously, Danny, you would not have any problems with parking outside your front door.

398. Mr T Clarke: He probably needs to cut trees down to get the helicopter in.

399. Mr W Clarke: Thank you for your presentation. I agree with your point about other statutory bodies not being included in the legislation. You have the likes of councils, Housing Executive, Forest Service and Rivers Agency, and it even says that schools should be exempt. That is the very place that should be used for teaching young people about litter; I do not think that schools should be exempt. I agree with your comment on that. NI Water sites have litter strewn all over them; I have issues with that. Forest Service only does litter sweeps in forest parks; it does no cleaning in the general forest. I want clarification as to why that is. Is it to make the Bill competent? Why are the exemptions in it? Can you clarify that?

400. I think that the working classes are punished by fixed penalty notices. I have a serious issue with fixed penalties in general. If you are living on £75 per week, a £75 fine will mean a hell of a lot to you. There should be a sliding scale of fixed penalty, taking into account salary and economic background. To a millionaire, £75 is nothing; but to someone living on £60 per week, £75 is a hell of a lot of money. Every Department just sticks down £75 or £100 fines for fixed penalty notices in legislation without seriously considering whether that is a deterrent or whether it is punishing the working classes. That is what I see it doing. It does not make middle or upper class people think twice about dropping litter or dog fouling or whatever. Departments must think about fixed penalties and how they operate. That is my general opinion.

401. Dr I Humphreys: If a case goes to court, the exact issues that you have talked about are taken into account. Ability to pay is one of biggest elements in deciding the size of a fine. That is why sometimes cases go to court and the fine is less than the fixed penalty.

402. A lot of people who are fined are not from working classes. For example, one council recently noted the number plates of 500 people who were driving round dropping litter out of cars to identify the licence holders and issue article 20 notices. Those people were from across the whole spectrum. Litter is dropped from all sizes of car, four-wheel drives and so on. It makes no difference. The point is that everyone is doing it and until we come down hard on it and accept that it will cause pain in some places, we will not deal with it and we will carry on spending money on clearing it up. We spent £34 million this year and £28.3 million the year before; what is it going to be year on year? We have to start coming down hard on it.

403. Mr T Clarke: I disagree with Willie Clarke about the scaling of fines. If you do not commit an offence, you will not face a fine. This is all about encouraging people not to get fined. There should not be a scale of fines, and you should not argue for more lenient treatment because you are at one or other end of the social ladder. If you drop litter, you break the law and you should be fined, regardless of your social standing.

404. Mr W Clarke: You are missing the point.

405. Mr T Clarke: No.

406. The Chairperson: Hold on. There are two points here. From your point of view, it is a deterrent.

407. Dr I Humphreys: Yes. It is about creating the perception in the public's mind that they will get caught if they drop litter. The message is that it is costly if you get caught, so do not do it.

408. Mr Buchanan: One of the things that plagues our towns and cities is chewing gum, the majority of which may be thrown down by schoolchildren. How do you enforce a fixed penalty on a schoolchild?

409. Mr T Clarke: Parents.

410. Dr I Humphreys: As you are probably well aware, most councils shy away from issuing a fixed penalty notice to anyone under 16, or even older than that. Therefore, the message does not get across to the young people who drop litter.

411. There are councils in England, for example, who will legitimately take a picture of someone who has dropped litter, whether that is gum or any other form of litter. Quite often the person who dropped the litter will be wearing a uniform, so the council will take that photograph into the school and show the head teacher. The person who dropped the litter may have been asked their name and replied, "Mickey Mouse". The council will ask the head teacher whether they know the person, and it can be tackled in the school in that way. The head teacher will at least be aware that that person has committed an offence, even if the matter is taken no further.

412. Some councils are thinking about issuing fixed penalties to younger people. A great deal of caution must be taken in that area. Education about litter in schools should be the first port of call in tackling the issue with young people.

413. The Chairperson: I agree with your last point. However, I take exception in that primary schools and the first and second years of secondary schools do a lot of good work to send the right message to children about litter. There is a gap, as there is in everything, but it cannot be denied that good work is being done. It is something that we need to look at. At what age can someone receive a fixed penalty notice?

414. Dr I Humphreys: I may be wrong, but I think that the proposal is that anyone over 10 years old can receive a fixed penalty notice.

415. The Chairperson: OK; I just wanted clarification.

416. Mr W Clarke: I will back you up and say that young people are more responsible than older generations. A lot of good environmental education is given in schools. It is wrong to say that it is young people who drop chewing gum and litter. I know from my own child that children are very responsible about litter and chewing gum.

417. The Chairperson: Alex Ferguson may have set the tone, given the amount of chewing gum that he chews. I wonder where he puts it. [Laughter.]

418. Thank you very much for your presentation. I look forward to incorporating some of your views into the report.

419. We will now have a briefing on the Clean Neighbourhoods and Environment Bill from children and youth groups. I welcome Linda Moore of the Children's Law Centre; Koulla

Yiasouma of Include Youth; Elaine Conway of Children in NI; and Jacqueline O'Loughlin of PlayBoard. Are you happy enough with that pronunciation?

420. Ms Koulla Yiasouma (Include Youth): I am; thank you very much.

421. The Chairperson: We will give you 10 minutes for a presentation and then open it up to members' questions. Please be gentle with the members.

422. Ms Yiasouma: Likewise, I ask the members to be gentle with us. I will begin by thanking the Committee and saying how pleased we are to be here giving evidence. I am the director of Include Youth. I am here to act, if you like, as mistress of ceremonies. I will briefly introduce some of our concerns about the Clean Neighbourhoods and Environment Bill before handing over to Jacqueline O'Loughlin, chief executive of PlayBoard and Dr Linda Moore, policy adviser for the Children's Law Centre, who will go through some of our substantive issues. Elaine Conway is here as policy manager for Children in Northern Ireland, and she will get involved in the question and answer session.

423. Like all right-minded people, Include Youth agrees that creating a safe and clean environment is vital for the well-being of all citizens of Northern Ireland. Although we support the proposed legislation's broad aims, we struggle to see how some of its actions — as they relate to children, young people and their families — will achieve the desired outcomes. We believe that they run the risk of further alienating, even criminalising, some of our already excluded young people.

424. Our broad concerns include how little recognition there is in the Bill of the adverse impact of gating orders on children and young people, and that there is no recognition of the impact of the issuing of fixed penalty notices to children, young people or their parents. The legislation seems to be a lift from England and Wales; it does not seem to have been sufficiently Ulsterised. It does not pay due regard to the specific circumstances of the North of Ireland. As such, it has missed an opportunity. The legislation and the Department of the Environment (DOE) consultation that preceded it take little cognisance of some of the excellent activities by councils and other agencies that divert and prevent littering, graffiti writing and other antisocial behaviour by children and young people.

425. We were really disappointed by the response from the Department of Environment to the concerns that we expressed in response to its first consultation. The substantive points that we raised remain unanswered. The consultation summary paper does not sufficiently represent the number of objections that we raised and little attempt seems to have been made to take account of our points. We are unsatisfied with the way in which some of the issues were addressed, particularly in regard to the best interests of the child and due process, which we believe contravenes article 6 of the European Convention on Human Rights.

426. The Bill does not specifically address some of the criminal justice legislation as it relates to the fining of children and young people. There is no recognition that imposing a fine on or issuing a notice to a child may have child protection or safeguarding implications. The Bill does not seem to take cognisance of the impact of fixed penalty notices on already economically and socially deprived families. It does not sufficiently consider how punitive actions may result in the criminalising of children and young people. The legislation has absolutely no recognition or celebration of effective alternative approaches that are already quite prevalent in some of our communities.

427. Before handing over to my colleagues, I want to say a few words around fixed penalty notices. There is evidence from England and Wales of a marked increase in the number of children and young people being drawn into the criminal justice system through the use of pre-

court sanctions. I understand and we recognise that fixed penalty notices are not a criminal conviction; however, breaching them is. We ask the Department to supply us with evidence that suggests that such a form of action actually reduces graffiti, litter and antisocial behaviour by young people.

428. As I have said, we are aware of many alternative projects and actions by council officials that tackle such issues effectively, and we urge the Department to undertake a review of those innovative practices with the aim of replicating them across Northern Ireland. Much is to be learned from an approach based on engaging the community, in partnership with children and young people and the public, and coming up with agreed solutions that need not include the punitive steps suggested in the Bill. I think that I speak for all four organisations when I say that we would be more than happy to assist in that process and to contribute any information that we have.

429. Finally, we appreciate that the Department talks a lot about guidance in its response to the consultation. We urge that key stakeholders — I have talked about some of those already — are engaged, even at this early stage, to help to develop that guidance so that it recognises the rights of children and young people and ensures clean and safe neighbourhoods.

430. Thank you for listening to my brief introduction. I hope that it was helpful. I will hand over to Jacqueline to talk a bit more about other things.

431. Ms Jacqueline O'Loughlin (PlayBoard): Thank you. Good afternoon. I am the chief executive of PlayBoard, the lead agency for children's play in Northern Ireland. I, too, thank the Committee for inviting us along to give our views on the Clean Neighbourhoods and Environment Bill. I will draw on a broad range of research that is pertinent to PlayBoard's expertise in children's play. My input will consider the potential implications that Part 1 of the Bill, namely gating orders, may have on children and young people's mobility, territoriality and play and recreation affordances.

432. The Bill gives councils new powers to make gating orders to deal with problem alleyways. It states that gating orders will be used predominantly to address crime and antisocial behaviour in built-up areas. As Koulla highlighted, the practice of closing off alleyways is not a new concept. It has been in operation in England for many years. To date, the adult-led evaluations of gating order schemes — I emphasise that the evaluations have been adult-led — highlight that, in some circumstances, they have proved to be a useful tool in preventing problem behaviour. However, conversely, it has also been noted that, in some cases, the public have been denied a valuable right of access with insignificant benefit to security.

433. From an adult perspective, we all absolutely sign up to the prevention of crime and antisocial behaviour and the improvement of our local neighbourhoods; those aims are to be commended. Improvement in the community environment raises many issues that are of critical importance to both children and young people and other residents. I must point out that adult's views and perceptions of what constitutes a pleasing neighbourhood can differ somewhat to those of children. Bear it in mind that children spend a lot of their time hanging out and playing with friends in their home neighbourhood. The local environment can, therefore, have a major impact not only on health and well-being but on the ability to foster positive community identity and a sense of belonging among children and young people.

434. PlayBoard wants to highlight that the Executive's play and leisure policy framework and the accompanying implementation plan, which is in development, has a number of core themes that are pertinent to the Bill, namely champions for play, places and spaces for play and access to play. A play space goes beyond its boundary. It is not just about fixed playgrounds and destination parks but the whole community. We need to consider the importance of children's ability to roam and to have free access in their home environment. Children and young people

should be able to travel actively and independently when visiting friends or going out to play. Play and active travel are interwoven and sometimes indistinguishable.

435. The significance of children's play in developing resilience and well-being is widely documented; there is a body of research to support it. Therefore, it is essential that local communities and those who are involved in community planning recognise the way in which children and young people participate in play and recreation and that they appreciate the environmental conditions that promote such participation. For example, children and young people naturally seek out places where they are not scrutinised by adults. Alleyways and back entries are some of the places that present them with that opportunity.

436. It is perceived that gating orders will deter crime and antisocial behaviour. However, although they will improve crime rates in some areas, so-called nuisance behaviour among young people will not be put right by the mere installation gates or barriers. In fact, children will see that as a challenge or simply congregate somewhere else. Society could deem as antisocial the behaviour that they engage in at that other place, whether it is play or another activity. The root cause of children and young people being labelled as disaffected and antisocial must be addressed to reduce and eradicate any perceived annoyance caused. Therefore, it is necessary to protect children and young people's spaces from adult encroachment. Furthermore, when environmental conditions severely impact on children's ability to participate fully, more direct action may be required to restore favourable environmental conditions for children and young people's self expression.

437. Children and young people's activities should not be polarised but incorporated into wider environmental-planning processes. Restricting the youth of the highway can have a negative impact on children and young people, not least those with disabilities. Consideration must, therefore, be given to the requirements of the Disability Discrimination Act 1995. Children and young people are more likely to regularly use shortcuts, and alleyways provide those, giving access to schools, shops and bus stops, and so on. Furthermore, parents use those back alleyways and rely on certain routes to ensure that their children are away from busy traffic and arrive at school safely.

438. Positive environments that offer safe opportunities for physical play and activity can strengthen community identity and foster a sense of pride and belonging in our children and young people. It is worth reflecting on the idea that urban planning and public health have joint roots. Looking back, we designed cities to try to reduce mortality rates and eradicate disease. Today, the issues are different, but no less important. We have huge levels of childhood obesity to deal with, as well as severe mental health problems, a myriad teenage suicides and child poverty. All those ultimately affect life expectancy. PlayBoard suggests that there is a strong incentive to find new and more collaborative ways of working that draw on community expertise, primarily those that are affected by policy decisions.

439. Children and young people, as well as those with experience of the built environment and the health sectors, should be consulted prior to the implementation of gating orders. In many of our neighbourhoods, children and young people have limited opportunities for play and leisure, resulting in a loss of enjoyment, freedom, confidence and independence that such activity brings. PlayBoard is concerned that alley-gating would further restrict and displace those opportunities.

440. We are aware that the Minister for Regional Development, who has policy responsibility for this legislation, agrees with the proposals set out in the Bill. However, we offer the following observations for the Committee's consideration and deliberation: although we acknowledge the genuine concerns of residents about crime and antisocial behaviour, the concerns of children and young people about the potential displacement of their play spaces because of the proposed

introduction of gating orders must also be recognised. One should not be negated in favour of the other.

441. We recognise the rationale that underpins the Bill and understand that gating orders may have attractive benefits. It is proposed that they should be used as a safeguard against crime; equally, however, we recognise the potential for abuse of the legislation. We suggest that the rights of children and young people must also be safeguarded, which the introduction of the Bill has the potential to harm.

442. A gating order must give consideration to compensating children and young people for the displacement and restriction of play spaces previously accessible to them. We are not suggesting that every neighbourhood has a fixed play park but a wider appreciation of the need for the environment for play.

443. Other mechanisms also need to be explored for addressing community problems, such as community development methodologies, play work, youth work and outreach programmes. We need to work with planners to create informal shared spaces that can be enjoyed by all residents. The proposal for gating orders may well be a catalyst for positive change in the environment and in reducing crime. However, it must be recognised that other progressive changes will also be required to address the issues and potential difficulties that the introduction of gating orders may cause, such as a lack of physical resources leading to social exclusion and increased polarisation of our children and young people.

444. The introduction of the legislation will require an increased level of co-ordination and ongoing commitment between policymakers at departmental and council levels to ensure that its implementation is maximised. The Clean Neighbourhoods and Environment Act 2005 has been in operation in England and Wales since 2006. We suggest that there is a need to reflect on the positive and negative lessons from that. Studies have highlighted that there has been a negative impact on children and young people.

445. We are concerned that public perceptions of crime and antisocial behaviour, along with the so-called demonisation of children and young people in the media, may fuel community expectations and a desire for gating orders. We suggest that some parameters and definitions should be established to assist clear evidence gathering to support successful implementation.

446. Finally, PlayBoard strongly advocates that the Department of the Environment respond to and engage with children and young people as equal citizens and primary stakeholders in their neighbourhood environments. It is essential that all residents feel a sense of ownership and can deliver on the issues that affect the local community in ways that respect and value their contribution.

447. PlayBoard asks the Committee to consider how the Bill would impact on or support cross-departmental working and other social policy frameworks and initiatives such as those supported by the Office of the First Minister and deputy First Minister, including the programme for cohesion, sharing and integration, the child poverty strategy, the play and leisure policy, A Fitter Future for All and the community safety strategy. Although that list is not exhaustive, it is simply illustrative of the perceived connections with the Bill.

448. Linda will now make a brief presentation.

449. The Chairperson: I am mindful of the time available, but I will give her an opportunity.

450. Ms J O'Loughlin: You should have seen how much we made her cut down.

451. The Chairperson: I can well believe that.

452. Dr Linda Moore (Children's Law Centre): Thank you for the opportunity to address the Committee. I will talk about three issues, giving each one minute: equality screening, the consultation process and fixed penalty notices.

453. The draft Bill was screened out in the initial consultation phase and was deemed not to require a full equality impact assessment (EQIA). The children's organisations are extremely puzzled as to how and why that happened. In the screening exercise, the Department concluded that there was no indication or evidence that any of the section 75 groups have different needs, experience, issues and priorities in relation to the Bill. However, as you heard from my colleagues, children's organisations believe that children do have different needs and experiences in relation to the issues that the Bill raises.

454. Research supports that. For example, the Committee might want to look at research by Ursula Kilkelly and her colleagues for the Northern Ireland Commissioner for Children and Young People (NICCY) in 2004 and research recently published by Siobhán McAlister and her colleagues in Queen's University.

455. In its response to the initial consultation, the Department for Regional Development agreed that section 75 screening should be carried out on gating orders because of the potential adverse impact on children. Our conclusion is that the Department is in breach of its section 75 duties and that it has failed to provide adequate evidence of the basis for its decision to screen out the Bill. We do not understand it.

456. I turn to the consultation process. We draw the Committee's attention to the extremely limited consultation with children's organisations during the initial consultation process, despite the clear impact on children and young people. There were very few children's organisations on the consultation list. The fact that only three children's organisations responded — and those were late — shows not that we are not interested or that we are inefficient, but that the children's organisations did not know about the Bill or its implications. There was very little knowledge about it.

457. We also draw the Committee's attention to the statutory obligation inherent in section 75 to consult directly with those likely to be affected by a policy. We argue that that means children and young people. We consider that they are one of the groups who will be most directly impacted upon by the introduction of the Bill, and we would like to know what steps were taken by the Department to engage directly with children and young people. What child accessible documentation has the Department produced? We are not aware of any.

458. Koulla talked about the development of the guidance. There needs to be comprehensive engagement with all interested parties and stakeholders, including children's rights organisations and children and young people.

459. Koulla also touched on the subject of fixed penalty notices. In our responses to the initial consultation on the Bill in April, children's organisations were in agreement and the consensus was that the proposals regarding fixed penalty notices were not appropriate if applied to children. We outlined the many reasons for that, including the disproportionate impact on children and their families in areas experiencing poverty; the inability of many children to pay fixed penalty notices, particularly under 16s, who generally do not have access to independent money and who will have to ask their parents to pay it; the potential net-widening and criminalisation of children and young people, which Koulla mentioned; and children's immaturity, relative to adults, which may mean that they do not fully understand the consequences of the legislation. How many children understand that it is an offence to drop litter? They may know

that it is wrong, but they may not understand that there is the potential that fixed penalty notices may lead to custody.

460. We note that the Department has accepted that a different approach may be needed for children and young people for fixed penalty notices. We welcome that and we would like reassurance that they will not be used on children.

461. The Chairperson: Thank you very much for your presentation. It is rare to be sitting as a Committee with four women staring down at us. I see one of my constituents in the Public Gallery; you are very welcome.

462. Earlier, we discussed the amount of legislation to be scrutinised and the work programme for the Committee. We are keen to process this Bill.

463. I want to tease out some of the issues and work with you to bring forward amendments. I have gone through the information that you submitted, and we welcome your suggestions. I want to pick up on a few points and then we will move on to members' questions.

464. We may have to go back and ask the Department about section 75 and the EQIA. I could answer your question very easily from a political point of view and from a party perspective. However, as Chairperson of the Committee, we will ask the Department why there was deemed not to be a need for that.

465. You mentioned the consultation. I previously had issues in getting consultation information out to as many people as possible. There are lists, and we have tried the process using advertising and by writing to different groups. People often reply to consultations late, and, through the Committee, we have afforded people an opportunity to provide written presentations and to send those in late. Are you saying that the people who you represent have had their views included in the consultation process, or have some people still not been consulted?

466. Dr Moore: A lot of people out there do not know. We have done what we can to put the word around. However, a lot of children's organisations and other community and youth organisations do not know about the consultation and are not aware that the legislation would affect them. Also, children and young people themselves have not been consulted, and it is vital for the guidance that they are.

467. The legislation has been lifted from England. A quick search of what is happening in England would inform the Department, as I am sure it is aware, that the legislation there has had a big impact on children. Indeed, in their guidance, many of the councils in England stated that a lot of the provisions are aimed at children and young people. Therefore, organisations representing children and young people should have been included in the consultation.

468. The Chairperson: To be fair: we try to give everybody an opportunity. I will check out what the minimum and maximum consultation periods were, but I think that it was perhaps 12 weeks.

469. Ms Yiasouma: The point is we did not get it. We heard about this only through —

470. The Chairperson: I agree with you. However, to us, it is not a case of whether you are on the list or not on the list. We put the legislation out to public consultation. It is then up to people to take part. However, that is something that we will look at and ask the Department about.

471. I agree with what you said about young people's inability to pay, which Mr Clarke brought up. That is something that we will look at as we go through the legislation. To be honest: we have to look first at the deterrent. An individual's actions must be looked at and the process must then be taken from there. Mr Clarke raised the issue about the amount of money and whether people would be able to pay —

472. Mr T Clarke: Willie Clarke. I want it on record that that was Willie Clarke.

473. The Chairperson: I take on board what you are saying about people's inability to pay, and we will look at that.

474. I want to talk about something that I have experienced. That is secondary, indirect experience, Mr Clarke, just to clarify, about gating.

475. Mr T Clarke: Mr Trevor Clarke.

476. The Chairperson: Yes. I pointed at you, but you had turned your back.

477. I take on board what the witnesses said about play areas. The legislation proposes measures for alley-gating. That would be an option. Alley-gating has been carried out in certain areas of Belfast and in my constituency. In an area in my town, alley-gating has been used to protect the people who live in a certain row of houses or whatever. There is a need, in some cases, for alley-gating. However, to be honest: my experience of working with young people shows me that there is a gap in how we are trying to deal with and educate our young people. I do not mean education at school, but education on littering and antisocial behaviour. We need to look at that in the round. A lot of good work is going on in primary schools and post-primary schools. I do not want to tie behaviour down to age, because it is not right to do that. However, unfortunately, in my experience, there has been an increase in antisocial behaviour in some areas. I want to find a way to get the right balance to address that.

478. I am not saying that alley-gating, as has been suggested by some people, is right. It is not a one-size-fits-all solution. We need proper consultation with all bodies, including the Housing Executive. That is the way that I am prepared to go and that is what I want the Bill to represent. The witnesses may be against that. If alley-gating is not adopted, what proposals are there to address it? If we do not agree with alley-gating, and it is for the Department for Regional Development, what can we include in the Bill to try to address the issue?

479. Ms J O'Loughlin: That is quite a broad question. I am not against the concept of gating orders per se. We object to the fact that the consultation failed to engage the whole community. There are also issues around how we categorise antisocial behaviour. Is the act of two children kicking a ball up an alleyway enough to impose a gating order? That is important, because residents can perceive children and young people engaged in their normal play behaviours to be antisocial. By applying pressure on their local authority to apply a gating order, those residents could hold sway over the rights of those children. We need to take a balanced approach. Other methodologies could be incorporated in addressing such issues, but we must explore those further. They include community development, outreach youth work, play work, and so on.

480. Dr Moore: If the Committee plans to amend the provision, it should note that one of our concerns was the method proposed in the Bill to consult about the gating of an alley, such as putting a notice in a newspaper. Well, that is great, but it does not involve children. If the Committee proceeds with an amendment, we would like it to include the need to consult with children and young people who are affected.

481. The Chairperson: Totally, and, when the issue came up in the Chamber, we asked for proper consultation. An alley cannot be gated just because some people want it to be. Freedom of movement issues are involved, and, to be fair, I take on board the play issue, but most of the children who we know would be in bed by 10.00 pm or 11.00 pm. Our issue is about noise at 1.00 am, 2.00 am or 3.00 am. That may be something that we have to look at. However, I agree that we need to look at that further.

482. We talked about fixed penalty notices, and I think that a witness who gave evidence previously said that they would be applied from the age of 10. That is something we need look at that, but I wanted your views and for you to explain what you are doing to try to get the message across.

483. Ms Yiasouma: We talked to quite a lot of the council officials who will implement those fixed penalty notices. We have not talked to all 26 councils. Of those we have talked to, not one said that this is a good idea for children and young people. I am not sure how helpful this will be, but they said that they try to use preventative or restorative approaches in the community. One council official said that it was hard enough for young people to get a job these days without a criminal record around their necks, so the official was not going to issue them with a fixed penalty notice.

484. We suggest that fining a child under the age of 16, maybe 18, amounts to a fine on their parents. That brings in a whole heap of issues, including the parents' ability to pay and the possible consequences for a child of a letter coming through the door stating, "Because of what your wee Jonny did, you have to cough up £50 or £100". Has somebody assessed what impact such a letter will have on what the parent does to the child? We regard that as using a sledgehammer to crack a nut. There does not seem to be any appetite for it. We have to stop antisocial behaviour, but if we want to go down the deterrent line as a method of — fixed penalties would be a last resort — other existing criminal legislation and enforcement powers can be used by councils. We are not sure why we would implement this as well, without looking at some preventative, diversionary and more community-based approaches.

485. The Chairperson: I agree. However, there have to be deterrents. It is not all about antisocial behaviour. Mr Trevor Clarke wants to come in on that point.

486. Ms Yiasouma: No, it is about —

487. The Chairperson: Let us be honest: that is the impression that may be given by talking about fixed penalties and the stick approach as opposed to the carrot approach. We need to look at that when we have the opportunity to scrutinise the Bill. Ultimately, it is a deterrent. If it is an anti-litter exercise, about gating orders or reducing antisocial behaviour, whatever the case may be, we have to have some element of deterrent, and that is what we seek to achieve through the Bill. It may look, on the face of it, like we are trying the stick approach, but we are not. We want to amend the Bill so that everyone is included. There needs to be proper consultation before we make a decision on what is in the Bill and before we implement it. I know of children who got letters home from the PSNI for what were, believe me, very minor things. Those children, regardless of their age, are on the record now. It is something that we need to look at.

488. Mr T Clarke: Speaking as a father of three children, I hate the fact that we are sitting here making excuses for young people.

489. The Chairperson: Excuse me; no one is making excuses for anyone. We are here to put proper legislation in place. We have to look at everything that comes down the track. It is not about excuses.

490. Mr T Clarke: Alley-gating is needed because of antisocial behaviour. If we do not create a deterrent, antisocial behaviour will continue. I hope that the legislation is brought in. If a letter from the PSNI ever comes through the door for a child of mine, I will pay the fine. The child will then be punished for the behaviour and pay me back through pocket money or whatever. Unless you create something that instils that approach in the home, you will not educate children. If we are going to exempt anyone under the age of 18 from punishment, we do not need alley gates. It is the younger people who cause most of the problems and nuisance in each of our constituencies. Elderly people are living in fear because of the activities that are going on at the back of their homes.

491. We need to create legislation that gives young people an incentive not to congregate in an area or get involved in antisocial behaviour there. The only way to do that is to identify them. Some parents do not know where their children are, but most responsible parents would not let them behave like that anyway. If the fine comes through the door and wee Jonny is identified, any responsible parent will take action. We are being very woolly and protective of young people. This is only an observation, but it is a criticism of the witnesses. For people who represent young people, some of the comments —

492. The Chairperson: No one is being woolly. We are allowing these people an opportunity to put across their views, which is the proper process.

493. Mr T Clarke: I am disputing that.

494. The Chairperson: How we deal with it will be taken in the round. You are right that a stick approach is needed, which is why I mentioned alley-gating. I have experience of it.

495. Ms Yiasouma: Mr Buchanan is really hearing some excuses from me this afternoon. [Laughter.] We are not suggesting for a minute that the children or young people who litter, graffiti or take part in antisocial behaviour should be allowed to do so with impunity. We are saying that these proposals are not the best way of dealing with the problem. As a parent and citizen, I am as interested as anyone else in having a safe, happy, quiet life for me and my children. Having read some of this stuff, I am not convinced that it is the best way forward.

496. We need to use terms such as "last resort" and "exhausted all other avenues". There are a number of other things that we can do to deter children from engaging in antisocial behaviour. You talk about parents paying fines and responsible parents. I have yet to meet a parent of any child, particularly a child with who Include Youth works, who does not want to be responsible. The problem is that some parents are struggling with how to parent their children, and they do not have the means to pay fines. We need to consider whether we are pushing people down a road that alienates them. We want the children and young people involved to realise that what they are doing affects a number of other people and to ask themselves what they need to do to stop it. We are definitely not saying to let them get on with it and that it does not matter who they annoy.

497. Mr T Clarke: Jacqueline said that she was not against alley-gating, but the first action point in the summary of your presentation states your opposition to gating orders. I do not know how you can say that you are not against alley-gating if your first action point states that you are. The cost implications mean that gating orders are not something that any council or other authority goes into lightly. I have been involved in a case recently that has involved the police, Roads Service, the Housing Executive and the council to try to deter young people from getting involved in antisocial behaviour.

498. However, in the words that you have just used, it is a last resort. They feel that they have to consider alley-gating, because they have exhausted all other avenues. The young people are

not interested in being moved on and are not deterred by other measures, such as the removal of trees and improved lighting. I was amazed to hear today that Belfast City Council spends £500,000 a year administering alley-gating. I would have thought that if all 26 councils were here, they would say that they do not want alley-gating because it costs too much money; they only do it as a last resort.

499. Jacqueline, you said that you were not against it, but you did say in your presentation —

500. The Chairperson: It is a summary of the four submissions, to be fair. That is why I said at the start that I did not want to go down the road of discussing some of the comments. Some of them call for a halt to legislation; that is not a route that we want to go down. You have heard both arguments. We are looking for proper consultation. Mr Clarke is right. A similar thing happened in my own constituency; we went through all the proper the processes, and alley-gating was the last resort. That is all that I am saying. Councils do not close off any areas lightly. We will move on.

501. Mr McGlone: Thank you for coming to the Committee today. You raised a number of issues, such as a lack of consultation. A number of organisations have not been consulted; clearly, we would like to hear which organisations those are. You mentioned some negative experiences of the legislation in Britain. I would like to hear what those are — I do not mean today, you can forward it to us — so that we can learn from the negative experiences, if there are any.

502. It is unfortunate that we have moved into an area of complete negativity, with the demonisation of young people, which was referred to earlier, and so on. Alley-gating is done to prevent crime and antisocial behaviour. I assume that there would be an extreme test of reasonableness in the approach to it. It is not all about children: there are the druggies and winos and all that associated with the problem. Although youngsters get a bit out of hand on occasion, alley-gating would have to be done in circumstances when they were totally out of hand.

503. The Chairperson: Just for the Committee's reference, we must be careful about reference to certain types of people. Mr McGlone, you mentioned two names. We just have to be very careful.

504. Mr McGlone: I did not mention any names.

505. The Chairperson: No, but you mentioned a type of person. You need to be mindful of what you are saying.

506. Mr McGlone: Sorry. That is fine, but that is the reality.

507. Mr Weir: I think, Patsy, it should be referred to as "sobriety-challenged issues". [Laughter.]

508. Mr McGlone: To be fair, those are the sorts of issues that have had to be dealt with in the past, along with the associated activities. That is reality. As I see it, if there is such a problem in an area that there is no other solution, the final recourse is to deal with it in that manner. I am not talking about installing alley gates everywhere, nor am I talking about demonizing youngsters in any way. I do not think that any council or local authority anywhere would adopt such an approach. If they were to close off alleys right, left and centre, we would want to question that.

509. We may get a wee bit out of sync in tightening up the extremities of something that is not going to be an extremity at all. To my mind there would be a test of reasonableness as regards alley-gating; if there is no other option, it must be done.

510. If you could relate to the Committee the experiences of negative effects as a result of such legislation in Britain, I would welcome that, so that we can learn from those experiences and feed that into our legislation.

511. Ms Yiasouma: I will ask Elaine Conway to talk briefly about the consultation process and its flaws, then we will address the other two questions.

512. Ms Elaine Conway (Children in Northern Ireland): I am glad that you have acknowledged the problems with the consultation. However, there is a real opportunity to look again at the consultation process during the development of regulations and guidance on this legislation. It seems that, in some parts of the Department, we can see very good practice in the consultations with children and young people. We know that the officials who led the work on the road safety strategy were very proactive in engaging with children and young people. If you talk to those officials, you will hear how they saw that that legislation had to be adapted in response to the needs of children and young people to make it more workable and deliverable. Where there is good practice in one part of the Department, we would like to see it mainstreamed throughout it. We welcome consultation and proactive engagement with children and young people. If you recommend that to the Department, it will be welcome.

513. The Chairperson: We would appreciate it if you could send us any information that been requested.

514. Ms Yiasouma: I will send the Committee information about our experiences. I do not have it to hand.

515. Mr Weir: Thank you for your presentation. On the positive side, there was a great deal of clarity in your position, except with respect to one issue, which I want to tease out because I did not quite get your point. On the negative side, I must be honest: I fundamentally disagree with most of what you said.

516. Ms Yiasouma: And I am his constituent as well.

517. Mr Weir: We may share a constituency, but I am not sure that we are on the same planet.

518. The Chairperson: I remind members that this session is being recorded.

519. Mr Weir: I am more than happy for my views to be made public.

520. To be fair, your position has been clear. However, the only point I did not get is your concern about disability discrimination legislation with respect to gating orders. I may not have picked up what you said correctly. Can you expand on that and tell us what you are concerned about?

521. Ms J O'Loughlin: That was to do with access. We know how the legislation works, how folk must have keys and so on to operate the gates. If there are residents who are disabled, that may impinge upon their ability to do what they need to.

522. Mr Weir: This is to do with access to back alleyways?

523. Ms J O'Loughlin: Yes. We need to take cognisance of the Disability Discrimination Act 2005 when we look at the process of putting gates in place.

524. Ms Yiasouma: It is one of the sifting processes that needs to be done.

525. The Chairman: Is that you finished with your constituent, Mr Weir?

526. Mr Dallat: Thank you for your presentation. It is good to hear a point of view that challenges.

527. I am sure that you would subscribe to the whole concept of defensible space. Very often defensible space is sought to protect children. I do not want to name the town, but in the last couple of years, children could have lost their lives, as the absence of alley-gating allowed people to go into backyards and set oil tanks on fire, with the fire travelling through the roof space and the ceiling coming down on top of people. Do you accept that there are occasions when alley gating is the only option to protect children?

528. Ms J O'Loughlin: Absolutely. This is about being reasonable and taking cognisance of wider community issues. What we are trying to do is extend the Committee's frame of reference and thinking process. We want you to recognise that children and young people are a constituent group that must be taken into consideration. We know of instances of alley-gating being used to defend play space and enable young people to go out and play. We know that that works. However, we must also reflect on the power that this gives to local authorities. There is potential for communities to want alley gates erected to counter what they deem to be antisocial behavior, but which we know is just children playing.

529. Dr Moore: From our point of view, if we were developing policy and then legislation on clean and safe neighbourhoods, we would not start with the Bill. We would want to look at alternatives to alley-gating. We know that the Committee is pushing ahead with the Bill and is keen to get it passed, but we urge members to look at the legislation to see where opportunities to include a duty to consult young people can be built in. That duty already exists as part of section 75, but we want it built into the legislation so that, when it comes to the last resort of alley-gating, the council involved has a duty to consult with children and young people in the area.

530. Mr Dallat: I am making the point that often children are very much the subjects of the protection afforded by alley-gating. For example, a single parent with three young children had her windows replaced on Friday, and on Sunday night they were broken again. It strikes me that alley-gating may offer those three children and their mother some protection. That is that.

531. I agree that it is hardly desirable to impose fixed penalties on children. However, in the past couple of months, I have been to some of the poorest parts of the world where children appreciate their environment. It caught my attention because there was no litter whatsoever. Are there better ways to cultivate the kind of culture that I have seen in other places, where children have very little going for them?

532. Ms Yiasouma: Some of that can be seen in Northern Ireland. A council officer outside Belfast told us about a boy he had seen littering outside a training college. The council officer went into the training college to talk to a senior manager. They both sat down and talked to the young person, and, it would seem, the young person recognised where he had gone wrong.

533. There are a number of similar examples. Again in Mr Weir's constituency, the Youth Justice Agency and the council work together to help young people get involved in cleaning up. In the past year, my organisation, Include Youth, has been involved in six or seven environmental

clean-up operations involving young people. So, quite a lot is happening. Nobody made them do that. We negotiated with them and supported them in reaching an understanding of their responsibility towards the environment in which they and their neighbours live, and they participated willingly. Actually, on one of the trips, the biggest whinger was the project manager, not the young people, who had a great time and left with a great sense of achievement. God, I hope that he is not listening. [Laughter.]

534. The Chairperson: Be very careful. The session is being recorded. Do not name the project.

535. Ms Yiasouma: No, I will not. The project was fine. He was brilliant really.

536. A lot of council officers wanted to make the point that, rather than being used to set up structures around fixed penalty notices, the money may be better spent on prevention, intervention and engagement with young people in their communities.

537. The Chairperson: And that is what we are looking to introduce through the Bill.

538. Mr Clarke, very quickly, we have to be out of the room before 1.15 pm.

539. Mr W Clarke: Chairperson, you do that all the time.

540. The Chairperson: I do not.

541. Mr W Clarke: You do. You tell me to be quick and you let everybody else waffle away.

542. The Chairperson: Normally, you are second or third to speak but, unfortunately, today you are bottom of the list.

543. Mr W Clarke: Thanks, Chairperson, and I thank the witnesses for their presentation, which I found very informative.

544. First, I agree that a full equality impact assessment should have been carried out. If we are to cut and paste legislation from across the water, we should at least look at the consultation process that they went through. I also agree that young people must be consulted early on this or any legislation. Particularly if we are going down the road of alley-gating, the youth outreach work should be done first. Measures should be taken such as getting youth outreach workers to contact young people and explain to them that, if their behaviour does not improve, an alley will be closed off.

545. There are bigger issues, such as underlying factors of educational underachievement, parental responsibility, broken homes and home life generally, including abuse at home. Social services should take more responsibility on a number of issues, such as why young people are out on the street to such an hour.

546. There needs to be greater understanding that much of what we have been talking is a policing issue. The police have certain responsibilities, and, at times, councils seem to be continually doing the police's work. There is a greater onus on neighbourhood policing teams to work more closely with young people instead of demonising them. I heard it said earlier that the bother was being caused by young people, but adults cause a lot of bother in our neighbourhoods and communities as well, whether through drugs, drink or whatever else. I take on board what you have said, particularly about alley-gating being a last resort. The concept of it as a last resort should be included in the legislation.

547. Ms Conway: You hit the nail on the head when you talked about the other agencies and education. There is a need to take a holistic view of children and young people. District councils, to give them their due, have really stepped up to the plate in that regard. They are very active; I am sure that some members will be familiar with the process of children's services planning, which operates at half-board level but actively involves district councils. There is a difficulty in seeing a piece of legislation like this sitting outside the holistic framework for responding to and dealing with children and young people. We would like a response that looks at the whole child and what is going on in the home environment, in the community and in the school and promotes early intervention and preventative work and diversionary approaches. We need to look at approaches that involve everyone by creating partnerships that can look at proportionate and appropriate responses to children and young people and ensure that the services that they need are there when they need them.

548. Ms Yiasouma: Willie Clarke spoke about policing issues. On Monday, the Minister of Justice announced a review of youth justice in Northern Ireland. Trevor Clarke talked about crime and antisocial behaviour; we hope that there will be a forensic analysis of young people's criminal and antisocial behaviour. The review panel needs to take cognisance of some of those issues so that there is read-across to other Departments.

549. Mr W Clarke: That will help Departments as well.

550. Mr Buchanan: I just want to make a quick observation. We can talk about what the police should be doing and what everyone else should be doing, but the reality is that the responsibility lies with the parents. If parents took control of their children, we would not have the difficulties and problems that we are faced with today. The police have responsibilities, and the other agencies and Departments have a role to play. I fully support the idea of early intervention, which stops things from coming to a head. However, we must not take our eye off the ball; the responsibility for children always comes back to their parents. If they do not take that responsibility, society is left to pick up the tab that we are talking about today.

551. Mr W Clarke: I want to pick up on Mr Buchanan's point. I agree entirely with what he is saying, but it must also be recognised that some parents cannot look after themselves, never mind their children, and they need support for that.

552. The Chairperson: I agree; there needs to be a holistic approach, and there is a collective responsibility on all of us to get this right. There is an opportunity to do that through this legislation, and we would welcome the reports and information that we have requested. We also welcome suggested amendments. We have heard a wide range of views, and to be fair to all members — even though, unfortunately, they all are male — we have all dealt with these issues as public representatives and we recognise the work that you are doing, and that you are part of the process. Thank you very much.

553. Mr T Clarke: Are there any witnesses here from the South Down constituency? Newry and Armagh and North Down are represented. I just want to reassure Mr Willie Clarke that he will get a vote.

554. The Chairperson: I can only assure you that I represent the best constituency in the North. Thank you.

11 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 Alastair Ross
Mr George Savage
Mr Peter Weir
Mr Brian Wilson

Witnesses:

Mrs Ashley Graham
Mr Lyall Plant Countryside Alliance
Ms Emily Jeffrey
Mr Steve Jenkinson Kennel Club
Mr Tom Ekin

555. The Chairperson (Mr Boylan): We will receive briefings from the Countryside Alliance and the Kennel Club on the Clean Neighbourhoods and Environment Bill. I know that the witnesses from the Countryside Alliance have not yet arrived, but I will invite the witnesses from the Kennel Club to start the presentation. I welcome Emily Jeffrey, senior public affairs officer of the Kennel Club, and Steve Jenkinson, access adviser.

556. Ms Emily Jeffrey (Kennel Club): The Kennel Club is the UK's largest organisation dedicated to the health and welfare of dogs. Within its broad remit, the Kennel Club aims to protect and promote in every way the general improvement of dogs. Since the introduction of the Clean Neighbourhoods and Environment Act 2005 to England and Wales, on which this Bill is modelled, the Kennel Club has monitored the growth in restrictions on access for dog walkers and campaigned to improve the management of public space in order to balance the needs of those with and without dogs.

557. Although the Kennel Club generally favours approaches that place greater emphasis on informal management of land, it views a national framework of dog control orders as a means of ensuring consistency and fairness in managing access, provided that accompanying guidance is followed.

558. Mr Steve Jenkinson (Kennel Club): Irrespective of any changes in the law, the Kennel Club believes that the key to successful management of land with public access, while recognising and respecting all interests, is based on sound practical implementation on the ground. That mirrors, in essence, the Sandford principle, in that formal restrictions on access should only be implemented where any conflicts cannot be resolved by good management.

559. Unfortunately, the experience of KC Dog in recent years has been that, certainly in England and Wales, there is still a culture in some parts of local and central government that instinctively seeks to make knee-jerk, disproportionate and excessive restrictions on walkers with dogs, with little or no evidence to support them and without paying attention to the many positive aspects of dog ownership. We feel that the same attitude is also prevalent among a significant number of land managers.

560. Indeed, a lack of compliance with any access restrictions has often been attributed to alleged widespread irresponsibility of walkers with dogs. So, in 2006 the Kennel Club jointly

published with Hampshire County Council and the then Countryside Agency the report 'Understanding the Psychology of Walkers with Dogs', a study conducted by the University of Portsmouth. Based on the findings of that study, the Kennel Club believes that, in fact, in the majority of cases access authorities' adherence to well-established principles of good visitor management plays a far more important and influential role on compliance, hence our stance in favour of that approach. More recent research, which was part-funded by Natural England, has also shown that land and access managers have themselves inadvertently added to the conflict by providing information to dog owners that is unclear, inconsistent and misleading.

561. In particular, without good management, dog control orders can simply displace problems, pushing dog owners onto farmland and other areas where they have not been before, potentially leading to increased conflict with livestock, farmers and wildlife. The Kennel Club acknowledges that a case can be made for restrictions in certain instances, but to ensure that that makes things better for dog owners and landowners alike, we simply ask that an objective, proportionate and evidence-based approach is adopted in each case.

562. Ms Jeffrey: One of the issues highlighted in our briefing on the Bill, which has been circulated, is the need for central data collection and monitoring of the restrictions, as we feel that without a strategic overview of access provision for dog walkers it is impossible to gauge whether the use of the restrictions is effective, fair and offers good value for money.

563. The Kennel Club recently issued a wide-ranging freedom of information request to all authorities with the power to make dog control orders in England and Wales. That constitutes the first comprehensive set of data on access provision and the use of dog control orders in England and Wales to date. We believe that the Committee would benefit from knowing the findings of that research and the experience of implementing orders in England and Wales.

564. From the data collated so far, the Kennel Club has found that over 50% of respondents do not have any intelligence relating to the cost of creating those orders, such as costs relating to consultation expenses or signage. Of the respondents able to provide details of their expenditure, the mean average spend per local authority was £10,894.56. However, the detail of those costings varied significantly between councils in that a large number indicated that there were extra costs in addition to those given in the data but not included in the figure; for instance, officer time or the cost of the consultation process. A significant number also indicated that the figure given was only an estimate.

565. The highest spend by a single authority was £313,174, spent by East Lindsey District Council, though that was not a particularly outstanding amount. There was often a huge differential between expenditure on and income from dog control orders. For instance, Middlesbrough Council spent £109,461 on dog control orders and has only brought in £1,547 from fixed penalty notices. That represents a recuperation of just 1.4% of the total expenditure.

566. Redcar and Cleveland Borough Council implemented an exclusion dog control order in one cemetery and raised £37,666 in two years, which equates to around £392 a week. That begs the question of whether the dog wardens there are doing anything other than enforcing that one exclusion order. Of the respondents that had implemented orders, just over 66% carried out only the minimum statutory consultation, such as placing an advert in a local newspaper, and just under 7% claimed to have either carried out no consultation or to not know what consultation they had carried out.

567. Our position on specific types of orders is that the Kennel Club supports the use of dog fouling orders and dogs on leads by direction orders, and appreciates that there will at times be justification for the use of dogs on leads and dog exclusion orders, though we want those to be used as frugally as possible. We do not support the use of maximum number of dogs orders, as

we consider them to be arbitrary. The Kennel Club understands that there may sometimes be issues regarding an owner's ability to control a large number of dogs in public; however, that can be equally true of people with one or two dogs, rendering that particular order useless.

568. The Kennel Club believes that the other orders introduced in the Bill — the dogs on leads by direction orders and the dog fouling orders — would be adequate to deal with the potential negative consequences of anyone struggling to control a large number of dogs. However, that would not preclude establishing a permit scheme to regulate walkers of large numbers of dogs if it were thought necessary.

569. The Kennel Club is seeking the introduction of a right of appeal against the types and extent of orders implemented or an obligation to review orders after a certain period; for instance, two years. Although we envisage appeal being an absolutely last resort, we feel that it is necessary to ensure that a fair process is followed, which takes into account the needs of all access users. Under the current Bill, once orders are implemented there is no mechanism to challenge the fairness of them, even if they are clearly disproportionate to the problem that they seek to address.

570. Our concern about the proposed regime is borne out by examples of excessive uses of powers in England. For instance, Southend-on-Sea Borough Council took a decision to ban dogs from every beach in its jurisdiction during the summer, despite calls to make a proportion of those beaches available to dog walkers. Although there is no evidence of a balance being struck between the needs of those with dogs and those without in this case, there is clearly no means to challenge the fairness of the decision other than judicial review.

571. We are also seeking a requirement on local authorities to consult those directly affected, including dog owners who regularly use the affected areas. That could be done simply by providing an officer presence in parks, beaches or gardens included in the proposals, and/or by writing to or attending meetings of local dog-training clubs to publicise the orders. Again, our research shows that only 13.7% of the authorities in England and Wales that carried out consultations actively approached dog owners or training clubs and over 86% of them failed to do so.

572. The Kennel Club also wants local authorities to be required to specify the land to which any proposed orders will apply. We view that information as absolutely integral to ensuring that meaningful public consultation can take place, because without it consultees would find it impossible to give an informed response. Sadly, though, that has not occurred in at least two cases that we know of. Torrington District Council and Adur District Council, both in England, published and implemented dog exclusion orders for facilities signed at the entrance as a dog exclusion area, which is not very specific, or duly foreclosed areas, which is also not very specific.

573. We believe that there should be a requirement for authorised officers tasked with enforcing legislation to hold or undergo training in dog behaviour, to enable them to adequately determine when to use the dogs on leads by direction order. We suggest using wording similar to that in the Control of Dogs (Scotland) Act 2010:

"the person is skilled in the control of dogs and has the capacity to instruct and advise others in matters relating to the control of dogs."

574. That would ensure that the orders are enforced to a fair and consistent agreed standard.

575. I thank the Committee for giving us this opportunity to make our presentation.

576. The Chairperson: Thank you very much. I am mindful that some members have to leave within the next 15 minutes, so I will give Lyall an opportunity to say a few words about some of the issues that the Countryside Alliance has with the legislation and I will then briefly open up the session up for questions.

577. Mr Lyall Plant (Countryside Alliance): Thank you, Chairman. I apologise for the timing; we were informed that we were required for 11.00 am.

578. We fully support the Kennel Club's position. However, we have a few further problems with clause 38. We welcome most parts of the Bill and believe that it will be beneficial to the people of Northern Ireland.

579. Our main issues are with the order relating to the fouling of land by dogs and the removal of dog faeces. Our organisation fully supports the order. We believe that it will serve to maintain the standards of responsible dog ownership and encourage those who have not upheld those basic principles before. However, as evidenced in the paper by the Assembly Research and Library Services and highlighted by the Kennel Club, problems have arisen in England. Therefore, we believe that for the order to be implemented successfully there needs to be proper disposal facilities and education on dog fouling.

580. As regards the keeping of dogs on leads, our organisation is concerned with animal welfare; in this case, what is best for dogs. An adequate amount of exercise is vital for a dog's mental and physical health. Without adequate exercise, a dog can become bored, nervous and even aggressive, which can form the beginning of a vicious circle. Exercising a dog off the lead can optimise the time available and ensure that the dog receives a higher amount of exercise. Interaction between dogs can help to prevent aggression and to teach appropriate boundaries and behaviour.

581. Countryside Alliance Ireland supports the dogs on leads by direction order. That will ensure that local councils have the power to deal with irresponsible dog owners, while allowing responsible dog owners the previous levels of fundamental freedom. If a dog is deemed to be out of control, it is reasonable for the owner to be directed to restrain the dog on a lead. The main issue here is what level of activity is deemed to be out of control. We believe that authorised officers tasked with enforcing legislation should undergo training in dog behaviour to enable them to adequately determine when to use the dogs on leads by direction order.

582. We believe that the exclusion of dogs from lands is excessive and will unnecessarily reduce the freedom of movement and the public access allowed for dog owners. If both the dog fouling and dogs on leads by direction orders are enforced adequately and adhered to, there should be no reason to exclude dogs from lands. We are aware that there will be exceptions to that; for example, to ensure compliance with European nature conservation regulations. We are concerned that by not offering guidelines to local councils on that matter, there is a risk that they will take draconian measures.

583. I will now discuss the order relating to the number of dogs that a person may take on any land. We believe in and understand the need to regulate professional dog walkers, and we support the Kennel Club's thoughts on that. However, we believe that the aforementioned orders are adequate to contend with the potential negative consequences of dog walking. We consider the use of this order to be arbitrary and not pragmatic and, therefore, oppose it. We instead suggest establishing a permit scheme or licensing system to help to regulate professional dog walkers.

584. The order has the possibility of alienating the countryside and country sports community. There needs to be a clear exemption for working dogs and packs of hounds or beagles. Without

the exemption, there is a possibility of persecuting country sports groups that are carrying out their normal activities. The purpose of the Clean Neighbourhoods and Environment Bill is not to restrict or prohibit country sports and it should, therefore, provide a clear exemption in primary legislation for any such activities. The prerogative of exemptions should not be devolved to local councils. The main issue of concern is public meets, such as on Boxing Day or New Year's Day, where hounds gather in a public place or a main thoroughfare or cross a main road.

585. Related to the Clean Neighbourhoods and Environment Act 2005 in England and Wales, the majority of councils there have an exemption for working dogs, which is a dog that fulfils a job, and hounds. In addition, there is the issue of infringing on the rights of rural dwellers. The majority of those dwellers will have more than one dog, and a substantial number may have upward of five dogs. This order would restrict their right to pass over a public road or path when travelling between private lands. We are concerned that the devolution of power to local councils could lead to the draconian laws that have been highlighted by the Kennel Club and to a disproportionate response to the irresponsible behaviour of a minority of dog owners.

586. The Chairperson: That was a good plug for rural sports and for the Countryside Alliance. Thank you both for your presentations. Have you looked at how much it will cost for training officers in dog behaviour? Will you respond to the issue of the number of dogs and the control of dogs on leads? How has legislation in England and Wales worked? What can we learn from practice there? Is there better practice here?

587. Ms Jeffrey: We have not established the costs of that training, but we have worked quite closely with the Welsh Assembly to discuss taking forward a training programme with their officers to regulate the breeding licensing there. We are willing to do that. Obviously, there will be a cost, but the level of training needed by dog wardens is minimal. It will probably only take one day to get to grips with the key issues. We could do an awful lot more training than that, but we are talking about quite basic standards of enforcement. What was the second question?

588. The Chairperson: It is about the number of dogs that can be walked by one person. What is in legislation now and what is proposed?

589. Ms Jeffrey: In England and Wales, the Department for Environment, Food and Rural Affairs guidance recommends six dogs. It is up to the local authority implementing the orders as to whether it goes for six. We have seen cases of four, but I have never seen more than six. However, as we said, our concern is that that is quite an arbitrary way to tackle a problem that exists in a minority of cases, and we feel that it would be very difficult to enforce. We could have a permit scheme instead, if it is felt particularly necessary to regulate professional dog walkers. My understanding is that that was the original impetus for that order in the England and Wales Act, and my understanding is that there is not the same issue with professional dog walkers here.

590. Mr Jenkinson: We need to remember that, even on the wet days that we have seen recently, dog owners are out there. We are trying to encourage people to feel happy on the outside and to take exercise and do everything that is linked with the health agenda. Our concern is that we do not want to lose those things. The more proactive authorities have recognised that there are places where they need to restrict dogs, either because some people do not like them or it is inappropriate to have them in certain places, but they have offered other places for them to go, where they will be welcome and where dog bins etc are provided. There has been no need for formal enforcement, because they have just made it easy for dog owners to go somewhere where they will feel welcome. They do not want conflict either, and that has worked really well.

591. The authorities in places where it has worked best have not actually used the legislation but have recognised that dog walking is a recreational activity, like sailing, having children or climbing, and asked how they should accommodate it in areas such as public lands and state forest lands. It works in those cases, whereas, as I alluded to in my paper, where authorities have just banned dogs from all their beaches, dog owners will still find somewhere to go, because being able to exercise a dog off-lead is really important, both to the person and the dog, as my colleague was saying. If it is not managed proactively, dog owners will go somewhere where the local authority has no control. Sometimes they will go into areas that are special for wildlife, or into farmers' fields where there are sheep.

592. We do some "mystery shopper" exercises in which we ring around councils and tourist information centres, explain that we want to be a good dog owner and ask where we can take a dog for a walk at a particular time of the year, perhaps when there is lambing going on. Some of them say that we cannot take them in the park but we should take them for a run on the moors or in the fields. When the public hear those messages from local authorities, you can understand how they end up in conflict. The guidance should say that if councils want the restrictions, they must deal with the reality that those people are going to go somewhere. It is a bit like restricting parking in a town. People are still going to want to park somewhere.

593. We know that being proactive and managing the situation well actually benefits the people for whom the orders are made, but there is a little bit of denial. Sometimes we have seen that one authority will do an order and it just pushes dog walkers into the next council area. It perpetuates conflict, which is not good for anybody. The general principles are fine, but they need to be used as a management tool, not for people to just use the legislation, because that is kind of naive. People are not going to get rid of their dogs and will still need to exercise them, so councils should look at good management of where they go, rather than just trying to stop them doing it.

594. Mr Weir: Thank you for your presentation. The Chairperson covered one issue that I was going to cover. I would like clarification on the issue of right of appeal for a dog control order. How do you see that working? Who would the appeal be made to, and who would have the right of appeal?

595. Ms Jeffrey: Obviously we will wait and see whether that amendment is tabled and passed before we work out the finer details of it. We would want to look at the framework for other appeals processes to decide who the appeal should go to, but the point that we were trying to get across is that it will not be a case of someone being issued with a fixed penalty notice and appealing that. It is about appealing the extent of the order. Someone such as the Local Government Ombudsman would probably be appropriate.

596. Mr Weir: So, it is an appeal on the general principle rather than the detail of a control order.

597. Ms Jeffrey: Yes, that is what we are seeking to get included in the Bill.

598. Mr McGlone: Thank you for coming along to see us here today. I will focus on the points made by the Countryside Alliance; it is good to have you along to advocate the needs of those with hounds and beagles. Chairperson, we need to seek some detail from the Department to clarify that the Bill will not adversely affect rural sports activities, which are a rural way of life for many people, particularly at certain times of the year. Is the Committee happy enough to do that?

599. The Chairperson: Certainly, yes.

600. Mr W Clarke: Thank you for your presentation. That Chairperson covered most of the points that I wanted to make. I declare an interest as a local councillor. I agree that there should be zoning of areas for dog walking, otherwise there would be difficulty with environments such as picnic areas, children's play parks or recreational beaches. You covered it quite well; there is a need to provide alternatives and get a balance so that dogs can be let off the lead. Responsible dog owners must be entitled to an area in which to do that. It is a natural thing for a dog to do and it is good for its well-being. I agree with that, and I think that most points were covered.

601. The Chairperson: If no other members have any questions, I will thank the witnesses for their presentations. I will just say that, Lyall, I have a different point of view: I think that you should be able to jump over the gate and away you go, as long as the dog is well trained and well looked after.

602. Mr Weir: But what does the dog do? [Laughter.]

603. The Chairperson: However, you are correct; you have highlighted an issue that might arise from the Bill, regarding freedom of movement, particularly in the countryside. I know that we talked about that previously, Emily.

604. Just for reference, the dog generally jumps over the ditch while I get over the gate.

605. Mr Plant: Thank you, Chairperson. Just to follow up on Willie Clarke's point, in north Down most of the children's areas are separated-off with railings. For example, Donaghadee commons is a fantastic spot. It has a beautiful park for children that is separated-off with railings, and outside that responsible dog owners can walk their dogs on or off leads, and there are enough blue bins around for people to use. However, there is a problem with dog fouling because there are people who come out at night or early in the morning and do not pick it up. As a responsible dog owner, when I walk in Donaghadee commons, with my bags in my pocket and my dog on its lead because he would swim to Scotland and back otherwise, I do not like it when irresponsible people leave dog faeces and somebody walks past and looks at me as if my dog did it.

606. The Chairperson: You must explain to me what that commons is; we would not see that round Armagh district. Once again, thank you very much. We will take on board your comments about the Bill.

607. Mr Jenkinson: Thank you for your time.

608. The Chairperson: We will now receive a briefing from Mr Tom Ekin on the Clean Neighbourhoods and Environment Bill. A submission has been provided and is included in members' packs. Mr Ekin, you will have between five and 10 minutes to make a presentation, after which I will open up the session to members' questions and comments.

609. Mr Tom Ekin: Thank you, Chairman. I do not know what information is included in member's packs or whether the submissions that I made to various people have been provided. However, if members have read my submission, they will have detected a sense of urgency about the need to get on with things.

610. I am in business in the private sector, and I make decisions fairly quickly, some of which are right and some of which are wrong. However, by and large, I get 55% of them right. My attitude is to simply get on with things. For my sins, I am also a councillor in Belfast City Council. However, I am not speaking as a councillor but as a taxpayer largely. I am speaking as somebody who has seen documents coming through Belfast City Council for the past five or six years. I used to read those documents, but I stopped doing so, because I became totally fed up

and bored with them. I am not going to waste my life reading that stuff. We must make decisions and change our attitudes in order to get things done here more rapidly than before.

611. As an agitated taxpayer, I recently asked the question: will this legislation be in place before next May? If it is not in place by then, I have been told that it will be delayed until the next mandate starts. However, if that were to happen, I would get very annoyed and would condemn it as a waste of taxpayers' money and of the powers that were meant to come with devolution. It would drive most of us insane. I, therefore, urge you to get it completed sooner rather than later. When I ask whether the legislation will be in place by the end of this session, I get statements such as — [Interruption.] My apologies; I tried to switch off my phone.

612. The Chairperson: Somebody is phoning to let you know that we are going ahead with this.

613. Mr Ekin: I am sorry. It is a new phone; I lost the last one. I apologise, because that is unacceptable behaviour.

614. I was recently told that the Assembly endeavours and hopes to get the legislation in place by the end of this session. That is unacceptable; it must be in place. Somebody must set the date by which that should happen, and perhaps that person is you, Chairperson.

615. I will now deal with a couple more issues. These are general issues; I do not know the detail, because I got fed up looking at the detail three years ago. We must learn from other councils' experiences of the activities that they have carried out and the problems that they have encountered. Let us not have laws that counter that.

616. I am thinking of a couple of specific issues. I told city council that ownership of buildings seems to be an issue, and it needs to be redefined. We must have open enough powers that enable us to say that the person who is perceived to be an owner is the owner, because then we can start to act. It must be remembered that the review of public administration (RPA) was meant to give councils a lot of powers. Perhaps we will now get the son or daughter of RPA; I do not know. However, something will be put in place, and we must ensure that that gives councils the powers to address the things for which councillors are being blamed.

617. The other day, I spoke to somebody in the street who said that a particular problem was the council's fault. However, from my inside knowledge, I knew that it was not the council's fault but somebody else's. We must move on. Some time ago, I was particularly irritated when somebody dumped what looked like derelict vans in the middle of Belfast. However, nobody could get any of the Departments to respond. City council, the police and environmental health could not do anything about it. Eventually, out of a sense of great annoyance and the fact that people were shouting at me in the street and asking me what we were doing about it, I went to the Department for Social Development (DSD) and said: "I am going to go public with this and annoy the hell out of you". The city council could not do anything; the councillors just had to sit and look on. This legislation has to give the powers to the people who are allegedly in control of an area.

618. Another simple answer is to get the responsibility and penalties where they should be. My neighbours are all retired and, as you guys know, retired people are all blooming well pains in the neck, because they are the most agitating. However, they are dead right in what they say. Belfast city centre is a mess, and the Streets Ahead project is meant to be going ahead. However, Belfast City Council does not have the rules to penalise the people who are responsible. DSD is responsible for caravans. That is an unclean and unsafe neighbourhood. Everything is against it, but nobody seems to be able to take responsibility.

619. I have travelled the world and have seen places where there is fly-posting and places where there is no fly-posting. I tried to get the rules on that changed some years ago, but Joe Drew of Roads Service stopped us. That is not a surprise; Roads Service seems to stop a lot of things. Why can we, as the city council that gets blamed for those things, not take instant action? The last bit of legislation that I read suggested that we will go after the person who hangs up the poster. Does anybody ever see those people? I have seen one: he was bigger than me, so I did not say anything. The beneficiary must pay, and the council must not pussyfoot around and impose £10 fines or whatever. Eamonn McCann makes a lot of money out of the projects that he advertises. His posters need to be there for seven days.

620. The Chairperson: Be very careful when mentioning names.

621. Mr Dallat: He will not mind.

622. Mr Ekin: He will not mind because he was willing to help —

623. The Chairperson: I certainly mind.

624. Mr Ekin: The person who benefits most from the posters needs them to be there for about seven days to maximise the effect. That is fine. The last time that I saw any documentation, we were talking about giving 14 days' notice and then chasing the guy who used the paint. Roads Service stopped us having a process to regularise that. I saw a system in Halifax, Nova Scotia a long time ago. People who want to have commercial events there can organise them, and people who want to have charity event such as a bring-and-buy sale can do that, but it is controlled. We do not that, and, when I last looked at the legislation, it did not give us the powers to regulate that, to override Roads Service objectionables or to chase after the beneficiaries.

625. I want to raise another appalling example. I do not know how many members know the Lisburn Road, but there are about three derelict sites there where buildings have been half pulled down. It is a total mess. Can I get anybody to take responsibility to fence it off or close it off? No. Can the city council do it? No. Will the Department for Regional Development (DRD) do it? No. Will the owner? No. The owner claims to be in liquidation or administration, and nobody will do it. Who takes responsibility?

626. My final point is that I could not see a catch-all clause in the Bill. I know that the legal people will say that we cannot have such a clause, but councils get blamed for everything. I, as an elder citizen, get sworn at for not moving things forward and asked whether I can do anything about certain issues. The legislation will never be perfect. People will always find ways round it, but it is better to have an imperfect law now than a perfect one some time. I do not know when that would be. We will never get it right. Therefore, I urge the Committee to take on board those general ideas to get responsibility pushed into council to give them the flexibility to look after the areas for which they are perceived to be responsible.

627. The Chairperson: I am glad that you want legislation to be put through. I have listened to some of the issues that you have mentioned. All public representatives, especially those on councils, have had the same issues in their own areas.

628. In the work programme for this Committee, we are sitting with four Bills. I think that we are finishing off scrutiny of two at the minute. As Chairperson, I would like the support of the Committee to push that legislation through in this mandate. The Clean Neighbourhoods and Environment Bill is one of those Bills, and we are going through it. I think that it is a good Bill. It will not be perfect, but we have an opportunity in this Committee Stage to try to address some of the concerns that have been raised about it.

629. You raised the issue of fly-posting, which we have all seen and suffer in our constituencies. Are you suggesting that an official area should be designated for that? I know that you highlighted the fact that it is a cross-departmental issue, involving, for example, DRD. We have to tease all that out and see how we will co-operate and work with the different Departments to deal with that issue. Do you believe that a designated area is way of addressing the issue of fly-posting? Is it a way forward for councils to pick an area outside a town and erect a hoarding with planning permission for people to advertise on it?

630. Mr Ekin: It is a way forward but, being pragmatic, designating one site in one town or one area is probably not practical. What I saw in Nova Scotia was several limited areas where notices could be placed and were removed periodically by the council. However, I also saw notices pinned to trees and on walls. So, I would not say that it is enough to have just one specific site.

631. The Chairperson: Whether it is one or three or four, I am only asking whether you think that it is a way forward for councils to take responsibility for undertaking such a scheme.

632. Mr Ekin: I believe that that is way forward, yes, where it is a controlled site.

633. The Chairperson: OK, thank you. You also mentioned derelict buildings, which is an issue that concerns many members. I know that it is raised in this Bill and that it is cross-departmental. It is an issue that the Committee certainly wants to look at.

634. Mr McGlone: Mr Ekin, thanks very much, you are a breath of fresh air. I am glad that there is someone outside this room who appreciates the frustration that we feel, as elected representatives who spend day after day doing line-by-line scrutiny of legislation, just for it not to be implemented by a Department for whatever reason. On many occasions all we get are reasons why not to implement legislation. Coming from the private sector, you will know that that is not the way to run a business or an organisation. So thank you for being absolutely frank with us, and I hope that, in return, we will be absolutely frank with you.

635. We discussed the matter earlier and I — along with other members, I am sure — am deeply concerned about the incapacity of the Department to implement legislation that is enacted but is sitting on shelves gathering dust. We are seeking assurances on that. Earlier today, we discussed how we want a Department that does something and tries to get legislation implemented on the ground. We are picking up from constituents their frustrations about things not happening, just as you are picking that up from the grass roots, which may be a wee bit remote from the Department on occasions. So, we can lick thumbs on that one, and thank you for your breath of fresh air. Perhaps you could get a job over at the Department.

636. Mr Ekin: No thanks.

637. Mr McGlone: You could get a few things moving on.

638. The Chairperson: Mr Savage, do you have a question? You are very welcome to the Committee.

639. Mr Savage: Thank you very much, Chairman.

640. Tom, I am glad that you are trying to get fly-posting dealt with. We have the same problems in the Craigavon Borough Council area. Councils having the power to do something about it is long overdue.

641. I am very interested in what you said about how we deal with derelict land, deliberately burned buildings and rubble on the sites of demolished buildings. That is a major problem. A couple of examples come to mind of sites where buildings have been burned down. The people who own them want to do something about it and replace the buildings that were there, yet they cannot get planning permission to do that. Some sort of legislation has to be put into place for people who own such sites and want to tidy them up and bring them back into use. As it stands, such people cannot get planning permission and cannot do anything about it. Something has got to be done about it, and I am glad that you raised it today.

642. Mr Ekin: I think that Craigavon Borough Council should be empowered to say to the owner of the land — assuming that it was they who demolished the building — that they must tidy that place up. I do not know why that is not in the legislation. Surely, owners of land have a responsibility to look after the land and keep it kempt. I recall that we once had to use the health and safety legislation to deal with a derelict site, but we had to find a couple of rats on the land first. That was daft. It was a beautiful country park, and houses were knocked down. There was a lot of rubbish there, and people came and burned the remaining bit that had not been knocked down. There were fires and a lot of junk was dumped there, but we had to wait until we found rats before we could call in the health and safety people. That was a nonsense. As soon as the building was knocked down, the council should have been able to tell the owner that they had to clean the site within a short time and, if not, the council would clean it and bill them for it. Perhaps that is pie in the sky.

643. Mr Dallat: Thanks, Tom, for your presentation. I would like to better gauge the depth of your feelings on these matters. Will you give us an indication of what you mean by a fine: is it £50, £500, or £1,000? At what level would you pitch the fine?

644. Mr Ekin: I have had difficulty with that, because what I regard as a punitive fine other people regard as something like an execution. I do not believe that £50 fines work. It also depends on the size of the site. There are two sites on the Lisburn Road that have been in a bad condition for a long time. The guy who created the mess probably spent around £5 million buying the site, but he is now in administration. I would have thought that he should be fined a couple of thousand pounds for not blocking off the site, because it is defiling the whole street. The house that I talked about a moment ago in Barnett's Park —

645. The Chairperson: There are certain buildings in Belfast that may need work done: put it that way. Be very careful about mentioning names.

646. Mr Ekin: I will get into trouble.

647. The Chairperson: You are talking about certain buildings. To be honest, it is across each area, it is not just in reference to one thing.

648. Mr Ekin: Sorry, Chairman; I get a bit excited. Just keep your thumb on me.

649. I just do not know what the fine should be, but I know that a slap in the wrist is no use with most people; they will either laugh at it or ignore it. I would have thought that, in this day and age, anything less than £1,000 is not going to get anybody's attention.

650. Mr Dallat: Is there a need to redefine what fly-posting is? Like everything else, it has moved on. In the old days someone took a bucket and posters were slapped up everywhere. People still do that, but councils have become quite sophisticated in how they fly-poster; they have expensive attachments on every lamp post. If councils festoon a town from one end to another with things promoting festivals and flower shows, how can you ask other people who may not have the same resources to stop fly-posting of, perhaps, a more menial type?

651. Mr Ekin: I do not know. I think of the "Merry Christmas" signs in Belfast at the moment: are they fly-posters or not? If there are designated sites and posters are put on the designated sites, that is it. Other than that, people have to get planning permission for signs.

652. Mr T Clarke: Tom, you said that you are in business: what sort of business are you in?

653. Mr Ekin: I have developed the fastest-growing high-tech business park in the world: Weavers Court Business Park. It is a scientifically based, high-tech facility in Sandy Row.

654. Mr T Clarke: Do you have tenants in that?

655. Mr Ekin: Yes.

656. Mr T Clarke: I am sure that those people have to advertise their business. How do you think that they would feel if there were official hoarding signs and others were getting free advertising and hoarding space? What are your thoughts on that?

657. Mr Ekin: I know that, in some places, people have to pay for fly-posting. Some years ago I worked with another guy on a scheme that he was to organise and manage, and people would pay for him to put up decent signs.

658. Mr T Clarke: Do you think that people will pay for it?

659. Mr Ekin: People who fly-post should pay for it. Indeed, if they put posters on official sites, that will fund it.

660. Mr T Clarke: You talked about derelict sites: we will not be specific about where they are. You mentioned an example where the owner has gone into administration. However, you are still talking about large fines. How could you fine someone who is in administration?

661. Mr Ekin: First, I would like to think that it will not get to the point of having to fine the person. A fine is supposed to be preventative. To answer your question, in cases of administration there will generally be some assets left, so the fine would join the list of creditors and if a penny or 50p in the pound can be recouped, that is what happens.

662. Mr T Clarke: The main reason why people are in administration is that they bought property at the height of its value in the market and it has dropped immensely. Surely, in the scheme of things, a £1,000 or £2,000 fine for not putting up a fence is pointless against a £2.5 million debt. I assume that those who are waiting to get money, particularly the banks, will get first call. Therefore, the £1,000 or £2,000 fine will never be paid because it will never feature in relation to the value of the property. It is OK in theory to put out pie-in-the-sky ideas but, sometimes, there is no way to recoup the money. We are listening to ideas that apply in the ideal world, but we are not in the ideal world anymore.

663. Mr Ekin: Most of our life is not spent in recession. Most people who fly-post and suchlike work in a vibrant, working economy.

664. Mr T Clarke: You gave an example about a person who is in administration. Yes, we will not always be in difficulties, but many buildings are redundant because, due to financial difficulties, the owners cannot move on with projects.

665. Mr Ekin: That could be the case.

666. Mr T Clarke: More often than not, buildings are redundant because the developer does not have the wherewithal or the money to finish the projects.

667. Mr Ekin: I will give an example. If one goes through Shaftesbury Square or has done so in the past five years, one will see a building there that has been derelict and empty that whole time. Even at the height of the boom time it was a total mess.

668. The Chairperson: I am a poor old country boy. The next time that I am driving through Belfast I must have a look at all the streets that you mentioned. Mr Clarke is absolutely correct about some of the derelict buildings. At this moment in time, the majority of derelict buildings are not in that state because of a lack of planning or because of the Planning Service; it is because of the financial situation. I may seek clarification from the Department on this, but I believe that the Waste and Contaminated Land (Amendment) Bill contains some powers to allow people to go on to derelict sites. We welcome that power.

669. Mr McGlone: I have seen a number cases of site owners going into administration. As everybody in this room will know, NI Water and Roads Service retain a bond. Is there any prospect that, when an initial application goes in, the council or some agency could retain a site enhancement bond that could kick in if the development does not go ahead? If the development goes ahead, that is fine; the person will get the money back as they do from Roads Service and NI Water. However, if the company goes into administration, Roads Service and NI Water could complete the work using the retained bond. Is there any possibility of having a site enhancement bond that could be retained by the council upon application for the site? Is that an idea?

670. Mr Ekin: It is certainly an idea. I do not know how it would work, but I am open to any ideas. It is about getting the site tidied. The target is to ensure that the place is cleaner and tidier and that councils, which seem to get most of the blame for such things, can do something about it.

671. The Chairperson: I know that when people in the countryside are looking to build a replacement dwelling or a dwelling, they sometimes use certain terminology about reusing an old building for planning gain. Buildings that sit there after their shelf life has expired are sometimes used to get —

672. Mr T Clarke: That is slightly different, Chairman. The problem with most of these developments is that the developers concerned have been fairly speculative and have targeted deprived areas so that they can knock down houses and build big shops and nightclubs. That is slightly different from replacing a redundant building in the countryside with another house.

673. The Chairperson: It is not a planning issue. I was only using that as an example.

674. Mr B Wilson: I declare an interest as a councillor. I totally share all of your frustrations, Mr Ekin. We have come across all the different types of cases to which you referred. In a number of cases, owners simply allow their sites to become derelict, which attracts fly-posters and everything else. Environmental health has been trying to find some way of taking action to deal with that but, in many cases, no actions are available to its officers; they have to find rats or something like that first. That is extremely frustrating. You talked about an all-embracing nuisance clause on nuisances that cannot be anticipated. I totally agree with the sentiment but it would be difficult to legislate on that. What are your thoughts on it?

675. Mr Ekin: Like you, I do not know how that would work. I do not know how the legislation could be worded to provide the freedom to do that. That is why I talked about a catch-all clause. Legal draftsmen want everything tightened so much that everything is specific, so the legal guys spend a lot of time arguing about the specifics instead of the principle. It is like that old expression:

you know what an elephant is but you cannot describe it. I do not know how to get there. However, that is what I, as a taxpayer, want councils to be able to do. I hate seeing my money being squandered on fixing things that should not have been broken in the first place. By that I mean, for example, councils having to paint over fly-posters that should not have been there in the first place. That is such a total waste. I cannot answer your question. Ideally, I want open flexibility.

676. Mr Weir: I understand where you are coming from on that specific point, Tom. However, the reason why legal draftsmen want the wording tied down is because they know that whatever is specifically set out in the Bill will potentially be tested in the courts, whereas the general principles of the policy cannot be. The provisions must be legally workable and be able to survive any challenge mounted in the courts by somebody who has been prosecuted under them. Any catch-all, vague provisions would be meaningless because they would not stand up to scrutiny. Do you, therefore, accept that your proposal presents a real, practical problem?

677. Mr Ekin: I do indeed.

678. The Chairperson: Thanks for your presentation, Tom. A couple of different issues have been raised relating to the term "derelict". Obviously, some buildings out there are dilapidated and falling down, and the policies on rats and the Waste and Contaminated Land (Amendment) Bill might deal with that issue. Your point is that those buildings are not being reused, especially in the city. However, that is a financial issue. Perhaps the departmental officials who are present could look at what legislation is in place to address some of the issues that have been raised today about dereliction. Thank you, Tom.

679. Mr Ekin: Thank you for your attention.

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

680. 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?

681. Mr Robert Gray (Department of the Environment): Should I go through the issues that are raised in the table?

682. The Chairperson: Yes, briefly. I will open the session up for members' comments thereafter.

683. 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.

684. 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.

685. 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 offences 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.

686. The Chairperson: Is it up to councils? Is the power there if they wish to use it?

687. 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.

688. 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.

689. 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.

690. 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.

691. 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.

692. 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?

693. 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.

694. 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.

695. 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.

696. Mr Gray: We are not targeting you in this legislation.

697. The Chairperson: I would like to think not. [Laughter.]

698. Mr McGlone: Whom does it target?

699. 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.

700. The Chairperson: Are members content with the clause?

Members indicated assent.

701. 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?

702. 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.

703. 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.

704. Mr Gray: Will you put that forward as an amendment?

705. The Chairperson: It will be easier for you.

706. Mr Gray: We will consider that point.

707. 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.

708. 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.

709. 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.

710. 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?

711. Mr Gray: It is as before.

712. The Chairperson: Are members content with that change?

Members indicated assent.

713. 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.

714. 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.

715. The Chairperson: Are members content?

Members indicated assent.

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

717. Are members content with the clause?

Members indicated assent.

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

719. Are members content?

Members indicated assent.

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

721. Are members content?

Members indicated assent.

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

723. Are members content?

Members indicated assent.

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

725. Are members content?

Members indicated assent.

726. 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.

727. 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.

728. 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.

729. 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.

730. The Chairperson: Thank you for that clarification — we would have trouble putting that in the Bill.

731. 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.

732. Mr Kinahan: You mentioned the guidance that you will send. Will it be included in that?

733. Mr Gray: Yes.

734. The Chairperson: Are you requesting dog toilets as well, Mr Kinahan?

735. 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?

736. 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.

737. 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?

738. 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.

739. Mr Dallat: As long as we have the dogs sorted out.

740. 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.

741. Mr Gray: We would regard that as litter.

742. Mr W Clarke: Does that include bread and everything?

743. Mr Gray: Yes.

744. 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?

745. Mr McGlone: Did you ask whether the ducks could get prosecuted?

746. Mr Weir: They would be the witnesses.

747. Mr W Clarke: There needs to be clarity on the matter. There may need to be an amendment about that.

748. 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.

749. The Chairperson: If the dogs ate up everything, there would be consequences later.

750. Mr Weir: That would not be litter, however.

751. The Chairperson: It is a very valid point, Mr Clarke.

752. 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.

753. 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?

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

755. Mr Buchanan: Common sense is very uncommon today.

756. Mr W Clarke: A Hitler of an enforcement officer will be prosecuting everybody.

757. The Chairperson: Will there be a different level of fine, depending on the colour of the bread?

758. Mr Weir: That would not pass section 75.

759. 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.

760. 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.

761. 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.

762. Mr McGlone: They could give the wrong name and address.

763. 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.

764. 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.

765. 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?

766. 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.

767. 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.

768. 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.

769. 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.

770. 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.

771. Mr Gray: How could you force someone to go to the council?

772. Mr Kinahan: If they refused, they would have to pay a fixed fine.

773. 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.

774. 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.

775. Mr Dallat: You cannot demand ID.

776. 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.

777. Mr Gray: The Bill follows the approach that is taken in England and Wales.

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

779. Mr Weir: In either case, the accent might give it away.

780. 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.

781. The Chairperson: That would mean that half the population would be fined.

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

783. 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.

784. Mr McGlone: It is a sticky one.

785. 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.

786. 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.

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

788. 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.

2 December 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 George Savage

Mr Peter Weir
Mr Brian Wilson

Witnesses:

Ms Hazel Bleeks
Mr Robert Gray Department of the Environment
Mr Jackie Lambe
Mr Gerry Anketell
Mr Brian O'Neill Department for Regional Development

789. The Chairperson (Mr Boylan): We will begin with Part 1, which concerns gating orders. I believe that the departmental officials have to go at a certain time. I welcome Robert Gray, Gerry Anketell, Hazel Bleeks and Brian O'Neill. You are all very welcome.

790. I remind members that, although most respondents welcomed the proposals to give powers to councils to make gating orders, some were concerned that that would raise expectations among residents about gating orders that were not required and that there may be an impact on emergency services and other necessary access. Several councils suggested that "new burden" funding should be provided. Youth groups, in particular, are opposed to the potential impact of the gating orders on children and young people and suggested that the Bill should specify that they should be seen as a last resort.

791. Brian and Gerry will respond. You have heard the issues and complaints about the proposals.

792. Mr Robert Gray (Department of the Environment): I will respond, Chairman. I welcome Gerry Anketell and Brian O'Neill. They have supported us throughout the bringing forward of the clause.

793. With your permission, Chairman, I will make a correction to a statement that I made in the meeting of 30 September in response to a question from Peter Weir. I stated that alley-gating is a Department for Regional Development (DRD) responsibility and that the Department of the Environment (DOE) is carrying the provisions in Part 1 of the Bill concerning gating orders on behalf of DRD. That is not exactly correct. The correct position is that DRD is responsible for the legislation that the DOE is amending to give effect to the alley-gating provisions in the Bill. It is the DOE's policy decision to progress the clean neighbourhoods agenda, an important part of which is the need to bring forward proposals to make the existing procedure for closing off nuisance back alleys more effective. I want to make it clear to the Committee that the DOE is, therefore, in the lead in taking forward the gating order provisions, with valuable support from our colleagues in DRD.

794. I also want to make it clear that DRD is not responsible for alley-gating, as was wrongly indicated by me on 30 September. The present arrangements are that DRD merely facilitates such schemes through the making of statutory rules or gating orders to modify existing rights of way. That then enables a local council, with the agreement of the community, to erect gates. DRD does not supply funding, nor does it construct or erect gates to achieve alley-gating. Those are the responsibility of an independent sponsor who will have worked with the local community in bringing forward proposals for an alley-gating scheme. I just wanted to put that on the record.

795. It is fair to say that a number of Departments and other bodies have an interest in the benefits to be gained from alley-gating schemes. DOE has an interest, because such schemes

will improve environmental quality in our neighbourhoods. The community safety unit in the Department of Justice will have an interest in how they will help to deal with community safety issues. The Department for Social Development has an interest in neighbourhood renewal and improvements in the quality of life for those living in local communities. DRD has an interest in the elements relating to road safety, traffic management and rights of way. Last but not least, district councils have a clear and direct interest in the benefits to be gained by alley-gating.

796. The Department is pleased to note the broad welcome that has been given by district councils to Part I of the Bill. Councils recognise that the existing regime for making gating orders has proved to be cumbersome. It is felt that a more streamlined approach is required and that responsibility for making gating orders would be better placed with local government than with central government. Clause 1 of the Bill, therefore, inserts new articles in the Roads (Northern Ireland) Order 1993 to enable district councils, with the approval of the Department for Regional Development, to make a gating order in respect of an alleyway that is also a relevant road. The gating order will restrict public access to an alleyway that is facilitating persistent crime or antisocial behaviour and will enable the council to install, operate and maintain barriers to enforce the order. Clause 1 specifies the circumstances in which a council may make a gating order and the types of restrictions to access that it may impose. It also provides for interested parties to have the opportunity to make representations about a proposed gating order.

797. I have divided the issues that were raised during Committee Stage into concerns about costs and concerns about the impact of section 75 and the promotion of equality of opportunity in relation to children and other groups. T

798. The clause does not impose a duty on councils. Councils are being given an additional tool to enable them to make gating orders, with the approval of DRD. Gating orders are not new. This streamlines an existing system and gives discretionary power to a local council to decide, on the basis of representations that it may receive, whether a gating order would be appropriate.

799. In deciding whether to go forward with the gating order, the council will have to take into account such issues as costs and the impact on section 75 groups, such as disabled people and children. Arrangements are built into the clause that require the council to take those issues into account. It is only when a decision is made as to whether a gating order is appropriate that those issues apply. We are merely giving councils the tools to do the job, if the job needs to be done. That addresses a lot of issues that were raised in Committee.

800. The Chairperson: There is also the issue of freedom of movement, which concerned the youth groups, and the antisocial element that goes along with that. We are saying that the measure should be a last resort. However, a lot of groups are involved. The Housing Executive will have an interest, for instance. DRD will have a role in respect of the adoption of the footpath or entry. That is perhaps your only role, but you have to be invited to take part in the process to give your opinions.

801. Mr Gerry Anketell (Department for Regional Development): That is broadly correct. The clauses relate to relevant roads, which will be adopted roads. DRD has authority for roads, so it has responsibility for the maintenance of those alleys or footpaths. From that point of view, we need to be involved in the process.

802. The Chairperson: The gates are locked at the minute, and there is a responsibility to open the gates to facilitate service people. Are there any issues with that?

803. Mr Brian O'Neill (Department for Regional Development): There have not been any issues. Roads Service receives keys because my staff have to inspect the adopted alleyways. The emergency services have keys, and the councils make arrangements with the residents to ensure

that the gates are opened at the appropriate times for servicing, such as the removal of bins or rubbish, or for inspections. If there are problems, we can be contacted to make arrangements with the residents to be there at a certain time to open the gates. In the past three years, there has not been any difficulty in people getting into the alleys.

804. The Chairperson: Is there an opportunity to include the term "last resort" in the Bill? I think that the Committee supports the idea of alley-gating, but as a last resort after exploring all other avenues. Some people are in favour of it and some are not.

805. Mr Kinahan: What does "last resort" mean?

806. Mr Weir: I take Mr Kinahan's point. There may be some form of wording that could be included in the Bill. I am not sure that "last resort" would legally stand up to scrutiny because, legislatively, I do not think that it is the correct terminology.

807. Mr Gray: Certain criteria have to be met, one of which is outlined in proposed new article 69A(3)(b) of the Roads (Northern Ireland) Order 1993, which is included in clause 1:

"the existence of the road is facilitating the persistent commission of criminal offences or anti-social behaviour".

808. The guidance document that we will bring forward will support all of the provisions in the Bill. The "last resort" point is the sort of issue that can be fleshed out in the guidance.

809. The Chairperson: It was only a question, but you can see the opposition to it. I am sorry that I mentioned it.

810. Mr W Clarke: What is the definition of antisocial behaviour? Does it include children playing or kicking a football?

811. Ms Hazel Bleeks (Department of the Environment): It is defined in the Bill as:

"behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as that person."

812. So, there is a clear definition there.

813. The Chairperson: So, could it be construed as somebody kicking a football down an alleyway?

814. Ms Bleeks: Yes; if that caused harassment, alarm or distress to someone.

815. Mr W Clarke: People just standing outside a house could cause that.

816. The Chairperson: That could be loitering with intent. It is a fair point. I take your word on it. Given what you have said about the definition, it could mean anything.

817. Mr Weir: My concern is not that gating orders will be issued willy-nilly; my concern is about the flipside of the coin. I appreciate what has been clarified, and, consequently, I am happy enough to support the proposal, but my concern is more about raising expectations about things that will be very costly to put in place. When we received evidence from NILGA (Northern Ireland Local Government Association), I think that a representative from Belfast City Council said that it had an annual budget for administration. It may well be that, with the best will in the

world, this was somewhat overblown, but it was stated that the council had an annual budget of £500,000 to deal with alley-gating. Although Belfast City Council is an awful lot bigger than any other council, I would be concerned if that was read across into other councils. Given the fact that there is some opportunity because Belfast City Council uses alley-gating at present — the Bill more or less clarifies the law and takes it forward — are you aware of how many other areas use alley gates?

818. Mr B O'Neill: A number have been used in a couple of locations. A few gates have been erected in Derry, but, primarily, they are around Belfast. I think that there is one other location outside Derry and Belfast, but I cannot remember where it is. It is very limited outside Belfast.

819. The Chairperson: We have one.

820. Mr Weir: Is that to keep people out or to keep them in? [Laughter.]

821. The Chairperson: They get out when the sun shines and stay in when it is snowing.

822. Mr W Clarke: Are we looking at some form of words such as "the last option"?

823. Mr Gray: We can look at that in the guidance document.

824. Mr W Clarke: Could that not be included in the Bill itself?

825. Mr Gray: The Bill is quite clear on the criteria that must be satisfied before it is possible to bring forward an alley-gating proposal. The council must be satisfied that persistent criminal offences and antisocial behaviour are taking place. Indeed, proposed new article 69A(3)(c) states that:

"it is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour."

826. Those are quite strong criteria that must be satisfied.

827. Mr W Clarke: I want to ask about section 75 and the equality impact assessments. The Committee received submissions that certain groups were disadvantaged when alley-gating was introduced in England. Will equality impact assessments be carried out?

828. Mr Gray: If a council is going to make a gating order —

829. Mr W Clarke: Councils will carry those out.

830. Mr Gray: As local authorities, they are required to take those issues into account.

831. Mr W Clarke: My experience of councils is that those assessments are not always carried out. I declare an interest as a member of Down District Council. In my council area, I know of one play area where access has been closed because of antisocial behaviour. That action deprived a deprived area of access to a playground, which impacted on children and mothers. That is already happening in council areas, which is why I would prefer to see something overarching that would ensure that equality impact assessments are carried out at this stage.

832. Ms Bleeks: To take the example that you gave; if an alley or road is the only means of accessing a play area or premises, a gating order cannot be made. You cannot cut people off

from premises or play areas by means of a gating order. A gating order would not be appropriate in those circumstances.

833. Mr W Clarke: Down District Council gated that play area, and, by doing so, demonised the whole population of the area never mind just a couple of people. I am not saying that it is children who cause antisocial behaviour — a lot of the time they get blamed for it when much older people are responsible. Placing the gate on that play area means that people must take a round trip of 25 minutes. That is happening now.

834. Ms Bleeks: Under the terms of the Bill, that could not happen.

835. Mr Gray: We are correcting that.

836. Mr Weir: To be fair, we are not generally talking about access to playgrounds but about access to back alleys. We have not directly used alley-gating in North Down, but there were problems in, I think, the Brambles area of Rathgael, more or less where the forest is, and I am sure that Brian will be aware of those, too. There was a lot of antisocial behaviour in that area, and there was what might almost be described as an escape route into the forest for kids and teenagers who were creating problems. A small gap was then closed off, which solved the problem and stopped that from happening. Therefore, some physical restriction can be useful at times.

837. Mr W Clarke: I do not disagree. The example that I gave is of an entry behind houses. I do not want to get into the issue today, but, in my opinion, we are not dealing with the problem. Alley-gating simply drives people on to somewhere else, and the underlying issues are not being tackled. However, I agree that it is only one tool in the toolbox. If there is to be information in the guidance notes and further work with councils on implementation, I will be happy. When will those guidance notes be available? Is the Department consulting with NILGA?

838. Mr Gray: We will have to consult fully with the Committee on those guidance notes.

839. Mr W Clarke: When will we see those guidance notes?

840. Mr Gray: We cannot proceed with the guidance until the Bill gets Royal Assent.

841. Mr W Clarke: Are you drawing the guidance notes up in parallel with the Bill's progress?

842. Mr Gray: We are working on all of that material so that we will be in a position to issue it as soon as possible after the Bill receives Royal Assent.

843. Mr W Clarke: So, you are working on it now.

844. Mr Gray: Yes. We are working on all of the guidance documents under the Bill.

845. Mr B Wilson: Mr Weir talked about expectations. I am concerned about that as well. I know of at least six places in the Rathmore estate that would be closed off by alley gates if this were enacted. The alleys are normally rights of way. How does that relate to rights of way?

846. The Chairperson: I agree. The problem has been about freedom of movement. We are saying that it is about giving councils the power to making gating orders, but we must bear in mind that a lot of authorities are involved in this. DRD, the Housing Executive and councils are involved. Ultimately, it will be a corporate council decision, in agreement with everyone else. That is why it is important.

847. We have talked about gating orders being used as a last resort, and you have outlined the criteria. It is not about obstructing people. Agreement has to be reached. Through our experience of the issue, I have learned that there needs to be proper consultation, because it does not affect only one end of an estate. The gate may be in one location, but it affects the movement of everybody around that. That is the problem, and it needs to be taken into consideration. It is up to councils whether they agree with everybody else and decide to go down that route. The Bill gives that power. I know that people raised their concerns.

848. It is important to give proper guidelines, because sometimes guidelines are written on a piece of paper but nobody enforces them or takes them on board. You need to enforce what you are saying in the policy and what the guidelines state.

849. Mr Gray: The guidelines will be subject to full consultation with, amongst others, children's organisations, which have had a lot to say about the proposals. There will be an opportunity for stakeholders and experts on the issues to shape the guidance.

850. The Chairperson: Are members happy with the Department's explanation? Do you require any more information?

851. Mr T Clarke: Since responsibility for the scheme is going to the councils, so will the burden. Some of the areas are owned by DRD or the Housing Executive. Will they stump up?

852. The Chairperson: I am saying that they will have to make that decision as a group.

853. Mr T Clarke: Who will be left to pay for it? Will it be the councils? After all, the land may be owned by the Housing Executive or DRD.

854. Mr B O'Neill: It will be the promoter. If the council is the promoter, the council will have full responsibility for the costs. With regard to rights of way, we have to assess what the impact will be and whether our approval for alley gates would be given.

855. Mr T Clarke: Who are you with?

856. Mr B O'Neill: DRD — Roads Service.

857. Mr T Clarke: You are not writing the cheque.

858. Mr B O'Neill: No.

859. Mr T Clarke: I am concerned that there is a wee bit of a difficulty. I am working on a case in which there is a problem with an alleyway. It would be unfair if the council were to carry the burden, given that the problem has been associated with the Housing Executive's layout design of developments or with Roads Service, which adopts roads. Sometimes the problem is related to design. It is unfortunate that the council will have to foot the bill to fix that. Is there no way of making the other agencies responsible so that they stump up money as well?

860. Ms Bleeks: I am not sure about making the other agencies responsible. Brian mentioned the promoter footing the costs. Quite often, the council will be the lead on that. There is nothing to stop interested parties, such as the Housing Executive, the councils or, in some cases, the neighbourhood renewal units coming together to fund a project jointly. There is no onus on councils to fund a project on their own. If they do not have the money, they cannot do it. There is no reason why they cannot get together with other bodies to fund it jointly.

861. Mr T Clarke: Is there no way to build into the Bill an onus on the Housing Executive or DRD, or whoever owns the land, to co-fund the project with whatever organisation is leading the project? It is easy for DRD or the Housing Executive to design a development in such a way as to create a problem, but it is unfortunate that the council has to pick up the bill to fix it.

862. Ms Bleeks: The provisions in the Bill do not change the funding. At the minute, people can jointly fund projects. In some cases, the council will do it and, in others, the Housing Executive will step up.

863. Mr T Clarke: You could make it easier if you made it a requirement for each of the partners to do something, as opposed to expecting a council to do it alone.

864. Mr Gray: The Bill was brought forward on the basis of it being cost-neutral. All the provisions are treated as cost-neutral. As regards gating orders, we have taken into account the benefits that would be achieved by a council through a reduction in the cost of dealing with problems in the alleyway. That may not compensate for everything, but —

865. Mr Weir: I understand how other elements in the Bill could be presented as cost-neutral, but there has been a level of spin in this case. There may be social benefits and less trouble and so on, but, from a purely financial point of view, alley-gating will cost councils a reasonable amount of money. The idea that spending money on gating alleys would save a council a lot of money does not, with the best will in the world, bear proper scrutiny.

866. Mr Gray: It is, ultimately, up to the councils to decide whether they want to make a gating order.

867. Mr Weir: With respect, that is a separate point. You can make the point that you regard it as being in the overall interests of the community or the right thing to do. However, that is different from saying that, from a financial point of view, it will be cost-neutral to a council, because, with the best will in the world, it will not be. There may well be certain other advantages that it provides to the community in the broader sense, for example, an improved quality of life, but, from a purely financial point of view, it will not be cost-neutral for councils.

868. Ms Bleeks: The provisions on gating orders in the Bill will not impose additional costs on councils — there are already costs for gating orders now.

869. Mr Weir: That may be a slightly different point, but it is not cost-neutral if you have to take action, because, on the balance sheet, it will show as costing money. The issue, as with many services, is whether you feel that it is worthwhile doing it to improve people's overall quality of life. However, with the best will in the world, let us not oversell this and say that they will be cost-neutral to councils.

870. Mr W Clarke: Alley-gating will definitely not be cost-neutral, and councils will not see it that way. There is a bit of topspin in that, never mind spin.

871. Mr Gray: Perhaps I should clarify the position. The Bill gives councils a range of additional powers and duties, and, taken as a whole, the Department's line is that the Bill is regarded as being cost-neutral.

872. Mr W Clarke: That may be the Department's line, but it is certainly not cost-neutral when the councils will have to foot the bill at the end of the day. I agree with Trevor Clarke's point about different statutory agencies. The Bill places a greater onus on those agencies, particularly

the PSNI and NIO. If it is cost-neutral for anyone, it will cost-neutral for those organisations, as they will save money on policing and resources.

873. Before you say, "This is great", we need to look at what resources will be made available for community safety. Perhaps that is what you mean by cost-neutral, and perhaps other funding streams will be put into the pot. If gating orders work, there will be a reduction in the amount of policing time, and the money saved should be put into the pot for councils to draw down on.

874. The Chairperson: It could be cost-neutral if, say, the PSNI had to be called out 30 times in one year. I do not know what that would add up to —

875. Mr W Clarke: That is not the council's budget.

876. The Chairperson: No, it is not. I agree; there is a collective responsibility on all agencies and Departments associated with alley-gating, including the Housing Executive, DRD, neighbourhood renewal, which you mentioned, and community groups. If it costs £5,000 to gate an alley, funding should be provided by those bodies.

877. The main issue is the one that Mr Wilson identified. Gating orders are already being issued by councils, and alleys have been sealed off. However, what I think Mr Wilson was trying to say was that, when someone sees this power in the Bill, they will phone their council and ask it to act on it. That is the impression that it will give, and it is a problem. If you go down all the alleyways and avenues — pardon the pun — and agree collectively not to seal off an alleyway because it is not in the best interests of the community to do so, a member of the community could ask what the point of having that power is. That is where the criticism would come in.

878. We could go on talking about it all day, so, just to wrap up, we will have to seal that door and everybody in until we get agreement on it. Can we look at guidelines and ensure that, collectively, there is responsibility for all to contribute to the cost?

879. Mr W Clarke: Chairperson, just to expand your point: what are the equality implications? If all the citizens in a street asked the council for alley-gating, and then drew comparison in another estate where that was put in, they would say that they are ratepayers like everyone else, and the council has an onus or a duty to protect them. Can we check out what the legal equality implications are?

880. The Chairperson: On that note, everyone keeps saying that the council pays for it: the ratepayer pays for it, at the end of the day. Do members require any further information on that? No. You will come back to that point, Robert?

881. Mr Gray: Yes.

882. The Chairperson: Thank you. That concludes the informal part on gating orders. Gerry and Brian, thank you very much for coming. No doubt we will be talking to you again.

883. Jackie is going to join us for this part. Part 3 is about litter. Clause 16 refers to fixed penalty notices for litter offences. Several issues were raised about the clause, which included whether fines should be higher than £75 to act as a proper deterrent; the lack of publicity relating to fixed penalty notices, which will make them less of a deterrent; whether the power for councils to authorise non-council staff to implement enforcement powers should apply to all enforcement sections of the Bill; whether the Department should set maximum and minimum fines; the fact that littering among young people should be tackled in schools first; whether there should be a minimum age limit in the serving of a fixed penalty notice; and the impact of such fines being

issued to young people. We will try to race through those issues before I take the Committee's comments.

884. Mr Gray: The Department notes the various views on the appropriate level of fine to be levied through fixed penalty notices. Our initial remit on this Bill was to bring Northern Ireland broadly into line with the level of fines and so on that are enforced in England and Wales.

885. Mr Dallat: Why?

886. Mr Gray: That is what I was told to do; that is our remit.

887. There is a provision in the Bill that allows the Department, by Order, to change the level of fines in the future. The fine in the Bill is £75. In the Republic of Ireland, the fine is €150. The Bill will allow councils to set their own level of fine within a range, and that range will be set out in regulations.

888. We had to use something as a basis to find a level of fine, and we used the level of fine that was brought in in England and Wales through the Clean Neighbourhoods and Environment Act 2005. I believe that a lot of councils and local authorities over there apply a fine of £80 at the moment. The Department feels that the level of fine is proportionate to the offence of dropping litter.

889. The Chairperson: Basically, Robert, let us cut to the bones of all this: some people are saying that the fine is not a deterrent at that level. We need examples that it is working elsewhere. You say that it works in England and Wales or wherever; we need to know whether it is definitely working at that £75 level.

890. Mr Gray: If I dropped a piece of litter while walking down the street and someone slapped a £75 fine on me, I would not be happy. I regard that as a significant fine.

891. The Chairperson: To be fair, that is correct. I would not like a £5 fine, never mind a £75 fine. It is whether the Committee feels that that is enough.

892. Mr Weir: I do not have massively strong views on the exact amount. It would certainly annoy someone to get fined £75. Having said that, I suppose the problem from a deterrent point of view is that many people will think that the chances of getting caught are very slim.

893. The idea is to give councils a degree of flexibility. Is any sort of graduated measure envisaged, depending on how quickly somebody pays? A parking ticket, in theory, is £60. However, if it is paid within a period of time, it is £30. Is the intention to have something similar regarding the speed of payment of fixed penalty notices for litter? If so, is £75 the upper limit? I think that nine out of 10 people will see the sense and pay the fine within the period of time, which effectively means that they will pay half the charge. In what way do you see that happening?

894. Mr Gray: There is a provision in the Bill that will allow district councils, as an encouragement to people to pay, to charge a smaller amount if the fine is paid early.

895. Mr Weir: The encouragement to pay is quite a useful device because it brings in the money a lot more quickly.

896. Mr Gray: The opportunity for councils to do that is consistent throughout the Bill.

897. Mr Dallat: If our sole purpose in life here is to bring things into line with what is happening in Wales and Scotland, why do we not just rubber-stamp the whole lot? I am serious, because Wales and Scotland have innovative ideas about how to manage things. We should, at least, have — [Interruption.] Sorry, Thomas, do you want to take over?

898. Mr Buchanan: No, go ahead.

899. The Chairperson: Hold on.

900. Mr Dallat: I am making a very serious point, and I expect to have the freedom to do so. It is frustrating when I get out of bed at 6.00 am and come here, only to be told that we are bringing legislation into line with elsewhere. That is a waste of public money. I have studied the issue very carefully, and I know that, in other parts of the world, that fine could be £1,000. I am not advocating that, but the purpose of it is to get across a message that millions of pounds are spent by 26 councils every year to pick up litter that should not be dropped in the first place. The issue is serious.

901. I am not shooting the messenger over the £75 fine; please do not get me wrong. If there is provision for a 5% increase every year in line with inflation, do we drop it in a recession? I am trying to be constructive, but I would much prefer that the ideas of this Committee, which we discussed previously, are taken seriously by the Department so that we are not just nodding dogs and bringing something into line with something that is happening somewhere else. I am quite annoyed.

902. The Chairperson: Obviously, it is a decision for the Committee. A £75 fine for dropping a cigarette packet is hefty enough. It is about the message that we have to get across. We need the deterrent, which is the fine, but we also need to get the message across. People talked about the lack of publicity. If we go down the road of fining people £75, it has to be publicised.

903. Mr W Clarke: I take on board what John said, but £75 is proportionate for dropping a bit of chewing gum or a cigarette butt. As I said before, fines should be on some sort of sliding scale based on someone's salary. If somebody earns £100,000, a £75 fine for them driving along in their Porsche and firing out their chip papers would probably not seem like a lot. However, if someone is on benefits and getting £60 a week, £75 is a lot of money. It is proportionate.

904. The Chairperson: Are you asking for the Porsche to be removed, Willie?

905. Mr W Clarke: That would be a good fine; take the Porsche.

906. When debating the setting of a fine in the Dogs (Amendment) Bill, the Committee for Agriculture and Rural Development mirrored what was happening in the Department of the Environment: we increased the fine from £50 to £75. There was a lot of anger in the Committee about that. It is trying to mirror the £75 across the board. If the fine is paid in time, it is reduced to £50. I think that that is what they were looking at. I am happy with that. I am not happy with the fines, because they are not based on a person's ability to pay and salary.

907. Mr Gray: The other point is that a fine is offered as an alternative to prosecution. If councils know of a persistent offender who is not getting the message, they can seek to prosecute that person. That can result in a £2,500 fine in court, if the judge so decides.

908. Mr T Clarke: Mr Clarke referred to the people who are unemployed. I hope that he is not talking about those who are technically unemployed but laundering millions of litres of fuel in a

year and evading the relevant duties. Those people are technically unemployed, so I do not think that there should be a sliding scale.

909. Mr W Clarke: If you have information like that, you should give it to the PSNI.

910. The Chairperson: OK, gentlemen, that is nothing to do with this Bill.

911. Mr W Clarke: I think that that was a slander on unemployed people.

912. Mr T Clarke: What, the ones who are laundering fuel and are unemployed?

913. The Chairperson: OK, gentlemen. Mr Trevor Clarke, there are genuine cases, but, I think the £75 is reasonable. I know that it has been said that it mirrored other areas, but —

914. Mr Gray: It is a proposal.

915. The Chairperson: I know that it is a proposal. There are examples of good practice. Maybe, we should take those on board.

916. Mr Savage: I have been listening carefully to what the members have been saying. I noticed in Craigavon Borough Council's minutes of this past week that a number of fines have been imposed for flicking a cigarette butt out through a window. Individuals have faced fines of £75 and legal costs of £125. It is coming before the council on Monday night. One person faced three of those fines in one day. The council does not have a pup's chance of getting the money from that person. In fact, one of the offences was committed by an individual in a taxi when coming from court. Is there not a simpler way of doing it?

917. I live in a rural area, and I constantly see people dumping grass on the side of the road, but nothing seems to be happening. They have no excuse for doing that, because they have different bins for grass and other materials. It so happens that one of the people happens to be a bank manager, and, I believe, the other happens to be an employee of your Department. Those are real issues that have to be addressed. Something more streamlined needs to be introduced. I do not know how it can be done, but those people are breaking the law. I do not know of a more simple way of getting the money from those people, but the councils are being put to the expense, when they know that they will not get the money. Those people are consistently breaking the law.

918. The Chairperson: That is the other end of the scale. The idea is to provide a deterrent. Recovery and enforcement are mentioned, but we need to have proper powers to deal with those.

919. Mr Jackie Lambe (Department of the Environment): There are examples from around the world of the imposition of higher levels of fines, as Mr Dallat said. There are also examples in which the whole approach to litter has been taken forward in an entirely different way. For example, in the Republic of Ireland, Holland and, I think, Australia, the power has been given to the local law enforcement agencies. In those instances, the agencies are involved in taking environmental-type offences and raising their profiles so that they are priorities in local communities. So, there is a range of different ways of taking this forward.

920. Traditionally, the approach here has been to keep that role fairly limited to local authorities, though, if the police here see someone littering, they have the power to stop that person, ask for their name and address and send the details to the local district council so that it can take appropriate and proportionate action.

921. Mr Weir: In some cases, there is the separate issue of trying to identify who has dropped the litter. I am not sure that there is a particularly easy way around that, particularly in country areas where it is difficult to be vigilant.

922. People should not qualify for legal aid for littering offences, but sometimes they do. Have there been any discussions with the Department of Justice about that? The Minister of Justice is talking about reforming the legal aid system. People are refusing to pay fines, but councils are sometimes reluctant to take people to court because, as Mr Savage said, the court fine is often a lot less than the legal costs of the prosecution. In those circumstances, costs should follow the event; if somebody is found guilty, they should pick up the tab for the cost of the prosecution.

923. Sometimes, that can be avoided for low-level offences, because you will not get an order of cost for legal aid. One case went through several stages of the court. Although not exactly a littering offence, there was an infamous case in north Down in which someone deliberately broke the smoking ban. Mr Wilson may be aware of that case. The defendant did not have a leg to stand on, but, because that person was receiving legal aid and kept on pushing the case, it ended up costing the council £2,000. That was a situation in which the council had no alternative other than to prosecute.

924. Can there be any degree of liaison, if we are looking at the overall reform of legal aid, with the Department of Justice to see where there can be a joined-up approach? That could help to have a legal system in which being taken to court for a low-level crime hurts the defendant rather than the prosecuting body.

925. Mr Gray: No, there has not been any direct engagement on that point. The only engagement that we have had with the Department of Justice has been on community safety.

926. Mr Weir: Would it not then be worthwhile to take that as a suggestion? It could be around the levels of payments of legal aid. The Minister has made it very clear that he is looking to cut legal aid budgets from about £100 million to about £80 million. The protection of very low-level cases, which act as a disincentive to prosecute people who are guilty, could at least be looked at. I encourage you to see whether a wee bit of joined-up thinking can be applied to the prosecution of those types of offences.

927. As somebody indicated, a fixed penalty should be an alternative to a prosecution. However, unless you have the full system properly worked out, the danger is that some people may not bother paying it because they know that the prosecution will not be followed through with as it is not cost-effective.

928. Mr Gray: That is not something that we envisage being in this Bill.

929. Mr Weir: No, but by the same token, if we are putting in place related legislation, that could be considered. There may be related issues that are not in the Bill. The issue comes down to one of the chestnuts of this Committee: the implementation of the Bill. It is not enough to have legislation; we have to work out the next steps in the follow-through. The follow-through in this case will involve a clear-cut system that covers not just the initial fixed penalty but how you deal with litter control and how that is followed through the system. Having that worked out in the process rather than in the legislation is quite important.

930. The Chairperson: Both members have raised valid points, and they should be followed up on.

931. Mr McGlone: My colleague Mr Dallat raised an important issue. I never thought that litter offences and fixed penalty notices would raise so much bartering around the place, but there

you are. When you get out of bed in the morning to come up here through the snow, you never know the way it is going to be, but, he raised a valid point. I want to know, and I do not expect you to itemise it, how much of this Bill is, in effect, just a cut-and-paste exercise from legislation that exists in Britain somewhere?

932. Mr Gray: The existing legislation in Northern Ireland, such as the Litter (Northern Ireland) Order 1994, is entirely based on corresponding legislation in force in England and Wales. The model for this Bill is the Clean Neighbourhoods and Environment Act 2005. This Bill is based on that model and the consultation document was taken forward on that basis. That is what councils asked for. NILGA, many MLAs, MPs, and so on lobbied strongly for legislation here to correspond with the Clean Neighbourhoods and Environment Act 2005. It was on the basis of that lobbying that the Minister decided to take it forward.

933. Mr McGlone: So, it is virtually a read-across then?

934. Mr Gray: Only where appropriate. There are areas that had to be changed and there are areas in Northern Ireland law that are slightly stronger than the law in England and Wales, and vice versa. We are not doing anything to weaken the law here. It reflects the demand of district councils and key stakeholders, Members of the Assembly, MPs representing Northern Ireland and organisations such as TIDY Northern Ireland.

935. Mr McGlone: I do not doubt the integrity of the Department's position, I am just trying to establish, other than the wee bits that we try to tweak here, how it is different by way of its strength, innovation or creativity around aspects of legislation. That is what I am trying to get to.

936. Mr Gray: Broadly speaking, it is very similar to the legislation that is in force in England and Wales.

937. Mr Buchanan: One issue is about how it will be implemented on the ground. For instance, if I drop litter and the warden gives me a fixed penalty, I could argue against it and say that I did not do it. If I do not pay the fine and it goes to court, would my word be taken against his, or does he have the authority to say that I dropped the litter, but there is no photographic evidence? It is different to putting something on a car, because there is photographic evidence. Is this going to cause a problem? If a teenager or someone still at school does it, or spits chewing gum out on the street, does the warden give them the order too? Who would pay that?

938. Mr Gray: A litter warden should issue a fixed penalty notice only as an alternative to prosecution. In issuing a fixed penalty notice, the litter warden should be confident that, if the case is taken to court, he has sufficient evidence to secure a prosecution.

939. Mr Buchanan: What is "sufficient evidence"?

940. Mr Gray: That would depend on each case.

941. The Chairperson: The enforcement actions and all the criteria that go along with that are important for the warden.

942. Mr T Clarke: They have that power at the moment, do they not?

943. Mr Gray: Yes.

944. Mr T Clarke: Can you tell me how many fixed penalties have been given out in the past 12 months?

945. Mr Gray: About 3,500.

946. Mr T Clarke: Is that concentrated in particular areas?

947. Mr Gray: Well, Belfast, obviously, is the main one.

948. Mr T Clarke: Belfast is a big place, but I cannot imagine that many councils will have litter wardens out in the borough watching people drop litter anyway.

949. Mr Gray: No. There are very few. A few councils have litter wardens. Councils can keep the money from the fixed penalty notices, and I think Belfast uses that money to pay towards its litter wardens.

950. The Chairperson: OK. We spent half an hour on clause 16. I hope that the rest will not take as long. The key point is that, although it is OK to grant enforcement powers, it raises other issues.

951. Mr Gray: Enforcement is a big issue.

952. The Chairperson: If members who are councillors see, for example, litter on rural roads, when they go to their Monday night council meeting, I hope that they remember what was said about clause 16 today.

953. The Department has explained enough, and I do not think that we need any more information. I am afraid to ask for suggested amendments. Are members content with the Department's explanation?

Members indicated assent.

954. The Chairperson: We still have to get the guidelines and everything else back.

955. Mr Gray: The enforcement guidelines are comprehensive, and they will be subject to full consultation. We are talking about a big document.

956. The Chairperson: There is no point in bringing in a clause without enforcement powers to implement it and to follow-up on the implications of those actions.

957. Clause 17 concerns litter clearing notices. Although the clause was generally welcomed, issues were raised about the 28-day compliance period, the exemption of Crown land, the extent to which litter abatement notices can be issued by councils, the need for national indicators and maintaining standards, and other exemptions. Robert, in the short time that is available, will you go through each of those issues, after which I will open the session to questions from members?

958. Mr Gray: Clause 17 is probably one of the most powerful clauses for dealing with litter, as it strengthens councils' powers to deal with litter in a much more streamlined way than before. Under the provision, councils will be able to serve a litter clearing notice on occupiers or owners of any land in its district that is open to the air. If that does not happen, the council will be able to clear the land itself and recover the costs for doing so. Failure to comply with a clearing notice will be an offence.

959. I will turn to the various issues that were raised. The 28-day compliance period was criticised for being too long. The new provision will replace litter control areas and simplify procedure. Starting from the day on which the notice was served, a person served with a litter

clearing notice will be given 21 days in which to appeal to the court, which will quash the notice, modify it or dismiss the appeal. The 28-day compliance period is, therefore, not considered to be unreasonable, given that it includes a 21-day appeal procedure.

960. Concern was expressed about the fact that clause 17 will exempt Crown land or land belonging to an education institution —

961. Mr Dallat: Why will education institutions be exempt?

962. Mr Gray: Those bodies will be exempted because, under the Litter (Northern Ireland) Order 1994, they already have a duty to ensure that their land is kept clean.

963. Mr McGlone: If they are under a duty and they are to be exempted, will there not be a conflict?

964. Mr Gray: No. The Department —

965. Mr McGlone: I will clarify what I mean. What duty are they under and how is it enforced? Is it through the education and library boards? Who has the duty, and which agency is responsible for compliance?

966. Mr Gray: The duty is on the education institution or the statutory undertaker. If the duty is not complied with, the relevant council — Jackie will correct me if I am wrong — can take action.

967. Mr McGlone: But, not under this legislation?

968. Mr Gray: No. Issuing a litter clearing notice would be a double whammy for such institutions, because they are already under a duty. Litter clearing notices will deal with land that is not subject to an existing duty to have litter cleared. It is quite a powerful proposal.

969. There is a range of issues, and I will go through them quickly.

970. The Chairperson: Go through them very quickly, please. Members have the packs.

971. Mr W Clarke: What is the rationale behind Crown lands being exempt? I can understand the situation with education authorities and the Department of Education. You said that Crown lands such as beaches and shorelines were exempt.

972. Mr Gray: Beaches and shorelines are not exempt; they are district council land.

973. Mr W Clarke: No. That is Crown land. Some elements are council land, but other elements are Crown land.

974. Mr Gray: The Litter (Northern Ireland) Order 1994 imposes a duty on whoever occupies that Crown land to keep it clean. If that is not complied with, the district council can take action against the Crown. Is that right, Jackie?

975. Mr Lambe: Yes. The provisions in the Litter (Northern Ireland) Order 1994 apply to the Crown. Therefore, if a council feels that a Crown body or other statutory undertaker is not —

976. Mr W Clarke: Does it not say that Crown lands are exempt?

977. Mr Gray: Crown lands are exempt from the provisions concerning litter control notices.

978. Mr W Clarke: I am confused.

979. Mr Gray: I will give you an example. Say, for instance, an individual's private garden is in an appalling mess because of litter. At the moment, the council has to go through quite a procedure to try to deal with that. Under the new provision, it can serve a notice to instruct the owner to clean it. If the owner does not clean it, the council can go in and clean it and recover the cost of doing so. At the minute, that owner is not under a duty to keep it clean, but Crown bodies and statutory undertakers and so on are already under an existing duty to keep their land clean.

980. Mr W Clarke: I do not mean to hold you back, and I appreciate your explanation. What about the likes of Crown land, forestry land and areas under the remit of the Rivers Agency that are not being cleaned? You are telling me that, under this provision, they are exempt.

981. Mr Gray: They are exempt from this specific provision regarding litter control areas, because they are already under a duty. If they do not comply with the existing duty, it is up to the councils to do something about it and tackle them.

982. The Chairperson: I understand that. At the minute, they are duty-bound to keep their land right. Come the enforcement and implementation, the council will be able to go after them and make sure that they do that. Mr Weir, you wanted to say something.

983. Mr Weir: My point has been clarified.

984. The Chairperson: Mr Clarke, you are obviously still not content.

985. Mr W Clarke: How can a local authority go after the Rivers Agency to make it clean its land? How can the council go after the Forest Service to make it clean its land?

986. Mr Gray: Would it be helpful if I were to explain that in a letter? I will set it out in bullet points.

987. Mr W Clarke: I would appreciate that.

988. Mr Kinahan: At a litter convention in Craigavon, one of the key points put by the Mallard Consultancy lawyer was that we should expand the litter control notices so that they deal specifically with the sale of food and drink and where the associated litter goes afterwards. Therefore, it will not only be about the premises around which the litter is found but about being able to identify the litter, wherever it has been thrown. If we specify it, it can be dealt with straight away, instead of leaving it. They said that we should expand that.

989. Clause 17 would insert new article 12A into the Litter (Northern Ireland) Order 1994, and that article refers to:

"land in its district which is open to the air."

990. Should we not be looking at it more from a visual point of view and calling it an eyesore? Is there a different way of wording it?

991. A belt-and-braces approach should be taken to what we have just been discussing. If we can tackle someone in two ways, that is better than tackling them in one way. When it comes to schools, the councils have the power; that is the belt. The braces are that the issue is meant to be tackled through the education system. The same goes for Crown land. We need every tool we can get if we are to tidy up Northern Ireland.

992. Mr Gray: The council can apply litter clearing notices and provisions to any land in its district, but Crown land is exempt here because the Crown is already under a duty to clean it up. There are no restrictions when it comes to someone organising an event on the land.

993. Mr Kinahan: So, are you happy enough that it covers everything?

994. Mr Gray: I think so, yes.

995. The Chairperson: Following on from that, if it comes to the bit and the Crown does not clean the land up, does the council have the power to go in and clean it up and recover the costs?

996. Mr Lambe: Article 12(1) of the 1994 Order states that, where a district council is satisfied that any relevant Crown land, any relevant land of a designated statutory undertaker or any relevant land of a designated educational institution is defaced by litter, or that defacement of it by litter is likely to recur, the council can serve what is called a litter abatement notice. That is separate to the litter clearing notice that we have been talking about. That power currently exists, and the notice can require the relevant body to take the steps that are specified in the notice. Again, there is an appeals process within that notice-serving provision.

997. Mr Kinahan: We want to get up speed. It is about the pace of dealing with this.

998. Mr Lambe: Again, if taken to court, a person found guilty of an offence should be liable on summary conviction to a fine not exceeding level 4 on the standard scale, which is £2,500. If they continue to fail to comply with the notice, there is provision for a continuing daily offence of one tenth of the level four fine. The onus is on the statutory undertaker to comply with the notice.

999. Mr Kinahan: What is the timescale? I presume that, if there is a legal challenge —

1000. Mr Lambe: It is 28 days; 21 days is the period for an appeals process within that notice-serving provision. It is for the court to take the final decision on whether a person has complied with or breached the terms of a litter abatement notice. I think that that is maybe what was confusing earlier. We were talking specifically about a litter clearing notice, which is a new provision. This is an existing provision in the 1994 Order.

1001. The Chairperson: I do not want you to answer right away, but can you get me some information on exempt land, on actions that have been taken and on whether fines have been levied against anyone who did not adhere to a duty?

1002. Mr Gray: I am not aware of —

1003. The Chairperson: Is there any way of getting any information on that?

1004. Mr Lambe: We will do our best.

1005. The Chairperson: I would imagine that any such action would be very limited. OK, thank you gentlemen. I think that we have gone through that thoroughly enough.

1006. We move on to clause 18, "Street litter: control notices". We were generally content with the clause and welcomed it, but there were two issues: the need to include offices and commercial premises in measures to control waste left outside by smokers and the inclusion of all land in the open air and highways. Can you briefly go through that?

1007. Mr Gray: There was a request to expand the legislation to cover offices, commercial premises and so on. This relates to the control of litter dropped by smokers standing outside pubs, clubs and restaurants. The Department proposes to handle the matter through subordinate legislation. The Street Litter Control Notices Order (Northern Ireland) 1995 specifies the description of commercial or retail premises. The Department proposes to amend that legislation so that it can deal with smokers and so on standing outside those premises. That will also be subject to full consultation. It is another example of the subordinate legislation guidance that will flow from this Bill to deal with those sorts of situations.

1008. The regulations will cover the need to have parity with England on fixed penalty notices so that they will be applicable to all land in the open air and on highways. Is that right, Jackie? We will deal with that issue in subordinate legislation that will be brought forward after the Bill is enacted.

1009. The Chairperson: As soon as the Bill is enacted?

1010. Mr Gray: Yes. There are about 14 sets of regulations, if I remember correctly, and a dozen guidance documents that flow from the Bill. One of those will be about preventing cigarette litter.

1011. The Chairperson: I agree with you, but they need to hit the ground running. The Committee raised some issues in that regard.

1012. Mr Weir: That might not be the most appropriate choice of phrase.

1013. The Chairperson: OK. Are we happy enough, members? Are there any other questions?

1014. No issues have been raised in connection with clauses 19 and 20. There were a few issues with clause 21, "Controls on free distribution of printed matter": the need for clarity on the powers that councils will have to control the free distribution of printed matter; the difficulty of determining whether a person who is distributing leaflets is aware of a designation; the need for powers of investigation for councils; clarification of the land designation process; the introduction of fixed penalties for failure to adhere to conditions set for leaflet distribution; the need for designating areas for distribution; and concern regarding restriction of religious and cultural activity and appropriate equality proofing.

1015. I know that I have gone through those quickly, but you are familiar with them.

1016. Mr Gray: Those are quite precise comments. Clarification of the powers that are available will be covered in comprehensive new guidance, subject to full consultation. The Bill makes it clear that it is an offence to distribute, commission or pay for the distribution of free literature without consent in a designated area. Those who commission such literature are equally liable.

1017. There is a comment that the Bill makes a distinction in the offence of distributing leaflets without consent between those who distribute the leaflets and those who cause another person to distribute the leaflets. Each council is required to keep a copy of street litter control notices and orders designating land where free literature cannot be distributed without consent on a register that must be available at all reasonable times for public inspection. In addition, each council will need to ensure that they adequately publish details of land in their areas that has been designated. Details and information related to that matter will be covered in the guidance documents.

1018. In the case of a person who commissions the distribution of leaflets, the burden of proof is less onerous. It was commented that, in order for council enforcement officers to successfully determine the identity of a person responsible for commissioning leaflets, councils will require powers of investigation. The provisions of the Bill are being inserted into the Litter Order. Article 20 of that Order provides district councils with a general power to obtain information. So, we feel that the matter is already covered in that Order. A point was made about clarification, all of which will be covered in our guidance document, subject to full consultation.

1019. The next point concerned the fact that a council may grant consent, with conditions, to prevent defacement. There was a request to provide further clarification on that; again, that will be covered in the guidance document. Jackie was looking at the next point, which was to do with making it an offence to fail to adhere to the conditions set for leaflet distribution. That is quite complicated.

1020. Mr Lambe: I will try to simplify that one. Essentially, the Department's approach is that, if someone has consent from a council to distribute free literature and that consent has a number of conditions attached to it, any breach of any of those conditions will mean that that person is no longer complying with the consent and is, therefore, guilty of distributing free literature in a designated area without consent. Therefore, we did not feel that there was a need to specify that breach of a condition will lead to further action by the council. It is automatically implied that that will happen if people do not comply with the consent that they were granted by the council originally.

1021. Mr Gray: We are issuing guidance on this. The next point is concern about the potential restriction of religious and cultural activity and appropriate equality proofing. The Bill already makes it clear that material distributed for charitable, religious or political purposes is exempted from this requirement, so that is not an issue.

1022. The Chairperson: Take, for example, a small business that wants to advertise. They print material and set it on cars. We have talked about this before, but, in a nutshell, is there provision to allow that, or are we looking at stopping it altogether? Will you clarify that?

1023. Mr Gray: There is provision to allow that. We are trying to deal with people who stand outside the front of CastleCourt handing out leaflets, and five minutes later, the area is covered in them. If the Bill goes through, people will need the approval of the district council to do that. It will be up to councils to decide how they go about that.

1024. The Chairperson: So, anyone who wants to distribute leaflets in any way, whether on cars or wherever else, will have to get approval.

1025. Mr Gray: They will have to get consent.

1026. Mr Dallat: I am trying to understand this. So, it will be the council, rather than the Bill itself, that decides whether or not this is against the law. The Bill merely gives councils the power to decide.

1027. Mr Gray: The person will have to get permission from the council to distribute material within the council area.

1028. Mr Dallat: I overheard the remarks on the far side of the table about the exemption of political literature; that will go down well with the public. One of the biggest problems in designated areas is access for disabled people, such as wheelchair users. If a council bans the handing out of literature, which presumably directs people to particular restaurants, shops or whatever, surely we will get a proliferation of sandwich-board men, fingerposts and all the other

obstacles that are there already and that councils and the Department do nothing about. We will stop pieces of literature falling but replace those with obstacles that are far worse for people who have difficulty negotiating around them.

1029. Mr Gray: I would be surprised if the council decides to ban the distribution of leaflets. The council is likely to tell people that there are conditions to distributing literature. We do not want to see literature lying all over the ground. It is difficult to know until the thing starts to work in practice. It is not seen as a measure for councils to ban leafleting. It is more about trying to control it.

1030. Mr Dallat: Councils are responsible for promoting musical events, cultural events and a whole lot of other things that are intended to make tourists happy. There is no way to do that other than to hand out their little glossy A5s or whatever. That happens all over the world, and there is not a problem with it.

1031. Mr Gray: Yes.

1032. Mr Weir: There may be a misunderstanding here. It is not a question of councils having the power to simply impose a blanket ban; it is that anyone looking to do this will require the council's permission. A council could be in legal difficulty if it produced a blanket ban, because it would be judicially reviewed. Presumably, the gist of it is that each application will be treated on its merits.

1033. Mr McGlone: You mentioned CastleCourt, where a few people, maybe from overseas, try to get a lock of pennies by dishing out leaflets for different things. I am intrigued by the outworking of this. Prime locations are always used for handing out leaflets. I am trying to figure this out in my head. If, say, two, three, four or five businesses that are in competition all decide to leaflet at a particular location because it is advantageous to their business, the council could do only one thing, and that is grant permission to all those businesses. It could not grant permission to one business and not the others, could it?

1034. Mr Lambe: The council must be in a position to justify whatever decision it makes on an application for consent to distribute literature in a designated area, and, in the interests of equality, those decisions must be entirely transparent. If one person were granted consent and another who felt equally justified in applying were refused, it would be open to that person to have the council decision judicially reviewed. Councils need to take into account factors such as potential follow-on costs from any decision, as they do with any current decision-making powers.

1035. I can see the difficulty in the situation that you outlined, but the designation mechanism is primarily a control and management mechanism. Councils can use it to better control and manage the distribution of free literature in designated areas that have proven to be a particular problem in the past. It is not designed to allow councils to impose a complete ban.

1036. Mr McGlone: That is my point. We seem to be getting to the nub of the matter. Essentially, it is a mechanism by which councils can approve nearly everything that comes their direction, whatever that might be. If councils do not approve virtually everything that comes their direction, it is going to be a handlin'. Very few businesses have the financial wherewithal to take judicial reviews, but there is always the Equality Commission and all those sorts of bodies. In essence, all that the provision will do is introduce a formal process that will approve virtually everything that comes the direction of councils.

1037. Mr Lambe: Through that formal process of registration, the councils have additional information to take action over litter. They will have the names and addresses and whatever else they need to secure prosecutions. At the moment, the situation is uncontrolled, and, unless a

person is caught in the act, it is difficult to prosecute either the promoter or other vested interests.

1038. Mr McGlone: If someone applied for permission and the council later found them to be guilty of the disposal of litter as you have outlined, could that be used as a reason not to give that person permission again?

1039. Mr Lambe: It is in the Bill that, if a person is guilty of such an offence, they can be banned for a period and will not receive further consent to distribute in the area. So, if someone gets consent but does not comply with the agreement and is found guilty of breaching its terms, councils can take that into account when considering future applications.

1040. Mr T Clarke: I understand why you are trying to control who can distribute leaflets and why people must stick to guidelines. However, if leaflets are dropped, surely responsibility lies with the person who dropped them rather than with the person who distributed them. Who picks up the tab then?

1041. Mr Gray: In such a case, the person who dropped the litter will have committed an offence.

1042. Mr T Clarke: The person who is distributing the leaflet is not going to drop it, because he is there to promote something. You said that, if there is a problem, the council will know who to get back to. However, a promoter pays to have that literature printed and pays for someone to distribute it, not drop it. So, how will that give councils something to go back to?

1043. The Chairperson: To be fair, Mr Clarke, if you have permission to distribute leaflets, you have a responsibility to distribute them and look after where they go. Somebody has to be held accountable.

1044. Mr T Clarke: There is no accountability mechanism in this.

1045. The Chairperson: No, there is. If you request permission from a council to distribute leaflets, you have a responsibility for those leaflets.

1046. Mr Gray: I think that the council would be at liberty to tell people who want leaflets distributed that they should be telling those handing out the leaflets to say to people, "Do not drop them."

1047. Mr T Clarke: We live in the real world.

1048. Mr Gray: I am trying to put it to you in practical terms. It is really just an additional measure to try to reduce litter.

1049. Mr T Clarke: That is absolute nonsense.

1050. The Chairperson: Can you come back to us in writing on that? We could be here all day. We will just clearly outline how you propose to deal with that. It is a valid point that people walk off and fire leaflets away.

1051. Mr Savage: Most of us are involved in the political world, and, in two or three months' time, everybody will be handing out leaflets. We had better be very careful how we do that. I agree in theory with what the two men at the bottom of the table are saying, but, in practice, will it really work? Somebody is going to have to say, "That is the way it is". The principle is

right, but how will it work? I am thinking of the wee man standing on the corner handing out religious tracts. That happens every day of every week, and we have to be very careful about those things. Those people are there with good intentions, as are the people who are hand out political leaflets. If we pass something, we have to be careful to ensure that we can make it stick.

1052. Mr W Clarke: Religious material is exempt.

1053. I do not think that this is complicated. At the end of the day, councils will draw up a policy on the distribution of material. Certain conditions will be imposed on the business or on the promoter, and they will have to abide by them. They may have to enter into an agreement whereby they clean the area every hour or whatever. I think that it is quite simple, to tell you the truth. It happens with fast food trailers and the like; the council imposes the condition that those running them must clean up the area afterwards.

1054. Mr Gray: I could not have explained it better myself.

1055. The Chairperson: That is a typically common-sense approach.

1056. Mr Weir: I wonder whether we are missing a trick here, because the second bit of the proposed new article is on the designation of areas. We are looking at a situation where there is blanket cover, but presumably councils could use the power in very discrete areas where there has been a specific problem. In that way, they could try to exclude leafleting in a particular area. They might also be worried about contamination in, for example, an area just beside a particular beauty spot that they wanted to ensure was kept pretty clean. There would, presumably, be quite geographically limited designations. You may not necessarily be that worried about people handing out leaflets in town centres, but you may well want things to be kept fairly tidy outside a particular building because it is a tourist attraction, for instance.

1057. Mr Gray: They would have the discretion to do that.

1058. Mr T Clarke: Can we get a legal opinion as to whether councils could restrict or refuse people if they get this power? It seems to me that we are passing on another burden to councils. If it comes to a challenge, the council will be burdened by having to refuse or approve.

1059. Mr W Clarke: Councils would have a policy.

1060. The Chairperson: On the legal side —

1061. Mr Gray: Paragraph 3(3) of proposed new schedule 1A to the 1994 Order, as inserted by clause 21, states:

"A district council need not give consent under this paragraph to any applicant where it considers that the proposed distribution would in all the circumstances be likely to lead to the defacement of the designated land."

1062. The council can, therefore, refuse to give consent if it thinks that a person would be unscrupulous or that it could lead to a place being turned into a mess.

1063. Mr T Clarke: I still think that that leaves councils in a very precarious position. What has NILGA said about that?

1064. The Chairperson: We need to find out about the legal position. Will you do that for us, Mr Gray? I do not see an issue with the wording. In fact, I think that it is a common-sense approach. However, a member has asked a question, so we need to address that.

1065. Mr Gray: What would you like to get a legal position on exactly?

1066. Mr T Clarke: The Bill states that councils may refuse to give their consent for the distribution of printed matter. However, how can they differentiate between one applicant and another? You said that a council could refuse consent if it believed that an applicant might cause a problem. However, how would the council know whether someone is likely to cause a problem unless he or she had actually done so? If councils buy into this, will they be leaving themselves open to a legal challenge by individuals or companies if they refuse consent?

1067. Mr Gray: We will look at that.

1068. The Chairperson: Clause 22 is entitled "Fixed penalty notices: supplementary". The Examiner of Statutory Rules suggests that the power in the clause should be subject to draft affirmative procedure. Will the Department draft an amendment to reflect that?

1069. Mr Gray: Is that on affirmative resolution for fixed penalties?

1070. The Chairperson: Yes.

1071. Mr Gray: The Committee already raised the same point about clauses 4 and 7. That is presently with the Minister, who needs to approve the answer.

1072. The Chairperson: You will bring along an amendment. Thank you.

1073. The Chairperson: Clause 23 deals with the exclusion of liability. No issues were raised in relation to this clause. Clause 24 deals with abandoned shopping and luggage trolleys. Members welcomed this clause. However, they suggested that the provision be extended to cover cages and baskets left in public places. Mr Gray, do you wish to comment quickly on that suggestion?

1074. Mr Gray: We viewed that as quite a significant proposal. We had not considered it, and it would require detailed consideration and an amendment to the Bill. Furthermore, the proposal has never been consulted on. We talked about it recently and agreed that there are also practical issues involved. As you said, for example, baskets from local supermarkets have no identification marks. However, something could be brought forward in future. We would not have the time to do so now. That is a significant proposal, in our view.

1075. Mr T Clarke: I disagree. Shopping trolleys lying in hedges and rivers are easily identifiable.

1076. Mr Gray: We are talking about shopping baskets.

1077. The Committee Clerk: The proposals cover trolleys. However, the stakeholders suggested that they should also cover baskets.

1078. Mr T Clarke: I thought that you meant that trolleys could not be covered in the proposals.

1079. The Chairperson: No, baskets are not covered.

1080. Are members happy enough with that explanation?

Members indicated assent.

1081. The Chairperson: Clause 25 is entitled "Section 24: transitional provision". No issues were raised in relation to this clause.

1082. Robert, we have to move on. However, we will no doubt get you back to finish this.

1083. Mr Gray: Are we not doing Part 5?

1084. The Chairperson: We could start Part 5, but we would be here to 5.00 pm. Thank you very much.

9 December 2010

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)

Mr Trevor Clarke

Mr Willie Clarke

Mr John Dallat

Mr Peter Weir

Witnesses:

Ms Helen Anderson

Ms Hazel Bleeks

Mr Paul Byrne Department of the Environment

Mr Jackie Lambe

Mr Denis McMahon

Ms Jennifer Stewart

1085. The Chairperson (Mr Boylan): We welcome Denis McMahon, Paul Byrne, Helen Anderson and Jennifer Stewart from the Department of the Environment (DOE). They are with us to discuss the High Hedges Bill.

1086. We previously got to clause 5, so we will start at clause 6. A few questions were asked about that. We will go through each clause and get a response from you. Hopefully, Mr Weir will be back by that time, so we can try to get agreement on the clauses. [Inaudible due to mobile phone interference.] We will revisit clause 6 and the issue of appeals against remedial notices and other decisions of councils. I remind members that guidance on that clause is being drafted. The Department is engaging with the NI Courts and Tribunals Service and has held discussions with the Valuation Tribunal and taken account of its concerns. Trevor Clarke had asked a question about that.

1087. Mr T Clarke: Although we formally accepted clause 5, as we discovered later, the information on it may not have been accurate. Perhaps that is the best way to put it. I would prefer that we revisit clause 5 before going to clause 6 so that we can clear up any issues with that information.

1088. The Chairperson: We would like clarification on clause 5.

1089. Mr Denis McMahon (Department of the Environment): The key thing about clause 5 is that it is a normal provision for the purposes of providing flexibility in the event that circumstances change between the time that a notice is issued and when it takes effect. For example, if a

complainant moves house and the subsequent owner decides that they do not mind the height of the hedge or they would like it to be higher because they want a bit of privacy, the flexibility in that situation would be allowed.

1090. Mr T Clarke: I do not want to prolong this issue any longer than necessary. I do not want to rehearse what was said at the previous meeting, but, given what was said then, we could probably understand it and reach an agreement. However, we did not actually explore it, because a lot of what we talked about before we got to clause 5 was about who pays and at what stage someone does not pay. When I study it further, I find a problem with it. If there is an agreement, the complainant has paid the council to take action after following all the council's informal guidance. The council then serves notice and takes money off the person with the high hedge. If an agreement is then reached, even with a withdrawal notice, does the complainant still get their money back at that stage? Can you clarify that? Where are we with fees if there is a withdrawal notice?

1091. Mr McMahon: That would depend on the specific circumstances. One of the problems is that any of those notices will apply over the longer term. Therefore, the issue is not just about cutting down the hedge; it is about the maintenance of the hedge. For example, someone may get a notice because that is the only way to resolve the dispute, and the hedge is cut down accordingly and is maintained to that level. Someone else may move in a year later and say that they do not mind the hedge or want it higher. The point is to allow such flexibility in those situations. In that case, if it was a year later, would it be appropriate to pay the complainant? The complainant got what they wanted and got the issue resolved while they were there.

1092. Mr T Clarke: They got it resolved, but at that stage, they have paid already. Is there still a provision for the complainant to get their money back?

1093. Mr McMahon: There is a provision for the complainant to get their money back anyway at the discretion of the council, if the circumstances provide for it. However, I stand to be corrected on that. The point that I am making is that it would not necessarily be automatically linked with the change in the notice, if you know what I mean.

1094. Mr T Clarke: OK; I am content with clause 5.

1095. The Chairperson: We agreed clause 5 at the previous meeting, but we wanted an explanation of it. Mr McGlone is not here, but both he and Trevor Clarke raised an issue about clause 6, which deals with appeals against remedial notices. Unfortunately, we cannot agree it, but I want clarification on the point that was raised. Can you remember back to that issue, Mr Clarke?

1096. Mr T Clarke: It was because there was confusion about clause 5. Even though I am satisfied with the explanation that I got today, I wonder why there would be an appeal against a decision, when, under the provisions that clause 5 will introduce, everybody should be content with the relaxation or withdrawal of the notice. Why would anybody appeal against that?

1097. Mr McMahon: Without having been at the previous meeting, and I apologise for that, my understanding is that the concern is that someone may make a mistake and put something incorrect on the remedial notice. Why should that be allowed to happen, with the result that there would be a lead-in to a big appeal process? The concern was that the explanation that had been given previously was to do with mistakes potentially happening with the notice. I will perhaps take this back a step: what I am trying to say is that, no matter how tightly we define it, there will have to be an element of judgement. We can, and will, give a lot of guidance, and we will work with councils on that. Ultimately, however, judgements will have to be made about the issues on a case-by-case basis. It all means that, if a council makes a judgement, a notice will

need to be issued. The clause really just allows an appeal against that judgement, because people may disagree and say that the guidance has been applied incorrectly.

1098. The Chairperson: It is an appeals mechanism.

1099. Mr McMahon: It is a normal appeals mechanism, absolutely.

1100. The Chairperson: The person is entitled to appeal against it, and that is what we are putting in.

1101. Mr McMahon: Yes.

1102. Mr T Clarke: I understand the appeal against the remedial notice, but I cannot understand the appeal against the withdrawal.

1103. Mr McMahon: That goes back to the example that you gave earlier. For example, a complainant may have gone through the whole process and got to a certain point. The council may suddenly say that something has changed and that it is going to remove the remedial notice. The complainant might ask why the council suddenly changed its mind, especially after they went through the whole process and got where they needed to get to. At that point, if the complainant was not satisfied, they could challenge that decision.

1104. Mr Paul Byrne (Department of the Environment): The Bill is an attempt to cover all circumstances. For instance, if the complainant sells up to a commercial concern, which puts in a car park and asks the council to alter the remedial notice, the hedge owner can say that the remedial notice no longer applies and that they wish to withdraw it. The problem is that, for planning purposes, the commercial concern may wish the hedge to be maintained for the car park. There is therefore a need to allow an appeal against that decision.

1105. Mr McMahon: The key point to get across is that we do not expect that provision to be used. It is a normal catch-all in the event that a complainant makes a complaint, which goes through to remedial notice, and, for some reason, the council decides that, according to its guidance, the remedial notice should no longer apply. However, the complainant might say that it should still apply. The point is really just to allow the complainant or the hedge owner to say that that notice should or should not apply.

1106. The Chairperson: It is a difficult one to explain, to be fair.

1107. Mr T Clarke: Given what is in clause 5, if a mistake with the withdrawal is made under that clause, people need to be given the entitlement to appeal what they have determined is a wrong decision.

1108. Mr Byrne: That is exactly it.

1109. Mr T Clarke: My difficulty is that I cannot understand how people would ever withdraw. I am not trying to revisit the clause, but once people have gone through the whole process and served notice, I cannot see why they would ever want to appeal.

1110. Mr McMahon: One of the challenges is to understand that, with any of the notices, the issue is not just the initial cutting down of the hedge. The point is that notices could be in place for a number of years, so there has to be a certain amount of flexibility, because a lot could change. As I said, the hedge owner could move, and someone else could say that they think that there is now a different set of circumstances.

1111. The council could review its policy and say that, in the light of the most recent guidance, a notice that it issued a year ago does not apply any more. In that case, the council could decide that the notice no longer applied and the complainant who was still living at the same address could protest. The point is to allow that degree of flexibility.

1112. Mr T Clarke: It gives a degree of cover, I suppose. If a council makes a wrong decision, I can see that the complainant has protection against the council as well.

1113. Mr McMahon: That is exactly it.

1114. Ms Helen Anderson (Department of the Environment): That is particularly the case, given, as you will recall that the Bill deals with people's personal enjoyment of their property, which includes hedges. It provides a degree of cover to ensure that everyone's human rights are provided for in any eventuality.

1115. The Chairperson: You have seen examples of the complaints that people make and the situations that they can get into. People will go by the letter of the law when they make complaints, and we have to have those mechanisms in place for challenges and for protection. Are you happy enough with that explanation, Mr Clarke?

1116. Mr T Clarke: Yes.

1117. The Chairperson: I will go through the clauses, and, hopefully, Mr Weir will be back. I just want clarification on some points. Clause 7 deals with the determination or withdrawal of appeals. Thankfully, no issues were raised in the previous meeting about that clause. Clause 8 concerns powers of entry. I remind members that, where calls are concerned, council officers should be permitted to enter any land to enable proper assessment and that notice should have to be given only where necessary. The Department has indicated that, given the need for respect for privacy and family life, reasonable notice of intended entry needs to be given to an occupier of land. The standard practice is to give 24 hours' notice. The Department also noted that it is not necessary to give notice to an owner who is not an occupier of the land in question. Notice does not have to be given if an officer is invited on to land. That seems pretty clear. Do members have any comments to make about the powers of entry?

1118. Mr W Clarke: Will a code of conduct be drawn up that sets out guiding principles?

1119. Mr Byrne: That will be in the guidance. This issue is to do with human rights, so there will be a code of conduct.

1120. The Chairperson: Clause 9 concerns offences. I remind members that concerns were expressed that problems will arise in determining which owner/occupier should be taken through the courts. It would be burdensome to take everyone concerned to court. The Department replied that it would not be appropriate to single out one individual, as the identification of an individual where several people may be involved could lead to unintentional discrimination. The clause ensures equal treatment of all. Several respondents called for the use of a fixed penalty notice option as an enforcement tool in the event of non-compliance with a remedial notice. The Department has, obviously, discounted that option, as there is a risk that hedge owners could pay the fixed penalty and not address the problem of the hedge, which is possibly the costlier element, and after that, there would be no comeback for councils.

1121. Mr McMahon: Again, the latter point refers to the fact that such issues take place over a long period. If I go back to the former point, I should say that we would not necessarily see taking action against multiple owners happening all the time. Not many of those disputes happen between groups of people, but, in the event that there is a dispute about the location and

ownership of a hedge, the Bill provides enough cover to ensure that we are not missing anybody who should be included. We have a concern that picking on an individual in such circumstances could create challenges. It would bring us back to the appeals process.

1122. The Chairperson: Clause 10 deals with the power to require the occupier to permit action to be taken by the owner. No issues were raised about that. Clause 11 is "Action by council". I remind members that concerns were expressed about the fact that the Department will expect councils to act in default where a property is vacant. However, the Department indicated that there would be no obligation on councils to act in a default situation, as it is a discretionary power. In response to suggestions that it would be cheaper to remove a hedge where landowners could not be traced, the Department stated that the removal of a hedge without the hedge owner's permission would constitute criminal damage.

1123. We have concerns about circumstances in which no one is available to be held to account for the condition of a hedge. I am happy enough with the explanation that has been given. Do members have any comments to make on that?

1124. Hopefully, we will also be able to deal with the vacant property issue. Most owners of those properties should have been identified through Land and Property Services by now. However, there is a gap and, hopefully, through this piece of legislation, we will try to get to —

1125. Mr T Clarke: Chairman, will the part of the clause that refers to "neighbouring land" give councils the power to go on to the land of someone who is not the hedge owner? Am I reading that right?

1126. Mr McMahon: It would be a hedge owner. However, it would be a vacant property, and councils would be able to go on to that property. The issue is about removing hedges; councils can cut down hedges —

1127. The Chairperson: Yes; it would be criminal damage if a hedge was removed without consent.

1128. Mr T Clarke: It says in the clause that councils will have the power to "enter the neighbouring land".

1129. Mr McMahon: That is right. I stand to be corrected, but as I understand it, this clause will give councils the power to cut a hedge down to a height of 2 m. However, they will not be able to remove hedges.

1130. Mr Byrne: In the Bill, the term "neighbouring land" means the land in which hedges are situated.

1131. Mr T Clarke: "Neighbouring" makes it sound as though it is —

1132. Mr Byrne: Yes; it makes it sound like it is the next property. In the Bill, the term "neighbouring land" is defined as the land that contains the hedge.

1133. The Chairperson: Thank you. Clauses 12, 13 and 14 deal with offences committed by a corporate body, the service of documents in electronic form, and statutory charges. No issues were raised about them.

1134. Clause 15 deals with interpretation. I remind members that NILGA expressed a view that the Department should give more detailed guidance as to what it means by "access" in the

context of determining whether a hedge is the subject of a justified complaint. The Department stated that the words "or access" had been removed from the Bill following the public consultation, as the use of those words had caused confusion and uncertainty about the definition of a high hedge. Of course, the jury is still out on what a high hedge is and whether a single leylandii tree should be included. However, we will not debate that.

1135. NILGA also called for guidance on the potential creation of peepholes in hedges and what would be deemed acceptable. The Department stated that guidance will include the issue of gaps in hedges. Do you have any comments to make on that?

1136. Ms Jennifer Stewart (Department of the Environment): We will be preparing detailed guidance for councils to help them through the process. There will also be guidance for the complainant and the hedge owner so that they know what to expect. All the issues that were raised will be covered in the guidance, which should be available before the legislation comes into effect.

1137. The Chairperson: No issues were raised about clauses 16 to 20, which deal with power to amend sections 1 and 2, application to the Crown, regulations and orders, and commencement. No issues were raised about the long title. We will ratify all that when Peter Weir comes back.

1138. Those were all the questions that we have on the outstanding clauses of the High Hedges Bill. Thank you for clarifying Mr Clarke's point. We all had a difficult time getting up here in the snow, and I appreciate your taking the time to come up. Could you please stay so that we can ratify things when Mr Weir comes back?

1139. Mr Byrne: I am here for the next session anyway.

1140. The Chairperson: OK. We now move to our informal clause-by-clause consideration of the Clean Neighbourhoods and Environment Bill. We will go through Parts 4, 5, 6 and 7 now. Members have a copy of the Department's response on the level of Assembly scrutiny that is afforded to powers to change the level of fixed penalties in the Bill. There is also a response from the Committee for Social Development on the Bill. Are members content to note those documents?

Members indicated assent.

1141. The Chairperson: I welcome Hazel Bleeks and Jackie Lambe from the environmental policy division of the Department of the Environment. Denis McMahon and Helen Anderson are still with us.

1142. I remind members that this informal stage is the time to ask questions and seek clarification on the Bill. We will then discuss those points at the formal clause-by-clause scrutiny.

1143. We will start with Part 4 of the Bill, which generally covers graffiti and other defacement. Clause 26 concerns penalty notices for graffiti and fly-posting. I remind members that, although the clause was generally welcomed, several issues were raised. Those included the lack of consultation with small and medium sized enterprises (SME), the cost impacts that the proposals will have on them, the provision of alternative sites by councils, and the issuing of penalty notices to juveniles.

1144. Ms Hazel Bleeks (Department of the Environment): As part of the formal consultation process, we consulted the Federation of Small Businesses and the Northern Ireland Chamber of Commerce. Neither organisation raised any issue on the cost for small businesses.

1145. The Department has acknowledged that a different approach to the issuing of fixed penalties to children and young people is necessary, and we have undertaken to produce guidance for district councils on the issue.

1146. The Department feels that council provision of legal poster sites is a matter for individual councils. There is a difference of opinion as to whether sites should be provided for informal posters. Different councils have different views on that. In some cases, that is an issue for a particular council area. Therefore, we feel that it is a matter for councils to determine, rather than the Department having to require that those sites be provided.

1147. Mr T Clarke: I agree entirely that we should not be forcing councils to provide such sites. In fact, I disagree with there being any such sites.

1148. Mr W Clarke: Obviously, I disagree with Trevor, but that is par for the course. I think that there is an obligation in the legislation that clearly states that councils must provide an alternative site. For this legislation to mean anything, it should be compulsory for councils to provide such sites. We need to table an amendment to clause 26 to that effect.

1149. The Chairperson: If we are going down the route of preventing fly-posting, how can that be enforced? If the council does not provide an alternative site, how can the prevention of fly-posting be enforced? That is a problem that raised its head in evidence to the Committee.

1150. Mr T Clarke: If there is no fly-posting whatsoever, a ban on it might be easier to enforce. There are other methods by which businesses can advertise and that other enterprises can gain from. Fly-posting is a cheap and tacky method of advertising that people have been abusing for many years. We should not be promoting it at all.

1151. Mr W Clarke: What we are trying to do is regulate fly-posting in a controlled manner. On a designated site, someone could pay an income to the council to display their posters or product.

1152. The Chairperson: I think that having the option to do that is fine. That would provide a funding source as well, and it would give the councils the power to allow it if they so wished.

1153. Ms Bleeks: There is absolutely nothing to prevent councils from providing sites in those circumstances, if appropriate. We are saying that we do not think that it should be a requirement.

1154. Mr W Clarke: I think that this point is fundamental. The Department is telling a business owner that it is not allowed to fly-post, but, at the same time, the council says that it will not provide a display unit for the business. I think that that is unfair.

1155. Mr McMahon: We were trying not to give a view one way or the other through the legislation. We felt that, by including that as a compulsory requirement, we might be overriding individual council's wishes. The whole Bill is framed around the perspective that councils are the best people to make these decisions because they know what the local circumstances are. For example, Belfast City Council looked at the issue and had some concerns about providing alternative sites, as that might encourage more illegal fly-posting. Therefore, the point is to try to get a balance. We were not saying that individual councils should or should not take a particular stand, but we were concerned that, if we put that into legislation, it might be overly rigid and would not allow councils the flexibility that they need. That is where we were coming from.

1156. The Chairperson: This does not apply completely, but, to be fair, I think that an element of how this came about is also connected to the advertisements such as one sees on big trucks on the edge of the motorways on the way into town. I know that there is difficulty with planning and even with getting signage itself through planning and so forth, and we are trying to take the burden of responsibility of enforcement in those cases. I am not saying that someone should take a massive 40 ft poster and put it on an alternative site somewhere; I am saying that part of the whole process of going through the Bill is to try to alleviate the pressures that the enforcement section of planning has in dealing with that. Do not get me wrong; I am not saying that it is right or wrong, but that is also part of the problem.

1157. Mr T Clarke: Unfortunately, I am recording that I agree with the Department today. I think that the direction that it is taking is right. You might find that we would criticise it if officials came with a big stick and said that councils must do this, because some councils might choose not to do it and would not want to be told by the Department that they must put up these billboards. Not every village or town in the Province has fly-posting, but if this provision is in the Bill, the Department is saying that councils must provide for fly-posters, whether they want them or not. The way that the Bill has been framed is that the councils have the opportunity, if they want to apply for the site and go through the proper planning process, to do so, and if they choose not to and the people in the area do not want it either, they do not have to do it. I think that we are going down a very dangerous road by asking councils to enforce that provision.

1158. The Chairperson: I am just teasing it out. I am not sending you down one road or the other. Mr Dallat, did you have an opinion on this?

1159. Mr Dallat: I am sufficiently confused. I sympathise to a large degree with what Willie is saying, but at the same time, Trevor also has a point. I think that councils should be encouraged to provide sites. Some of them do so on a voluntary basis, so it is perhaps best left like that.

1160. The Chairperson: We will have a final explanation of that point, and then we will move on.

1161. Mr W Clarke: The difficulty I see is that a particular council could have a great moral issue to consider; perhaps it could be anti-drink. At the same time, a business such as a nightclub may want to advertise. The council could take it upon itself to tell the business that it is not allowed to advertise and that it is not going to put a display unit up. I am not talking about fly-posting; I am talking about a tasteful display unit. The council could regulate what scale that would be, where it would be and whether it would be on council property or wherever. It could have complete control of what it did. I am not saying that there should be big billboards all over the place; I am talking about tasteful units to display or advertise a business. We will tease that out.

1162. The Chairperson: I thought that sufficient explanation had been given at the informal clause-by-clause scrutiny, but I can see that this man will have to come back to us. Thank you for the explanation. Is the Committee content with the explanation?

Members indicated assent.

1163. The Chairperson: Clause 27 deals with the amount of penalty. I remind members that the main concern about this clause is the impact —

1164. Mr W Clarke: Can we go back to the question of whether we are happy with the explanation of clause 26? I am not happy with it.

1165. The Chairperson: I will put the Question on the clause when Mr Weir gets back. I was asking whether we are content with the explanation or whether we want to change it. The Department has explained the issues. If we, as a Committee, want to look at amendments, we

can do that. At the minute, we are just going through what the respondents said and getting explanations and clarification.

1166. Mr W Clarke: OK.

1167. The Chairperson: The main concern about the amount of penalty is the impact that it would have on children and young people. I invite the departmental officials to comment and ask them to confirm that they will include an amendment to make the power in clause 27(5) to change the amount of fixed penalty subject to draft affirmative procedure.

1168. Ms Bleeks: We covered the issue of fixed penalties for children by saying that we will deal with it in guidance, and we appreciate that a different approach is needed. The Department also undertakes to take forward the amendment for the amount of the fixed penalty to be subject to affirmative resolution.

1169. The Chairperson: Thank you very much for that clarification. You clarified the point about the impact of penalty notices on children and young people. I do not think that there are any other real issues with that clause.

1170. Clauses 29 and 30 —

1171. Mr W Clarke: What is the age that children can be given a fixed penalty?

1172. Ms Bleeks: Do you mean the minimum age?

1173. Mr W Clarke: Yes.

1174. Ms Bleeks: The minimum age is 10.

1175. Mr W Clarke: Does that mean that you will criminalise children at the age of 10? Does the Committee not have an issue with that, Chairperson? I certainly have an issue with it.

1176. The Chairperson: You are asking a different question. I am going only by what is in the document and on what we have looked at. However, members are entitled to ask any questions that they want to. The explanation about the age was specific, but you are entitled to seek further clarification, Mr Clarke.

1177. Mr W Clarke: All I am saying is that it is unacceptable to criminalise children at the age of 10. In my opinion, even 16 years of age is borderline, but I suggest that the Department look at a minimum age of 16 rather than 10.

1178. Mr T Clarke: Surprise, surprise: I totally disagree. If we have a problem with litter, regardless of whether the person is aged 10, 16, 13 or whatever —

1179. Mr W Clarke: We are dealing with graffiti.

1180. Mr T Clarke: OK, graffiti — it is still the defacement of someone else's property. I am not trying to stray from the subject, but, over the past number of months, young people have been used to orchestrate violence on the streets of our Province. Why should those young people be treated any differently from someone who has turned 18? If they have been involved in certain behaviour, which, in this case, concerns graffiti, they should be punished. I have children of my own. If any of them came home with a fixed penalty because they had been involved in

something like that, I, as a parent, should be responsible and pay it. Why should we wrap them out in cotton wool? If they are guilty of committing a crime, they have to be penalised.

1181. Mr W Clarke: Fair enough. If you are going to go down that line, make the fixed penalty out to the parent rather than to the child.

1182. Mr T Clarke: That is fine. I would probably accept that.

1183. The Chairperson: I completely understand. I remind members that we are going through the clause-by-clause analysis document. No comments have been made on some of the clauses. Members are entitled to ask any question on any clause, and this is the place to do that. For clarification, does the age issue tie in with this Bill or other legislation?

1184. Mr McMahon: We have worked closely with the Department of Justice and have based these elements of the Bill on the wider approach that is taken on the age of criminal responsibility and so on. However, if the Committee has specific concerns with that approach, we are obviously happy to look at them. We have sought to base this aspect of the Bill on the wider approach to criminal justice; we have not tried to introduce a new approach.

1185. The Chairperson: That is a valid point. Can we look at the question of who the fixed penalty is issued to?

1186. Ms Bleeks: That could be looked at in the guidance.

1187. The Chairperson: That would be a better idea, and I think that the Committee would agree with that. Obviously, someone has to take responsibility, but, as Trevor Clarke said, there is a problem. Some of the behaviour involves young children; indeed, I have seen some throwing snowballs, which they get warnings for. They might be throwing snowballs at cars, but it does not matter what the behaviour is; it is antisocial behaviour, and it is happening at the minute. We should look at the element of who receives a fixed penalty and who is responsible for it. Can you bring something back on that? We might be happy to go down the route of having that in the guidance.

1188. Mr McMahon: Yes.

1189. Mr W Clarke: I agree with you and with Trevor that some sort of deterrent is needed. A better option for the age group between 10 and 16 would be some sort of course on, for example, litter or graffiti. They could go to a workshop or something similar with their parents.

1190. Ms Bleeks: That will be looked at in the guidance. We are not suggesting that issuing a fixed penalty to a child is our first option. However, it is there, and it can be used in certain circumstances. That said, there are other steps that we would want to take prior to issuing a fixed penalty.

1191. Mr W Clarke: I am happy with that explanation. You would get more out of it, the child would get more out of it, and the parents would obviously get more out of it.

1192. The Chairperson: The legal question of issuing a penalty to a parent would need to be looked at.

1193. Are members content with that clarification?

Members indicated assent.

1194. The Chairperson: Clauses 29 and 30 deal with penalty receipts and guidance respectively. No issues were raised on those matters. Members can ask for points of clarification on those clauses. I see that no members want to ask any questions, so are you content with those clauses?

Members indicated assent.

1195. The Chairperson: Clause 31 deals with defacement removal notices, and some concerns were raised about those. For example, concerns were raised that the proposed timescale of 28 days for removal is too long. There were also concerns about the need for a power to prosecute the owner of defaced street furniture, as well as on the differences between the Bill's proposals and article 18 of the Local Government (Miscellaneous Provisions) Order 1985, which gives councils the power to remove graffiti and fly-posting.

1196. Ms Bleeks: I will talk about the comments that were made about the 28-day period being too long. It is important to make a distinction in that. There is already provision in legislation that allows councils to remove graffiti and fly-posting from property. In certain circumstances in those cases, councils can act immediately. The purpose of the defacement removal notice provisions is fairly specific. They aim to encourage the owners of street furniture, that is, statutory undertakers and so forth, to work with the councils to remove defacement from their property. In those circumstances, we think that 28 days is appropriate to give them notice asking them to remove that defacement. They will be told that if they do not remove it, the council will come in and remove it.

1197. Mr T Clarke: I may have missed something, not necessarily on that point, but on wider issues. Are you saying that, if I owned a redundant property and someone put a advertisement for a nightclub on it, as the owner, I would be responsible?

1198. Ms Bleeks: No. Privately owned property will not be affected. It refers only to —

1199. Mr McMahon: Electricity boxes, for example, would be covered.

1200. Mr T Clarke: In that example, would the utility company be responsible?

1201. Ms Bleeks: Yes. We are trying to —

1202. Mr T Clarke: Surely that is unfair. Should it not be the responsibility of the person who fly-posted illegally on the utility's property?

1203. Ms Bleeks: It is also in the utility's best interest to make sure that their property is kept free of that defacement.

1204. Mr T Clarke: I am concerned that we are putting an onus on a utility company, if we are using them as an example, to keep their property free of that defacement, even though the person who put it there is the one who committed the offence.

1205. Ms Bleeks: Yes, and that will not affect that person's being prosecuted for the offence. The two things will work in tandem. It will not detract from taking action against the person who committed the offence.

1206. Mr McMahon: It is not an either/or situation.

1207. Mr T Clarke: I am not against nightclubs, but the other problem that I have with this 28 days' provision is that, although many people defend fly-posting, most of it is for events or concerts or whatever is coming up. Most posters are up, and the events are over before the 28 days are up anyway, so the impact of allowing the fly-posting to continue has not been lost. There should be no time limit at all. Fly-posting penalties should be immediate.

1208. Ms Bleeks: You are right, and, in those circumstances, when new fly-posting goes up, the existing legislation, which allows councils to act immediately, will come into play. A defacement removal notice under the 28-day notice regime is specifically targeted at the removal of the remnants of old posters and stickers that have built up over time, and the aim is to encourage the utilities to work with councils to remove them. However, new fly-posters will still be targeted immediately under the existing legislation.

1209. Mr T Clarke: I am confused too, sorry. I apologise for that.

1210. The Chairperson: The power to prosecute the owner is needed. What is the difference between the Bill and the Local Government (Miscellaneous Provisions) Order 1985?

1211. Ms Bleeks: That Order is the other piece of legislation that I was referring to; it is the existing legislation that allows councils to act immediately.

1212. The Chairperson: Are there any other questions? Are members content with that explanation? I apologise; will you clarify the need for a power to prosecute the owner of defaced street furniture?

1213. Ms Bleeks: That would fall under the defacement removal notice procedures, and, in those circumstances, we do not feel that it would be appropriate to have the power to prosecute the owner. Coming back to what Trevor Clarke said, that person is a victim to some extent, and we do not think that they should be prosecuted.

1214. The Chairperson: No problem. I just sought clarification on that. Thank you. Are members content?

Members indicated assent.

1215. The Chairperson: Clause 32 deals with the recovery of expenditure. I remind members that concerns were raised that the clause would reduce the councils' powers to deal with fly-posting. Are there any comments on that?

1216. Ms Bleeks: I am not sure how that clause can be seen as reducing the powers of councils to deal with fly-posting.

1217. The Chairperson: On clause 32, NILGA commented: "The recovery of costs for the removal of the notices is not an appropriate substitute for powers of prosecution, which would act as a better deterrent and allows a more robust control measure to deal with the problem of fly-posting."

1218. Ms Bleeks: Those powers are not an appropriate substitute, nor are they intended to be a substitute. There is no reason why the council cannot remove the defacement and recover the costs. Both approaches can be followed. We are seeking to give councils the power to take prosecutions for fly-posting. They do not currently have such powers, but we are seeking to provide them.

1219. The Chairperson: Thank you. These are issues that were raised and on which we are seeking clarification.

1220. Mr T Clarke: I welcome councils' being given more powers, but I am nervous that it may be a bit like the on-street drinking regulations. Sometimes, the problem is in giving councils the power to enforce those regulations. We would need to consider the level of fines that are available, because, if we look at the cases of on-street drinking in any of our boroughs, it costs the councils almost four times more to take a person to court to get them fined than is returned in that fine. I do not know how that conversation will be had, but I am concerned that another burden may be created for councils by encouraging them to prosecute at a cost that, compared with the fine that is levelled, is prohibitive.

1221. Ms Bleeks: It is already an offence to fly-post, so we will not be creating a new offence. We will really only be giving the council the power to take prosecutions for that offence. Therefore, the levels of fine and so on are already in legislation; they are not in the Clean Neighbourhoods and Environment Bill. That is provided for in planning legislation. Councils have asked for, and are very keen to get, those powers.

1222. The Chairperson: Are members content with that explanation?

Members indicated assent.

1223. The Chairperson: Clauses 33 to 35 deal with guidance, appeals and exemption from liability where defacement removal notices are concerned. No issues were raised about those clauses. Are members content?

Members indicated assent.

1224. The Chairperson: Clause 36 deals with the sale of aerosol paint to children. I remind members that there was general support for this clause. However, some respondents wanted the age restriction raised to 18, and some had concerns about enforcement. Youth groups were also concerned about the impact of the regulation on children. Do you wish comment on that?

1225. Ms Bleeks: I will just reiterate what is stated in the analysis table, which is that there has been some debate about whether 18 or 16 is the more appropriate age. Having looked at the issue, the Department feels that 16 is the more appropriate age. People of that age may be homeowners or vehicle owners, and they may have a legitimate need to buy those aerosol paints, so they should not be excluded from doing so.

1226. I know that the children's organisations had some issues, and they said that we were making an assumption that children under 16 were the main perpetrators of graffiti. Although we do not have any local evidence that we are able to draw on, evidence from elsewhere certainly suggests that the vast majority of graffiti is actually done by young males aged between 11 and 16. Therefore, we think that the ban on under-16s is appropriate.

1227. Mr T Clarke: My views on the issue are probably more in line with NILGA's. I think that 18 is an appropriate age. Young people are still juvenile at 16. We want to remove the temptation, so I believe it would be better if those aged 18 and under were banned from buying aerosols.

1228. Ms Bleeks: We thought that that would be unduly restrictive. People can legally own a home or a vehicle at 17, yet they would not be able to buy aerosol paint for a legitimate purpose.

1229. Mr T Clarke: If you took a sample of the number of people who are homeowners at 17, you would find that it is very small. That is a weak argument for not banning under-18s from buying aerosol paint. Most people do not fly the nest until long after they are 18, 20 or whatever.

1230. The Chairperson: Some fly it earlier. If someone needed to fix their car, they would not be able to buy an aerosol to spray it. However, I understand where Mr Clarke is coming from. Are there any other comments on that?

1231. Mr W Clarke: I agree with Trevor. I think that the age should be 18. That is a first: Trevor and I agreeing on something. You said that there are no local data, but you drew on a reference to a report that the London Assembly produced. Across the water, the age is 18. That seems like a bit of contradiction.

1232. Ms Bleeks: Across the water in England and Wales, the legal age to buy aerosol spray paints is 16.

1233. Mr W Clarke: What about in Scotland?

1234. Ms Bleeks: I do not know.

1235. The Chairperson: It does not matter what is done elsewhere. We need to find out what we want to do here.

1236. Mr W Clarke: There are no local data, so we are drawing on evidence from across the water. I am sorry; I thought that the age was 18. You are targeting 16 and 17-year-olds by saying that they are causing the graffiti, so we are going to ban them from having aerosols.

1237. The Chairperson: We do not have enough members present to make a decision. We could, however, consider proposing an amendment to that clause at some point.

1238. Mr T Clarke: We would not necessarily need an amendment if we could get the Department to agree to change the clause. I just know by looking at the officials today that the Department would be flexible.

1239. The Chairperson: That is very considerate of you, Mr Clarke. I do not know whether that is the impression I get. Do you want to comment on that?

1240. Mr McMahon: We will happily look at it. From a pragmatic point of view, I certainly hear what members are saying. As a parent of a 17-year-old, I could probably go either way on the argument. However, our view is that it might seem odd if people who are old enough to have a driving licence cannot buy an aerosol can.

1241. Mr T Clarke: They might be old enough to drive, but they still cannot get into some nightclubs until they are 21.

1242. Mr McMahon: I accept the point. There is a range of age restrictions, and we understand that. We are happy to have a look at that and to come back with recommendations.

1243. The Chairperson: You need to consider prospective young artists and everyone else.

1244. Mr McMahon: That is a really good point.

1245. The Chairperson: Can you come back to us with more data on that?

1246. Mr McMahon: Yes.

1247. Mr W Clarke: If a person attends a technical college or a school, there may be a licence for them to obtain as part of their coursework or something. That is a safeguard.

1248. Mr McMahon: We could have a look at what mechanisms might work. Speaking off the top of my head, I could not say whether a licence would work, but there must be some way of —

1249. Mr T Clarke: The offence is to sell, not to possess.

1250. Ms Bleeks: That is right. There is nothing to stop an adult buying —

1251. Mr T Clarke: A college could give an aerosol to a 15, 14 or 13-year-old for whatever activity they are doing, but we are trying to prevent retailers from selling the paint. The chances are that someone who is under the age of 18, which is what I would like to see, will use it lawfully because they have been given it for a purpose, instead of having been sold it for misuse.

1252. Ms Bleeks: That is right. There is absolutely nothing to prevent an adult from purchasing aerosol paint and giving it to —

1253. The Chairperson: There are no more budding Banksys — is that his name? — or graffiti artists out there any more. We are doing away with all that. Thank you for that explanation.

1254. Clause 37 deals with the unlawful display of advertisements. Some concerns were raised about this issue, including the comparison with approaches that are taken in England, a lack of enforcement by Planning Service and prosecution powers for councils. I mentioned the issue of enforcement. There is no doubt that it is a big problem.

1255. Ms Bleeks: We agree that enforcement is a big problem. As I said, councils are keen to be able to tackle it. That is why the Department wants to bring forward legislation that will give councils the power to take prosecutions. Unfortunately, that is not currently happening, but our intention is that councils will have those powers and will be able to take prosecutions for fly-posting.

1256. The Chairperson: Regardless of whether somebody agrees with the advertising, we are bringing in laws for people to adhere to, and then other people —

1257. Mr T Clarke: That is not so much to do with fly-posting.

1258. The Chairperson: I know. All that I am saying is that we raised the issue of people getting away with advertising. I want to be clear that everybody is on a level playing field. You are right: enforcement is definitely an issue, but the point is about how we nail that down in legislation.

1259. Ms Bleeks: Are we talking about wider advertising as opposed to fly-posting?

1260. The Chairperson: It was raised about this clause in particular. I am only raising it. If I adhered to the law, but somebody else was advertising, no matter what way they were advertising, it could still be illegal. Therefore, it is something that we certainly need to look at.

1261. Ms Bleeks: We are looking specifically at fly-posting and trying to disentangle it from wider types of advertising. There are a couple of reasons why we are not looking at the wider types of

advertising, but the main one is that, very often, advertising other than fly-posting is linked to planning permission. It would not be workable to give councils enforcement powers on wider advertising without their having the responsibility for the control of advertising and of planning permission. The intention is that councils will eventually get the full remit of the control of advertising.

1262. The Chairperson: When Trevor Clarke deals with the 248 clauses of the Planning Bill when we are all off at Christmas, perhaps planning will be moved to councils —

1263. Mr W Clarke: Perhaps that should not have been brought up.

1264. The Chairperson: Councils would then have the power to deal with that.

1265. Mr T Clarke: I think that we need to put down a marker. We can blame councils as well, but the Planning Service has the power at the moment and has not used it. It is OK to say that things will be fixed when planning powers go to councils, but we cannot ignore the fact that the Planning Service has not used its power.

1266. The Chairperson: That is the issue that was specifically raised. I am only asking for clarification.

1267. Mr T Clarke: The Department and the Planning Service need to have a conversation about how they could tighten up the existing legislation, because it needs to be tweaked. What we are really talking about is the unlawful display of advertisements. I imagine that that refers to temporary posters, or what we would deem illegal billboards.

1268. The Chairperson: That is the point with this matter.

1269. Mr McMahon: We certainly agree that there is an issue to be looked at. Our concern was that, if we tangle this provision with planning legislation, it would not necessarily meet any of the objectives. We did not think that it could be resolved through the Bill.

1270. Mr T Clarke: Perhaps you could communicate our concern that the Planning Service could do more about that, because it is not playing its full part.

1271. The Chairperson: We can make that a recommendation. We need to learn from the best practice of the approaches that are taken elsewhere. I am sure that you are looking at how it is being done elsewhere.

1272. I remind members that a series of general issues about graffiti was raised. I will go through the points, and, if you wish to respond, please do so. The issues are: failure of fixed penalty fines to recover costs; the age of criminal responsibility, which we have dealt with; guidance to councils, which is key to it all; and children's access to the appeals process. Those were the further comments that were made. Would anybody like to comment on any of those specific issues?

1273. Ms Bleeks: As far as the fixed penalty notices and the income that they will generate are concerned, we made the point about similar clauses that we are not imposing a duty on councils to act. Councils will have to take decisions as to whether it is appropriate for them to act in the circumstances. We would imagine that they will do so only where there is a net benefit in the local context in their doing that. The only appeals process that is referred to in Part 4 relates to defacement removal notices. Those would never be issued to children, so the appeals process is not really relevant.

1274. The Chairperson: Would you like to comment on the age of criminal responsibility?

1275. Ms Bleeks: That is not really a matter for the DOE; it is a matter for the Department of Justice.

1276. The Chairperson: OK; obviously we want you to liaise about the issue that we discussed earlier. Thank you very much.

1277. That concludes our discussion on Part 4 of the Bill, so we will now move to Part 5, which relates to dogs. Clause 38 provides the power to make dog control orders. Most respondents welcome the introduction of powers for councils to make such orders. However, there were concerns about the maximum number of dogs that can be walked by one person; the power for a council to draw up what is termed "fouling of land by dogs" for the entire council area; regulations in conjunction with dog control orders; and the proposed level of fines. Those were the four issues that were raised. Would you like to comment on them?

1278. Ms Bleeks: The Department is seeking to streamline the system to enable councils to deal more effectively with environment-related dog issues. We have a very cumbersome by-law system, and a lot of the councils have complained about it being difficult to use. We are trying to streamline the system and bring the dog fouling offence from the Litter (Northern Ireland) Order 1994 under the same regime, so that all environment-related dog control legislation is contained in the one place. The other point was about councils making a fouling-of-land-by-dogs order. That could be a one-off exercise. Councils could do that and deem that it covers their entire areas. The Department still sees that as being less cumbersome than the existing system.

1279. One person walking a maximum number of dogs on leads has been highlighted as a problem, and I know that the Kennel Club had some reservations about that practice. We are trying to get councils to take a balanced approach and take into account the needs of dog owners as well as the needs of those people who use the same land, by making sure that dogs are adequately controlled for the benefit of other users of the land, particularly children.

1280. We are trying to control situations whereby someone would go out with several dogs on leads and be unable to control them because there were too many of them. The Bill will allow councils to make a dog control order to restrict, if necessary, the number of dogs that can be taken out by one person.

1281. The Chairperson: Is there a maximum number? I know that the Kennel Club brought this issue to us. What would be a maximum number?

1282. Ms Bleeks: There is no maximum number set in the Bill. That would be a matter for a council to determine in individual circumstances.

1283. Mr T Clarke: That would leave scope. I think that a council would have to question why somebody would need to walk a whole lot of dogs on leads, but in the case of beaglers, or whatever they are called, and other such dog-walkers, a council would have the discretion to grant permission. Is that what you are saying?

1284. Ms Bleeks: Yes.

1285. Mr T Clarke: That seems fair.

1286. Mr W Clarke: Just to clarify: the flexibility would apply to professional dog-walkers, such as those who walk greyhounds and could walk four at a time.

1287. Ms Bleeks: There could still be a restriction, even for professional dog-walkers.

1288. Mr W Clarke: There would be a restriction?

1289. Mr McMahon: There could be a restriction, but whether it was applied would be on a case-by-case basis. There would have to be a judgement.

1290. Mr W Clarke: That is people's livelihoods.

1291. Mr McMahon: Absolutely.

1292. Mr W Clarke: I know a number of people who walk greyhounds. That is their occupation.

1293. Mr McMahon: The Bill refers to grooming and dog-walking businesses as well. I take your point, but the judgement allows councils the power of —

1294. Ms Bleeks: It will be for the council to determine.

1295. The Chairperson: Do you want to comment on the proposed level of fines?

1296. Ms Bleeks: We are proposing a level 3 fine for the breach of a dog control order. We took the same offence in England and Wales as our starting point, and we put that out to consultation. Generally, it has been accepted as being appropriate, and the Department feels that it is proportionate to the severity of the offence.

1297. The Chairperson: OK, gentlemen. I am content with that explanation. Are there any more questions? No. OK.

1298. Clause 39 is supplementary to dog control orders. Concerns raised on this clause included the applicability of dog control orders and the risk of confusion with existing legislation. Would anyone like to comment on that?

1299. Ms Bleeks: As far as applicability is concerned, and to go back to what was said previously, the main concern was in relation to dog fouling. We are saying that district councils will be able to draw up a fouling-of-land-by-dog order that could apply to its entire district, if that is what it decides to do. There was also some concern that places such as private sports grounds would be excluded under the terms of the legislation. We have taken legal advice on that and they would not be excluded. So basically, if a council draws up a fouling-of-land-by-dogs order for its entire district, private sports grounds would be included.

1300. The Chairperson: And, just to risk confusion with existing legislation; does this complement what is there already, just to give more powers?

1301. Ms Bleeks: We already have the dog-fouling offence in the Litter (Northern Ireland) Order 1994 and we have the dog by-law system, which as I said earlier can be very cumbersome. So, we are putting those together. They would essentially be replaced.

1302. The Chairperson: That is great: a change to the by-laws. OK; gentlemen, are there any questions? No.

1303. Clause 40 is about lands to which this part applies. I remind members that the Kennel Club and Countryside Alliance were opposed to the use of dog exclusion orders except where absolutely necessary. They also suggested amendments to require councils to specify the land to

which dog exclusion orders shall apply; consult on proposed exclusion orders to a variety of relevant channels; introduce a right to appeal following consultation; and provide details of dog exclusion orders to allow the Department to record and monitor them.

1304. On the other hand, councils want reassurance that the Department would not unduly restrict the options available to them by prescribing exceptions. There is a right wee bit on that section; would the witnesses like to comment?

1305. Ms Bleeks: The vast majority of issues raised are not directly relevant to what is in the Bill. They get down to a finer level of detail that will be dealt with in the subordinate legislation and the guidance that we will consult on. We made that point during our discussions with the Kennel Club, and it was happy as long as we assured it that it will be included in that consultation process.

1306. The Chairperson: OK. So you reassured the Kennel Club and it is happy as long as it is consulted. It is for the Committee to decide whether the Kennel Club needs to come back to look at amendments, but as long as you keep it informed that should be fine. Are members content with clause 40?

Members indicated assent.

1307. The Chairperson: Clause 41 deals with fixed penalty notices for the contravention of dog control orders. I remind Committee members that councils welcomed the option for officers to authorise fixed penalties and recognised the potential for off-setting costs. No concerns were raised about that clause. Are members content with clause 41?

Members indicated assent.

1308. The Chairperson: Clause 42 deals with the amount of fixed penalties. I remind members that the discretion for councils to set a fixed penalty of up to £75 was generally welcomed, but councils were concerned that it may require replacement signage, which would be at a cost to councils. Councils were also concerned that under Magistrate's Court rules in the North, charges are limited to £75 and any costs in excess of that would have to be borne by councils. In addition, the Examiner of Statutory Rules suggested that the power in clause 42(6) for councils to substitute a different amount for that in 42(1)(b) should be subject to a higher level or scrutiny such as draft affirmative procedure, and members and officials will certainly remember that term. Would officials like to comment on any of that?

1309. Mr McMahon: There is a concern among councils about the Bill as a whole and the potential for costs, and the concerns raised are part of that. We have argued that the Bill is cost-neutral overall. Perhaps Hazel would like to say something specifically about the £75 limit.

1310. Ms Bleeks: It will be up to the councils whether they want to increase the current fixed penalty. They can keep it at £50 if they want, but if they choose to raise it to £75 they will get more income, which will offset the cost of replacing signs.

1311. Mr McMahon: They will need to do a business case.

1312. The Chairperson: OK. Are members content with clause 43 and the possible need to use draft affirmative resolution?

Members indicated assent.

1313. The Chairperson: Clause 43 deals with the power to require name and address. No comments were made about clause 43. Are members content with clause 43?

Members indicated assent.

1314. The Chairperson: Clause 44 deals with by-laws. I remind members that councils were concerned about the removal of by-laws to make dog control orders, and that they urged the Department to enable councils to retain that flexibility. I think that the officials responded to this earlier, but can they provide some clarification on that?

1315. Ms Bleeks: To be honest, I was quite surprised that councils wanted to retain by-laws.

1316. The Chairperson: So was I.

1317. Ms Bleeks: The overwhelming response that we got from councils is that they find by-laws cumbersome, and we know from our experience that that is the case. By-laws that are in force will remain so. They will not be repealed automatically and will continue to operate until such times as the councils choose to make the new dog control orders.

1318. The Chairperson: I suggest that they do that fairly quickly. Are members content with clause 44?

Members indicated assent.

1319. The Chairperson: Before we finish with Part 5 of the Bill there are two other general comments that I need to make; including the need for officers working on dog-related issues to be adequately trained, and the integration and amalgamation of all dog-related legislation. Do you wish to comment on those issues?

1320. Ms Bleeks: Authorised officers will need to be trained, but that is a matter for councils to consider. We have been liaising with DARD on dog-related legislation. It deals with two distinct areas of dog control. Although we deal with environmental issues, DARD is concerned with the control of dangerous dogs, the promotion and support of responsible dog ownership and changes to the licensing system. We do not necessarily feel that it is desirable for those functions to sit in one piece of legislation, but we acknowledge that the two regimes need to work together. We have been working with DARD to make sure that there is no overlap and that councils understand where the legislation applies.

1321. The Chairperson: OK. We are moving on rightly, so bear with us. We will move on to Part 6, which deals with noise. Clause 45 deals with the designation of alarm notification areas. I remind members that although the clause was generally welcomed, several issues were raised, such as the inclusion of all alarm types, the difficulties of getting named keyholders for shared housing, flats and houses of multiple occupancy, the differentiation between intruder and smoke alarms, the impact of the direction on permitted levels under the Noise Act 1996 and the extension of that Act to include licensed premises. Where would you like to start?

1322. Mr Jackie Lambe (Department of the Environment): I will begin with the first point about the differentiation between audible intruder alarms and other types of alarms. The councils already have powers under the Pollution Control and Local Government (Northern Ireland) Order 1978 to take action against all types of alarms. The new provision is targeted specifically at audible intruder alarms in particular areas where there have been proven problems in the past. It is targeted specifically at audible intruder alarms because those alarms generally tend to cause the most annoyance.

1323. There were comments about extending the provision to all types of alarms. The Department's view on that is that extending the provision in that way would automatically include household smoke alarms or carbon monoxide alarms and would place a duty on virtually every householder who has a smoke alarm fitted in a designated area to have to register with the council and provide his or her name and address. That would be completely unworkable.

1324. There were comments on the extension of the Noise Act 1996 to include licensed premises. In many people's minds, the phrase "licensed premises" is a rather restrictive description. What was envisaged was an extension of the 1996 Act to include all places that are subject to an entertainments or liquor licence. That includes social clubs, restaurants that sell hot food take-outs and are open until late at night and a wide range of premises that would tend to be open late at night and which have the potential to cause noise that will affect nearby residents. The provision extends the existing 1996 Act provisions to that broader range of premises so that councils can take action, not just against noisy dwellings, which is currently the case, but a wider range of noisy premises.

1325. The Chairperson: OK. Do members wish to make any comments? I think that we have covered most of the points raised.

1326. Clause 46 concerns withdrawal of designation. I remind members that main concerns about this clause were the consultation and administrative processes. I invite the Department to comment on that.

1327. Mr Lambe: This relates to clause 45 and clause 46. A number of concerns were expressed by councils that the whole designation process might be overly cumbersome. The Department has taken advice on that, and will include it in the guidance it issues to councils, to clarify that the inclusion of a flyer in the likes of a council news-sheet, or council magazine, that issues regularly throughout the year, of a proposed designation area is sufficient to cover the notification and withdrawal process. It is not necessary for councils to notify every individual householder, because such magazines are issued to all premises in council areas.

1328. The Chairperson: Do members have any comments to make? Are members happy enough?

Members indicated assent.

1329. The Chairperson: Clause 47 is about the notification of nominated key-holders. Here, the main concern was the nomination of key-holders. Jackie, would you like to comment?

1330. Mr Lambe: I want to clarify that, in relation to notification of nominated key-holders, the onus is not on the council to go out seeking nominations from individual businesses or premises owners. If an alarm is sounding and a council is called out to deal with it, if the owner or occupier of that property has not registered with the council and provided the name and address of a nominated key holder, that person is guilty of an offence and can be dealt with in that way. There is no onus on the council to go out with an over-the-top administrative process and seek nominations from individual properties in a designated area.

1331. The Chairperson: Clause 48 is about nomination of key-holders. No issue was raised in respect of clause 48. Clause 49 relates to offences under section 47 and fixed penalty notices. Again this is the issue of the key-holders. Has the Department any comment to make?

1332. Mr Lambe: I wish to make it clear that, in the guidance that the Department proposes to issue, it will include an option for owners of properties to provide more than one. The statutory requirement is for one, but there is nothing to prevent owners from providing additional names

and addresses of key-holders, as is the case currently with the voluntary code that operates with councils.

1333. The Chairperson: Are members happy enough with that? We will move on.

1334. The Chairperson: Clause 50 is about the amount of fixed penalty.

1335. I remind members that although the discretion of councils to set their own fixed penalties was welcome, there were concerns about the administrative burden, the level of the default penalty which is £75 and flexibility in councils for different penalty levels.

1336. I remind the Department to comment on key or additional issues and confirm that it will provide an amendment of clause 50 during the Committee Stage.

1337. Mr Lambe: This is the same issue that has come up across a number of areas. Councils will have discretion to set the size of the fixed penalty locally, within a range prescribed in the regulations. Where they do not decide to set a penalty, a default penalty of £75 applies. The Department has accepted the point about the draft affirmative resolution.

1338. The Chairperson: We will move on to clauses 51 and 52, which deal with the use of fixed-penalty receipts and the power to require a name and address with regard to fixed-penalty notices. No issues were raised in respect of those clauses.

1339. Clause 53 deals with the power of entry. I remind members that stakeholders sought clarity on the need for a warrant to enter property boundaries and premises and on extending the types of alarm to which the Bill applies.

1340. Mr Lambe: The Department has sought legal advice and agrees that a warrant is not required to enter a property boundary to silence an alarm. So, if an alarm is mounted on the exterior of a building and silencing it requires a council official to enter the courtyard or the garden, a warrant is not required.

1341. Mr T Clarke: I appreciate what you are saying, but what happens in cases where a council silences the alarm and there is damage to it? Theoretically, you cannot silence an external bell box without damaging it.

1342. Mr McMahon: We might need to look into that issue to see what the liability would be and how that would work.

1343. Mr T Clarke: As long as we do not leave councils unsure.

1344. Mr McMahon: That is a fair point.

1345. Mr Lambe: That is dealt with in clause 55(9) through an indemnity for council officials for anything done by them in good faith while exercising their duty.

1346. Mr T Clarke: That is fine. Has that been tested?

1347. Mr Lambe: It is no different from the current position with councils.

1348. Mr T Clarke: Councils do not silence alarms at present, generally speaking.

1349. Mr Lambe: From Belfast, my understanding is that it is a fairly regular occurrence.

1350. Mr T Clarke: I should have declared an interest as a member of Antrim Borough Council. We have heard of nuisance alarms, but I have never known our council to silence alarms, but maybe it is not very active on the issue.

1351. Mr McMahon: We are happy to look into that and satisfy the Committee. We will seek to confirm that it is being used elsewhere.

1352. The Chairperson: Clause 54 is entitled, "Warrant to enter premises by force". We are seeking clarity on how that would operate in practice.

1353. Mr Lambe: The Department acknowledges that there will, on occasion, be difficulties in getting a warrant, particularly late at night or outside normal hours. However, those problems are no different to the problems faced by councils under the existing powers in obtaining a warrant to enter premises by force. So, there is nothing new in this clause; it is simply a replication of an existing power for the new proposal.

1354. The Chairperson: No issues were raised in respect of clauses 55, 56 and 57. Clause 58 is entitled, "Noise offences: fixed penalty notices". I remind members that councils were concerned about resources in relation to this clause, including the level of the default fine at £100. I ask the departmental officials to comment on the key issues and confirm its contentment with the amendment.

1355. Mr Lambe: As previously stated, the Department is content with the amendment.

1356. The £100 fixed-penalty notice is the same as it is under the Noise Act 1996. To date, only Belfast City Council has resolved to apply the Noise Act to its area. As far as I know, Belfast City Council is the only council in Northern Ireland that applies the Noise Act. The fixed penalty notice will be no different from the current position. However, there will be a range of fixed penalty notices, and if a council decides that it wants to impose a slightly higher fixed penalty, it will have the discretion to do so.

1357. Mr Weir: You say that the level of fixed penalty notice fines will be the same as they are currently. Is perhaps one reason why councils outside Belfast do not apply the Noise Act because they would have to go through all the hassle and the most that the person will be fined will be a public fine anyway? It is a wee bit of a chicken-and-egg situation.

1358. Mr Lambe: Possibly one reason why other councils have decided not to use that power is because when a council decides to adopt the Noise Act, it is under a statutory duty to provide an out-of-hours noise service. Only Belfast City Council has decided that it wanted to do that, and it provides a night-time noise service that runs through until about 4.00 am. It can, potentially, be expensive for councils to do that. From experience, that provision has the greatest effect in urban areas. To date, only Belfast City Council has adopted the Noise Act.

1359. The Chairperson: Are members content with that explanation?

1360. Members indicated assent.

1361. The Chairperson: Clause 59 is entitled, "Extension of Noise Act 1996 to licensed premises etc." Although members generally welcomed the clause, the following concerns were raised: the technical requirements for indoor entertainment licensing; a review, and incorporation into the Bill, of closing orders; and the need for a regular review of the £500 fixed penalty. The Committee for Social Development asked for an opportunity to comment on the clause, but, on

reflection, decided to make no comment. [Laughter.] If I had seen the end of that sentence, I would not have started it. Does the Department want to comment on those three issues?

1362. Mr Lambe: In extending the Noise Act to licensed premises, the fixed penalty has been increased to £500 to reflect the more serious impact that noisy premises can have on adjacent residents.

1363. The clause is essentially the extension to commercial-type premises of the provisions that apply to domestic dwellings, but with a higher fine to reflect the more serious impact that those premises can have on local communities.

1364. The Chairperson: Is regular review an option?

1365. Mr Lambe: The Department intends regularly to review the level of all fixed penalties in the Bill.

1366. The Chairperson: Thank you. Perhaps you would like to comment on a few general issues: phased implementation; guidance to councils, which we talked about; informal action; and resources.

1367. Mr Lambe: With regard to phased implementation, councils generally asked the Department to ensure that there will be a sufficient lead-in period to allow for adequate training in all the Bill's new provisions. Therefore, the Department proposes to consult with councils on the guidance, and on the new statutory subordinate legislation that will need to come into effect to give the Bill the teeth that it needs to be operational. Most councils have asked for a minimum lead-in period of three months, and we see no difficulty with that.

1368. The Department accepts that, if many councils decide to operate the new provision, there will be an additional resource commitment. Currently, 25 out of the 26 councils simply do not bother exercising the night noise provisions in the Noise Act. If they decide that they wish to operate that, there will be an additional cost to them. That is no different to a decision taken by a council to operate the existing Noise Act, so, again, the decision on whether they wish to take on board that additional duty rests with the council.

1369. The Chairperson: There are only eight clauses and the schedules left, so we will try to get through those. We move to Part 7, which is on statutory nuisance. Clause 60 was generally welcomed, but some concerns were raised. A response spoke of the need for a catch-all clause, and a concern was raised about the applicability of a best practicable means defence to smoke nuisance. The need for greater scope for councils and for the extension of the Bill's powers to cover pigeons was raised. Concern was raised about the exclusion of agricultural land from the meaning of: "relevant industrial, trade or business premises".

1370. There is food for thought in those responses.

1371. Mr Lambe: By way of context, the new statutory nuisance provisions consolidate existing statutory nuisance law, most of which dates back to the old Public Health (Ireland) Act 1878. That Act has been amended and tweaked over the years. Many of the statutory nuisance provisions in this Bill are simply a consolidation of that existing statutory nuisance law. There are one or two new areas, such as the statutory nuisance of artificial lighting and statutory nuisance in relation to insects. A few tweaks of the wording are required to bring us more into line with the position that exists in England and Wales.

1372. As I said, statutory nuisance legislation has evolved over the past 130-odd years. To date, the Department has had no requests from environmental health practitioners for a catch-all provision, and we have no evidence for any need for that. We are not aware of any deficiencies in the existing statutory nuisance regime that call for a catch-all provision.

1373. The comment on the best practicable means defence to smoke nuisance was about the statutory nuisance of smoke emitted from premises and the statutory nuisance of fumes and gases emitted from premises. One of the provisions in the Bill is a specific exemption of the provision relating to fumes and gases from premises so that it applies only to dwellings, not to commercial, industrial or other premises. The best practicable means defence is available only in relation to commercial and business premises. It is not generally available to domestic premises. There is a different starting point in relation to those two statutory nuisance provisions.

1374. Pigeons is a trickier issue. There have been calls from district councils for additional powers to deal with pigeons. The Department has looked very closely at the matter and concluded that existing statutory nuisance powers are consolidated in the new clause 60(1)(a), which would apply to:

“any premises in such a state as to be prejudicial to health”,

1375. or in clause 60(1)(e):

“any accumulation or deposit which is prejudicial to health”.

1376. Both would enable councils to deal with pigeon droppings and so on. Councils also have powers under their existing good law and government —

1377. Mr Weir: In light of the existence of such provisions, a change in the law may not be necessary. Is it just a question of the Department sending out some sort of memo? Sometimes, interpretation of regulations can be narrow and it would be helpful to point out a possible wider interpretation.

1378. Mr Lambe: Yes, the Department is happy to do that.

1379. The Chairperson: The Committee will make a recommendation on the importance of doing that.

1380. Mr T Clarke: There is a lot in clause 60. Is noise anywhere in there?

1381. Mr Lambe: There are two categories of noise. Noise emitted from premises is provided for in clause 60(1)(i). Separately, clause 60(1)(j) relates to: “noise that is prejudicial to health...and is emitted from or caused by a vehicle, machinery or equipment in a street”.

1382. That tweaks existing noise provisions to separate them into two separate categories.

1383. Mr T Clarke: At the risk of being parochial, noise from motorsport facilities has been a problem in my area. Will that clause be a useful tool for the council?

1384. Mr McMahon: Are you talking about jet skis?

1385. Ms H Anderson: No, it is motocross.

1386. Mr T Clarke: Ones without planning permission. Noise travels into the streets from scrambling tracks —

1387. Mr W Clarke: That is an issue for planning enforcement.

1388. Mr T Clarke: No, there is a noise pollution issue. It is a nuisance.

1389. Ms H Anderson: That may still be caught under the Control of Pollution Act? I think that the legal definition of "street" implies that it is a street as a Roads Service, DRD responsibility.

1390. Mr T Clarke: Yes, but would the Bill not present an opportunity to capture that as well? At the end of the day, it is a nuisance.

1391. Ms H Anderson: I appreciate that, but I am not sure that clause 60(1)(j) will capture it. Perhaps we should check.

1392. Mr Lambe: May we check and come back to the Committee on that matter?

1393. The Chairperson: Please come back, if necessary with an amendment to the clause.

1394. Mr T Clarke: I also want to ask about clause 60(1)(l), which deals with watercourses. That intrigues me.

1395. Mr Lambe: That specific provision exists as a statutory nuisance provision in the Public Health (Ireland) Act 1878. Councils asked us to retain that provision in the new statutory nuisance regime. Their primary concern was that councils should be allowed to take action in respect of watercourses, the normal drainage of which had been interfered with by man so that the normal flow had been stopped or adjusted.

1396. Mr T Clarke: The relevant paragraph states "choked or silted up", which is natural in bogland watercourses.

1397. Ms H Anderson: Much of the old public health legislation dating back to the 1800s related to stagnant water. If that is the case, I assume that one of the issues that might be caught relates to silting occurring to the extent that water ceases to move, becomes stagnant and potentially creates associated problems with insects or odours. However, we will check the detail on that.

1398. Mr T Clarke: Does that give the council the power to make the landowner clear that?

1399. Ms H Anderson: They would have had that provision already under the old Public Health (Ireland) Act. It is only where it is prejudicial to health or a nuisance; that is the crucial bit. It is not just where it occurs; it is where it occurs to the extent that a statutory nuisance is created.

1400. Mr Lambe: To clarify, there is specific case law that states that, if the water becomes choked or silted as a result of natural activity, the statutory nuisance provision does not apply. It is only where it applies in relation to a man-made activity.

1401. Mr T Clarke: That is not what is says there.

1402. Mr McMahon: I think that it is the definition of the term "choked". It would not be referring just to a natural occurrence.

1403. Mr T Clarke: It states: "which is so choked or silted up as to obstruct".

1404. That is natural in some types of watercourse anyway.

1405. The Chairperson: That is a valid point.

1406. Mr Lambe: I will look again at that, and come back to the Committee.

1407. Mr T Clarke: I am pleased that it can be there and that it can be used as a tool, but I am just curious. In looking at the opposite side of that, watercourses rise. That normally happens on peatlands, and the natural occurrence is that it is going to choke and silt up. We are putting an onus on someone to clean out something that is going through its natural environmental process.

1408. Mr McMahon: I think what you are saying, Jackie, is that the case law would not —

1409. Mr T Clarke: If that is the proposal, I would welcome that, but I think it will be an interesting one.

1410. Mr McMahon: We will come back on that.

1411. Mr T Clarke: Can I ask your colleagues in the Environment Agency what their view is on that?

1412. The Chairperson: Finally on that clause, there is reference to the exclusion of agricultural land.

1413. Mr Lambe: The Department intends to clarify the definition of "agricultural land" specifically in the guidance.

1414. The Chairperson: OK. Thank you.

1415. Clause 61 concerns the duty of district councils to inspect for statutory nuisance. One issue was the inclusion of pigeons, but you have dealt with that.

1416. Mr T Clarke: Sorry, I missed that.

1417. The Chairperson: There is already legislation on that.

1418. Mr T Clarke: That is weak as well.

1419. The Chairperson: You mentioned clause 61(a)?

1420. Mr Lambe: Councils currently have powers under the statutory nuisance regime to deal with premises in such a state as to prejudice health or a nuisance, or accumulations, which can be anywhere, or deposits that are prejudicial to health. Councils also have the power to make by-laws under the good rule in government legislation to control pigeons. Final provision is made in article 71 of the Pollution Control Order that allows councils to take any steps for the purpose of abating or mitigating any nuisance, annoyance or damage caused by the congregation in any built-up area of feral pigeons. The Department's view was that there is a range of powers already available to councils to deal with pigeons, and there was not in our view a need for a specific statutory nuisance provision.

1421. Mr McMahon: One important point to add to that is that, obviously, as part of producing the guidance, we would want to, where relevant, draw attention to existing powers to make sure that they are used. I think that that is the point.

1422. The Chairperson: I accept the explanation, but what I am saying is that a lot of people have made a response on that, so it must not be working properly.

1423. Mr McMahon: Yes, I think that is fair.

1424. The Chairperson: Are we saying there is enough in legislation at the minute, or do we need to shore it up?

1425. Mr McMahon: The Department's view is that the powers are there, but clearly people are not applying them or may not be aware of them, and we need to make sure that that is built into the guidance so that people are fully aware of the powers at their disposal.

1426. Mr T Clarke: Are the powers — [Inaudible due to mobile phone interference.]

1427. The Chairperson: If the existing powers are properly applied, it is fine.

1428. Mr McMahon: If the power was not there and we were building it in, I suppose —

1429. Mr Lambe: There are, as I said, two existing statutory nuisance provisions dealing with deposits and accumulations and dealing with premises and such estates. The other two powers relate to a by-law-making power for councils.

1430. Mr T Clarke: No disrespect to Jackie, but most of us think that by-laws are weak. If there is another mechanism, why was it not included in the Bill?

1431. The Chairperson: That is a valid point, and it is one that NILGA raised. However, as bodies, councils should know what is applied in councils. We discussed by-laws earlier.

1432. Mr McMahon: When I heard by-laws again, I must say that I —

1433. The Chairperson: Yes; let's not go there. If there is an opportunity to implement something in the Bill and incorporate it, we should do so.

1434. Mr McMahon: We are happy to look at it.

1435. The Chairperson: Thank you.

1436. Clause 62 deals with summary proceedings for statutory nuisances. The following concerns were raised about clause 62: the issue of abatement notices in relation to appeals; the exclusion of the power for a court to make an order on conviction requiring the nuisance to be abated; the definition of an "owner"; and the introduction of daily fines. Jackie, would you like to comment on those points?

1437. Mr Lambe: The Bill already makes provision for the introduction of daily fines under clause 62(10). There is another provision in clause 62 under which a council, if it is of the opinion that the fine that is likely to be imposed by a court is not sufficient to deal with the offence, may take proceedings in the High Court, where there is no limit to the amount of fine that can be imposed. Therefore, the Department feels that there is sufficient provision to deal with most circumstances.

1438. From knowledge, only two of the councils expressed a preference for the old system to remain in place, while the rest of the 26 councils welcomed the new streamlined procedure of issuing an abatement notice and launching court proceedings if a person fails to comply with that. That is regarded as a much speedier process, and it will enable councils to deal with particular problems that arise at an earlier opportunity.

1439. A comment was made on the need for regulations to be introduced for appeals. The Department will consult on the appropriate regulations before the appeal provision is brought into operation.

1440. As the Committee will be aware from previous meetings, the Department's remit in the Bill was to bring Northern Ireland's statutory nuisance law and other environmental law into line with England and Wales. In that jurisdiction, the statutory nuisance provision is used in a slightly different way than it is used by many of the councils in Northern Ireland. A number of councils have told me that because Northern Ireland's housing legislation is not up to date with housing legislation elsewhere in the UK, they must resort to using statutory nuisance legislation to deal with many housing defects in privately rented houses. They have a particular problem with absentee landlords and those who live overseas, which is why they called for a broader definition of "owner." The Department is looking at that, and, subject to ministerial approval, would be minded to bring that into being, so that our statutory nuisance legislation is not weakened from its current position. If we moved in line with the rest of the UK in that respect, we would, in effect, weaken those provisions.

1441. The Chairperson: No issues were raised on clause 63, concerning abatement notice in respect of noise in the street.

1442. Clause 64 concerns supplementary provisions. Stakeholders sought more clarity on the interpretation of clause 64 and an indication of the new procedures that will be required to deal with noise in the street.

1443. Mr Lambe: The Department will bring forward detailed guidance on the new provisions that deal with noise in the street. Clause 65 allows councils to recoup expenses that are reasonably incurred in abating the statutory nuisance. A cost recovery mechanism will be introduced as part of the new provisions.

1444. The Chairperson: Are we content with that explanation?

Members indicated assent.

1445. The Chairperson: Clause 65 concerns expenses recoverable from owner to be a charge on premises. Among a range of comments on clause 65, stakeholders sought the extension to the rest of the Bill of the definition of "owner" in this clause. Obviously, you are considering that.

1446. Mr Lambe: Apologies, Chairperson. I jumped the gun slightly in my previous comment. The recovery of costs relates to clause 65, and not clause 64.

1447. The Chairperson: Do members have any questions on that? Are members content?

Members indicated assent.

1448. The Chairperson: No concerns were raised about clause 66 on payment of expenses by instalments. The clause was welcomed by councils and others, and there were no comments on it. Does any member want to ask a question on clause 66? Are members content?

Members indicated assent.

1449. The Chairperson: Clause 67 concerns summary proceedings by persons aggrieved by statutory nuisances, and clause 68 concerns application of Part 7 to the Crown. No comments were made on clauses 67 and 68. Unless members have any comments, I propose that we move on. Are members content?

Members indicated assent.

1450. The Chairperson: A series of general issues were raised about statutory nuisance that cannot be related directly to specific clauses. I would like the Department to respond to two general issues: overcrowding, and legislating for unsightly and unkempt gardens.

1451. Mr Lambe: The issue of a statutory definition of overcrowding has been brought to the attention of the Department for Social Development, which has policy responsibility for housing legislation, including overcrowding. I referred earlier to the fact that Northern Ireland's housing law lags behind the rest of the UK. The Department for Social Development is aware of the issue. Whether it brings forward legislation is a matter of its departmental priorities.

1452. The Department of the Environment's view is that unsightly and unkempt gardens will be addressed through the new litter-clearing notice provisions that will be introduced in clause 17. If there are unsightly or untidy gardens, even at derelict premises, a council can issue a litter-clearing notice as security for the clean-up.

1453. The Chairperson: That concludes the informal scrutiny of Part 7. We now have Part 8, miscellaneous and supplementary provisions. Clause 69 concerns use of penalty receipts; clause 70 concerns offences relating to pollution, etc: penalties on conviction; clause 71 concerns offences by bodies corporate; clause 72 concerns regulations and orders; clause 73 concerns interpretation; clause 74 concerns minor and consequential amendments and repeals; clause 75 concerns commencement; and clause 76 is the short title. No issues were raised in respect of those clauses. Are members content to move on?

Members indicated assent.

1454. The Chairperson: We move on to schedules 1 to 4. The only issue that was raised in relation to the schedules was the suggestion that regulations should be made under schedule 2 to prescribe the cases in which an abatement notice is or is not to be suspended.

1455. Mr Lambe: As I said previously, the Department will consult on the draft regulations prior to the coming into operation of Part 7 of the Bill. It is absolutely essential that the appeal mechanisms are in place before councils can operate under the new statutory nuisance procedure. That will all be consulted on well in advance of the provisions coming into operation.

1456. The Chairperson: Thank you very much. That concludes the informal scrutiny of the Clean Neighbourhoods and Environment Bill. When the Committee receives all of the information that it has requested, it will commence formal clause-by-clause scrutiny. There are a few issues on which the Department has to come back to us. Are members content with the explanations that were given throughout the process?

Members indicated assent.

1457. The Chairperson: We now move back to the formal clause-by-clause scrutiny of the High Hedges Bill.

Clause 6 (Appeals against remedial notices and other decisions of councils)

1458. The Chairperson: We received further clarification on this clause. Mr Clarke, are you happy enough with that clarification?

1459. Mr T Clarke: Yes.

1460. Question, That the Committee is content with the clause, put and agreed to.

1461. Clause 6 agreed to.

1462. Clause 7 agreed to.

Clause 8 (Powers of entry)

1463. The Chairperson: The Committee sought clarification from the Department, and we were satisfied with the explanation.

1464. Question, That the Committee is content with the clause, put and agreed to.

1465. Clause 8 agreed to.

Clause 9 (Offences)

1466. The Chairperson: The Committee sought clarification in relation to this clause, and we were content with that clarification.

1467. Question, That the Committee is content with the clause, put and agreed to.

1468. Clause 9 agreed to.

1469. Clause 10 agreed to.

Clause 11 (Action by council)

1470. The Chairperson: The Committee sought some clarification in relation to this clause. I think that we are happy enough with the explanation.

1471. Question, That the Committee is content with the clause, put and agreed to.

1472. Clause 11 agreed to.

1473. Clauses 12 to 14 agreed to.

Clause 15 (Interpretation)

1474. The Chairperson: We expressed some concerns about this clause and sought some clarification from the Department, and we are happy enough with that clarification.

1475. Question, That the Committee is content with the clause, put and agreed to.

1476. Clause 15 agreed to.

1477. Clauses 16 to 20 agreed to.

1478. Long title agreed to.

1479. The Chairperson: That concludes the Committee's formal clause-by-clause consideration of the High Hedges Bill. A report will be brought back to the Committee in the next couple of weeks. Thank you very much.

16 December 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 Peter Weir
Mr Brian Wilson

Witnesses:

Ms Helen Anderson
Ms Hazel Bleeks Department of the Environment
Mr Robert Gray
Mr Jackie Lambe
Mr Gerry Anketell Department for Regional Development
Mr Brian O'Neill

1480. The Chairperson (Mr Boylan): I initially welcome Robert Gray and Helen Anderson from the Department of the Environment (DOE) and Gerry Anketell and Brian O'Neill from the Department for Regional Development (DRD). We will go through Parts 1, 2 and 3 of the Clean Neighbourhoods and Environment Bill, and Committee members will be able to seek clarification on any points on which they require it.

Clause 1 (Gating orders)

1481. The Chairperson: Issues were raised about clause 1. I remind members that, at its meeting of 2 December, the Committee asked whether the Department had received legal advice on clause 1, as there was a feeling that the introduction of the Bill will lead to a situation in which expectations are raised about the installation of gates. The Department's response stated:

"The Bill does not impose a duty on district councils to make gating orders; rather it gives them the power to do so in respect of a road which is facilitating high and persistent levels of crime and/or anti-social behaviour that adversely affect local residents or businesses."

It continued:

"There is no legal advice in respect of the point raised concerning clause 1 and the Department does not see any need for such advice. It will be a matter for a district council to take a decision

as to whether it is appropriate to make a gating order after taking all of the relevant circumstances into account."

1482. I also inform members that NILGA has provided further details on the costs, specification and benchmarking of the alley gates that are in place. That information is provided in members' packs. Are members content to incorporate those responses into the Committee's report?

Members indicated assent.

1483. Do any members wish to comment on clause 1?

1484. Mr Dallat: Is the Department sure that there are no section 75 problems with clause 1? Has it checked cases that were taken to the Equality Commission, which recently ordered the payment of fairly substantial sums of money because of obstructions that had been placed in the way of wheelchair users?

1485. Mr Brian O'Neill (Department for Regional Development): I am not aware of cases being taken for obstructing wheelchair users.

1486. Mr Dallat: I know of a case that was taken against Coleraine Borough Council. That case was settled out of court, and the council paid £3,000 for obstructing wheelchair users. I am not certain whether that was as a result of alley gates or kissing gates, but I believe that it was gating.

1487. Mr B O'Neill: The gates that have been approved by Roads Service have primarily been in Belfast, with a few in Craigavon. No issues at all have been raised on your point, Mr Dallat. There have been no complaints about any obstructions to any person in the Belfast area, where all the gates have been put up.

1488. Mr Dallat: Has the Fire and Rescue Service Board had any input into gating? Does it have issues with access for hoses, and so on?

1489. Mr B O'Neill: Local councils consult all the relevant statutory authorities before proposals are brought to us. Therefore, the Fire and Rescue Service Board is consulted by the local council.

1490. Mr Weir: Will the Fire and Rescue Service not have skeleton keys for gates? I would have thought that, in most cases, they are not likely to want to put hoses down back alleyways. However, I presume that the emergency services will have a means of gaining complete access to those places anyway. I do not know the individual circumstances in Coleraine, but I wonder whether it was an alley-gating situation or whether the gates were blocking general access for the public and had a specific impact on the disabled in a more general area than a back alleyway.

1491. Mr Dallat: I mentioned previously that there have been a number of very serious fires at backs of houses in Limavady because some clowns were running around lighting oil tanks. Some families were very lucky to escape with their lives.

1492. Mr Weir: Presumably, if alley gates prevented people getting access to oil tanks, it would stop, or reduce massively, that threat. It could even cut out the problem in a different way.

1493. The Chairperson: Mr Dallat has raised the issue of disabled people. That is fine. That issue should be incorporated into part of the consultation process that has been happening up to now

anyway. I am glad that he made the point, because, during discussions, we should be mindful to invite representatives of such bodies.

1494. Mr Gerry Anketell (Department for Regional Development): It is fair to say that all the emergency services will be given provision for access to any gated area.

1495. Mr W Clarke: The Department is telling me that anybody who installs gates will have to carry out an equality impact assessment (EQIA). Is that correct?

1496. Mr Robert Gray (Department of the Environment): It is imperative that, under the proposals, if the local council —

1497. Mr W Clarke: Or the Housing Executive.

1498. Mr Gray: The councils will make the gating orders.

1499. Mr W Clarke: For the Housing Executive.

1500. Mr Gray: They will do so on behalf of the proposer of the gating scheme. The order can be implemented only if the council makes the gating order, and it is imperative that it undertake a thorough section 75 screening.

1501. Mr W Clarke: I wanted that on the record.

1502. The Chairperson: I will put that recommendation at the end of the report under matters raised.

Question, That the Committee is content with the clause, put and agreed to.

Clause 1 agreed to.

1503. The Chairperson: Thank you very much for your input, Gerry and Brian. We now move on to Part 2, and I welcome Jackie Lambe and Hazel Bleeks from DOE.

Clause 2 (Exposing vehicles for sale on a road)

1504. The Chairperson: One question was asked about the clause, and we sought clarity on the proposals that relate to the sale of two or more cars that are parked within 500 m of each other. We were content with the explanation provided by the Department.

Question, That the Committee is content with the clause, put and agreed to.

Clause 2 agreed to.

1505. Mr Dallat: I am not sure whether any other members have noticed, but, recently, perhaps in anticipation of the legislation, people have started to put one car out on the road while leaving the rest of them behind a wall. Presumably, that is OK. However, it still creates a road hazard, because people stop and queue, and so on.

1506. Mr T Clarke: Why can we not just make it that people cannot have any cars for sale out on the road?

1507. The Chairperson: I remind members that I have already put the Question and got agreement on it. We have previously discussed the issue at length. We are certainly not rushing into it.

1508. Mr Weir: We will have to wait for the Christmas episode of 'Doctor Who' to go back in time.

Clause 3 (Repairing vehicles on a road)

1509. The Chairperson: Members were concerned about the impact on broken-down vehicles but were content when advised that there was a 72-hour exemption for breakdowns and accidents. Do members have any comments before I put the Question?

1510. Mr Dallat: Have we discussed the 72-hour exemption? That is not flexible, no? Seventy-two hours is three days, which is a fair while for a car or lorry to be sitting on a road.

1511. The Chairperson: We were concerned about broken-down cars being taken away and wanted to give people an opportunity to remove their cars. Are we now saying that we are against an exemption?

1512. Mr Kinahan: It is needed if someone cannot get the parts.

1513. The Chairperson: I think that it is quite reasonable.

1514. Mr Dallat: All right.

1515. Mr W Clarke: There is also the example of a car that is stuck in snow.

1516. The Chairperson: It could be snowed in for two days.

1517. Mr T Clarke: Discretion will be applied if it is snowed in.

Question, That the Committee is content with the clause, put and agreed to.

Clause 3 agreed to.

Clause 4 (Power to give fixed penalty notices)

1518. The Chairperson: I remind members that subsection (9) provides a power for the Department to substitute a new amount of fixed penalty payment specified in the Bill. The Examiner of Statutory Rules suggests that the power should be subject to draft affirmative procedure, in keeping with all the other Bills that are going through the Assembly. The Department has agreed an amendment to allow for the power to be subject to draft affirmative procedure. That is all very well, but we have not seen the amendment. What has happened?

1519. Mr Gray: The point about draft affirmative procedure will apply to numerous clauses. There are powers that relate to the amount of fixed penalty notice throughout the Bill, and we have grouped all those together. I have written to the draftsman to seek the amendments. This would be only one of around eight or nine amendments.

1520. The Chairperson: That is OK. However, I will be putting the Question to the Committee, and we have not seen the amendment. Are you giving us an assurance that we will receive the amendment?

1521. Mr Gray: We have asked the draftsman for it, so I do not see any problem.

1522. The Chairperson: Are you listening very carefully, gentlemen? Robert does not see any problem.

1523. Mr McGlone: Where are we leaving it, then?

1524. The Chairperson: We have received assurance that subsection (9) will be subject to draft affirmative procedure, which is what we want. Robert, once we have agreed to this, we have agreed to it. Are you giving the Committee an assurance that it will be subject to draft affirmative procedure?

1525. Mr Gray: The Minister has agreed that it will be subject to draft affirmative procedure.

1526. The Chairperson: That is fine. Are we happy enough, gentlemen?

1527. Mr McGlone: What is the time frame for that?

1528. Mr Gray: I would like to have all the amendments that will be subject to draft affirmative procedure ready in time for the next meeting of the Committee.

1529. Mr McGlone: Will we see them then?

1530. Mr Gray: Yes.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 4, subject to the Department's proposed amendment, agreed to.

Clauses 5 and 6 agreed to.

Clause 7 (Offence of abandoning a vehicle: fixed penalty notices)

1531. The Chairperson: I remind members that subsection (9) provides a power for the Department to substitute a new amount of a fixed penalty payment. Again, it should be subject to draft affirmative procedure. We have received assurances that we will have that.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 7, subject to the Department's proposed amendment, agreed to.

Clauses 8 to 13 agreed to.

Clause 14 (Offence of dropping litter in lake, pond or watercourse)

1532. The Chairperson: We now move on to Part 3. I remind members that they raised concerns about the definition of "litter" in the clause. We sought clarity, and members were content with the Department's response.

Question, That the Committee is content with the clause, put and agreed to.

Clause 14 agreed to.

Clause 15 (Penalty for failing to provide name)

1533. The Chairperson: Members discussed the introduction of fixed penalty notices for giving false name and address information but concluded that those were unworkable. Members were subsequently content with the clause.

Question, That the Committee is content with the clause, put and agreed to.

Clause 15 agreed to.

Clause 16 (Litter offence: fixed penalty notice)

1534. The Chairperson: Members questioned the level of the default fine, which is £75. We discussed the option for councils to encourage payment of fines by increasing the amount for late payments. The Department confirmed that the age of criminal responsibility — that is, to which fixed penalties can be issued — is 10 years of age and that guidance on issuing fines to minors will be issued.

1535. Does anyone wish to make any further comments? We received clarification at our previous meeting. We had a discussion last week in Limavady about who would pick up the fine. It was also raised during the discussion on a later clause. Can you provide clarification on that? It concerned the parent picking up the fine. Was that the issue that was raised about a later clause? How does that impact on clause 16?

1536. Mr Jackie Lambe (Department of the Environment): On the question of who is liable for the fine, there is no onus on the parent of a young person to pay the fine on the young person's behalf. The fine would be issued — if it is, in fact, issued — to the person responsible for the offence.

1537. The Chairperson: Do members have any comments to make?

1538. Mr W Clarke: I still have serious concerns about criminalising children at 10 years of age. I cannot my head get around that, and I do not care what guidance is given. I have a seven-year-old child, and I am thinking about her coming home at 10 years of age crying her eyes out over being given a fixed penalty. I cannot accept that. It is too young an age at which to criminalise young people.

1539. There has to be an educational aspect to this. The school should get it through to children that if they drop litter, they will have to sit some sort of module, or something similar. If we criminalise 10-year-old children and send them home to their parents with a fixed penalty, we do not know how the home will react. There are a number of issues around that, and I am not happy about it at all. I want it on the record that I do not support the clause.

1540. Mr T Clarke: That issue came up last week concerning graffiti. I am still of the same opinion. The drive down from Limavady over the mountain did not change my view. If someone commits a crime, he or she has to pay the fine. As I said last week, I have three children myself — all minors — and if they committed a crime, they would have to pay the fine. If we want to try to improve and clean the streets, and we will probably find that most of the litter incidents are down to younger ones anyway, so —

1541. Mr W Clarke: That is totally wrong.

1542. Mr T Clarke: I am sorry, but I am speaking. If they take the fine home with them, it is up to the parents to pay it by whatever means, but they have to pay up.

1543. Mr W Clarke: To say that the majority of litter on the street is left by young people and 10-year-olds is an outrageous comment to make. That is absolutely disgraceful. There is more education in school about the environment than there ever was. It is older people who cause most of the litter problems. I need to put that on the record. I will not support the clause, no matter what guise is put on it.

1544. Mr T Clarke: Get Willie Clarke out litter-picking.

1545. Mr Dallat: There is a war between the Clarkes.

1546. Mr Kinahan: I think that I will sit back a little.

1547. The Chairperson: The problem was raised under a different clause. We were content with the comments, but what I asked about last week was the legal opinion. Do we look at making the parent or responsible person pay the fine? Is there any way of amending it or of looking to another clause as a means of dealing with the issue?

1548. Mr Gray: Let me take this opportunity to clarify to the Committee what the Department's intention is, and this will hopefully reassure the Committee about the whole business of issuing fixed penalty notices to juveniles. The Department's intention is to issue guidance based on that already in force in other parts of the UK about issuing fixed penalty notices to juveniles. That guidance makes it clear at the outset that councils need to think very carefully about issuing a fixed penalty notice to a juvenile, and it recommends using different procedures. It recommends different procedures for 16- and 17-year-olds, and for children between the age of 10 and 15.

1549. It strongly advises authorities — in our case, councils — to include age-specific policies in operational and enforcement procedures. That includes the kind of thing that you were talking about, such as education in schools, but there will always be the possibility of a fixed penalty notice being issued under this legislation. That is the current position, but the guidance strongly recommends that councils look at the matter very carefully.

1550. The Chairperson: For clarification, the point is that the Bill will introduce a fixed penalty notice. It does not matter what age the person who drops the litter is. We are saying that a different Department sets the age group. We cannot do anything about it under the Bill. It is not within DOE's remit.

1551. Mr W Clarke: We could make a recommendation.

1552. The Chairperson: We can put it in the report. We can make a recommendation, but can we change the age range or not?

1553. Mr Gray: There is nothing to prevent the Committee from tabling an amendment that outlaws issuing a fixed penalty notice to a child, but if you do that, the only other course open is to prosecute.

1554. The Chairperson: I am not saying that. What I am trying to say is that the legislation will issue a fixed penalty notice, but as regards the justice system, I do not think that we can change the age.

1555. Mr Weir: It is the age of criminal responsibility.

1556. The Chairperson: That is not for us to say. A different Department has to look at that. Is that correct?

1557. Mr Weir: As I said, 10 years of age is the age of criminal responsibility.

1558. The Chairperson: All that I am saying is that we will make a recommendation in the report that it is not correct.

1559. Mr Ross: People do not get a criminal record for receiving a fixed penalty notice.

1560. Mr W Clarke: They do if they do not pay.

1561. The Chairperson: I am trying to deal with how the Committee thinks that the clause should be dealt with by the Department. It is a fixed penalty.

1562. The other issue is the age group. We can put in the report that some members are unhappy with the age group. Beyond that, we cannot change it. My understanding is that it is up to some other Department if it wants to change the age. Is that correct?

1563. Mr Gray: Yes.

1564. Mr McGlone: Mr Gray referred to guidance on those matters for local authorities in Britain. It would be very useful if the Committee could see that guidance or some read-across guidance associated with the legislation for the North. At the minute, we are stabbing in the dark a wee bit.

1565. Mr Gray: A letter has been drafted to the Committee and is awaiting approval. That letter includes the verbatim guidance. That will be with you in the next few days. The deadline for that was tomorrow.

1566. Mr W Clarke: I feel very strongly that 10 years of age is far too young. I do not care what the other Departments are saying. We have the opportunity to table an amendment stating that an older threshold for fixed penalty notices will have to be reached.

1567. Mr T Clarke: Grandparents or 85-year-olds?

1568. Mr W Clarke: I am thinking around 16 or 18 years of age, although I even have doubts about that. It is a serious issue if a 10-year-old is given a fixed penalty. Instead of going home, that child may run away. Who will take responsibility if that happens? If the Committee does not want to table an amendment, that is fair enough. I will put one down. However, we have the power to put down an amendment that fixed penalties not be issued to children between the age of 10 and 16.

1569. Mr T Clarke: Therefore, we tell them that it is acceptable to throw litter?

1570. Mr W Clarke: No. Councils would then look at a different policy for that age group, similar to the guidelines that have been explained. A different measure should be used for that age group. What do we do with a nine-year-old?

1571. The Chairperson: I want to seek clarification before we move on. If we agree to table an amendment to raise the age to 16, are we saying that that would be legally binding and that it would be up to councils to enforce it? Is that correct or is it outside the Committee's remit to deal with that?

1572. Mr Gray: If the legislation said that councils could issue fixed penalty notices only to those who are over the age of 16, that is what councils would have to do. The question is how are 15- or 16-year-olds dealt with? What is the deterrent to stop them dropping litter? The Department will try to deal with that through very strong guidance, which the Committee will see very shortly.

1573. The Chairperson: Until we see the guidance, we will put clause 16 on hold and come back to it.

Clause 16 referred for further consideration.

Clause 17 (Litter clearing notices)

1574. The Chairperson: I remind members that, at the meeting on 2 December 2010, we asked departmental officials to provide clarification on clause 17 on exemptions for Crown land and educational establishments. Members also asked for more information on enforcement action that has been taken to date under the Litter Order 1994 on Crown land. Members have been provided with a copy of the departmental reply, which states that article 12 of the 1994 Order includes powers to allow district councils to take formal enforcement action, including action in respect of Crown land that is defaced by litter.

1575. Concerning enforcement action, the Department states that it contacted a number of councils across the North, and responses indicate that any concerns that councils might have regarding Crown land that is defaced by litter be addressed voluntarily through an informal approach, rather than through having to resort to formal enforcement action. No councils contacted indicated that they found it necessary to take any formal action. Are members content with the Department's response, or are there any other questions?

1576. Mr T Clarke: Is the reply suggesting that there is an exemption? If it is saying that there is an exemption, I do not believe that there should be an exemption for anyone. Crown land should be treated equally to any other public building.

1577. Mr Gray: We have explained that there is an exemption, because there is already a legal duty to clean up Crown land.

1578. Mr Dallat: It does not do it.

1579. Mr T Clarke: Therefore, why should it be exempt?

1580. Mr Gray: It is already under a duty. We are talking about a litter-clearing notice provision that will apply to other bodies and other landowners instructing them to clean up their land because they are currently not under any statutory duty to do so.

1581. The Chairperson: An Order is already in place?

1582. Mr Gray: Yes.

1583. The Chairperson: I am only seeking clarification, because we discussed that.

1584. Mr Gray: I said then that it would be a double whammy to remove that exemption.

1585. The Chairperson: OK. Are members happy enough with that explanation?

Question, That the Committee is content with the clause, put and agreed to.

Clause 17 agreed to.

Clause 18 (Street litter: control notices)

1586. The Chairperson: Members raised concerns about addressing smoking-related litter outside pubs, clubs, restaurants, and so on, that has arisen since the new smoking laws came in. I have been advised that the Department will address that issue in subordinate regulations. We were content enough with that.

Question, That the Committee is content with the clause, put and agreed to.

Clause 18 agreed to.

Clauses 19 and 20 agreed to.

Clause 21 (Controls on free distribution of printed matter)

1587. The Chairperson: There were concerns about the clause. At our meeting on 2 December, members asked the Department to provide the Committee with legal opinion on the grounds on which a council may base a decision to approve or refuse consent to distribute printed material on the street and for more information on how the Department envisages that working in practice. The departmental reply states that it cannot provide a legal opinion on that, as:

"Each case received by a council will have to be considered on its merits and a decision made by that particular council. In reaching such a decision the district council may decide to seek a legal opinion relevant to the particular case in question.

Clause 21 of the Bill makes clear that a council may refuse consent where, for example, it considers that the proposed distribution would in all the circumstances be likely to lead to the defacement of the designated land."

It goes on to say:

"Clause 21 of the Bill also includes a process whereby a decision of the council can be appealed to a court of summary jurisdiction. A person aggrieved by a decision of a district council therefore has this option and it is likely that legal opinion relevant to the grounds on which the council's decision was made would be required.

The Department will be bringing forward, as soon as possible after the Bill is passed by the Assembly, comprehensive guidance covering the practical implementation of the new provisions on controlling the distribution of free literature. The Guidance will be subject to full consultation and it is expected that any concerns raised by councils on the practical workings of the new provisions would be addressed in that Guidance."

1588. Are members content with the Department's response, or are there any questions?

1589. Mr Dallat: What will happen with literature on windscreens?

1590. The Chairperson: It is down to making an application to the council, is that correct?

1591. Mr Gray: Windscreens are covered if the distribution of free material is on relevant, designated land. However, distributors of such material would need to get permission to put flyers under window wipers.

1592. The Chairperson: It is down to councils to make that decision, and, if someone is unhappy, there is an appeals process.

1593. Mr McGlone: Would that also apply to what are loosely described as Crown properties?

1594. Mr Gray: Do you mean cars that are parked on Crown properties?

1595. Mr McGlone: Aye, I am picking up on John's point.

1596. Mr Gray: I would need to check that one. Jackie, do you have any views?

1597. Mr Lambe: We may have to come back to the Committee on that, as I do not want to give inaccurate information. However, my initial reaction is that Crown properties do not fall into the category of:

"relevant land of the district council".

1598. My feeling is that councils could not designate an area where the distribution of free printed material requires approval if that included Crown land, unless it is a road that is maintained by Roads Service. However, I would want to be absolutely certain on that.

1599. Mr McGlone: Forgive my ignorance, but I am thinking about car parks that could be interpreted as being Crown property and that are publically open and accessible to everybody.

1600. Mr Lambe: I would want to check with colleagues in Roads Service, but my understanding is that Roads Service does not own many car parks. It manages some leased sites in and around Belfast that are used as car parks, but those sites do not fall into the definition of "Crown land" as they are not owned by the Crown. However, I will seek clarification on that point.

1601. Mr McGlone: Thank you.

1602. The Chairperson: I cannot put the Question. However, in reality, when would people ever access Crown land to advertise?

1603. Mr Lambe: An example that comes to mind is the car park here in Stormont, which is not designated by a council under this provision, because it does not fall into the category of:

"relevant land of the district council".

1604. It is only land in which councils have a role with respect to litter.

1605. The Chairperson: What I am trying to get at is whether people would be able to come in and put stuff on car windscreens on Crown land. Are there any examples of that having happened on Crown land anywhere?

1606. Mr Lambe: I am not aware of any, but primarily —

1607. The Chairperson: I would not imagine so. The Committee member has asked a question, and we cannot put the Question on the clause until we get a definition from the Department.

Clause 21 referred for further consideration.

Clauses 22 and 23 agreed to.

Clause 24 (Abandoned shopping and luggage trolleys)

1608. The Chairperson: I remind members that the Committee raised the prospect of including shopping baskets in the clause but recognised that there would be difficulties with that, as those baskets generally have no identifying marks. Members thrashed the issue out last week after Mr Clarke had raised it, but the Committee was content for the Department to consider the issue at a later date. There are no further updates from the Department or views from Committee members, so I will put the Question.

Question, That the Committee is content with the clause, put and agreed to.

Clause 24 agreed to.

Clause 25 agreed to.

1609. The Chairperson: That concludes the formal clause-by-clause scrutiny of Parts 1, 2 and 3 of the Clean Neighbourhoods and Environment Bill. The Committee needs to come back to two clauses, and it will do so at its meeting of 13 January 2011. At that stage, we will have all the information from the Department. Thank you very much.

13 January 2011

Members present for all or part of the proceedings:

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

Witnesses:

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

1610. The Chairperson (Mr Boylan): I welcome Robert Gray, Hazel Bleeks, Jackie Lambe and Helen Anderson. You are all very welcome.

1611. I remind members that on 16 December the Committee agreed clauses 4, 7 and 22 subject to amendments making the regulations in those clauses to alter the level of fixed penalty fines subject to draft affirmative procedure. Those have been provided by the Department on 10 January. I advise members that I will go through and ask for the Committee's position on

clauses 16 and 21 before formal consideration of the clauses in Part 4. Are members content that the proposed amendments to clauses 4, 7 and 22 meet the needs of the Committee?

Members indicated assent.

Clause 16 (Litter offence: fixed penalty notice)

1612. The Chairperson: We have to go back to two clauses that we passed over. I remind members that the Department has confirmed that the age of criminal responsibility at which fixed penalties can be issued is 10 and indicated that it will produce guidance for councils on issuing fines to minors. At the meeting on 16 December, members felt unable to come to a decision on the clause until they had seen examples of that guidance. The Department has provided details of guidance on fixed penalty notices to juveniles in England and Wales in its response to the issues raised under clause 28 in its second letter. It indicates that similar guidance will be issued to councils here. Do you have any other comments on that or are you content with what you have said?

1613. Mr Robert Gray (Department of the Environment): The guidance will be the starting point for us.

1614. The Chairperson: OK. It is over to the Committee. Do members have any comments?

1615. Mr W Clarke: As I said previously, I believe that criminalising young people through fixed penalties at the age of 11 is too young. It is as simple as that. I have not heard anything to change my mind.

1616. Mr Weir: I am similarly unaltered but on the other side of the fence.

1617. The Chairperson: I know that Mr Clarke has issues with this. Anyone who wishes to bring an amendment forward in the Chamber in respect of the age can do so.

Question put, That the Committee is content with the clause.

The Committee divided: Ayes 4; Noes 4.

AYES

Mr Buchanan; Mr Ross; Mr Savage;
Mr Weir.

NOES

Mr Boylan; Mr W Clarke; Mr Dallat;
Mr B Wilson.

Question accordingly negatived.

Clause 16 disagreed to.

Clause 21 (Controls on free distribution of printed matter)

1618. The Chairperson: Trevor Clarke is not here. This is the issue about Crown land. For those who were not at the meeting, I remind members that, at the meeting on 16 December, the

Committee deferred a decision on this clause until the Department provided an answer to queries on the clause's impact on Crown land. The departmental response is in the first letter, and it indicates that the power under this clause to control the free distribution of printed matter does not extend to Crown land but that, under existing law, councils can issue litter abatement notices to those responsible for Crown land to require litter to be cleared. I know that Trevor Clarke brought that issue up. I do not have an issue. Do any other members have comments?

1619. Mr Gray: The Department does not see it as a problem because there is legislation in place to deal with that.

1620. The Chairperson: OK. Legislation already exists to deal with that.

Question, That the Committee is content with the clause, put and agreed to.

Clause 21 agreed to.

1621. The Chairperson: We will now go through clauses 26 to 76 and the four schedules one by one to seek the Committee's position on each. I will group the clauses where possible. I remind members that this is the last opportunity to discuss the clauses of the Bill and that decisions will be final. Part 4 is about graffiti and other defacement.

Clause 26 (Penalty notices for graffiti and fly-posting)

1622. The Chairperson: I remind members that, at the meeting on 9 December, the Department accepted that a different approach is needed to issuing fixed penalty notices to young people and that the provision of alternative sites for fly-posting was a matter for individual councils. One member felt that the clause needed to be amended to make it compulsory for councils to provide fly-posting sites, but most felt that it should remain optional, although, obviously, new ways to advertise should be encouraged. Members were otherwise content with the clause.

1623. I advise members that the Department has since informed the Committee, in annex A of the letter dated 11 January, which was tabled today, that it intends to amend Part 4 to allow councils to deal more effectively with graffiti and fly-posting. The principal mechanism to achieve that is the inclusion of a new clause, which will be discussed later but which requires a consequential amendment to clause 26, replacing the word "obliteration" with "defacement". Gentlemen, you may wish to take a quick look at the letter dated 11 January, which is in your tabled papers, and we will certainly welcome the new clause. Any new measures to try to address the situation are certainly welcome.

1624. Question, That the Committee is content with the clause, subject to the amendment proposed by the Department to allow councils to deal more effectively with graffiti and fly-posting, put and agreed to.

1625. Clause 26, subject to the amendment proposed by the Department to allow councils to deal more effectively with graffiti and fly-posting, agreed to.

1626. The Chairperson: Are members also content to make a recommendation in the Committee's report that councils be encouraged to provide fly-posting sites? At the end of the day, that will only be a recommendation. Are we agreed?

Members indicated assent.

Clause 27 (Amount of penalty)

1627. The Chairperson: At the meeting on 9 December, the Department agreed to amend clause 27 to make the power to alter the amount of fixed penalty subject to draft affirmative procedure. Members have been provided with a copy of the amendment. This is draft affirmative again. We have already discussed this, and we are happy enough.

Question, That the Committee is content with the clause, subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified in the Bill subject to draft affirmative procedure, put and agreed to.

Clause 27, subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified in the Bill subject to draft affirmative procedure, agreed to.

Clause 28 (Penalty notices: power to require name and address)

1628. The Chairperson: At the meeting on 9 December, the Department agreed to provide the Committee with an example of the guidance on how the Bill will deal with the issuing of notices to juveniles. Members have been provided with the Department's response, in annex A of the letter dated 5 January. It is the Department's intention to produce NI guidance based on 'Issuing Fixed Penalty Notices to Juveniles', already in force in England and Wales, after full consultation with relevant parties.

1629. In addition to the specific guidance, the Department intends to bring forward detailed guidance for district councils on the use of fixed penalty notices. The aim of that guidance will be to explain some of the principles that underpin the appropriate use of local environmental fixed penalty notices: how their use should be planned and managed; on what basis they should be issued, and when they should not; and, importantly, how the non-payment of fixed penalty notices should be monitored, managed and dealt with.

1630. It is also the Department's intention to include in that guidance a section that offers advice on the main issues and rules to consider and follow when using fixed penalty notice enforcement against young people under the age of 18. A draft of that proposed guidance will also be subject to full consultation with interested parties. Are we happy enough with the guidance? It is important that the guidance be sent fairly quickly and in tandem with the Bill's being implemented, and we want a commitment from the Department in respect of that.

1631. Mr Gray: Yes, in relation to all the guidance.

Question, That the Committee is content with the clause, put and agreed to.

Clause 28 agreed to.

Clauses 29 and 30 agreed to.

Clause 31 (Defacement removal notices)

1632. The Chairperson: At the meeting on 9 December, members were content with clause 31. However, as with clause 26, the Department, in annex A of its tabled letter of 11 January, indicated that it is its intention to make a consequential amendment to this clause as part of its intention to allow councils to deal more effectively with graffiti and fly-posting by replacing the word "flyer" with "placard".

Question, That the Committee is content with the clause, subject to the amendment proposed by the Department to allow councils to deal more effectively with graffiti and fly-posting, put and agreed to.

Clause 31, subject to the amendment proposed by the Department to allow councils to deal more effectively with graffiti and fly-posting, agreed to.

Clauses 32 to 35 agreed to.

New Clause

1633. The Chairperson: In its paper dated 11 January, the Department indicated its intention to strengthen Part 4 of the Bill to allow district councils to deal more effectively with graffiti and fly-posting. It intends to achieve that by inserting a new clause after clause 35, the details of which have been provided at annex A. Would you like to give us a brief overview of the new clause?

1634. Mr Gray: As you said, the Department has now forwarded all the amendments to Part 4. We feel that they address most of the concerns that were raised by the Committee and by those who gave evidence to the Committee, as set out in your analysis table. The Department is also satisfied that, under existing law, a district council can take prosecution action. The Department intends to make that clear in follow-up guidance.

1635. Ms Hazel Bleeks (Department of the Environment): Article 18 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 provides a district council with the power to remove or obliterate graffiti which is detrimental to the amenity of any land in its district or any illegally displayed placards or posters. It also enables the council, in certain circumstances, to recover the costs that it incurs in doing so. We sought to strengthen those powers further, and the amendments that will be incorporated in the new article 18, as substituted by new clause 35A, provide that in circumstances where a district council gives notice of its intention to remove or obliterate any graffiti, placard or poster, the period of notice is reduced from 14 days to two days to enable councils to act more quickly. The landowner or occupier, who, in all likelihood, is the victim of the graffiti or fly-posting, will not be responsible for the cost of removing it. Where possible, that cost will be borne by the person who committed the act of graffiti or fly-posting, or the person whose goods, trade, businesses or other concerns are publicised by it.

1636. We also propose a new provision to ensure that compensation can be claimed by a person whose property is damaged by district councils exercising the power to remove or obliterate graffiti, placards or posters. Again, that will safeguard the property owner. However, we are making it clear that compensation cannot be paid to the person who displayed the graffiti, placard or poster, or caused it to be displayed. Any question of disputed compensation will be referred to and determined by the Lands Tribunal.

Question, that the Committee is content with the clause, put and agreed to.

New clause agreed to.

Clause 36 (Sale of aerosol paint to children)

1637. The Chairperson: At the meeting on 9 December, departmental officials agreed to provide the Committee with the age limit on the sale of aerosols in Scotland and to consider amending the Bill to raise the age limit to 18. The Department's response is at annex B of the letter dated 5 January. It indicates that the age specified in similar legislation is 16. However, on further

consideration, the Minister has requested that the wording "under the age of 16", as specified in clause 36, should be changed to "under the age of 18". The Department will therefore bring forward an amendment to the Bill to give effect to that change and raise the age to 18. Are members content with that?

1638. Mr W Clarke: It is very welcome news. The age limit of 16 was criminalising young people in general. I welcome the movement, and it proves that consultation is sometimes listened to.

1639. Mr Dallat: Clause 36(2) says:

"In subsection (1) 'aerosol paint container' means a device which—

(a) contains paint stored under pressure, and

(b) is designed to permit the release of the paint as a spray."

1640. Increasingly, these materials are stored in containers with a pump that, when activated, has the same effect as an aerosol. Is that wording adequate to take account of that?

1641. Mr Gray: I will have to check that. It does say "under pressure".

1642. Mr Dallat: Yes. A lot of those products are now not stored under pressure but can be released under pressure because they have a pump and a trigger. I would not want to see an outbreak of pump paint.

1643. The Chairperson: The Department can maybe come back with that response. However, this clause is to do with raising the age for the sale of aerosols to 18.

1644. Mr Dallat: It might read "or be capable of being put under pressure" or something like that. It may be all right the way it is; I do not know.

1645. Mr Gray: It could be. That issue has not been raised before. We need to check that out. My understanding is that people press the button on the can of spray paint and that is it. I had not envisaged dealing with that situation. We need to look at that.

1646. Mr Weir: A valid point has been raised. I wonder about the wording. Clause 36(2)(b) says that it is a device that is:

"designed to permit the release of the paint as a spray."

1647. That is a slightly wider definition that may well cover the situation. Robert is going get back to us on that. It would be wrong to create a prohibition but leave some sort of practical loophole that leads to an issue about whether something is covered by it.

1648. Mr Gray: We will check that out.

1649. The Chairperson: It is clearly stated in the Bill. The word "and" suggests both as opposed to one or the other.

1650. Mr Weir: It is important to get this right. If we are seen to have fallen down on this, I do not want us to look like a bunch of aerosols.

1651. The Chairperson: Do not record that, please. Mr Dallat has raised a valid point, but I think that it is covered by clause 36(2) which says that "aerosol paint container" means a device that:

"(a) contains paint stored under pressure, and

(b) is designed to permit the release of the paint as a spray."

1652. That might cover it. Do you want to respond to that? It says "and".

1653. Mr Gray: My initial view is that we cannot ignore the words "under pressure". I need to take advice on that.

1654. The Chairperson: That could be amended at Consideration Stage if need be.

1655. Mr Gray: It could, or the guidance could make it absolutely clear that there is flexibility to cover other sorts of containers. I do not want to commit one way or the other until I get some sort of advice.

1656. The Chairperson: Mr Dallat has raised the issue, and I think that it can be addressed. I also think that we can agree the clause.

Question, That the Committee is content with the clause, as amended by the Department to raise the limit below which it is illegal to sell aerosol paints to 18, put and agreed to.

Clause 36, as amended by the Department to raise the limit below which it is illegal to sell aerosol paints to 18, agreed to.

Clause 37 (Unlawful display of advertisements)

1657. The Chairperson: At the meeting on 9 December, members were content with the clause but were concerned that councils were likely to experience difficulty in trying to disentangle fly-posting from wider advertising, which come under the control of the Planning Service and is poorly enforced. Members considered the possibility of including a recommendation in that regard. I think that we are content with that. The new clause in relation to allowing councils to deal more effectively with issues covers it.

Question, That the Committee is content with the clause, put and agreed to.

Clause 37 agreed to.

1658. The Chairperson: If members are happy, we will make a recommendation that the Planning Service tightens up on the control of advertising to ensure that councils are able to implement the new fly-posting powers effectively. Are you happy for that recommendation to be made?

Members indicated assent.

New Clause

1659. The Chairperson: In its letter of 11 January, the Department indicated its intention to strengthen Part 4 of the Bill to improve information-gathering powers. It intends to achieve that by inserting a new clause after clause 37, the details of which have been provided at annex B. Would you like to give us a quick overview of that new clause?

1660. Ms Bleeks: Basically, the clause will provide district councils with the power to obtain any information that the council reasonably considers that it needs for the purposes of Part 4 of the Bill, which deals with graffiti and other defacement. Similar powers are already contained in article 20 of the Litter (Northern Ireland) Order 1994, and we understand that councils have found the power very useful, particularly when gathering evidence to enable them to take a prosecution. We were keen to ensure that they had that power in relation to graffiti and fly-posting as well.

Question, That the Committee is content with the clause, put and agreed to.

New clause agreed to.

Clause 38 (Power to make dog control orders)

1661. The Chairperson: We will move on to Part 5 of the Bill, which is in relation to dogs. At its meeting on 9 December we were content enough with clauses 38 to 41.

1662. Mr Gray: We will just take an opportunity to say something here. The main development since the Committee last considered this is that the Department has brought forward a new information-gathering clause in relation to Part 5 which strengthens it. We also want to clarify something that was mentioned at a previous meeting in relation to the dogs issue.

1663. Ms Bleeks: I would like to take the opportunity to clarify something that was said at the Committee meeting in Limavady on 9 December in relation to clause 38, which concerns the power to make dog control orders. The Hansard transcript of that meeting was only received this week, and, having read through it, the Department is somewhat concerned that the Committee was given the impression that a dog control order specifying the maximum number of dogs that can be walked by one person could be applied on a case-by-case basis. That is not the position.

1664. The correct position is that clause 38(3)(d) empowers the district council to make a dog control order specifying the maximum number of dogs that a person may take on to specified land. Prior to making a dog control order, the council must take into account the needs and views of all individuals concerned. However, if such an order is made, it will apply to anyone who takes dogs on to that specified land.

1665. The Chairperson: For clarification, I think that was the issue raised by the Kennel Club. Is that correct?

1666. Ms Bleeks: It was raised specifically in relation to professional dog walkers and greyhound owners — that type of thing. On reading through the Hansard transcript, it appeared that certain individuals could be exempt from a particular dog control order. What we are saying is that, once a dog control order is made in relation to specified land, it applies to everyone who goes on to that land, including professional dog walkers. However, prior to making the order, the council would have to consult with all individuals concerned and then decide whether it was appropriate to make the order. Obviously, the representations of professional dog walkers, the Kennel Club, etc, would be taken into account prior to making the order, and the council might decide that it was not appropriate for that land.

1667. The Chairperson: Obviously, it is still the discretion of the council to decide that. I am trying to remember the comments about that. It is still the council's discretion, and a key element of all that is proper consultation.

1668. Ms Bleeks: It is fair to say that all the Bill does is give the council the power to make dog control orders in relation to a number of different issues, one of which is specifying the maximum number of dogs. Following on from the Bill, there will be regulations to provide the detail of that and outline the procedures that councils have to follow before they can make a dog control order. One of those will specify that the council must consult.

1669. The Chairperson: That is fine.

1670. Mr Gray: The council may decide, having listened to the views of professional dog walkers and so on, to recommend that the maximum number of dogs on a particular area of land should be, for example, six or four. In other cases, the number might be smaller. It depends on the representations and so on that the council takes into account.

1671. The Chairperson: That is fine. However, I am saying that we need to give both parties — those people who may not wish to have people on their land and those people who are making a case — an opportunity. There must be a proper consultation process. The Kennel Club suggested that we establish a permit scheme to help us to regulate. Have we thought about that? Does that impact on what we are saying here, or are we still saying that we leave it to the discretion of councils as long as there is proper consultation and people have an opportunity?

1672. Ms Bleeks: It has to be down to the councils. The introduction of a permit scheme is viewed as overly cumbersome.

1673. Mr Ross: Effectively, this will allow councils to decide whether or not to impose the orders. Councils can choose not to. You mentioned exemptions at the start — could a local council introduce an order that creates exemptions?

1674. Ms Bleeks: That could be dealt with at the order-making stage. For example, when we look at the regulations that will flow from this, we will look at things like exemptions for assistance dogs. Obviously, if a council makes an order that excludes dogs from certain land, it will want to make exemptions for assistance dogs. Therefore, it is possible that professional dog walkers could be exempted through the detail of the order. The Bill merely gives the council the power to make those orders if it chooses to.

1675. Mr Ross: That is fair enough.

1676. The Chairperson: We need to be very careful to give those people the opportunity and ensure that the council looks at it properly. We will have to make a recommendation.

Question, That the Committee is content with the clause, put and agreed to.

Clause 38 agreed to.

Clauses 39 to 41 agreed to.

1677. The Chairperson: I also ask that we make a recommendation in the report about the matter that has been highlighted today. Do members agree?

Members indicated assent.

Clause 42 (Amount of fixed penalties)

1678. The Chairperson: At the meeting on 9 December, the Department agreed to amend this clause to make the power to alter the amount of fixed penalties subject to draft affirmative procedure.

Question, That the Committee is content with the clause, subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure, put and agreed to.

Clause 42, subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure, agreed to.

Clauses 43 and 44 agreed to.

New Clause

1679. The Chairperson: As with Part 4, the Department indicated its intention to strengthen Part 5 of the Bill to give councils improved information-gathering powers. It intends to achieve that by inserting a new clause after clause 44, the details of which have been provided at annex B to the letter dated 11 January. Will you give a brief overview of the new clause for members' benefit?

1680. Ms Bleeks: It is really as before. It is exactly the same as new clause 37A and article 20 of the 1994 Order. It gives district councils the power to obtain any information that the council reasonably considers it needs for the purposes of Part 5 of the Bill. Again, we understand that councils will find this power very useful, particularly when gathering evidence to enable them to take a prosecution.

Question, That the Committee is content with the clause, put and agreed to.

New clause agreed to.

Clauses 45 to 49 agreed to.

Clause 50 (Amount of fixed penalty)

1681. The Chairperson: At the meeting on 9 December 2010, the Department agreed to amend this clause to make the power to alter the amount of fixed penalty subject, once again, to draft affirmative procedure.

Question, That the Committee is content with the clause, subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure, put and agreed to.

Clause 50, subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure, agreed to.

1682. The Chairperson: We will all know what affirmative procedure is when this is done.

Clauses 51 and 52 agreed to.

Clause 53 (Power of entry)

1683. The Chairperson: At our meeting on 9 December, departmental officials agreed to clarify the situation in regards to liability for damage to alarms caused by council officials. The Department's response is provided in annex C of the letter dated 5 January. It states that:

"Clause 55(9) of the Bill states that 'nothing done by, or by a member of, a district council or by an officer of or another person authorised by a district council, if done in good faith ... is to subject the council or any of those persons personally to any action, liability, claim or demand'."

1684. That is very well put. Thank you very much. It continues:

"Council officers, and those authorised by a council, are therefore indemnified from any damage caused in exercising their powers of entry to silence an alarm, provided that action is exercised in good faith."

1685. Are members content with the Department's response?

Members indicated assent.

Question, that the Committee is content with the clause, put and agreed to.

Clause 53 agreed to.

Clauses 54 to 57 agreed to.

Clause 58 (Noise offences: fixed penalty notices)

1686. The Chairperson: At the meeting on 9 December, the Department agreed to amend the clause to make the power to alter the amount of fixed penalty subject to draft affirmative procedure. We are content with the Department's response.

Question, That the Committee is content with the clause, subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure, put and agreed to.

Clause 58, subject to the amendment proposed by the Department to make the power to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure, agreed to.

Clause 59 agreed to.

Clause 60 (Statutory nuisances)

1687. The Chairperson: At the meeting on 9 December, the Department agreed to consider an amendment in relation to noise from illegal motorsports tracks. The Department's response is at annex D of the letter dated 5 January. The Department states that the improved procedures for dealing with statutory nuisance that are brought about by Part 7 will enable councils to deal more effectively with noise that is emitted from land that is prejudicial to health or a nuisance. Accordingly, the Department is of the view that an amendment in relation to noise from illegal motorsports tracks is not required as the situation is already adequately covered by the Bill. Trevor Clarke raised this issue. Are members content with the Department's response?

Members indicated assent.

1688. The Chairperson: At the meeting on 9 December, members also asked for clarification of clause 60(1)(l) as we were concerned that it might be used to impede the natural progression of water systems. Again, Trevor Clarke raised this issue. The Department's response is provided at annex E of the letter dated 5 January, and states that English case law has established that the range of potential recipients of abatement notices under the provision are subject to an important limitation. Where a natural watercourse becomes silted up by natural causes and causes a nuisance by flooding, the landowner is unlikely to be held liable under the provision. By contrast, if a watercourse is created or substantially altered by humankind, the landowner or occupier is responsible for its design, construction and maintenance and may be in default in respect of their inadequacies. Are members content with the response in relation to watercourses?

Members indicated assent.

1689. The Chairperson: In addition, on 9 December, when members considered clause 65, they asked the Department to consider extending the definition of "owner" in clause 65 to the rest of the Bill, as was requested by the Local Government Association and several individual councils. The Department agreed to consider that, and in annex C of its response dated 11 January it proposes two amendments to the clause that will expand the definition of "owner" to the whole of Part 7. I think that we are happy enough with that response.

Question, That the Committee is content with the clause, subject to the amendments proposed by the Department to expand the definition of "owner" in clause 65 to the whole of Part 7, put and agreed to.

Clause 60, subject to the amendments proposed by the Department to expand the definition of "owner" in clause 65 to the whole of Part 7, agreed to.

Clause 61 (Duty of district council to inspect for statutory nuisance)

1690. The Chairperson: At the meeting on 9 December, the Department agreed to consider an amendment in relation to the inclusion of pigeons. The Department's response, at annex F of the letter dated 5 January, states that it considers that the existing powers that are available to councils in clause 60(1)(a):

"any premises in such a state as to be prejudicial to health or a nuisance"

and clause 60(1)(e):

"any accumulation or deposit which is prejudicial to health or a nuisance"

are sufficient to allow councils to serve an abatement notice where there are problems associated with pigeons. Are members content with the response?

Members indicated assent.

Question, That the Committee is content with the clause, put and agreed to.

Clause 61 agreed to.

Clauses 62 to 64 agreed to.

Clause 65 (Expenses recoverable from owner to be a charge on premises)

1691. The Chairperson: As mentioned previously at clause 60, the Committee requested the expansion of the definition of "owner" in this clause to the whole of the Bill, and members have a copy of the response. The Department has proposed amendments that will apply the definition to the whole of Part 7, which includes an amendment to the clause. Are members content with the Department's response?

Members indicated assent.

Question, That the Committee is content with the clause, subject to the amendments proposed by the Department to expand the definition of "owner" in this clause to the whole of Part 7, put and agreed to.

Clause 65, subject to the amendments proposed by the Department to expand the definition of "owner" in this clause to the whole of Part 7, agreed to.

Clauses 66 to 71 agreed to.

Clause 72 (Regulations and orders)

1692. The Chairperson: At the meeting on 9 December, the Department agreed to amend the clause to ensure that the powers, once again, become subject to draft affirmative procedure.

Question, That the Committee is content with the clause, subject to the amendment proposed by the Department to make the powers to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure, put and agreed to.

Clause 72, subject to the amendment proposed by the Department to make the powers to alter the amount of fixed penalty specified on the face of the Bill subject to draft affirmative procedure, agreed to.

Clauses 73 to 76 agreed to.

Schedules 1 to 4 agreed to.

Long title agreed to.

1693. The Chairperson: That concludes the formal clause-by-clause consideration of the Clean Neighbourhoods and Environment Bill. A report will be brought back to the Committee in the next couple of weeks with the recommendations that we agreed on the clauses. Thank you very much. I have no doubt that we will see you again, and I take this opportunity to wish you a happy new year.

1694. Mr Gray: Thank you.

26 January 2011

Members present for all or part of the proceedings:

Mr Cathal Boylan (Chairperson)
Mr Willie Clarke
Mr Danny Kinahan
Mr George Savage
Mr Brian Wilson

Clause 16 (Litter offence: fixed penalty notice)

1695. The Chairperson (Mr Boylan): We will now move on to clause 16 of the Clean Neighbourhoods and Environment Bill so that we can go over the issue that arose about the age of an offender. When we voted on that clause previously, the result was 4:4. We sought clarity at that time as to which way the vote would go, and we agreed that it would go in favour of the clause as drafted. However, that was not the case. As it was a tied vote, the decision was not that the clause would go through as drafted. That means that we have to look at it again.

1696. The Committee Clerk: We need to clarify whether members are content that that is how they intended the vote to be. The Chairperson asked whether members were content with the clause as drafted, and the vote was tied at 4:4. That means that it did not go forward as drafted, so that proposal was not carried. The indication that I gave after that was that the clause would go ahead as drafted, but that is not correct. Therefore, we need to confirm that members are content that the decision that was made on that day is the one that they want. If it is not, the Committee can reconsider that this morning.

1697. Mr Kinahan: I was not here.

1698. The Chairperson: At our meeting on 13 January 2011, the Committee divided on clause 16, which is entitled "Litter offence: fixed penalty notice". The minutes of the meeting recorded that the Committee was content with the clause as drafted. However, that was an incorrect decision.

1699. I remind members that the Department confirmed that the age of criminal responsibility is 10, meaning that fixed penalty notices could be issued to anyone of that age. The Department also indicated that it would produce guidance for councils on issuing fines to minors. At the meeting on 16 December 2010, members felt unable to come to a decision on clause 16 until they had seen examples of that guidance. The Department provided details of guidance that is used in England and Wales concerning issuing fixed penalty notices to juveniles, and it indicated that similar guidance would be issued to councils here.

1700. A concern about that age was the issue that some Committee members, particularly Mr Willie Clarke, identified. Ultimately, when we went to the vote, it was split at four each, and we are saying that we agreed the actual clause as drafted. However, that is not the case. We did not agree that it should refer to that age group, so we need clarification.

1701. The Committee Clerk: If I could just clarify this point, the clause is about introducing the opportunity for councils to issue fixed penalty notices for litter offences. That applies down to the age of 10, because that is the age of criminal consent. However, that is a separate issue; it is not identified in the Bill. As the law stands, councils have the power to prosecute people from age 10 upwards for litter offences. Clause 16 would introduce an alternative, that is, a fixed penalty notice, for that offence. Therefore, the concern was about the age of consent applying to the clause.

1702. To ensure that members are absolutely sure about what they are agreeing to, by not agreeing the clause, they are not changing the age of consent or the fact that councils can still prosecute. They are saying that a fixed penalty notice could not be applied for a litter offence.

1703. Mr Kinahan: It could not be applied to a minor.

1704. The Committee Clerk: It could not be applied to any person of any age; it is simply that the age of criminal responsibility is 10. The clause will apply down to age 10.

1705. Mr W Clarke: Thank you for that explanation. We are not saying that we do not want to see fixed penalties for litter offences. We are saying that we think that children between the ages of 10 and 16 are too young to be criminalised for a litter offence. I believe they should get some sort of guidance or caution followed by some type of education on the matter. If a child is seen littering, they should go through some sort of course at school or to a waste-management educational course.

1706. I think that we need an amendment to the clause. I think that that is what we told the departmental officials, but they seemed to dig their heels in and were reluctant to negotiate or even to bring forward any sort of compromise position. They just kept going on about the guidance. I also talked to my party, and it is totally opposed to the criminalisation of children. I have already talked to the Bill Office about tabling an amendment, but it is up to the Committee to decide what it wants to do.

1707. The Chairperson: What is the time frame for this?

1708. The Committee Clerk: We have to complete our report on the Bill by Friday, and members have already received a draft report for tomorrow's meeting. However, members will see that clause 16 has been left undecided at this stage. We will draft something on the basis of this meeting.

1709. If members feel that the clause needs to be amended, we can do that. Therefore, members would be agreeing the clause, subject to an amendment. If it is a Committee decision, we can bring an amendment later. It does not have to be included word for word in the report; the report merely has to say that the Committee has made the decision.

1710. We saw the guidance from the Department, which maintained that the guidance will steer how councils will be encouraged or guided in the issuing of fixed penalty notices to minors. The Committee could look at an amendment, at a recommendation, or it could simply go with the clause as drafted, and a member could bring forward an amendment of their own accord or of that of their party.

1711. Mr W Clarke: I thought that the original 4:4 vote was that we were taking an amendment on the clause.

1712. The Committee Clerk: Perhaps I steered you in the wrong direction on that; my apologies for that. What we succeeded in doing the previous time was to not agree the clause as drafted, so perhaps we need to go a step further now.

1713. The Chairperson: That is why I sought clarification on the day.

1714. Mr Savage: With regard to the age issue, I was walking through a big shopping centre last week and saw some young people looking for bins to put their litter in. Younger people are now very conscious of litter, and older people could take a lesson from them. I find that very interesting, and I have to give teachers credit for what they are doing in schools.

1715. Mr Kinahan: I was not at the relevant Committee meeting, but I am happy for us to table an amendment to the clause. However, people should be given only one chance and be provided with some form of education on the issue. If they commit the offence again, they should be punished and fined. As long as the decision is firm on the second shot, we should look at an amendment. Can we do it in a way that means that we can get it back by Thursday?

1716. The Committee Clerk: I will talk to the Bill Clerk about that. We can agree to do something, subject to an amendment, and bring the wording of that amendment to the Committee between Committee Stage and Consideration Stage. Therefore, members will have time to consider the exact wording. However, today we need to agree on whether the Committee wants an amendment, and we can then provide the detail of that amendment. It is really a matter of the Committee's agreeing exactly what it would like the amendment to do.

1717. Mr W Clarke: I propose that we make an amendment.

1718. The Chairperson: We need to agree the clause as drafted, subject to amendment. Are you happy enough to go down that route?

Question, That the Committee is content with the clause, subject to amendment, put and agreed to.

Appendix 3

Written Submissions Relating to the Report

Armagh City and District Council Submission to the Clean Neighbourhoods and Environment Bill

By email to doecommittee@niassembly.gov.uk

13 August 2010
The Clerk of the Environment Committee
Room 247,
Parliament Buildings,
Ballymiscaw,
Stormont,
Belfast
BT4 3XX

Dear Sirs

Re: Clean Neighbourhoods and Environment Bill

Thank you for the opportunity to provide the views of Armagh City and District Council to the Committee on the above matter as requested

The Council would wish to take this opportunity to comment on the provisions of the Bill as set out in the report following.

I would ask you to note that due to time constraints over the summer period, it has not been possible to have this report ratified by the Council and it is anticipated that it will be reviewed by Council at a September meeting. Should any changes arise, I will advise you of same.

Yours faithfully

Fionnuala Loughran
Deputy Director, Regulatory Services and Audit

Armagh City and District Council Response to the Committee for the Environment on The Clean Neighbourhoods and Environment Bill

The Council welcomes the introduction of the Bill and the additional and effective powers for local councils that will help us to deal with issues that affect our communities and the quality of our local environment. We hope that this Bill will assist the Council in securing and maintaining high quality, clean neighbourhoods and a desirable area in which to live and work.

The Council does however have concerns as to the funding and resourcing of the additional new duties proposed for the council and also in relation to extensions to existing statutory duties.

Armagh City and District Council would also make the comment that we feel that the current powers would be strengthened if issues such as 'unsightly' and unkempt gardens and properties in residential areas were legislated for. Under current powers when we receive complaints of such properties it is not possible to establish that statutory nuisance conditions exist. Therefore, if the properties are not dangerous and are without food harborage for pests, the council has no redress to formal action and again can only use informal approaches to property owners. The result is low level environmental detriment and a reduction in the pride and appearance of a residential area.

We do note the Department's comments on page 30 of the response document to the consultation exercise and their assessment of the range of existing legislative provisions that currently exist. The Department believes that these already provide suitable means of dealing with structures that are detrimental to the amenity of an area. Given the practical experience of officers in investigating such complaints from residents and members; Council contests that the existing provisions in other legislation are applicable to the low level environmental issue of overgrown gardens and unsightly properties. Legislation such as Article 65 and 66 of the Pollution control and Local Government Order or the powers of NIHE under Article 63 of the Housing (NI) Order 1981 have a role in very specific circumstances where certain conditions are met, and unfortunately are not, in our experience, suitable as a formal means of securing improvement to properties and gardens that are detrimental to the amenity of an area.

Armagh City and District Council would therefore urge that relevant legislation in the UK such as section 215 of the Town and Country Planning Act 1990 is enacted in NI with powers given to the councils to require land to be cleaned up when its condition adversely affects the amenity of the area.

Part 1 Gating Orders

Armagh City and District Council recognises the benefits that gating orders can bring to the public, local communities and businesses.

A number of councils have already been involved in alley gating schemes and it is accepted that the issue of resourcing such schemes (eg costs of installation, staff, long-term maintenance, public liability etc) requires attention. In many cases, gating schemes have not progressed since they were first introduced in 2002 for lack of a promoter with sufficient funding to support the project. Council recommends that this part of the Act is accompanied by sufficient new burden funding and resources to ensure it is effectively utilised

Part 2 Vehicles

Clause 2

Armagh City and District Council notes the Department's comments that this clause provides additional power to the councils to deal with nuisance parking where 2 or more vehicles are parked for the purposes of advertising for sale within 500 metres of each other on a road. As the Department has agreed that the Street Trading (NI) Act 2001 can also deal with the sale of vehicles on a road, we would request that the proposal to consult on guidance on the use of existing and proposed powers is expedited in order to provide clarification to councils.

We also note that the matter of nuisance caused by vehicles parked on the street awaiting repair has not been addressed by this Bill due to the legislative timetable. The Council would request that this matter is addressed at the earliest opportunity so that more effective controls can be introduced to help reduce the impact of such activities in a residential area.

Part 3 Litter

Clause 17 Litter Clearing Notices

Armagh City and District Council remains concerned that the provision of Clause 17 to amend the Litter (NI) Order 1994 with Article 12 A (10) exempts Crown or land of an educational institution or statutory undertaker. We believe strongly that to retain this exemption will not assist in improving the general amenity and does not allow for efficient management of vacant, derelict land or open spaces in relation to litter, that are owned by other bodies.

Councils regularly face criticism for land that is affected by litter and that is controlled by other bodies that have statutory cleansing duties. These bodies do not invest the same time and effort into cleansing services. There exists a great disparity between what councils have to do in relation to litter etc and what other landowning bodies have to do; and the result is a degraded environment across Northern Ireland. Expecting other bodies to 'do their duty' has been shown not to work and thus leaving this unchanged is a recipe for ongoing problems and does not provide an effective solution to tackle problems within the spirit of the Bill.

Litter Clearing Notices have the potential to be an effective tool that can be used to raise the visual amenity of any area, but only if they can be used extensively. We would request that serious consideration is given to removing the exceptions to which litter clearing notices shall not be served under Clause 17 Article 12(10).

We note in the Department's response document that they consider it is not possible to bring this forward at this time due to the tight legislative timetable, but will consider this issue further in the context of proposed litter guidance. We would urge that efforts are made to extend the scope of the Litter Clearing Notices to deal with all areas of land.

Part 4 Graffiti And Other Defacement

Clauses 26 – 35

Armagh City and District Council welcomes the acknowledgement of the Department in its response document on the consultation process that councils need to have access to a comprehensive range of powers to take action against both the perpetrators and beneficiaries of

fly posting. We strongly support the proposal of the Department to amend the Act to make current Planning Service powers available to Councils to deal with this issue.

Currently, enforcement of advertisement control in Article 84, The Planning Northern Ireland Order (PNIO) 1991, provides for prosecution and removal similar to England's section 224 Town and Country Planning Act (TCPA) 1990 – including beneficiaries – but is a level 3 penalty and expressed as a Department power. The Planning Service in Northern Ireland does not use this power. Therefore, it is essential that councils be given these powers for effective enforcement through prosecution of both perpetrators and beneficiaries of fly posting, in addition to the powers of removal.

We also welcome the retention of Councils existing ability to immediately remove or obliterate placards, posters and graffiti using powers in the Local Government (Miscellaneous Provisions) (NI) Order 1985. To replace this provision with the proposal of a Defacement Removal Notice would have been cumbersome and bureaucratic.

However, contrary to the comment of the Department in its consultation response, Council still contests that the Bill should include powers to prosecute persons responsible for a surface which has been defaced by graffiti or fly posting for not complying with a Defacement Removal Notice. We do not accept that the Departments view that it would be 'inappropriate' to provide powers to prosecute and that the ability to re coup costs is a more appropriate course of action. Whilst we do of course wish to work in partnership with owners of street furniture, not all 'relevant surfaces' as described in Clause 31 (8) and (9) will be owned by statutory agencies. It can be readily envisaged that owners of buildings or land, particularly if vacant or derelict, will not comply with a notice on the basis that there is no potential legal action that can be taken against them.

Clause 36 Sale of Aerosol paint to children

Armagh City and District Council welcomes this measure. We would still consider that 18 is a more appropriate age for the offence rather than 16.

The minimum age for the sale of tobacco products and butane gas lighter refills is 18 and Council would be of the view that 18 should also be the minimum age for the purchase/sale of aerosol paints. Maintaining a standard minimum age would enable councils to combine regulatory and test purchasing activities, which would be more cost effective and which would comply more readily with government Better Regulation policies, rather than a separate test purchasing exercise as envisaged at Clause 36 (7) (c), solely for this purpose.

We would also highlight to the department that additional resources will be required for councils to identify premises selling aerosol paints and to raise awareness of the new legislation before test purchasing can take place.

Part 5 Dogs

The Council welcomes the power to make local dog control orders to address issues such as keeping of dogs on leads, exclusion of dogs from areas and dog fouling.

Whilst the Department comments that councils will be able to draw up a 'Fouling of Land by dogs Order' for the entire council area if they so chose, we are still reluctant to accept this as a replacement for the current offence found in Article 4 of the Litter (NI) Order 1994. Councils already have an effective means of dealing with offence of dog fouling and to replace it with a

Dog control order process appears bureaucratic and cumbersome when a suitable mechanism already exists.

It is important to ensure that the making of a dog control order is a streamlined and practical procedure. The Department will therefore need to consult with District Councils on the proposed Regulations associated with dog control orders.

Part 6 Noise

The additional powers introduced by the draft Bill are welcomed and will significantly update the existing Northern Ireland legislative position. It will give District Councils new powers to address noise problems which currently are not covered by the existing provisions in Northern Ireland but which can be addressed by GB local authorities. Therefore these powers are welcomed as a means of addressing local noise problems and therefore will assist in improving quality of life and health.

The additional powers will introduce an additional workload for councils as new types of noise complaint will require thorough investigation where currently only advice and / or informal action may be taken. Furthermore, detailed policy and procedures will be required within councils to ensure the successful implementation of these new and amended provisions.

Part 7 Statutory Nuisance

Clause 60 Statutory nuisances

The Council welcomes the extended list of statutory nuisances to include artificial light and insect pests.

Clause 62 Summary proceedings for statutory nuisances

62 (1)

The Council welcomes the new power contained in 62 (1) to serve an abatement notice in anticipation of a statutory nuisance occurring. This will help improve the quality of life and the environment for local residents as action can be taken before a nuisance situation arises.

62 (10)

Armagh City and District Council is concerned that the power of the court to make an order following conviction requiring the nuisance to be abated has not been included in the Clause 62 of CNE Bill. This provision currently exists in Section 112 of the Public Health Ireland Act and is proposed to be repealed. We view this as a retrograde step. The introduction of new legislation should always, in our opinion, add to or improve the existing situation; and in the case of enforcement tools or penalties, enhance and strengthen what is already available. Whilst we accept that on summary conviction the level of fine has been raised to Level 5 and there is 'daily penalty' of one tenth of that level for each day the offence continues, Council still believes that given the level of fines imposed by the Magistrates court, that the imposition of a court order to carry out work or to abate a nuisance or prevent it recurring, is a powerful deterrent which should be included in this legislation.

62(2)(b) Definition of 'owner'

In order to ensure effective enforcement of the abatement notice provision, Council would ask that, similar to the present position in the Public Health Ireland Act 1878, the definition of owner means 'the person for the time being receiving the rackrent of the lands or premises...whether on his own account or as an agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent'

In dealing with nuisance conditions in rented accommodation, it is not always possible to determine the owner of the property or they may reside outside the jurisdiction. In these or similar cases, it is important to be able to serve notice on an agent so that the nuisance might be abated.

Council would ask that the definition of owner above will be covered by the proposed Bill.

Ballymena Borough Council Submission to the Clean Neighbourhoods and Environment Bill

Detailed Response to the Clean Neighbourhoods and Environment Bill

Environmental Services Department, Ballymena Borough Council, 27th July 2010

Issue	Detail	Comment
Gating Orders	This part will allow a council, by order, to erect gates, which will restrict access to alleyways where crime or anti-social behaviour is occurring.	Alley gating is acknowledged as a measure that can have an impact in reducing crime, anti social behaviour and a range of environmental problems. As a department we welcome the Draft Clean Neighbourhoods and Environment Bill as it will give a faster and more effective procedure if we wish to implement these discretionary provisions. In addition, this department recognises, noise disturbance can be a part of anti-social behaviour and in this respect the new provisions are welcomed as potentially an alternative means of resolving noise disturbance. We would however have concerns in two areas. Firstly such provisions may create an expectation by residents that all alleys and secondary access ways could be gated when there is no necessity to do so. Clear guidance will be needed as well as DSD approval. Secondly there is a resource implication and we would like to see the question of funding clarified. These concerns aside we would acknowledge the many potential benefits to local communities in terms of crime prevention, disorder, noise nuisance, dumping etc and in this respect the new provisions are welcomed as potentially an alternative means of resolving such issues.

Vehicles

This part will allow a council to deal with Nuisance parking offences, abandoned and illegally parked vehicles and to issue fixed penalty notices in respect of these offences.

Similarly these provisions will inter alia allow councils to take action to address works / repairs to vehicles on the street which often can cause noise disturbance. In this respect these provisions are welcomed. Prescribed periods for landowner objections under Art 30 (2) (removal), and vehicle owner objections under Art 31(1)(ii) (disposal) of the Pollution Control & Local Government Order remain unprescribed. It is recommended that the opportunity be taken to provide clarity on such periods within the revised legislation. Although 15 days and 21 days are prescribed respectively as per similar GB and NI legislation. (Section 3(2) of the Refuse Disposal (Amenity) Act 1978, and Art 52 of the Road Traffic Regulation (NI) Order 1997) this department operates a 7 day notice system for removal and would recommend this as suitable maximum period for removal. Further that adequate resource is allocated to councils for removal and disposal of such vehicles where a responsible person does not come forward. Where the person responsible is known, similar powers to recover costs as per Article 32 of the Pollution Control & Local Government Order is requested. We would consider that the problems with abandoned vehicles are more significant than those problems created by vehicles parked on the road that are exposed for sale or being repaired. Proposals include giving an authorised officer of a Council the power to issue a fixed penalty notice regarding the offence of abandoning a vehicle. Further powers provided include the removal of the requirement to serve notice on a vehicle where it is considered to be in such a condition that it ought to be destroyed e.g burnt out vehicles. These proposals are welcomed as they streamline the process for dealing with abandoned vehicles. Councils have problems dealing with abandoned caravans and trailers under the current legislation so this new Bill would need to ensure that the definition of a vehicle is wide enough to cover such issues. In relation to vehicles being exposed for sale we would advise that the existing provisions in the Street Trading (NI) Act

2001 are satisfactory to deal with such scenarios and that the implementation of this new provision may well confuse this enforcement as it is not an offence unless 2 vehicles are within 500 metres.

Whilst it is confirmed that smoking related matter and chewing gum constitute litter, there is no broader definition of litter, and although this has never risen as an issue within this borough, we are aware there has been a matter of controversy elsewhere. It is believed that the Bill in England and Wales gives a more comprehensive definition of litter. The Bill proposes making it an offence to give false information relating to name, address etc when questioned by an authorised officer regarding an alleged litter offence. It is this department's experience that Magistrates do not give such matters much weight that is they do not attract any greater fine than would be the case for littering offences. It might therefore be more appropriate to make such an offence punishable by issue of a fixed penalty notice, thus reducing time and expense in bringing these cases before court. This department welcomes the introduction of Litter Clearing Notices that may be served on an occupier or owner of land requiring the land to be cleared of litter within a specified timeframe. Previously private land was outside of the Litter enforcement domain and only intervention through Public Health Acts or Rats & Mice Destruction (1919) Act could be used to resolve such problems. A 28-day compliance period from when the notice is served is considered too long, we would much prefer to see 7 days. The ability for councils to complete works in default and recoup costs is considered positive. The increase in fixed penalty fine to £100 is also welcomed. Controls on free distribution of printed matter - clarity is required on this if Councils will have the power to investigate companies who have commissioned the leaflet in question. These materials are often distributed by students or people on low incomes and issuing fines to them will not ultimately stop the practice. This department would believe that those who commissioned such literature should be equally liable.

Litter

The bill reinforces existing legislative position, with new offences including the offence of dropping litter in a watercourse, fixed penalties for failing to provide name / address, new litter clearing notices and street control notices, and controls on free distribution of printed matter.

Shopping and luggage trolleys

The Bill proposes powers for dealing with abandoned shopping and luggage trolleys

This department welcomes powers to dispose of, or sell abandoned trolleys. Further we welcome provisions to recoup costs for the removal, storage and disposal of abandoned trolleys from trolley owners. However it would be beneficial for the provision to be extended to cover cages and baskets that are also left in public places.

Generally the proposals are to be welcomed but it is unlikely that it will lead to full cost recovery by Councils for the areas they are responsible for enforcing through the income generated by Fixed Penalty Notices etc. The officer and administrative time required to adequately investigate and enforce many of these issues will still be significant therefore meaning that there will still be costs to the Council. There does not appear to be any enforcement powers for officers investigating potential offences for sale of aerosol paint to children (Clause 36).

Further the age within the Bill should be increased to 18, in line with the minimum age for tobacco products and butane gas refills, legislation which this department already enforce. Similarly with regards to fly posting the Bill only provides powers to Councils to target those actually posting the information as opposed to the promoters / beneficiaries. The power to target the beneficiaries lies with the Planning Service. It is more effective to target these groups however Planning Service in Northern Ireland do not see this as a high priority area. If fly posting is to be properly addressed Councils require comprehensive powers, including the full powers of prosecution. With regard to graffiti councils can currently exercise their right to remove or obliterate graffiti that is considered detrimental, this should be retained without the need to serve a Defacement Removal Notice, and thus incur a two-day wait before removal. Further there appears to be no powers to prosecute for non-compliance with such a notice. If graffiti is to be properly addressed Councils require comprehensive powers, including the full powers of prosecution.

Graffiti and fly posting

The bill reinforces existing legislative position, with new offences including fixed penalty notices for graffiti and fly posting, fixed penalty notices for failing to provide name / address, recovery of expenditure for removal of graffiti and fly posting, provisions regarding the sale of aerosol paint to children.

Dog Control

The bill gives councils additional powers in relation to dog control, including dog

This department welcomes the new proposals in relation to dog enforcement.

control orders, zoning of land and restricting the number of dogs that a person can take onto land. It proposes to replace the antiquated Byelaw system.

The use of these new provisions will be discretionary for Councils, with the ability to continue using the Litter Order. This department would welcome the options for choice that Councils will now have in regard to dog enforcement. Councils can adopt provisions locally, set fine levels (see cautionary note), decide local options and priorities and continue to retain all fixed penalties. We would however have concerns in that we are now adopting legislation and practice for England and Wales but if on the occasion of having to resort to prosecution for failure to pay a fixed penalty a council will not have the ability to recover costs due to the Northern Ireland Magistrates rules. Here charges are limited to £75, so any costs in excess of this will have to be borne by the Local Authority. We would also have concerns in relation to the repeal of Article 4 of the Litter Order and how that would diminish our ability to obtain information as in Article 20 of the same Order. The new Dog Control Order regime must ensure that we retain equivalent powers to those of Article 20 in the Litter Order.

The overhaul of the noise provisions, whilst welcome, will require a significant review and amendment to councils' internal guidance and procedures, involving officer authorisations, standard notices, letters etc. It is requested that once the legislation has been finalised, a reasonable period of time is given to councils to prepare for the commencement of these provisions. A period of 3 months is suggested between the making of the legislation and the commencement date. Alarms It is noted that this chapter introduces new provisions related to audible intruder alarms which undoubtedly can cause significant noise nuisance in urban areas. However, it is the experience of officers currently dealing with these situations under existing nuisance powers, that it is often impossible to determine whether a sounding alarm is associated with an intruder system or a heat/smoke system. Indeed it is often only having gained entry to the premises containing the alarm that such a distinction can be made. Therefore, the Department should consider including noise associated with

Noise

The additional powers proposed by the Bill will significantly update the existing legislative position. It will give councils new powers to address noise issues which currently are not covered by the existing provisions in Northern Ireland but which can be addressed by GB local authorities, such as designation of alarm notification areas to include notification of nominated key-holders, additional powers in relation to alarms, new discretionary powers in dealing with noise at night including noise offences i.e. fixed penalty notices and the extension of Noise Act 1996 to licensed premises.

other alarm types within the provisions. Whilst it is essential to make residents and owners aware of a new alarm notification area with a view to securing compliance with the requirements of that designation, the consultation and administrative process given in clause 46 is likely to be very costly. Many councils communicate directly with every address within their area by way of 'newsletter' publications. The Department should consider allowing councils the option of using such a newsletter as a cost-effective means of providing information regarding alarm designation areas rather than using newspapers (which only a proportion of addresses will actually view). It is noted that the clauses in the draft Bill make no mention of the approved Department of the Environment – Code of Practice on Audible Intruder Alarms 1982, which requires 2 nominated key holders. In accordance with that document the Department may wish to consider requiring the nomination of more than one key-holder as in practice it is often difficult to get in contact with just one individual. It is our interpretation of the power of entry that a warrant is not required to enter a property boundary in order to externally silence an alarm and that a warrant is only required to enter any buildings. We would be grateful if the Department could advise if this interpretation is correct. In addition power of entry should be applied to all alarms not just intruder alarms, as per the earlier comment. Councils have discretion on setting the amount of fixed penalty for offences under various parts of this section, this is welcomed with caution, as outlined in the covering letter.

Noise Act The removal of the adoptive nature of the Noise Act is welcomed together with the discretionary duty for councils to take reasonable steps to investigate a night-time noise complaint. The Noise Act provides an expedited procedure for investigating, quantifying and formally addressing a noise problem. It also provides a very useful Warning Notice procedure which has proven very successful in resolving complaints made to Belfast City Council (being the only council

Noise

Statutory Nuisances

The additional powers proposed by the Bill will significantly update the existing legislative position. It will give councils new powers to address issues which currently are not covered by the existing provisions in Northern Ireland but which can be addressed by GB local authorities, such as abatement notice in respect of noise in the street, light nuisance, nuisance arising from insects and overcrowding of premises.

in NI to have adopted the Noise Act). Whilst it is unlikely that all councils will deem it necessary or appropriate to establish a reactive night-time noise service to make use of the Noise Act, the provisions nonetheless offer a useful mechanism to address specific types of noise complaint and are therefore welcomed. It is anticipated that the use of Noise Act provisions which have been extended to apply to licensed premises and the use of fixed penalties will lead to more expeditious complaint resolutions with a reduced burden on the courts. These provisions may have implications for Part 13 of the DOE Model Terms - Technical Requirements for Indoor Entertainment Licensing in relation to Inaudibility clause. It is also noted the provisions relate to premises where meals and refreshments are served, this is a welcome addition. However it is strongly recommended that the use of Closing Orders currently available under Miscellaneous Provisions legislation to councils is reviewed and incorporated into the proposed bill, in a less onerous enforcement format to council. In draft clause 59(4) the amendment to the Noise Act Section 11(3) is noted, however, Section 11 (3) contains the word 'order' rather than 'orders'. Again, councils have discretion on setting the amount of fixed penalty for some offences under parts of this section, this is welcomed with caution, as outlined in the covering letter. The suggested £500 in relation to licensed premises is welcomed.

The overhaul of the statutory nuisance provisions, whilst welcome, will require a significant review and amendment to councils' internal guidance and procedures, involving officer authorisations, standard notices, letters etc. It is requested that once the legislation has been finalised, a reasonable period of time is given to councils to prepare for the commencement of these provisions. A period of 3 months is suggested between the making of the legislation and the commencement date. There are a number of specific technical comments under this part: It is unclear why the words "within the meaning of

Article 4" have been removed from Part 7, Section 60 (3) (d). It is recommended that these words be retained to maintain clarity for this exemption. It is not clear why a best practicable means defence is applicable to smoke nuisance (60(b)) arising from a chimney of a private dwelling, but such a defence is not available for fumes and gases (60(c)) arising potentially from the same source. These are both new categories of statutory nuisance in NI and, due to their similar nature in terms of probable source, it is suggested that both should attract a best practicable means defence. It is recommended that opportunity is taken to extend the power to request information as to ownership of property under Art 69 of the Pollution Control and Local Government (PCLG) (NI) Order 1978 (for the purposes of Part 7 of the CN&E Act 2010), to (1) be applicable to any person, and (2) also include "any information so specified which the council reasonably considers that it needs for the purpose of any function conferred on the council by the Order (Act)" as per Art 72 of the PCLG Order 1972. This will allow greater scope to acquire whatever information may be necessary for statutory nuisance investigations from a wider range of people. The issue of nuisance caused by pigeons can be a significant issue in urban areas. It is recommended that an additional category of nuisance be included to address, "any premises providing harbourage for pigeons so as to be prejudicial to health or a nuisance." The streamlining of the procedure for the abatement of nuisances, bringing it into line with that which applies in England under the Environmental Protection Act 1990, and the inclusion of an offence for non-compliance with the requirements of a Notice are welcomed. It is anticipated these measures will expedite the abatement of nuisances with a reduced input from the courts.

It is noted that the principle of using a 'daily fine' following conviction to secure the abatement of a nuisance only applies to premises other than industrial, trade or business premises. Whilst a maximum fine of £20,000 applies to industrial, trade or

business premises there is no provision for a further fine should the nuisance remain unabated. For the most serious nuisances associated with industrial, trade or business premises, abatement costs may be greater than the maximum fine that may be applied. Therefore in order to have an effective abatement procedure, the Department should consider the need for the introduction of a 'daily fine' to encourage abatement or alternatively provide clear legal guidance on the use of further convictions where the requirements of a notice remain unmet following first conviction. The recovery of costs by way of a charge on premises with appropriate interest is welcomed. The inclusion of a discretionary informal action step in the noise nuisance abatement procedure, i.e. deferring the service of a notice by up to 7 days, is welcomed as a means of achieving the abatement of a nuisance, where appropriate, without the service of a Notice. There are many changes within this new legislation apart from the headline changes such as artificial light and insects. There is no Northern Ireland standard for overcrowding in a dwelling whereas there is in England and Wales. The provision of such a standard would be helpful. For consistency we would recommend the provision as used in GB. DEFRA guidance is available in the UK to give councils direction on these two (new) statutory nuisances. It is presumed this guidance will be reproduced for use in Northern Ireland. The definition of owner is not listed in Article 60(10) but instead can be found in 65(9). It should be clarified if the definition of owner (similar to Public Health Acts) relates to the whole statutory nuisance section or just to expenses recovery. This department welcomes the new power to serve an abatement notice in anticipation of a statutory nuisance occurring. They also welcome the provision which removes the requirement to specify the "execution of such works, etc" in every instance.

This is a major change for us as enforcement officers as there is now a facility to appeal an abatement notice within 21 days to a Court of Summary

Jurisdiction. We assume that the Department will, before the new legislation takes effect, make appropriate regulations under Schedule 2 prescribing cases in which an abatement notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings. This is of particular concern in relation to its implications for Art. 65 PC LG Order (NI) 1978 and for all other urgent works. We regret that the power of the court to make an order has been removed but welcome the 'daily fine' principle for premises other than industrial, trade or business premises. While the level of fine has been increased, presumably to take account of this major change, councils are of the opinion that the judiciary should be issued with guidance directing them to impose fines (including a daily fine) which are substantially significant to send a message to the person committing the offence that he/she must comply with the abatement notice. Land forming part of an agricultural unit is excluded from the meaning of "relevant industrial, trade or business premises". Under the Agriculture Act (NI) 1949, it may be argued that poultry houses and farm buildings are included within the meaning of "agricultural land" and "agriculture". DEFRA guidance on "Statutory Nuisance from Insects" states that poultry houses/farm buildings on agricultural land are not exempt from statutory nuisance from insects even though the land surrounding them may be exempt. To clarify this issue and to avoid lengthy and costly arguments in court on this issue the council would like a specific statement in this paragraph indicating poultry houses/farm buildings on agricultural land are included with the term "relevant industrial, trade or business premises".

Banbridge District Council Submission to the Clean Neighbourhoods and Environment Bill

By email to doecommittee@niassembly.gov.uk
13 August 2010

The Clerk of the Environment Committee
Room 247
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Sirs

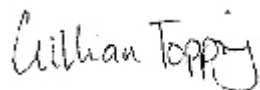
Re: Clean Neighbourhoods and Environment Bill

Thank you for the opportunity to provide the views of Banbridge District Council to the Committee on the above matter as requested

The Council would wish to take this opportunity to comment on the provisions of the Bill as set out in the report following.

I would ask you to note that due to time constraints over the summer period, it has not been possible to have this report ratified by the Council and it is anticipated that it will be reviewed by Council at a September meeting. Should any changes arise, I will advise you of same.

Yours faithfully



Gillian Topping
Head of Environmental Health

The Council welcomes the introduction of the Bill and the additional and effective powers for local councils that will help us to deal with issues that affect our communities and the quality of our local environment. We hope that this Bill will assist the Council in securing and maintaining high quality, clean neighbourhoods and a desirable area in which to live and work.

The Council does however have concerns as to the funding and resourcing of the additional new duties proposed for the council and also in relation to extensions to existing statutory duties.

Banbridge District Council would also make the comment that we feel the Bill does not adequately address an area of significant concern for local residents. We receive regular and numerous complaints about issues surrounding 'unsightly' and unkempt gardens and properties in residential areas. Often, no statutory nuisance conditions exist, the properties are not dangerous and without evident pest infestation, the council has no redress to formal action. Banbridge District Council is of the view that the CNE Bill was designed to address such types of issues that lead to environmental detriment and a reduction in the pride and appearance of a residential area.

We do note the Department's comments on page 30 of the response document to the consultation exercise and its assessment of the range of existing legislative provisions that currently exist. The Department believes that these already provide suitable means of dealing with structures that are detrimental to the amenity of an area. Given the practical experience of officers in investigating such complaints from residents and members, Council contests the

applicability of existing provisions in other legislation to the issue of overgrown gardens and unsightly properties. Legislation such as Article 65 and 66 of the Pollution control and Local Government Order or the powers of NIHE under Article 63 of the Housing (NI) Order 1981 have a role in very specific circumstances where certain conditions are met, and are unfortunately, in our experience, not suitable as a formal means of securing improvement to many properties and gardens that are detrimental to the amenity of an area.

Banbridge District Council would therefore urge that relevant legislation in the UK such as section 215 of the Town and Country Planning Act 1990, is enacted in NI with powers given to the councils to require land to be tidied up when its condition adversely affects the amenity of the area.

Part 1 Gating Orders

Banbridge District Council recognises the benefits that gating orders can bring to the public, local communities and businesses.

A number of councils have already been involved in alley gating schemes and it is accepted that the issue of resourcing such schemes (eg costs of installation, staff, long-term maintenance, public liability etc) requires attention. In many cases, gating schemes have not progressed for lack of a promoter with sufficient funding to support the project. Council recommends that this part of the Act is accompanied by sufficient new burden funding and resources to ensure it is effectively utilised

Part 2 Vehicles

Clause 2

Banbridge District Council notes the Departments comments that this clause provides additional power to the councils to deal with nuisance parking where 2 or more vehicles are parked for the purposes of advertising for sale within 500 metres of each other on a road. As the Department has agreed that the Street Trading (NI) Act 2001 can also deal with the sale of vehicles on a road, we would request that the proposal to consult on guidance on the use of existing and proposed powers is expedited in order to provide clarification to councils.

We also note with disappointment that the matter of nuisance caused by vehicles parked on the street awaiting repair has not been addressed by this Bill. The Department commented that this is a significant proposal which would require detailed consideration and amendment to the Bill that is not possible due to the legislative timetable. The Council would request that this matter is addressed at the earliest opportunity so that more effective controls can be introduced to help reduce the impact of such activities in a residential area.

Part 3 Litter

Clause 17 Litter Clearing Notices

Banbridge District Council remains concerned that the provision of Clause 17 to amend the Litter (NI) Order 1994 with Article 12 A (10) exempts Crown or land of an educational institution or statutory undertaker. We believe strongly that to retain this exemption will not assist in improving the general amenity and does not allow for efficient management of vacant, derelict land or open spaces in relation to litter, that are owned by other bodies.

Councils regularly face criticism for land that is affected by litter and that is controlled by other bodies that have statutory cleansing duties. These bodies do not invest the same time and effort into cleansing services. There exists a great disparity between what councils have to do in relation to litter etc and what other landowning bodies have to do; and the result is often a degraded environment across Northern Ireland. Expecting other bodies to 'do their duty' has been shown not to work and thus leaving this unchanged is a recipe for ongoing problems and does not provide an effective solution to tackle problems within the spirit of the Bill.

Litter Clearing Notices have the potential to be an effective tool that can be used to raise the visual amenity of any area, but only if they can be used extensively. We would request that serious consideration is given to removing the exceptions to which litter clearing notices may be served under Clause 17 Article 12(10).

We note in the Department's response document that it does not consider it possible to bring this forward at this time due to the tight legislative timetable, but will consider this issue further in the context of proposed litter guidance. We would urge that efforts are made to extent the scope of the Litter Clearing Notices to deal with all areas of land.

Part 4 Graffiti And Other Defacement

Clauses 26 – 35

Banbridge District Council welcomes the acknowledgement of the Department in its response document on the consultation process that councils need to have access to a comprehensive range of powers to take action against both the perpetrators and beneficiaries of fly posting. We strongly support the proposal of the Department to make current Planning Service powers available to Councils to deal with this issue.

Currently, enforcement of advertisement control in Article 84, The Planning Northern Ireland Order (PNIO) 1991, provides for prosecution and removal similar to England's section 224 Town and Country Planning Act (TCPA) 1990 – including beneficiaries – but is a level 3 penalty and expressed as a Department power. The Planning Service in Northern Ireland does not use this power. Therefore, it is essential that councils be given these powers for effective enforcement through prosecution of both perpetrators and beneficiaries of fly posting, in addition to the powers of removal.

We also welcome the retention of Councils' existing powers to immediately remove or obliterate placards, posters and graffiti using powers in the Local Government (Miscellaneous Provisions) (NI) Order 1985. To replace this provision with the proposal of a Defacement Removal Notice would have been cumbersome and bureaucratic.

However, contrary to the comment of the Department in its consultation response, Council still contests that the Bill should include powers to prosecute persons responsible for a surface which has been defaced by graffiti or fly posting for not complying with a Defacement Removal Notice. We do not accept that the Departments view that it would be 'inappropriate' to provide powers to prosecute and that the ability to re coup costs is a more appropriate course of action. Whilst we do of course wish to work in partnership with owners of street furniture, not all 'relevant surfaces' as described in Clause 31 (8) and (9) will be owned by statutory agencies. It can be readily envisaged that owners of buildings or land, particularly if vacant or derelict, will not comply with a notice on the basis that there is no potential legal action that can be taken against them.

Clause 36 Sale of Aerosol paint to children

Banbridge District Council welcomes this measure. We would still consider that 18 is a more appropriate age for the offence rather than 16. The minimum age for the sale of tobacco products and butane gas lighter refills is 18 and Council would be of the view that 18 should also be the minimum age for the purchase/sale of aerosol paints. Maintaining a standard minimum age would enable councils to combine regulatory and test purchasing activities, which would be more cost effective and which would comply more readily with government Better Regulation policies, rather than a separate test purchasing exercise as envisaged at Clause 36 (7) (c), solely for this purpose.

We would also highlight to the department that additional resources will be required for councils to identify premises selling aerosol paints and to raise awareness of the new legislation before test purchasing can take place.

Part 5 Dogs

The Council welcomes the power to make local dog control orders to address issues such as keeping of dogs on leads, exclusion of dogs from areas and dog fouling.

Whilst the Department comments that councils will be able to draw up a 'Fouling of Land by Dogs Order' for the entire council area if they so chose, we are still reluctant to accept this as a replacement for the current offence found in Article 4 of the Litter (NI) Order 1994. Councils already have an effective means of dealing with the offence of dog fouling and to replace it with a Dog control order process appears bureaucratic and cumbersome when a suitable mechanism already exists.

It is important to ensure that the making of a dog control order is a streamlined and practicable procedure. The Department will therefore need to consult with District Councils on the proposed Regulations associated with dog control orders.

Part 6 Noise

The additional powers introduced by the draft Bill are welcomed and will significantly update the existing Northern Ireland legislative position. It will give District Councils new powers to address noise problems which currently are not covered by the existing provisions in Northern Ireland but which can be addressed by GB local authorities. Therefore these powers are welcomed as a means of addressing local noise problems and therefore will assist in improving quality of life and health.

The additional powers will introduce an additional workload for councils as new types of noise complaint will require thorough investigation where currently only advice and / or informal action may be taken. Furthermore, detailed policy and procedures will be required within councils to ensure the successful implementation of these new and amended provisions.

Part 7 Statutory Nuisance

Clause 60 Statutory nuisances

The Council welcomes the extended list of statutory nuisances to include artificial light and insect pests.

Clause 62 Summary proceedings for statutory nuisances

62 (1)

The Council welcomes the new power contained in 62(1) to serve an abatement notice in anticipation of a statutory nuisance occurring. This will help improve the quality of life and the environment for local residents as action can be taken before a nuisance situation arises.

62 (10)

Banbridge District Council is most concerned that the power of the court to make an order following conviction requiring the nuisance to be abated has not been included in the Clause 62 of CNE Bill. This provision currently exists in Section 112 of the Public Health Ireland Act and is proposed to be repealed. We view this as a retrograde step. The introduction of new legislation should always, in our opinion, add to or improve the existing situation; and in the case of enforcement tools or penalties, enhance and strengthen what is already available. Whilst we accept that on summary conviction the level of fine has been raised to Level 5 and there is 'daily penalty' of one tenth of that level for each day the offence continues, Council still believes that given the often low level of fines imposed by the Magistrates court, the imposition of a court order to carry out work or to abate a nuisance or prevent it recurring, is a much more powerful deterrent.

This Council has had experience of associated legislation relating to housing matters, where legislation that contained the option of the court to make an order requiring the notice to be complied with or work to be done was repealed. The 'new' legislation does not have the Order provision and it has been our experience that this can result in unsatisfactory situations persisting for an individual if the offender chooses to bear the often insignificant fines imposed, even on a recurring basis for the same offence.

62(2)(b) Definition of 'owner'

In order to ensure effective enforcement of the abatement notice provision, Council would ask that, similar to the present position in the Public Health Ireland Act 1878, the definition of owner means 'the person for the time being receiving the rackrent of the lands or premises...whether on his own account or as an agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent'

In dealing with nuisance conditions in rented accommodation, it is not always possible to determine the owner of the property or they may reside outside the jurisdiction. In these or similar cases, it is important to be able to serve notice on an agent so that the nuisance might be abated.

Council would ask that the definition of owner above will be covered by the proposed Bill.

Additional Comment: Fixed Penalty Notices

Banbridge District Council supports the use of fixed penalty notices as an appropriate and efficient enforcement tool and we would encourage the committee to review the Bill to ensure that this option has been included as far as possible. We accept the comments of the Department in its consultation response document and note that it views the inclusion of the option, where not already provided for, as not possible within the legislative timetable. We would however request that in future reviews or secondary legislation, the option of using fixed penalty notices is actively considered and provided for where appropriate.

Belfast City Council Submission to the Clean Neighbourhoods and Environment Bill

Our Ref: 402-002201-2-NL

Your Ref:

13th August 2010

By email – doecommittee@niassembly.gov.uk

The Committee Clerk – Committee for the Environment
Room 247
Ballymiscaw
Parliament Buildings
Stormont
Belfast
BT4 3XX

Dear Sirs,

Re: Clean Neighbourhoods and Environment Bill

Further to the Call for Evidence advertised in the Belfast Telegraph on 8th July 2010, Belfast City Council welcomes the opportunity to submit written evidence for consideration at the Committee Stage of the Clean Neighbourhoods and Environment Bill.

A detailed response has already been provided to the Department in relation to the proposed Bill and a copy of that response is attached. However, there are some issues which the Council believe have not been sufficiently addressed in the Department's consultation response, or alternatively were not raised at the consultation stage, which it now wishes to bring to the attention of the Committee.

Part 4 – Graffiti and other defacement

The Council welcomes the Department's acknowledgement that district councils need to have sufficient power to take enforcement action against both the perpetrators and beneficiaries of fly-posting and that the provisions of the Bill as drafted did not provide those powers. Officers from the Council have met with the Department and have proposed certain provisions which would enable district Councils to take effective action against this blight.

The Council also welcomes the Department's decision to remove Clause 38 and instead retain Article 18 of the Local Government (Miscellaneous Provisions) Order 1985 (herein after referred to as 'the 1985 Order').

The Council would however recommend some amendments to Article 18 of the 1985 Order which, if implemented, will assist district councils in taking enforcement action and will also bring their powers into line with both the Planning Service and local authorities in England and Wales.

Article 18 provides that where the Council detect fly posting, it may serve a notice upon the responsible person requiring them to remove or obliterate same within 14 days. If the

responsible person fails to comply with the Notice, then the Council may remove or obliterate the fly posting and recover the expenses in so doing as a civil debt.

Belfast City Council has difficulties with both the definition of 'responsible person' and the time period prescribed within Article 18 of the 1985 Order.

The responsible person is defined in Section 18(10) as being:

(a) in relation to any graffiti, placard or poster, if it is displayed on land of which he is the owner or occupier; and

(b) in relation to any placard or poster, if it gives publicity to his goods, trade, business or other concerns.

Belfast City Council is of the view that this provision as drafted must have been the result of a typographical error as technically it does not allow district councils to recover expenses against a person who benefits from the fly posting unless the said fly posting is displayed on their own land.

The Council would therefore request that the Department replace the 'and' in the above clause with an 'or'. In so doing, district council powers will mirror those of the Planning Service, which are contained within the Article 84 of the Planning (NI) Order 1991 and the Planning (Control of Advertisement) Regulations 1992, and of local authorities in England and Wales.

In relation to the prescribed time period under Article 18, when a notice has been served upon a responsible person, that person has 14 days within which to remove or obliterate the fly posting. However, in England and Wales the responsible person is only permitted 2 days to remove the offending material.

A 2 day default period will undoubtedly lead to swifter action, either by the responsible person or by the Council in default and the Council therefore request that the Department consider amending the prescribed time period, which would also bring the provision into line with that in England and Wales.

Part 7 – Statutory Nuisances

The Council note the Department has indicated that the normal dictionary definition of owner will apply to all provisions regarding statutory nuisance bar that in relation to recovering expenses where work is carried out in default.

This can only be viewed as a retrograde step as it significantly diminishes the current powers of district councils as contained within the Public Health (Ireland) Acts. Under that legislation, the owner of the property is defined as being the owner or the person who receives the rack rent of the property, i.e., the agent responsible for the property.

The definition under the Public Health (Ireland) Act takes on a much greater significance in the private rented sector. The Department have previously recognised the value of this definition whilst drafting the Private Tenancies (NI) Order 2006, which is the principal legislation regulating the private rented sector in Northern Ireland, to the extent that it was included in the definition of an owner.

The Council serves a large proportion of Public Health Notices upon rental agents for a number of reasons. For example, owners can often reside outside the jurisdiction, cannot be easily identified or the situation may be urgent and the owner is not readily contactable.

Belfast City Council also understand that local authorities in England and Wales rarely use statutory nuisance legislation to deal with issues in privately rented accommodation as they have a more comprehensive legislative framework available to deal with disrepair. Therefore, there was no requirement to ensure the definition of owner included rental agents in the Environmental Protection Act as there are other legislative provisions in England and Wales, which are not at the disposal of district councils in Northern Ireland, to deal with statutory nuisance.

Given that the current proposal would see a weakening of district council powers to effectively deal with public health nuisance, Belfast City Council would urge the Department to reconsider the definition of owner under the proposed nuisance provisions.

Part 6 - Noise

The Council would also advise the Committee that since our original response, the Minister has signed the Permitted Level of Noise (Northern Ireland) Direction 2010 to support the application of the Noise Act 1996. Belfast is the only Council in Northern Ireland which has adopted the provisions of the Noise Act 1996 and provides a night time noise service. The Direction amends the current noise measurement standard and could have implications regarding the extension of the Noise Act to licensed premises. The Council therefore request that the Department give consideration to this matter.

This letter and the attached consultation response contain the Council's written submission to the Committee. Council officers are of course prepared to present evidence orally should the Committee require them to do so.

Yours faithfully,

Nora Largey
Solicitor
Enc.

Council Response - Draft Clean Neighbourhoods and Environment Bill

The purpose of this consultation exercise is to invite comments on the draft Clean Neighbourhoods and Environment Bill (Northern Ireland) as set out in Section 2 of the consultation document. The main purpose of the Bill is to improve and strengthen existing legislation to help District Councils deal more effectively with a wide range of problems associated with local environmental quality.

Issues covered by the Bill include litter, fly-posting and graffiti, dog control, noise, statutory nuisance, fixed penalty notices, gating orders, nuisance parking, abandoned vehicles, abandoned shopping trolleys and fines for offences relating to pollution.

Section 1 of the consultation document (Consultation Issues) provides an outline of the measures in the Bill and invites comments on the same. The Bill is divided into 8 distinct parts. The following tables look at each part separately and contain comments on the provisions contained within the Bill.

	Part 1 - Gating Orders	Response
Issue 1 (Page 12)	<p>Consultees are invited to comment on the provisions concerning Gating orders in Clause 1:-</p> <ul style="list-style-type: none"> • Gating orders; • Effect of gating orders; • Variation and revocation of gating orders; • Procedure for orders under this Part; • Validity of gating orders; • Publication and availability of gating orders. 	<p>BCC welcomes the proposal to make a specific power in respect of gating orders and any process which will streamline and speed up the current system. The Council therefore supports, in principle, the transfer of responsibility for making such orders to district councils. Belfast City Council has been involved in a pilot 'alleygating' scheme, erecting over 200 gates, and its experience is that the existing system, whereby the responsibility for the statutory process lies with DRD, leads to delays and frustration on the part of residents, etc.</p> <p>However the Council is concerned about the resource implications that such a new power would have in terms of increased administration, publication of notices, legal advice and local inquiries. The resources for the erection, operation and maintenance of gates themselves are also very limited as there is currently no central government funding for such schemes; this is something that central government needs to address, if gating schemes are to be used widely to reduce antisocial behaviour.</p>

		<p>In addition, the proposed legislation still requires the approval of the Department to make such orders, which could without effective controls, still add delay into the process. Therefore, there would need to be further guidance or clarification on what this entails and some parameters put around response times. It should also clarify the circumstances under which the Department might refuse the making of the order, to avoid any unnecessary expenditure.</p> <p>The Council would also wish to see a clear definition of a 'back street' as there is often confusion on the part of residents between a back street (alley) and a walkway. Section 69B (4) goes some way to addressing the issue of public rights of way to a residential dwelling, however a fuller definition would prove invaluable for councils when dealing with public expectations.</p> <p>The Council would also wish to see further guidance on the requirements relating to local inquiries, in particular the circumstances under which such an inquiry must be held and what element of discretion councils might have to determine the 'reasonableness' of objections considering the costs to the ratepayer of holding such inquiries.</p> <p>In respect of variation and revocation of gating orders, it would be helpful if Section 69C (2) could include a clause of antisocial behaviour directed to the gates or within the restricted space, as a reason for revocation.</p>
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Part 2 - Vehicles		Response
<p>Issue 2 (Page 13)</p> <p>Consultees are invited to comment on the provisions in Clauses 2 to 13 concerning:-</p> <p><u>Nuisance parking offences</u></p> <ul style="list-style-type: none"> • Exposing vehicles for sale on a road; • Repairing vehicles on a road 		<p><i>Nuisance parking</i></p> <p>One issue which is not adequately addressed is the parking of vehicles on the street which are "in for repair". Many of the repair garages are small</p>

	<p><u>Nuisance parking offences: fixed penalty notices</u></p> <ul style="list-style-type: none"> • Power to give fixed penalty notices; • Power to require name and address; • Use of fixed penalty receipts <p><u>Abandoned vehicles</u></p> <ul style="list-style-type: none"> • Offence of abandoning a vehicle: fixed penalty notices; • Notice of removal of vehicle by district council; • Disposal of removed vehicle by district council; • Guidance <p><u>Illegally parked vehicles</u></p> <ul style="list-style-type: none"> • Notice of removal of vehicle; • Disposal of vehicle by police officer; • Disposal of vehicle by Department. 	<p>small with little parking space. Vehicles in for repair are parked on the street, taking up residents spaces. Although no work is carried out on them in the street they are still regarded as a nuisance by residents.</p> <p><u>Abandoned Vehicles - Caravans</u></p> <p>One obvious omission in the draft Clean Neighbourhoods and Environment Bill Consultation Paper would be that of caravans (to include abandoned, located without necessary permissions or unoccupied).</p> <p>Belfast City Council receives enquiries regarding abandoned or illegally located caravans and as such more clarification would be welcomed on the inclusion of a definition of a caravan within the bill or even within the definition of a trailer as currently listed within the Pollution Control and Local Government Order 1978, Part II – Article 36 (1).</p> <p>The provision is not sufficiently robust to deal with vehicles abandoned on private land. The provisions should be capable of permitting the Council to remove vehicles from private land to which the public have access.</p>
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	Part 3 - Litter	Response
<p>Issue 3 (Page 14)</p>	<p>Consultees are invited to comment on the provisions in Clauses 14 to 23 concerning: -</p> <p><u>Offence of dropping litter</u></p>	<p>The proposed changes will have little impact, as the Article 3 offence remains unchanged. The Clean Neighbourhood and Environment Act (CNEA) 2005 clarified that the offence of littering applied to litter whether it was deposited on land or water. The Litter (NI) Order 1994 does not define littering in water as an offence. The CNEA 2005 also clarifies that</p>

<ul style="list-style-type: none"> • Offence of dropping litter in lake, pond or watercourse; • Penalty for failing to provide name; • Litter offence: fixed penalty notice <p><u>District council notices</u></p> <ul style="list-style-type: none"> • Litter clearing notices; 	<p>smoking related litter and chewing gum constitute litter.</p> <p>In relation to the proposals for the CNE Bill for Northern Ireland, the Council wishes to clarify if the Department has interpreted The Litter (NI) Order 1994 in its current format and its definitions to be as comprehensive as the CNEA in England and Wales without needing to make amendments to cover litter deposited into water and smoking related/chewing gum?</p> <p>The Penalty for failure to provide a name and address to an authorised person is amended to make it an offence to give a false name and address and this is welcomed. However, it would be beneficial to allow fixed penalty notices to be issued in respect of this offence, as experience of these matters before a magistrate is that they do not attract any greater fines than would be the case for littering offences. The use of FPN provisions in these circumstances could reduce the time and expense involved in bringing these cases before the court.</p> <p>The offence of failing to give a name and address should not be confined to the enforcement of Articles 3 and 4 but should apply generally in connection with all enforcement functions under the Order.</p> <p>The Council welcomes the flexibility to set the levels of fines under the proposed changes but would like to have sight of the Regulations proposed by the Department setting out the minimum and maximum ranges within which a fixed penalty amount can be set prior to the commencement and implementation of the CNE Bill in Northern Ireland</p> <p>The Council welcomes this new provision as it will enable effective control of pockets of land throughout the city which are detrimental to the amenity of the area. To date, we have relied on our persuasive abilities to get areas tidied up but where there is no co-operation, we have no legal basis to achieve compliance. These new powers will address this problem and</p>
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	<ul style="list-style-type: none"> • Street litter: control notices; 	<p>problem and will improve the cleanliness of local neighbourhoods.</p> <p>Article 12B (3) (d) should be removed or amended as it has the potential to be too subjective. The Council suggests that the Department consider alternative wording enabling the imposition of requirements under a notice in excess of that required to remedy the situation.</p> <p>The Council agrees with the rationale for making SLCNs more effective and easier to enforce. However the following comments should be noted;</p> <p>In England, the Street Litter Control Notices Order 1991 defines the premises where a street litter control notice can apply. After the CNEA 2005 was implemented in England, a gap in the provisions for dealing with smoking related litter from certain types of premises was highlighted in the wake of the implementation of the Smoke free legislation.</p> <p>In July 2007, the Street Litter Control Notices (England) (Amendment) Order was introduced to address litter (including smoking related litter) generated from those premises which were not covered by the existing provisions e.g. Pubs, bars, cafes and restaurants.</p> <p>In Northern Ireland, the Street Litter Control Notices Order (NI) 1995 specifies the premises which can be targeted using Street Litter Control Notices and the definition of premises to which the legislation applies, replicates the legislation in England prior to amendment ie The Street Litter Control Notices Order 1991.^[w]</p> <p>Therefore, in order to ensure parity with England, the same amendment is required to our legislation to enable Councils to effectively tackle litter (including cigarette litter) from pubs, clubs, restaurants and cafes.</p>
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	<ul style="list-style-type: none"> • Street litter: supplementary provisions; • Failure to comply with notice: fixed penalty notices <p><u>Free distribution of printed matter</u></p> <ul style="list-style-type: none"> • Controls on free distribution of printed matter 	<p>There is no doubt that the introduction of Smoke Free legislation in April 2007 has increased levels of smoking related litter outside office blocks. <u>Employees and visitors who cause smoke related litter on the street outside these office blocks fall outside the scope of the CNEA street litter control provisions as office blocks are not defined as relevant premises for this provision.</u></p> <p>SLCNs would be an effective tool for dealing with businesses who fail to make provision for their customers/employees who smoke outside of their premises. To date, Litter Wardens have fined employees caught discarding cigarette butts outside their place of work but it does not reduce the overall level of littering from others in that same building</p> <p>In the event that these provisions were extended to include office blocks, it is important that there is provision for councils to serve SLCNs on either the <u>owner or the occupier of the premises</u>. It is anticipated that Notices would have to be served on the owners of multiple occupancy office blocks rather than the occupiers. It would be impossible to enforce SLCNs if they had to be served on several occupiers in one building.</p> <p>Extension of the use of Street Litter Control Notices to include mobile vendors is welcome.</p> <p>The Council agrees that the change to the legislation to enable Councils to prosecute for non-compliance with a Street Litter Control Notice instead of seeking redress through a court order is more streamlined and should prove to be more effective.</p> <p>The use of the fixed penalty notice provisions in respect of these offences may be a more effective means of seeking compliance and will reduce the time and cost involved in referring such cases to court.</p>
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	<p><u>Fixed penalty notices: supplementary</u></p> <p><u>Exclusion of liability for district councils</u></p>	<p>It is anticipated that the proposed controls will help to reduce the impact of leaflet distribution, which is a persistent problem in areas of high foot fall within the city centre of Belfast as well as in the student areas of the city.</p> <p>The Council notes that the proposed CNE Bill for Northern Ireland makes a distinction in the offence of distributing leaflets without consent between those who distribute the leaflets and those who cause another person to distribute the leaflets. In determining if an offence has been committed in the first instance by the person who is distributing the leaflets, the Council must prove that the person distributing the leaflets knew that the area was designated. In practice, it will be difficult to prove that the person distributing the leaflets was aware of the designation and it is envisaged that few fixed penalties will be issued for this offence.</p> <p>In the case of the person commissioning the distribution of the leaflets, the burden of proof is less onerous; however, in order for Council enforcement officers to determine the identity of the person responsible for commissioning the distribution of the leaflets, the Council will require powers of investigation to request this information. Therefore the Council wishes to seek clarification from the Department in respect of the powers available to councils to enforce this legislation.</p> <p>Also, it is noted that the Council may grant consent with conditions to prevent defacement; however, further clarification is required on the possible redress that is available to the Council in the event of non-compliance with the conditions. The Council would urge the Department to consider making it an offence for failure to adhere to conditions set in respect of leaflet distribution which could be addressed through the use of a fixed penalty provision.</p> <p>The Council believes it is important that the Department issues guidance</p>
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		<p>issued in relation to arrangements for leaflet designation to include matters such as, administration of consents and size of areas to be designated etc. The Council wishes to be consulted during the preparation of this guidance.</p> <p>Noted</p> <p>Noted</p> <p>BCC welcomes any effective revisions of existing legislation with respect to litter which would enable us to improve the quality of the public and open spaces for which we are responsible and our ability to effectively deliver services in relation to these. We are committed to providing quality parks, open spaces and leisure facilities which are valued and used by all.</p>
<p>Issue 4 (Page 15)</p>	<p>Consultees are invited to comment on the provisions in Clauses 24 and 25 concerning:- <i>Shopping and luggage trolleys</i></p> <ul style="list-style-type: none"> • Abandoned shopping and luggage trolleys; • Section 24: transitional provision. 	<p>The new provisions are noted, however, in addition to nuisance caused by shopping trolleys, it would be useful if this provision could be extended to cover cages and baskets which are also left in public places and for which the Council incurs the cost of their removal and disposal.</p> <p>A broader definition might be to include other devices used for the transport and storage of goods other than a motor vehicle.</p>
<p>Issue 5 (Page 15)</p>	<p>Part 4 – Graffiti and Other Defacement</p> <p>Consultees are invited to comment on the provisions in Clauses 26 to 38 concerning:-</p> <p><i>Penalty notices for graffiti and fly-posting</i></p> <ul style="list-style-type: none"> • Penalty notices for graffiti and fly-posting; • Amount of penalty; 	<p>Response</p> <p>The Council is extremely disappointed with the proposed provision of the CNE Bill to tackle the blight of fly posting.</p> <p>Currently Belfast City Council spends approximately £90,000 annually to remove fly-posters and the proposals outlined in the consultation document to enable Councils to tackle fly-posting are very limiting in their scope and will not be effective in curtailing this activity.</p>

- Penalty notices: power to require name and address;
- Penalty receipts;
- Guidance

The proposals appear to mirror the powers available to Councils in England and Wales but the Department has not fully taken cognisance of the fragmentation that exists within Northern Ireland in that the legislative powers are split between three separate authorities namely the Northern Ireland Planning Service, The Department of Regional Development Road Service and the Councils.

In Northern Ireland, the power to prosecute the beneficiaries of fly-posting rests with the Northern Ireland Planning Service under Article 84 of the Planning (NI) Order 1991 which makes it an offence to display an advertisement in contravention of Regulations made under Article 67 of the Order. The Planning Service has made a policy decision not to enforce this legislation and has indicated to the Council that they do not have the resource to enforce the legislation and have further indicated that they do not regard the matter of fly-posting as a priority for their Department.

Research into the use of these powers since the implementation of the CNE Act has shown that Local Authorities in England are not solely relying on the provisions of the CNE Act but are also using other powers included in the Highways Act and the Town and Country Planning Act to tackle the fly-posting issues. Due to the fact that the Planning and Road service functions rest within Councils structures in England, they are able to take a holistic approach. Unfortunately this approach is not an option for Councils in Northern Ireland for the reasons outlined above.

The proposal to limit Councils' legal scope to tackling only those who personally affix the posters and not to those whose goods and services are advertised on the poster i.e. the beneficiaries of the advertisement, will severely curtail the Council's efforts to control and eradicate fly-posting activities and will not have any significant impact on reducing the levels of fly-posting activity.

	<p><u>Removal of graffiti and fly-posting</u></p> <ul style="list-style-type: none"> • Defacement removal notices; • Recovery of expenditure; • Guidance; • Appeals; • Exemption from liability in relation to defacement removal notices 	<p>In order to address this vacuum in enforcement activity in relation to fly-posting, Councils in Northern Ireland need a comprehensive range of legislative powers to robustly tackle the significant fly-posting activities which currently exist within the province.</p> <p><u>In addition to being able to fine individuals who are caught in the act of fly-posting by way of FPNs, provision must be made for Councils to enable venue owners/promoters/beneficiaries to be fined using FPNs and/ or prosecuted for allowing fly-posting to occur in connection with their business.</u></p> <p>In the absence of robust and comprehensive enforcement by Councils in Northern Ireland, the beneficiaries of fly-posting will continue to use this as a cheap form of advertising safe in the knowledge that the Council will only be able to pursue the person who affixes the posters. The individuals who are employed to post the fly-posters are generally low income workers who will be penalised for an activity that generates large incomes for promoters and venues and for whom there will be no effective sanctions to deter the activity.</p> <p>In view of the above comments, the Council urges to the Department most strongly to review this section of the proposed CNE bill to give Councils a comprehensive range of powers to deter fly-posting activities. If the current proposals remain unchanged, the opportunity to effectively curtail fly-posting will be lost and fly-posting will continue to have an adverse impact on the local character and appearance of neighbourhoods, particularly in urban environments.</p> <p>Under the Local Government (Miscellaneous Provisions) (NI) Order 1985, the Council exercises its right to remove or obliterate graffiti that the Council regards as being detrimental to the amenity.</p>
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<p><u>Aerosol paints</u></p> <ul style="list-style-type: none"> • Sale of aerosol paint to children 	<p>The Council wishes to retain this provision without the need to serve a Defacement Removal Notice on each occasion that graffiti is required to be removed as is required under the proposed provisions of the CNE Bill. Therefore the Council is seeking a review of this provision, so that the Council can retain its discretionary use of Notices when dealing with graffiti removal.</p> <p>It is disappointing to note that in the event of non-compliance with a Defacement Removal Notice that Councils have not been afforded powers to prosecute.</p> <p>The Council views the recovery of costs for the removal of graffiti as a poor substitute for powers of prosecution.</p> <p><u>Sale of Aerosol Paints to Children under the age of 16.</u></p> <p>The Council would make the following observations regarding the sale of aerosol paints to children under the age of 16:</p> <p>The Council already successfully regulates the sale of tobacco products and butane gas lighter refills to young people. It has a robust procedure for test purchasing based on national guidelines (LACORS) and an annual test purchasing programme. The minimum age for the sale of tobacco products and butane gas lighter refills is 18 and the Council is unclear of the evidence base used for selecting 16 as the minimum age for the sale of aerosol paints. It is difficult to get children to volunteer to take part in test purchasing and the children of staff are often used in existing programmes.</p> <p>The Council therefore believes there is an opportunity to combine the regulation of the sale of aerosol paints to minors with existing test purchasing undertaken by the Council, particularly if the minimum age was to be 18 rather than 16. The council therefore urges the Department</p>
<p><u>Advertisements</u></p> <ul style="list-style-type: none"> • Unlawful display of advertisements; 	

to make the minimum age 18 rather than 16.

There will be considerable additional work for the Council in identifying the premises selling aerosol paints and in raising awareness of the new legislation before test purchasing can take place. There will also be additional costs for businesses selling aerosol paints in establishing new procedures and training staff (this could involve a number of large national companies and parity of regulation with GB could potentially be an issue under the better regulation agenda). There are also potential health benefits in controlling the sale of aerosol paints to children and young people in terms of reducing substance abuse

- Removal of placards and posters.

Whilst any amendment to the legislation makes it more difficult for beneficiaries to avoid prosecution, the change, as proposed will not have the desired effect. The Planning Service do not undertake any enforcement activity in relation to fly-posting and have declined to work in partnership with the Council to pursue those beneficiaries involved in fly-posting. The Council is concerned that if the Planning Service continues to resist putting the resources required to actively pursue the benefactors of fly-posting when these enhanced powers come in to force, the new legislation will be ineffective.

The Council wishes to re-iterate therefore that the powers to address fly-posting activities should be given to Local Authorities who are willing to use the powers to control and reduce the impact of fly-posting within their areas.

Section 37(3) Creating a situation in which the defendant is required to prove innocence may be considered unlawful (reverse burden).

Under the Local Government (Miscellaneous Provisions) (NI) Order 1985, the Council exercises its right to remove or obliterate fly-posters that are displayed in contravention of the Advertisement Regulations.

	<p>The Council is extremely concerned that the proposed changes remove the power to remove or obliterate without giving prior notice of not less than two days.</p> <p>The Council views this proposal as a retrograde step which will severely hamper our efforts to reduce the visual impact of fly-posters within the city.</p> <p>The Council currently undertakes a very pro-active role in the removal or obliteration of posters which reduces the advertisement opportunity of the posters.</p> <p>The Council removes/obliterates approximately 2500 fly-posters per month and the requirement to serve Removal notices in respect of this quantity of fly-posters will be onerous, costly, time consuming and in practical terms, impossible to administer . This will mean that the fly-posters will not be removed and will adversely affect the visual appearance of the city.</p> <p>The Council wishes to lobby for this power to be non mandatory so that the Council retains the right to obliterate/remove posters without the need to serve Removal Notice on every occasion.</p> <p>The Council acknowledges that in cases where it is appropriate to issue a Removal Notice that the two day timeframe for compliance is appropriate.</p> <p>It is disappointing to note that in the event of non-compliance with a Removal Notice that Councils have not been afforded powers to prosecute.</p> <p>The recovery of costs for the removal of the notices is not an appropriate substitute for powers of prosecution, which would act as a better deterrent and allows a more robust control measure to deal with the problem of fly-posting.</p> <p>The Council notes that the determination of the person responsible for</p>
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		<p>displaying or causing a poster to be displayed may require some degree of investigation and it would be helpful if the Department could confirm if the powers to carry out investigations for this purpose will be reviewed to ensure that they are commensurate with legislative provisions imposed to enable effective enforcement.</p>
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<p>Issue 6 (Page 16)</p>	<p>Part 5 – Dogs Consultees are invited to comment on the provisions in Clauses 39 to 45 concerning: - <i>Dog control orders</i></p> <ul style="list-style-type: none"> • Power to make dog control orders; • Dog control orders: supplementary; • Land to which this Part applies 	<p>Response The problem of dog fouling continues to be a major nuisance and irritant for the people of Belfast, both in respect of residential streets and public spaces. Despite provisions in the Litter (NI) Order 1994 making it an offence not to clean up after a dog has fouled, detection and enforcement remains difficult. Many public places, including parks and other open spaces, are often contaminated by dog fouling. The Council therefore welcomes the focus in the draft Bill on dogs and, in particular, dog control orders. Belfast City Council encourages responsible dog ownership as the foundation for dealing with dog related problems generally such as fouling and attacks on people. The Council therefore views additional enforcement options, including the zoning of land and specifying the maximum number of dogs that a person can take on to land, as essential tools in its continuing efforts to encourage responsible dog ownership and to change the behaviour of those who fail to control their dogs. The Council also welcomes powers to give District Councils the authority to make it an offence not to keep a dog on a lead in a designated area as people are often intimidated when dogs are allowed to run free in public places.</p> <p>The Council is very concerned however that the Department proposes to repeal Article 4 of the Litter (NI) Order 1994 which makes it an offence to</p>
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	<p><i>Fixed penalty notices</i></p> <ul style="list-style-type: none"> • Fixed penalty notices for contravention of dog control order; • Amount of fixed penalties; • Power to require name and address <p><u>Supplementary</u></p> <ul style="list-style-type: none"> • Byelaws. 	<p>permit a dog to foul in a public place. These provisions have already proved very effective and the Council would have grave concerns about the potential impact of this proposal on the cleanliness of the city. Although there are proposals in the draft Bill to include provisions relating to dog fouling in dog control orders, this will only apply to those areas that have been so designated. Article 4 of the Litter (NI) Order 1994 should be retained and the offence of fouling should not be predicated on the designation of an area.</p> <p>It is important to ensure that the making of a dog control order is a streamlined and practical procedure which allows the Council to readily incorporate its designation into its planning processes. The current proposals, under the review of public administration, to make district councils responsible for Community Planning and providing them with powers of wellbeing will mean that dog control orders could have a significant strategic impact on the overall corporate plan. The Department will therefore need to consult with District Councils on the proposed Regulations associated with dog control orders, particularly in relation to the public consultation that needs to be undertaken before a dog control order is made and the subsequent publicising of the order.</p> <p>Problems associated with dogs can arise anywhere within the district council area and the Council therefore welcomes the comprehensive description of land to which dog control orders can be applied. It is important however that the Department does not unduly restrict the options available to a district council by prescribing land to be exempt from designation without full consultation with the district Council in whose area the land is located.</p> <p>The Council welcomes the discretionary option of an authorised officer issuing a fixed penalty offering the offender the opportunity of discharging any liability to conviction by payment of the penalty.</p> <p>The current penalty for dog fouling under the Litter Order is £50. However,</p>
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		<p>However, the Council welcomes the discretion specified in Clause 43 to allow Councils to set a fixed penalty of up to £75 for offences under a dog control order.</p> <p>Clause 45 suggests that Councils can not make byelaws in respect of any land to which it has power to make a dog control order. Whilst the council welcomes the proposals in general there is concern that the option of designating dog control orders in England, where this legislation has been in force for several years, appears to be rarely used. The council would be concerned that, depending on the requirements for prescribing dog control orders in the proposed Regulations to be made under the draft Bill, there may be required elements that would make designation difficult or prohibitive. In these circumstances the Council would want to retain the option of making appropriate byelaws. The proposals in Clause 45 would prohibit this. It is therefore imperative that district councils are fully consulted, prior to the making of relevant Regulations, on the proposed required elements for designating dog control orders..</p>
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	Response
<p>Issue 7 (Page 17)</p>	<p>Part 6 - Noise Consultees are invited to comment on the provisions in Chapter 1 - Clauses 46 to 57 and in Chapter 2 – Clauses 58 to 60, concerning:- Chapter 1 Alarm notification areas</p> <ul style="list-style-type: none"> • Designation of alarm notification areas; • Withdrawal of designation; • Notification of nominated key-holders; • Nomination of key-holders; • Offences under section 48: fixed penalty notices;
	<p>Alarm Notification Areas BCC welcomes these additional powers and the clarity in terms of the responsibilities of premises where alarms are installed. However, it has the following concerns about how implementation / enforcement will work in practice.</p> <ul style="list-style-type: none"> • In the Council's view, a key requirement to make this new power

- Amount of fixed penalty;
- Use of fixed penalty receipts;
- Fixed penalty notices: power to require name and address

more effective is to also make reference to **audible alarms in general** rather than solely focusing on intruder alarms. Belfast City Council has been using its powers under the Pollution Control and Local Government (NI) Order 1978 to deal with audible alarms and carry out work in default where the nuisance needs to be abated within a reasonable time and no responsible person can be found. This action is taken for both audible intruder alarms and other alarms.

It is worth pointing out that where a complaint arises and a noise nuisance is established, it is our experience that the alarm is sounding from an installed intruder alarm but on entry into the property it is discovered that the alarm can be associated with a fire alarm system - very similar in installation and sounding. These alarms are more commonly found in shared housing, flats and HMOs. It is our experience that even getting a named key-holder and responsible person for this type of accommodation is more unreliable. Therefore to differentiate between an alarm and an intruder alarm makes this power weaker and the Council would like the definition to refer to 'audible alarms' generally.

BCC also has concerns regarding the proposed route for obtaining **nominated** key-holders. The process identified is lengthy and we believe would result in a costly administrative exercise by having to designate an alarm notification area (with public consultation and consultation to every premises in that area) and carry out a series of individual consultations. The Council would ask the Department to consider whether Clause 46 (6) a and b - could be amended in a way which allows for the publication of an alarm notification area to be by way only of an advertised public notice in the relevant media. Other public consultations for most licensing and many other statutory functions are sufficiently covered by a

	<p><u>Powers in relation to alarms</u></p> <ul style="list-style-type: none"> • Power of entry; • Warrant to enter premises by force; • Powers of entry: supplementary 	<p>functions are sufficiently covered by a newspaper advertisement. Also the Council has a magazine which is delivered to every home in the Council area at least 4 times a year which could be used as an additional medium. As such BCC would seek to have 46 (5)b deleted.</p> <p>Feedback from other local authorities in England is that very few have ever found it worthwhile or effective in terms of costs to the Council of declaring an area.</p> <p>A DOE code of practice currently exists and this, whilst voluntary, asks for 2 nominated key holders. BCC would seek to amend Clause 49 to refer to at least 2 key holders.</p> <ul style="list-style-type: none"> • In relation to Clause 51 - amount of fixed penalty. The Council welcomes the power to set the rate of the fixed penalty. The administration burden on a high density urban area of introducing this new power will be considerable and the suggested default amount of a fixed penalty of £75 is not likely to be a sufficient deterrent to encourage compliance. Our experience is that in areas of high density housing, such as concentrated HMO and flats which are often privately rented, it is difficult to trace responsible persons and apply regulatory powers and we have difficulty obtaining landlord details. <p>Powers Of Entry</p> <p>BCC welcomes the powers under Clause 54 in relation to the conditions for the test of whether action can be taken and the shift away from proving a noise nuisance to one of 'reasonable cause for annoyance'. BCC again would refer to the point made above - in that this power should be amended to refer to 'Audible Alarms', rather than 'Intruder alarms'.</p> <p>BCC would also refer the Department to an approved Code of Practice on alarms and the reference to seeking that alarms are maintained, serviced</p>
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serviced and have a 20 min cut out device. It would be helpful to have reference made to this code in relation to the requirements for the occupier/ responsible person, in particular around the installation and maintenance of alarms. The advice we give is quoted below:

"An approved code of practice, issued by the Department of the Environment, provides guidance on minimising noise from alarm systems. The Council will have regard to compliance with this code in the exercise of its powers under the legislation. The code is entitled the Code of Practice on Noise from Audible Intruder Alarms 1982 and should be available for reference at local libraries.

Recommendations in the code include: -

- *alarm systems should be properly designed and installed;*
- *alarm systems should be regularly maintained under a contract with an alarm company;*
- *audible alarms should be fitted with an automatic cut-out device which should automatically stop the ringing after a period of 20 minutes from activation;*
- *If an automatic cut-out is not fitted a key holder must be able to respond and silence the alarm within 20 minutes of notification.*

In order to avoid the instigation of formal action by the City Council you are requested to ensure that all reasonable steps are taken forthwith to prevent false alarms and that the alarm if activated does not ring for any period in excess of 20 minutes. If you fit a 20 minute cut-out device to your alarm, you are advised to notify your insurance company of this action".

Warrant to Enter Premises.

BCC last year dealt with 264 alarms, 109 from commercial and 155 from

domestic premises. Of that the majority were resolved informally. Only 8 required formal proceedings using Article 49 of the Pollution Control and Local Government Order (NI) Order 1978. Only 5 of these complaints required the use of powers of entry to abate the nuisance.

The Council has a number of concerns with this clause, i.e:

- BCC is concerned that the application of Clause 55 adds another administrative layer to the abatement of noise. Where an alarm is sounding, particularly at night, we currently engage a procedure that if the noise is causing a nuisance, similar to those stated here, we use powers to carry out work in default (Article 98 of the LGA 1972 to enter and abate the nuisance), to enter the premises to silence the alarm. This process works effectively. The requirement to seek a warrant from a lay magistrate during the night for this offence may be difficult and we would seek clarity on the process. It is our experience that entering premises to silence an alarm has only ever been required in the early hours of the morning as day time alarms are often resolved.
- Should the Department decide to pursue this clause, then BCC would at least seek assurances that a **warrant would not be required** if an alarm can be silenced from an alarm box mounted externally on the wall of the property. To silence an alarm box on the outside still requires entrance to the property boundary and execution of works but does not require forced entrance internally to the property.
- Clause 57 2(a) and (b) - The Council believes that houses will be excluded where they are being cleaned, maintained or repaired and the burden of interpretation will be prohibitive. Also the Council would like the Department to make reference to the specific licence activity referred to in part (c).

Chapter 2 Amendments to the Noise Act and Extension to licensed premises

Interpretation of this Chapter.
Chapter 2

Amendments to the Noise Act 1996

- Dealing with noise at night;
- Noise offences: fixed penalty notices;
- Extension of Noise Act 1996 to licensed premises, etc.

	<p>BCC welcomes the introduction of this power. This Council is the only one in NI to have adopted the provisions of the Noise Act 1996 and it has been an effective tool in addressing night time noise. As a result we provide a dedicated out of hours Night Time Noise Service (NTNS), responding to almost 6000 noise complaints a year, the majority of which are dealt with by the NTNS. The service is welcomed and regarded as essential by the public and by elected representatives. The additional tools available under the Noise Act and subsequently under the Clean Neighbourhood and Environment Act are therefore welcomed.</p> <p>BCC supports Clauses 2-9; again it will be helpful that the District Council can determine a fixed penalty rate over the specified £100 and the Council may wish to exercise this facility. We have used the £100 penalty since 2000 and whilst a deterrent for some, it is not in all cases.</p> <p>BCC welcomes again the power to retain sums from fixed penalties to exercise the duties under the Act. However, it is unlikely that this will in any way address the costs of providing a service and the additional costs of extending the powers and duties under this part of the Act or in relation to any of the additional noise duties.</p> <p>BCC dealt with almost 6000 complaints last year, the vast majority are associated with residential complaints. In the main, noise issues between neighbours are often resolved through informal warnings, both verbal and written, negating the need to pursue a more formal route. Our view is that this is the most sustainable solution to resolving complaints and our evaluation of the NTNS shows that warnings are an effective deterrent. In terms of formal action, Belfast on average serves between 3-10 fixed penalty notices a year, under the Noise Act. Therefore even with additional powers to extend to licensed premises etc., it is highly unlikely there will be significant income from this route to assist in providing the level of service and responding to complaints.</p>
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		<p>We acknowledge under Clause 60 and Schedule 1 the provision of the noise act powers are extended to cover premises with an exhibition, entertainment, liquor or any form of licensed premises including clubs. The provisions also cover premises where meals and refreshments are served and therefore include restaurants etc. This is a welcome extension and provides an additional tool to responding to complaints. The Noise Act allows for a warning period to be given to the offending premises before formal routes are taken and we note this is extended to the premises listed above. This would fit with our experience that in most cases a warning period resolves a situation and the service of a fixed penalty would only be necessary where corrective action is not taken within the specified time. We also note that the fixed penalty is fixed at £500. The Department may wish to consider that this level is reviewed after a period of time as there is not provision for the Council to consider setting a level for this particular penalty.</p> <p>It should be noted that councils also have powers for the administration of entertainment licensing as provided for in the Local Government (Miscellaneous Provisions) Northern Ireland Order 1985. This legislation enables Councils to deal with issues of unreasonable noise emanating from premises with an entertainment license. The Council welcomes this additional power which it observes as complementing those that already exist</p>
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Issue 8 (Page 18)	Part 7 – Statutory Nuisances Consultees are invited to comment on the provisions in Clauses 61 to 68 concerning:- • Statutory nuisances; • Duty of district council to inspect for statutory nuisance;	Response Statutory Nuisance and Noise in the street We note that under Part 7 Clauses 37(a), 38 & 39 and Article 70 of the Pollution Control and Local Government (NI) Order 1978 are all repealed. These articles are relevant to the application of powers to deal with noise and the changes will result in a need to revise our applications and procedures; however it is appreciated that the same powers are contained

	<ul style="list-style-type: none"> • Summary proceedings for statutory nuisances; • Abatement notice in respect of noise in the street; • Supplementary provisions; • Expenses recoverable from owner to be a charge on premises; • Payment of expenses by instalments; • Summary proceedings by persons aggrieved by statutory nuisances. 	<p>contained within the new Act.</p> <p>We also note the additional duties and powers to deal with noise caused by a Vehicle, Machinery or Equipment in the street under section 64 and schedule 2, 3 (B). Experience of other Councils in England is that new procedures need to be put in place in relation to the application of this power as often they result in the Council carrying out work in default, e.g. silencing a car alarm. In the latter case the effective remedy is to force entry then secure the vehicle or have it removed to a secure other location.</p> <p>The Council is concerned that:</p> <ul style="list-style-type: none"> • To exercise the powers in relation to noise in the street will incur considerable additional cost to the Council. Consequently the Council would stress the importance of Government making available an adequate level of new burdens funding to ensure implementation of this new duty and increased level of service. • More clarity is needed regarding the interpretation of the definitions of equipment and includes action for loudspeakers not used for advertising, radios and buskers playing musical instruments. <p>Clause 66 - Expenses recoverable from owner to be a charge on the premises. BCC welcomes this provision to deal with works in default for functions such as abatement of noise nuisance that currently requires the Council to pursue an individual via civil courts for non payment of expenses incurred. Clause 66 allows a DC to service a notice for the payment of expenses and add reasonable interest rate. We note the right to appeal through the court. We also agree with and welcome the provision to allow recoverable expenses to be paid in instalments.</p>
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The Council welcomes the extension of the list of statutory nuisances to include artificial light and nuisance caused by insects. Many complaints however are also received by the council with regard to nuisances arising from pigeons, particularly in relation to vacant premises. The Council would suggest that a specific category of nuisance is included under Clause 61 relating to "...any premises providing harborage for pigeons so as to be prejudicial to health or a nuisance".

In addition, although the proposed statutory nuisance definition has been in existence in England and Wales, by virtue of the Environmental Protection Act 1990, Councils in England and Wales would not normally have used this power to deal with nuisances of a structural nature in dwelling houses. Structural defects, particularly in privately rented property, would normally be dealt with under the Housing Act 2004 (formerly the Housing Act 1995). Therefore this limb of the statutory nuisance procedure has not yet been widely tested. The Council would seek the extension of the definition of a nuisance to cover premises in such a state as to give rise to a risk of physical injury.

The Council welcomes the continuation of the obligation under the Public Health Act for Councils to inspect their districts for statutory nuisances.

The Council welcomes the streamlining and updating of the nuisance abatement procedure and the re-enactment that, where a nuisance arises due to a defect of a structural character, an abatement notice must be served on the owner of the premises. Under s2 of the Public Health (Ireland) Act 1878 the word "Owner" includes the person receiving the rack rent of the property. This allows the majority of abatements to be served on rent agents. This definition of owner has been included in the draft Bill under Clause 66(9) in relation to expenses recoverable from owners of premises but does not appear to be included in Clause 63. The Council would therefore recommend that the definition of "owner", as set out in Clause 66(9), be applied to the rest of the Bill to ensure that this

ensure that this important element of the statutory nuisance procedure is retained.

The Council welcomes Clause 65(5) which allows the district council to ensure that, in any circumstances, it can take action to abate a nuisance if necessary. Expenses incurred by a district council in abating a nuisance should be recoverable from the person responsible for the nuisance or from the owner of the property. The Council therefore also welcomes the provisions in Clause 66 that expenses thus incurred will become a charge on the property and will attract an appropriate rate of interest.

The Council welcomes the extended powers of entry, in respect of statutory nuisances detailed in Schedule 2, as they are consistent with the Council's enforcement obligations for abating statutory nuisances under Clause 63.

The Council believes that the draft bill should have addressed issues with regard to open and vacant sites. It has been the experience of the council that property has been acquired with the expectation of development but for market or economic reasons such development does not take place. Specific powers requiring such property to be enclosed and maintained should be addressed.

Similarly the process for dangerous structures and the lack of an emergency power enabling councils to take direct and effective action in the most urgent cases should be addressed.

The Council would welcome the inclusion in the Bill of prescribed forms to provide clarity and to deliver uniformity across Councils whilst ensuring compliance with the European Services Directive.

		<p>We note that the Bill suggests that Article 70 of the Pollution Control and Local Government (NI) Order 1978 is to be repealed. This section relates to Notices prohibiting recurrence of nuisance. However there appears to be no provision to include this in the new bill. The Council is of the opinion that this would be a retrograde step and the Council would strongly urge that article 70 is not repealed and remains a regulatory tool for District Councils.</p> <p>Whilst most of the provisions are interwoven with existing legislation there are stand alone proposals in the draft bill and for that reason the Interpretation Act (NI) 1954 should be expressly stated as applying.</p>
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Response	
<p>Part 8 – Miscellaneous and Supplementary Consultees are invited to comment on the provisions in Clauses 69 to 71 concerning:- <u>Use of fixed penalty receipts</u> • Use of fixed penalty receipts <u>Increase of penalty for pollution offence</u> • Offences relating to pollution etc: penalties on conviction <u>Offences by bodies corporate</u> • Offences by bodies corporate</p>	<p>Whilst this is welcomed by the Council, it must be stressed that this will in no way significantly off-set the costs of these new burdens. Therefore the Department needs to enter into dialogue with councils as soon as possible regarding resourcing if this new legislation is to be effective.</p> <p>Section 70 - BCC supports the increase in level of fine for offences under schedule 1 of the Environment (NI) Order 2002.</p>

Response Resources	
<p>Additional comments Please provide additional comments, such as</p>	

level of resources associated with implementation of the Bill, any additions recommended and any other relevant comments.

It is clear that additional resources will be required to respond to and administer complaints/ requests for service for many of the additional powers contained within this Act and to undertake some of the specified statutory processes. This will place an additional burden on the front line services set up to respond reactively to complaints, as well as support services, including legal support. There are additional duties under noise, light, alarms, gating orders, etc. and whilst these are welcomed, they also need to be resourced. There needs to be additional central government 'new burdens' funding to support the level of additional work.

Whilst DCs will be able to retain receipts for fixed penalty notices, experience from administering the Noise Act and from GB would suggest that this source of income is not likely to be significant. It is important that the use of fixed penalties as a source of income does not drive enforcement decision making. For example, in BCC when dealing with noise complaints, resolution is often achieved via the informal part of the process and this is currently measured as an indicator of effectiveness in the implementation of the Noise Act 1996, i.e. the success is the cessation of noise, not the number of fixed penalties.

BCC therefore stresses the importance of Government making adequate additional funding available to enable councils to deliver the extra duties and the associated increased level of services.

The Council notes that in GB, DEFRA has provided detailed guidance in relation to many aspects of the CNEA 2005. It will be imperative that the Department provides similar guidance for the CNE bill in support of the implementation of the legislation.

The Council believes that the powers of enforcement officers should be reviewed and where necessary upgraded by the Department to ensure they are comprehensive enough to enable effective enforcement of the proposed legislation.

Powers to deal with Dilapidated and Derelict Properties.

BCC is of the view that a new Clean Neighbourhoods and Environment Bill could also provide an opportunity to address issues regarding dilapidated and derelict properties which blight local communities and in respect of environmental quality. The legislation which currently provides for dealing with dilapidated properties is piecemeal and goes across the parameters of several public bodies, i.e. District Councils, Planning Service, and Northern Ireland Housing Executive. These crossovers can sometimes lead to confusion and frustrate effective and efficient responses to problems of dilapidated properties.

Whilst Art.66 of the Pollution Control Northern Ireland Order 1978 has been used by the Council on occasion to address issues with properties which are considered "seriously detrimental to the amenities of the area", the lack of a clear definition as to what constitutes "seriously detrimental to the amenity" can prevent the Council from dealing effectively with problems of dilapidation.

The issue of derelict buildings has recently been the subject of an MLA's question to the Environment Minister which highlights the negative impact these properties can have on local communities. This issue was also considered during the passage of the Building Regulations Amendment Bill 2009 and the Assembly voiced its concerns at the archaic legislation which governs dangerous, derelict and dilapidated buildings in Northern Ireland.

BCC is continually receiving requests to tackle problems associated with and caused by dilapidated properties but is often frustrated by the lack of powers to do so. In our experience a derelict property becomes a source of anti-social behaviour and vandalism which in turn can have wider negative impacts on a community and its environmental quality. **We**

		would therefore ask that in the framing of the new bill or allied legislation that the Department considers whether increased powers in terms of regulation and enforcement in this area can be given to local councils.
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Partial Regulatory Impact Assessment

Annex C contains the partial Regulatory Impact Assessment. In the main the Bill amends existing district council powers or provides new powers for district councils to use as and when they consider appropriate. The Department's initial view is that, taken as a whole, the proposals would be cost-neutral to district councils and could lead to overall savings in district council costs through increased efficiency and effective, well-publicised enforcement. We would welcome your views on whether you agree with this initial assessment.

Questions are posed throughout this initial assessment exercise to aid the completion of a full Regulatory Impact Assessment.

	Gating Orders	Response
RIA Question 1 (Page 139)	Do you have any views on the cost implications of enabling district councils to deal with nuisance alleyways by providing them with the power to make gating orders?	<p>The cost implications on Councils where the demand for gates is high and where finance is available to erect gates will be considerable.</p> <p>There will be additional costs associated with administration, placing of public notices, and legal advice (currently incurred out by DRD). There will also be costs associated with local inquiries.</p> <p>Moreover, a government led funding programme covering the capital costs of erecting gates would be needed to meet public demands for gating.</p>

	Vehicles	Response
RIA Questions 2 to 4 (Page 140)	2. How much does the district council currently spend on dealing with nuisance/abandoned vehicles?	2. Currently with the price of scrap metal, fewer vehicles are being abandoned with last owners receiving value from the scrap industry. In the past, however, enforcement of abandoned vehicle legislation would have been in the region of £10,000 per annum.

	<p>3. Do you agree that the stronger suite of powers outlined in Option 1 would lead to an overall reduction in the costs of dealing with the problem? If so, can you quantify this?</p> <p>4. Do you foresee any costs to businesses from these proposals?</p>	<p>3. The additional powers of enforcement regarding nuisance vehicles will lead to an increase in enforcement costs. It is not possible to estimate this as there is no historical data on which to base an estimate. However it is likely to be in the region of £10,000 to £15,000 per annum.</p> <p>4. Costs to businesses operating in the street will presumably be to obtain premises along with the associated permissions etc. to contain their business activities.</p> <p><i>Note: The finances of local government in Northern Ireland are, like those of others in the public sector, increasingly constrained. While the proposals are welcomed consideration should be given to financially compensating Councils for any potential costs in terms of application, investigative and enforcement activity associated with new powers.</i></p> <p><i>The ability of Councils to use fixed penalty receipts is welcomed but will not by any means fully fund the new powers.</i></p>
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	Litter	Response
RIA Questions 5 to 7 (Page 142)	<p>(A) Litter Control Areas – Litter Clearing Notices</p> <p>5. How many areas has the council currently designated as Litter Control Areas?</p> <p>6. How many litter abatement notices did the council serve last year?</p> <p>7. Do you agree that the introduction of Option 1 would lead to a reduction in</p>	<p>None</p> <p>None</p> <p>Yes Currently the Council will clean areas of land that could be cleaned by the</p>

	costs to councils?	owners if the Council had the legislative provisions to insist on cleansing. In the current circumstances it is more expedient to undertake the cleansing by the Council.
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	Litter	Response
RIA Questions 8 to 10 (Page 143)	<u>(B) Street Litter Control Notices</u> 8. How many Street Litter Control Notices did the district council issue last year?	None
	9. Can you estimate how much it currently costs to issue and enforce a Street Litter Control Notice?	No
	10. Do you agree that revising the Street Litter Control Notice system as outlined above would lead to a reduction in costs for district councils?	Yes providing that the definitions of premises can be expanded to include pubs, bars, restaurants, cafes etc

	Litter	Response
RIA Questions 11 to 15 (Page 145)	<u>(C) Distribution of Free Literature</u> 11. Would you anticipate any costs to your interests caused by introduction of option 1?	There will be an additional administrative set up cost and once the system is established there will be ongoing administrative costs and costs for enforcement of the legislation.
	12. How much does the district council spend a year on clearing up litter caused by free literature distribution?	We do not have the exact figure for this but would state that the total annual budget for street cleansing is close to £11 million.
	13. Can you give an indication of the number of sites that might be designated?	There are two main areas which are affected by high levels of leaflet distribution, namely the city centre and the student area. There will be a

	14. Do you think that the requirement to get a consent will reduce the numbers of legal distributors? 15. Do you think that the awareness of fines will successfully deter distributors?	number of sites within these areas but the exact number has not been determined. Difficult to estimate. I believe that there will be some who take a responsible approach and will endeavour to comply with the requirements of the legislation; however there will also be those individuals who will have a disregard for the law and will find ways to evade detection and enforcement.
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	Litter	Response
RIA Questions 16 to 17 (Page 147)	<u>(D) Abandoned Shopping and Luggage Trolleys</u> 16. Can you estimate the cost to district councils of dealing with abandoned trolleys?	Approximately £400 per week
	17. Can you estimate the cost to businesses of this measure if it was adopted by a district council?	The Council will have to charge somewhere in the region of £30 per trolley

	Fly-posting and Graffiti	Response
RIA Questions 18 to 23 (Page 149)	18. How much does the district council spend on removing graffiti and fly-posting each year?	Belfast City Council spends approximately £90,000 per year to remove graffiti and fly-posting.

	<p>19. Do you agree that the proposed measures would generally not impose any additional costs on district councils?</p> <p>20. Can you estimate the current cost to businesses of keeping property clear of graffiti and fly-posting?</p> <p>21. Do you consider that businesses would face additional costs as a result of these measures? If so, can you estimate what these might be?</p> <p>22. If these measures are introduced, how often do you think they would be used?</p> <p>23. Can you outline the benefits to businesses of a cleaner local environment and where possible quantify these benefits?</p>	<p>The imposed changes will create a huge administrative burden on councils, particularly in urban areas where fly-posting is occurring on a huge scale. In council areas such as in Belfast, where there are approximately 2500 posters being removed/obliterated per month, it would not be possible to issue 2500 Removal Notices and to administer the recovery of costs as proposed. The proposal on page 148 of the Equality Screening section states that if Councils "choose to use these powers; the cost of doing so could be offset by the receipts from fixed penalties issued". It is highly unlikely that there will be a significant amount of fixed penalties issued in respect of the powers proposed in the CNE Bill to deal with those persons who personally affix the posters and therefore it is difficult to see how the receipts received will have a significant impact on the cost of administering approximately 2500 Removal Notices per month.</p> <p>The Council does not have any information on the cost incurred by businesses, but can advise that some businesses have expressed frustration at the lack of enforcement powers available to Councils to enable effective control of these activities.</p> <p>Responsible businesses are already taking pro-active action to remove fly-posters and graffiti from their premises. It may be that businesses would endure these costs if they felt that effective enforcement action could be taken to deter this activity.</p> <p>The Council will have to review what level of resources will be required to administer the proposed measures. In view of the fact that we remove approximately 2500 posters each month, it is envisaged that the measures will only be applied in a prioritised manner. The administration required to recover costs will involve several departments within the Council eg Finance and Legal Services and this will have resource</p>
		<p>implications for those Services also involved.</p> <p>Businesses have expressed their on-going concern about the blight of fly-posters and graffiti at many meetings involving Council officers and they are aware of the efforts deployed by the Council to improve the appearance of the city by a concerted programme of rapid removal of fly-posters. Businesses will welcome any legislative controls which will improve the appearance and cleanliness of their locality as this will ultimately reflect on their businesses and hopefully enhance the local economy.</p> <p>The Department may wish to liaise with Belfast city Centre Management for further comment in relation to these issues.</p>

	Dogs	Response
<p>RIA Questions 24 to 25 (Page 151)</p>	<p>24. How much do councils currently spend enforcing dog bye-laws?</p> <p>25. Do you agree with our initial assessment that there will be cost savings to district councils as a result of the new dog control provisions in the Bill?</p>	<p>24. It is not possible for the Council to separate out the costs of enforcing by-laws from those associated with other aspects of dog control and dog fouling.</p> <p>25. The procedure for designation of dog control orders has not been specified within the draft Bill. There is authority for the Department to prescribe the procedure by regulations, including an obligation to make provision for consultation prior to the order being made and publicising it afterwards. Without greater clarity however around the detail of these processes the Council could not be definitive as to whether or not it will involve costs or savings to the rate payer. However, the payment of fixed penalties to the district council (Clause 42) and the option in Clause 43 to set fixed penalties at up to £75 should help to offset at least some of the costs of delivery.</p>

	Nuisance	Response
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RIA Question 26 (Page 153)	(A) Statutory Nuisance 26. The Department would welcome views on the cost implications of updating the legislation on statutory nuisance as reflected in the Bill.	26. The extension to the list of matters that can be treated as statutory nuisances is likely to bring with it increased workloads and resource requirements.
	Nuisance	Response
RIA Question 27 (Page 156)	(B) Noise Nuisance 27. Do you envisage any cost implications arising from the proposals?	27. BCC would express its extreme concern to the Department regarding the inadequacy of the current payment of 0.04 pence per head of population for those authorities who adopt the Noise Act. The Council would strongly seek to have the level of support funding increased to a more appropriate level. We have for many years requested the Department to consider an increase in this figure as it nowhere near offsets the cost of providing the service. The income currently received from DOE is a little over £10,000, whilst the service currently costs approximately £300,000. The additional powers in respect of other types of noise nuisance will add to the cost. Therefore assurance of continued and increased funding for this function is sought by the Council as soon as possible.

Children's Law Centre (CLC) Submission to the Clean Neighbourhoods and Environment Bill

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Introduction

The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and every child can achieve their full potential.

We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run an advice/ information/ representation service. We have a dedicated free phone advice line for children and young people and their parents called CHALKY and a youth advisory group called Youth@clc.

Our organisation is founded on the principles enshrined in The United Nations Convention on the Rights of the Child, in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

From its perspective as an organisation, which works with and on behalf of children, both directly and indirectly, the Children's Law Centre is grateful for the opportunity to make these comments on the Draft Clean Neighbourhoods and Environment Bill.

Endorsement of the response made by Children in Northern Ireland (CiNI) to the Draft Bill

The Children's Law Centre fully endorses the response made by Children in Northern Ireland (CiNI) to the Draft Clean Neighbourhoods and Environment Bill. We share CiNI's concerns about the potential of some clauses to increase the criminalisation and penalisation of children.

Substantive Comments

Context

The United Nations Convention on the Rights of the Child (CRC) protects children's rights to play (Article 31) and to experience a clean and safe environment (Article 24). Research on children's lives in Northern Ireland has demonstrated that these rights are often breached, especially for children living in areas characterised by high levels of poverty (see for example, Kilkelly et al 2004, McAlister et al 2009). Research by Save the Children (2007) found that children living in areas affected by poverty were more likely to experience environmental problems including rubbish and vandalism. The Draft Bill is therefore directly relevant to children and they and their families have a vested interest in improving the local environment. Creative, inclusive and participatory strategies should be developed to improve environmental safety and a clean and healthy environment. Unfortunately some of the specific clauses of the Draft Bill risk damaging and criminalising the most marginalised children rather than involving them in productive social change.

As we have cautioned in previous responses to Government, it is worrying that this draft legislation appears to have been largely lifted from the England and Wales legislation without due consideration of whether such an approach is the most appropriate in the circumstances of Northern Ireland. CLC believes that we need local solutions to local problems: solutions which involve children and young people rather than excluding them.

In its Concluding Observations on the United Kingdom (2008: para 26) the Committee on the Rights of the Child noted its 'regret' that 'the principle of the best interests of the child is still not reflected as a primary consideration in all legislative and policy matters affecting children'. The Draft Clean Neighbourhoods and Environment Bill will impact on children (and presumably intends to make an impact) and should include reference to the best interests of the child.

The Committee on the Rights of the Child (2008: para 34) also noted its concerns about increasing restrictions on children's freedom of movement and peaceful assembly for example through the use of ASBOs and mosquito devices. Unfortunately, the Draft Bill risks further restricting children's right to movement especially through the powers associated with Gating Orders. A further observation of the Committee (para 68) was that the 'steady reduction' in playgrounds had resulted in children being 'pushed' into public open spaces, their congregating there then viewed as 'anti-social' behaviour.

Fixed Penalty Notices (FPNs)

Inspiration for the Draft Bill comes from England and Wales and the Clean Neighbourhoods and Environment Act 2005. This legislation increased the number of 'environmental' offences which could result in Fixed Penalty Notices (FPN). Guidance was published by the Department for the Environment, Food and Rural Affairs (DEFRA) which includes commentary on the issuing of notices to children aged as young as 10. In the Guidance DEFRA (2007: 59) notes that 'whilst issuing fixed penalty notices to those aged 18 and over is in most peoples' minds uncontroversial, the same could not be said when it comes to issuing to those aged under 18'. DEFRA then notes by way of example that some magistrates will not want to 'give a criminal record to a young person for dropping a sweet wrapper'. A further example is given of a 'young person aged over 10' dropping a crisp packet while 'walking through a park'. The Guidance reminds the reader that this is an offence regardless of whether the child was aware of the law or not. Most children know that dropping litter is wrong or 'naughty', having been taught this by parents and teachers. How many know that it is actually an offence? Giving a child a 'warning' prior to issuing a FPN does not constitute diversion as required by international children's rights standards (Beijing Rules). Undoubtedly litter is a social problem affecting adults and children but it is of concern that children may face substantial fines and referral to the youth justice services for minor littering.

The Children's Law Centre is opposed in principle to the use of Fixed Penalty Notices for children as these cannot be considered to be in the 'best interests' of the child. Further, the impact of a £75 fine will have a disproportionate impact on children, many of whom do not have access to this amount of money and have no way of earning it. The likely consequence of the imposition of FPNs on children is tension and financial strain within families. We are particularly concerned at the proposal that failure to provide an accurate name and address may lead to a £1,000 fine. Some children may be anxious when apprehended for an offence and tempted to hide their real identities for fear of being in trouble at home, with no real understanding of the full consequences of their actions. Article 6 (European Convention on Human Rights) protecting the right to a Fair Trial is also engaged here. The DEFRA guidance explains that where offending is 'clear cut' and formal interviews 'not required' FPNs may be issued. Differential power relationships make it difficult for some young children to challenge authority figures, especially those in uniform, and it is of concern that some children may be wrongfully accused and issued with notices, unable to assert their innocence.

Part 1 Gating Orders

The proposed use of Gating Orders, which will allow the erection of a physical barrier to restrict access to public 'rights of way', is another issue with clear relevance to children. Again, we recognise that problems exist in some areas caused by behaviour by adults and young people which can be threatening to local residents, including older people. The proposal for the use of Gating Orders however has some practical difficulties, particularly the danger of simply shifting 'anti-social behaviour' from one area to another. This may initially relieve the situation for those living in areas experiencing problems, but the strategy also presents particular dangers for children who as a result of the closure of alleyways may be moved further from their homes and from any form of adult supervision. Equality Impact Assessments carried out in England, on the

use of Gating Orders note the differential and negative impact on certain age groups including children, parents with young children, older people and disabled people (see for example the EQIA conducted by Nottinghamshire County Council). Those who are socially excluded are particularly affected by Gating as they are less likely to be able to afford cars and may have to walk longer distances as a result. Disabled people may also be adversely impacted upon. Bearing these factors in mind, it is crucial that the Draft Bill is 'screened in' and a full EQIA conducted.

Part 4 Graffiti and Other Defacement

CLC recognises that graffiti can be damaging to local areas, particularly where it is sectarian, sexist, racist, homophobic or abusive in any way. It is particularly disturbing to see such offensive graffiti in play-parks used by young children. Kilkelly et al (2004) found that children did not like having to play in areas which they considered ruined by litter and graffiti. Some drew pictures for the researchers to illustrate their negative feelings towards this phenomenon. Our concern here is regarding the use of penalty notices of £75 and the potential imposition of a £1,000 fine where false information is given. For the reasons discussed above, FPNs are not an appropriate response to children's behaviour.

Community Safety in Northern Ireland

The issues raised in the Draft Clean Neighbourhoods and Environment Bill overlap in key respects with elements of the NIO's draft Community Safety Strategy. In our response to the NIO we recommended that Government hold back from further development of the draft Community Safety Strategy as the devolution of policing and criminal justice would offer our locally elected political representatives the opportunity to identify and agree their own community safety priorities. We proposed the development of a 'fit for purpose' Northern Ireland focused strategy, rather than the importation of a strategy developed for an English context and 'one which is increasingly falling into disrepute'. We noted that a number of Government Departments in Northern Ireland had been working on the development of some excellent strategies, the ethos and content of which were wholly inconsistent with the proposed provisions contained in the draft Community Safety Strategy.

Following devolution of policing and justice, responsibility for the development of a regional strategy on community safety lies with the Department of Justice. We advocate that this should be developed through a process of inclusive consultation, including meaningful consultation with children as a particularly affected group. Given the overlap, we suggest that many of the issues raised in the Draft Clean Neighbourhoods and Environment Bill should be dealt with through this process. The introduction of the Bill should therefore be delayed.

EQIA

We are aware that an Equality Impact Screening exercise has been conducted in relation to the Draft Bill and are extremely surprised that the result of this was to 'screen out' the Bill as not having an impact on equality of opportunity for any of the section 75 categories. It is clear from CiNI's response, and from our analysis above, that some powers contained within the Draft Bill will impact disproportionately, and potentially negatively, on children and young people (and will have implications for other groups besides). 'No' was the answer given to the question 'is there any evidence indication or evidence that any of the section 75 categories have different needs, experiences, issues and priorities in relation to this policy issue?' Yet research demonstrates that children have different needs and experiences of using public space (Kilkelly et al 2004, McAlister et al 2009). We urge the Department to review this Equality Impact Screening exercise, taking into account the findings of relevant Northern Ireland-based research and also considering research on the operation of the E&W legislation and how this has impacted on children.

We note that very few child-focused organisations were listed among consultees to the legislation. This situation should be remedied by extending the consultation time and specifically consulting with the children's sector.

The Children's Law Centre is committed to the effective operation of section 75 of the Northern Ireland Act 1998 and we are keenly aware of the statutory obligation inherent in section 75 to consult directly with those who are likely to be affected by a policy, whether or not they have a personal interest. Contrary to the conclusion of the Equality Impact Screening exercise it is very apparent that children and young people are one of the groups who will be most directly impacted upon by the introduction of the draft Clean Neighbourhoods and Environment Bill. All designated public bodies are under an obligation to ensure that child-accessible documentation is available in order to facilitate consultation with children and young people.

In addition, the Equality Commission's Guidance for consulting with children and young people, "Let's Talk, Let's Listen" (June 2008: para 2.26) states that,

"Section 75 of the Northern Ireland Act 1998 (and the guidance that comes with it), which gives you directions on how to carry out your duties. Children and young people have particular needs concerning information and to take part in consultation and decision-making processes, especially on issues that affect them.

It is particularly important that you consider which methods are most appropriate for consulting children and young people. You should also make sure that you provide information which is clear, easy to understand and in an appropriate format, to make sure there are no problems preventing you from consulting children and young people."

This Guidance also reiterates the obligations on designated public bodies detailed in the "Guidance for Implementing Section 75 of the Northern Ireland Act 1998" to ensure that direct consultation is carried out with those who are directly affected by a policy. It states that,

"Section 4 (2) (c) of the Guide lists the 'Guiding Principles on Consultation'. These principles say that good consultation depends on:

- engaging with and involving the Section 75 groups; and
- the policy or issue being understood by, and appearing to directly affect, the people being consulted" (para 3.8 page 20).

The Equality Commission's Guidance for Implementing Section 75 of the Northern Ireland Act 1998 states that,

"1.4 The new statutory duties make equality central to the whole range of public policy decision-making. This approach is often referred to as "mainstreaming". The Council of Europe has defined mainstreaming as:

"the (re)organisation, improvement, development and evaluation of policy processes, so that a[n] ... equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making". (Gender mainstreaming conceptual framework, methodology and presentation of good practices. Council of Europe, Strasbourg May 1998)

It is clear from this that the intention of section 75 is to mainstream equality, making it central to policy decision making. In order for an equality perspective to be central to policy making, it needs to be incorporated in all policies at all levels and stages. This would unequivocally involve

incorporation of the principles of equality of opportunity from the beginning of the process and throughout the development and implementation of the policy.

We note that the Equality Commission and Human Rights Commission were scheduled to receive copies of the consultation document and will be interested to learn what comments these bodies have made on the equality and human rights implications of the Draft Bill.

Conclusions

The Children's Law Centre is grateful for the opportunity of commenting on the draft Clean Neighbourhoods and Environment Bill. We look forward to seeing an analysis of responses and hope that the equality issues will be revisited.

In summary, our key concerns regarding the draft Bill and associated processes are:

- the failure to recognise through Equality Impact Screening the potential for adverse impact on children
- the incompatibility with children's rights of sections of the Bill, notably in relation to Fixed Penalty Notices and Gating Orders
- the potential to punish and further marginalise children living in areas of high levels of deprivation
- the need to develop local strategies for local issues rather than 'read-across' from England

References

Kilkelly, U. et al. (2004) Children's Rights in Northern Ireland. Belfast: NICCY.

McAlister, S., Scraton, P. and Haydon, D. (2009) Childhood in Transition: experiencing marginalisation and conflict in Northern Ireland. Belfast: QUB.

Children in Northern Ireland (CiNI) Submission to the Clean Neighbourhoods and Environment Bill

August 2010

Introduction

Children in Northern Ireland (CiNI) is the regional umbrella body for the children's sector in Northern Ireland. CiNI represents the interests of its 140 member organisations, providing policy, information, training, participation and advocacy support services to members in their direct work with and for children and young people. CiNI's membership is open to colleagues in the children's statutory sector recognising that the best outcomes for children are increasingly achieved working in partnership with all those who are committed to improving the lives of children and young people in Northern Ireland. CiNI hosts the Participation Network, an initiative supported by OFMDFM, which offers direct training, consultancy and sign posting services to government departments and statutory agencies to help them develop the knowledge, skills and expertise to engage directly with children and young people when carrying out their functions.

CiNI welcomes this opportunity to submit written evidence to the Committee for the Environment on the Clean Neighbourhoods and Environment Bill. In April 2010 CiNI responded to the Department of Environment's consultation on proposed Clean Neighbourhoods and Environment legislation. We have appended this earlier response to our written evidence for the consideration of Committee members.

CiNI has considered the Department's 'Consultation Summary' produced in June 2010 where it has responded to some of the issues we raised in our initial response, however there are particular issues which remain outstanding which have not been responded to or dealt with by the Department in drafting the Bill.

CiNI would urge Committee members to give all those responses from children's sector organisations due regard as it remains our strong view that children and young people will be adversely impacted by this legislation, particularly with regard to the introduction of Fixed Penalty Notices.

Part 1 Gating Orders

In our initial response to the proposals for legislation CiNI raised concerns regarding the introduction of gating orders and the potential adverse impact such orders might have on equality of opportunity for children and young people. It is likely that roads which could be targeted for gating orders in built up areas may be used by children and young people as pedestrians to have convenient, safe and easy access to school, health, play and leisure facilities. We would also highlight that consideration should be given to the needs of those who are disabled. The introduction of Gating Orders may also potentially raise issues in relation to physical access and therefore consideration must also be given to the requirements of Disability Discrimination legislation. CiNI did highlight in our initial response that it is imperative in compliance with the requirements of Section 75 of the Northern Ireland Act 1998 that proper screening and equality impact assessment of the proposed introduction of gating orders is undertaken. It is therefore welcome that the Department of Regional Development agrees, as indicated in the Consultation Summary^[1], that Section 75 screening should be carried out in respect of proposed gating orders. We would advocate that in proper compliance with Section 75 this must include direct consultation with children and young people to ensure the potential impact of gating orders on their daily lives is properly considered and understood, and where adverse impact is identified mitigating action is taken.

CiNI would also highlight our concern regarding the grounds upon which a gating order can be made. The District Council must be satisfied that the road/area is affected by or facilitating the commission of criminal offences or anti-social behaviour. CiNI would highlight that we have grave concerns regarding the term anti-social behaviour as defined by the Anti-Social Behaviour (NI) Order 2004. Anti-social behaviour is defined as 'acting in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself'. CiNI believes that as a concept anti-social behaviour is ill-defined and extremely subjective and for this reason we do not believe it should be used as a factor upon which to base the granting of a gating order.

Fixed Penalty Notices

In relation to the introduction of Fixed Penalty Notices (FPNs) we would refer Committee members to our initial response to the Department's consultation. CiNI remains entirely opposed to the use of FPNs against children and young people. Given that in respect of graffiti and fly posting these could be levied directly onto the child or young person we have real concerns regarding a child or young person's ability to pay such a fine given their dependent status. Fines

such as these are an onerous burden to place on a child given that they are likely to have limited means to pay. Clearly failure to pay a fine would result in a child or young person being fast tracked into the youth justice system.

Research evidence referred to in our earlier response demonstrates that issues such as litter and graffiti disproportionately impact on areas where the poorest children, young people and their families live. Therefore it is likely that the poorest children will be targeted, and it is these children and young people who will be even less likely to be able to pay such fines and will therefore find their families pushed further into poverty or fast tracked into the youth justice system. The proposed introduction of FPNs is entirely contrary to the Executive's Programme for Government commitments and PSA targets to end child poverty by 2020, by reducing child poverty by 50% by 2010 and eliminating severe child poverty by 2012.

The use of FPNs against children and young people aged 10 and over raises grave human rights and children rights concerns. CiNI is entirely opposed to the criminalisation of children from age 10 and we are concerned that the introduction of these proposed offences under the draft legislation and the accompanying penalty notices could lead to more children being criminalised as a result of inability to pay the fines.

CiNI is therefore deeply disappointed and concerned that, despite our representations on the matter, the Department has determined that it will continue with its proposals for Fixed Penalty Notices which can be used against children and has committed only to adopting 'a different approach^[2]' in respect of FPNs against children and young people.

Again we would reiterate our firm opposition to the use of FPNs against children and young people. CiNI believes that the Department must re-examine its strategic approach to the pursuit of clean neighbourhoods and environments. We are concerned and disappointed that in the absence of a proper policy development phase the opportunity has been missed to explore with all stakeholders, including children and young people, the approaches which could promote clean neighbourhoods and environments and prevent recourse to more punitive legislative measures.

CiNI does not underestimate the detrimental impact which issues including graffiti and litter can have on communities, and we believe that these issues should be tackled pro-actively through approaches which engage all members of the community in identifying local solutions. We understand that several District Councils do place an emphasis on preventative and diversionary activity for children and young people where there are issues relating to graffiti/litter etc, these activities focus on reducing incidences of these problems as opposed to dealing with the consequences in the aftermath. We would advocate that these approaches should be explored in more detail and best practice showcased with a view to rolling out the learning across District Council areas, so that learning can be transferred and embedded into policy and practice for all District Councils.

We understand that District Councils are increasingly engaging in and supporting multi-agency responses to planning and commissioning services for all children and young people through the auspices of the HSCB Children's Services Planning process. Already within this process much work is being taken forward on family support and early intervention, preventative and diversionary activities for children and young people at risk. We would stress that at the heart of this work is a commitment to promoting and supporting delivery of children's rights as set forth in the United Nations Convention on the Rights of the Child. We welcome and would highlight in particular the funding which the DHSSPS and NIO have invested in early intervention services for 8-13 year old children vulnerable to offending which, through joint initiatives, is delivering improved outcomes for these children.

Focus on Early Intervention

CiNI is extremely encouraged by the positive response of the Department of Justice to concerns expressed by the children's sector and wider NGO sector regarding the overwhelmingly punitive approach which was being proposed in relation to community safety issues and the negative focus on young people and families. The Department of Justice in its Pre-Consultation on the Development of a Future Community Safety Strategy^[3] has listened to the views of respondents and noted views that 'the emphasis on young people in the initial consultation was too negative, and some of the proposed initiatives were punitive, such as Parenting Orders, Support Order and Dispersal Zones'.

CiNI would commend the Minister for Justice for his careful consideration of the concerns. It is extremely welcome, as indicated in the pre-consultation, that the Minister 'does not intend to include such provisions as proposals for a new Strategy, unless there are compelling arguments for their inclusion during the consultation.'^[4]

Of particular significance is the decision of the Minister for Justice to revise the key themes for the Community Safety Strategy and, taking into account feedback received, the Minister has now identified early interventions as a key theme, to focus on addressing the risk factors that lead to offending and anti-social behaviour.

Beyond the Department of Justice, we would highlight that across the Executive, the overwhelming policy focus is on early intervention, prevention and diversionary responses for vulnerable children, young people and families. This is evidenced in the Cross Government 10 Year Strategy for Children and Young People^[5], which provides the outcomes framework to which all Government Department's must align policy development that impacts on children and young people. The 10 Year Strategy highlights the imperative on Government to shift to preventative and early intervention practice in support of a whole-child approach. This has been positively embraced particularly by those Government Departments with lead responsibility for children and young people, and is evidenced in the overall approach to families and parents presented in Families Matter^[6] the Regional Family and Parenting Strategy for Northern Ireland.

Therefore, CiNI would highlight that the Department of the Environment, in continuing to pursue the introduction of Fixed Penalty Notices against children and young people, is acting entirely contrary to many of the evidence-informed strategic policy responses for children and young people operating across Government, which are contributing to measurable improvements in the pursuit of positive outcomes for children and young people. CiNI would urge Committee members to direct the Department to re-examine its approach and set aside the punitive legislative proposals in favour of those evidence-informed early intervention and preventative initiatives targeting vulnerable children and young people which have a proven track record of delivering positive outcomes for children and young people.

Equality Impact Assessment

CiNI notes that the Bill's Explanatory and Financial Memorandum commenting on equality impact assessment, indicates the 'the Bill is believed to be consistent with equality of opportunity'. CiNI would contest this view and while we appreciate the overall aim of the Bill to improve the quality of life for all of the people of Northern Ireland appears positive in terms of promoting equality of opportunity, our concern remains that particular aspects of the legislation which aim to improve the quality of life for people are in fact likely to have significant, albeit unintentional, adverse impact on the promotion of equality of opportunity for children and young people. Contrary to the approach taken by the Department of the Environment to their statutory equality obligations, it is extremely welcome that the Department of Regional Development does agree that equality

impact assessment regarding proposed gating orders should be undertaken. We are dismayed and disappointed by the lack of a consistent approach across the Executive to positive engagement with the statutory obligation to promote equality of opportunity which is a central component of the Agreement which secured devolved Government for Northern Ireland in 1998.

CiNI would highlight to Committee Members that in our initial response to the proposals for legislation we raised significant concerns regarding the Department of the Environment's failure to properly engage and comply with its obligations to promote equality of opportunity under Section 75 of the Northern Ireland Act 1998. We raised concerns that the Department was acting in breach of its own Equality Scheme and these concerns remain.

The results of the section 75 screening exercise were not included in the Department's public consultation on the policy proposals. As we indicated in our initial response at the close of consultation on 23rd April 2010 the full screening paper was not available to download from the DOE website. Therefore we did not have an opportunity to comment on the full screening paper. Having subsequently received and considered the full screening paper we are concerned and disappointed with the approach to Section 75 compliance which has been adopted by the Department. CiNI entirely disagrees with the decision to screen out the policy for equality impact assessment.

At 2.5 of the screening paper the Department has indicated that no current data is available to facilitate the screening of the legislation, stating that 'on careful analysis of the legislative proposals, there is nothing to suggest that they should impact adversely on any of the section 75 groups'. As we indicated in our earlier response in respect of children and young people there does exist a strong evidence base relating to their needs, experiences, issues and priorities in respect of their neighbourhoods and environments. We highlighted some of this research to the Department in our initial response to the consultation (see below), and we would again advocate that the Department undertake a comprehensive trawl of research sources to inform a robust screening exercise.

The screening paper at 3.2 appears to suggest that consultations with representative organisations or individuals of the section 75 categories did not indicate that the legislative proposals created problems specific to them. However, we are unaware of any specific consultation with children and young people and/or those who represent them to consider the potential impact the proposed legislation might have on them. In this regard we would encourage Committee members to engage directly with children and young people to hear from them of the potential impact of the legislation.

Again contrary to the position presented at 3.4 of the equality screening paper we believe there is an opportunity to better promote equality of opportunity by adopting an approach which focuses on partnership across government, statutory agencies and the voluntary and community sector to identify innovative, early intervention, preventative and diversionary responses and activity for children and young people that addresses the challenges for neighbourhoods and supports delivery of the outcomes framework of the 10 year Children and Young People's Strategy that all Departments have signed up to and have committed to delivering on.

CiNI would strongly advocate that Committee members, as part of Committee consideration of the Bill, seek a full Equality Impact Assessment of the Bill proposals.

Engagement and Consultation with Children and Young People

CiNI is disappointed that the Department, in its analysis of responses to the consultation, has not acknowledged and responded to our concerns regarding the lack of direct engagement with children and young people on the development of these legislative proposals.

We would again highlight that the DOE is statutorily obliged under Section 75 of the Northern Ireland Act 1998 to engage directly with children and young people to promote equality of opportunity when carrying out its functions including the development of public policy which will impact directly on children, young people and their families. In addition to the requirement placed on the Department to consult directly with children and young people as members of the section 75 age category we would highlight the Department's obligations in relation to the UNCRC. Government in Northern Ireland has signed up to the UNCRC and in doing so committed to actively taking forward delivery of its provisions for all children and young people. The UNCRC places specific obligations on Government in relation to seeking and responding to the views of children and young people when developing public policy. Article 12 of the UNCRC requires State Parties to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

CiNI would highlight that support is available to DOE and indeed to Committee members to help ensure effective consultation with children and young people. CiNI hosts the Participation Network^[7], which is an OFMDFM supported initiative, set up to provide training, signposting and consultancy support to public bodies, such as DOE, to help in fulfilling section 75 obligations to consult with children and young people. We understand that the DOE's Road Safety Division has engaged with the Participation Network with regard to the development of its new draft Road Safety Strategy. The Committee may be interested in hearing directly from the officials leading on the development of the Road Safety Strategy of their experience of involving children and young people and the benefits this has brought to the policy development process. CiNI would advocate that this example of positive practice in engaging children and young people pioneered by one particular area of the Department should be embedded as part of the policy development process for all divisions/business areas within the DOE.

Conclusion

CiNI trusts that our written evidence can usefully inform Committee discussion and deliberation on the development of legislation to promote clean neighbourhoods and environments. We trust that Committee members will give due consideration to the serious concerns we have raised and look to endorse an approach which promotes and supports early intervention and prevention as the most efficient and effective response to achieving the aim of working in partnership with communities to create vibrant communities which provide clean, safe spaces that are shared and valued by all citizens.

Cini Response to DOE Consultation on Clean Neighbourhoods And Environments – April 2010

Children in Northern Ireland (CiNI) is the regional umbrella body for the children's sector in Northern Ireland. CiNI represents the interests of its approximately 140 member organisations, providing policy, information, training, participation and advocacy support services to members in their direct work with and for children and young people. CiNI's membership is open to colleagues in the children's statutory sector recognising that the best outcomes for children are increasingly achieved working in partnership with all those who are committed to improving the lives of children and young people in Northern Ireland. CiNI hosts the Participation Network, an initiative supported by OFMDFM, which offers direct training, consultancy and sign posting services to government departments and statutory agencies to help them develop the

knowledge, skills and expertise to engage directly with children and young people when carrying out their functions.

General Comments

The state of our neighbourhoods and general environment are issues of crucial importance for children and young people in Northern Ireland. Clean neighbourhoods and environments are highly valued by children and young people as it is in these areas that children spend much of their free time playing and meeting friends. The local neighbourhoods and environments where children grow up have major impact on childhood experiences and can impact on a child and young person's general health and well-being, and are also important in promoting positive community identity and a sense of pride and belonging for children and young people.

Children and young people are consistently vocal on issues relating to their neighbourhoods and environments and are keen to share their views on what they identify as being problems within their areas, while also offering solutions to addressing these problems.

Unfortunately living in a clean neighbourhood and pleasant environment is not the lived experience of all children and young people in Northern Ireland. For children living in areas where levels of poverty are high it is more likely that their will be significant environmental problems in these areas.

Northern Ireland has high levels of child poverty with 10% (44,000) of children living in severe poverty (children who were poor on 3 measures – low level of household income, child deprivation and parental deprivation)^[8] and 21% of children living in persistent child poverty (being poor 3 years in a 4 year period) which is more than double the GB rate of persistent child poverty^[9].

Save the Children research on severe child poverty revealed that one in ten severely poor children live in an area viewed by their parents as a bad place to live in, compared to one in sixteen non-severely poor children and one in one hundred non-poor children. Amongst the issues reported as 'major problems' were rubbish and litter; dog mess; vandalism and graffiti.

Children and young people also consistently raise issues in relation to a lack of places to go and things to do in their local areas. Recently it has been raised by children and young people who participated in the NI Commissioner for Children and Young People's Review of Children's Rights in Northern Ireland. Notably as part of the review children commented on the places where they currently spend time. The review noted that these places were deemed to be far from ideal in terms of safety and security. Children and young people had a lot to say about the poor state of their parks and other public spaces. Issues raised included broken and poorly maintained equipment, broken glass and rubbish lying around, vandalism, dog dirt and a lack of public conveniences^[10].

The review highlights that councils need to fulfil their duty, not only to provide adequate space for play, but to maintain it and ensure that it is a safe and clean place for children and young people^[11].

Recent research undertaken by QUB, The Prince's Trust and Save the Children NI^[12] with 196 children and young people from across 6 communities significantly affected by the conflict revealed that the main issues for these children and young people in relation to their communities were in order of priority, the nature of play/leisure facilities; street fighting/violence; alcohol; and the general state of the area. The general environment or state of the neighbourhood was raised by children in discussions about litter and rubbish on the streets,

graffiti, dog fouling and the consequent smell. They were concerned that the general appearance of their communities was drab and unkempt. Children had recommendations to make and focused on reconstruction, maintenance and the security of parks, young people desired more facilities, improved choice and diversity^[13].

CiNI would strongly advocate that the DOENI respond to and engage children and young people as primary stakeholders with an active contribution to make in promoting their neighbourhoods and environments. We do believe that action is required to improve the environments where the poorest children live. However, these actions must be developed through consultation and engagement with children, young people, their families and communities so solutions can be arrived at which communities feel ownership of and can deliver on collectively, in a way that respects and values the contribution of all members of whatever age.

Specific Comments on Clauses of the Bill

Fixed Penalty Notices (FPNs)

CiNI notes that the Bill proposes the introduction of Fixed Penalty Notices (FPNs). While it is not explicitly stated within any of the consultation documentation at what age a Fixed Penalty Notice can be applied, it is clear that in the case of penalty notices for graffiti and fly posting these will apply to children and young people aged under 16 and can be levied directly onto children and young people (see below re Part 4). CiNI also notes that failure to supply a name and address or to give false or inaccurate information would be an offence and could lead to a fine of up to £1000.

We do note that under the Clean Neighbourhoods and Environments Act 2005 which applies in England and Wales, FPNs can be issued to anyone over the age of 10, that is, the current age at which a child is deemed to be capable of being criminally responsible. Different procedures are in place for 10-15 year olds and 16 and 17 year olds. The only caveat placed on the issuing of these notices is set out in guidance issued by DEFRA to local authorities which states that they must act in accordance with their obligations under the Children Act 2004, to discharge their functions with regard to the need to safeguard and uphold the welfare of children^[14]. In England and Wales parents and legal guardians are not responsible for paying penalties issued to children and young people.

CiNI is entirely opposed to the use of FPNs against children and young people. Given that in respect of graffiti and fly posting these could be levied directly onto the child and young person we have real concerns regarding a child or young person's ability to pay such a fine given their dependent status. Fines such as these are an onerous burden to place on a child given that they are likely to have limited means to pay these. Clearly failure to pay a fine would result in a child or young person being fast tracked into the youth justice system.

As noted by the research evidence referred to above issues such as litter and graffiti disproportionately impact on areas where the poorest children, young people and their families live. Therefore it is likely that the poorest children will be targeted, and it is these children and young people who will be even less likely to be able to pay such fines and will therefore find themselves pushed further into poverty or fast tracked into the youth justice system. The proposed introduction of FPNs is entirely contrary to the Executive's commitment made in its Programme for Government and PSA targets to end child poverty by 2020, by reducing child poverty by 50% by 2010 and eliminating severe child poverty by 2012.

The use of FPNs against children and young people aged 10 and over raises grave human rights and children rights concerns. CiNI is entirely opposed to the criminalisation of children from age

10 and we are concerned that the introduction of these proposed offences under the draft legislation and the accompanying penalty notices could lead to more children being criminalised as a result of inability to pay the fines.

Despite much international scrutiny and commentary the age of criminal responsibility remains set at 10 years in Northern Ireland, below that age a child is irrebuttably presumed to be incapable of offending behaviour. In comparison to many countries across Europe, and indeed throughout the world, 10 years is considered extremely low for a child to be held responsible for criminal behaviour, noting that it is significantly lower than the age at which children can legally assume other responsibilities, such as being able to marry or to vote.

The UN Committee on the Rights of the Child has been consistent in its monitoring of the UK Government on the issue of the age of criminal responsibility. In 2002 the Committee observed that the age at which children enter the justice system was low and recommended that Government "considerably raise the minimum age for criminal responsibility"^[15]. Given the Government's failure to respond, the UN Committee again reiterated its recommendation in 2008, pointing also to detailed commentary provided in its General Comment No.10 on Children's Rights in Juvenile Justice, which, in considering the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), concluded that:

"... a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable ... State parties are encouraged to increase their lower minimum age of criminal responsibility to the age of 12 years as the absolute minimum age and to continue to increase it to a higher level ... A higher minimum age of criminal responsibility, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with 40 (3) (b) of the UNCRC, deals with children in conflict with the law without resorting to judicial proceedings, provided that the child's human rights and legal safeguards are fully respected."^[16]

The use of FPNs against children and young people raises questions in relation to article 6 of the European Convention on Human Rights the right to a fair and public hearing. This is also supported by the United Nations Convention on the Rights of the Child (UNCRC) to which Government here is a signatory and therefore compelled to implement. Article 40 of the UNCRC requires every child under 18 who has been alleged as, accused of or recognised as having infringed the penal law to be afforded the following minimum rights:

- (i) To be presumed innocent until proven guilty according to law
- (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence
- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance, and, unless it is considered not to be in the best interests of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians
- (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality
- (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used

(vi) To have his or her privacy fully respected at all stages of the proceedings

State parties are required under Article 40 to seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law.

CiNI would highlight that the process by which such notices are given would not comply with these obligations.

Part 1 Gating Orders

CiNI notes that Part 1 of the draft Bill proposes the introduction of Gating Orders which it is stated will predominantly be used to address crime and anti-social behaviour in built-up areas. Gating orders will allow the erection of a physical barrier to restrict public access to a road over which the public would normally have a right of passage.

Again CiNI would highlight that it is imperative in compliance with the requirements of section 75 that proper screening and equality impact assessment of the proposed introduction of gating orders is undertaken. We would highlight that children and young people potentially will experience significant adverse impact from the introduction of such orders. It is likely that these roads in built up areas may be used by children and young people as pedestrians to have convenient, safe and easy access to school, play and leisure facilities. We would also highlight that consideration should be given to the needs of those who are disabled. The introduction of Gating Orders may also potentially raise issues in relation to physical access and therefore consideration must also be given to the requirements of Disability Discrimination legislation.

Part 4 Graffiti and Other Defacement

CiNI recognises the detrimental impact graffiti and other defacement can have on neighbourhoods and the extent to which it can contribute to negative perceptions regarding particular areas. It is an issue which children and young people are keenly aware of and consistently reference in conversations regarding the condition of their local areas. Children and young people do not want their play parks, public spaces and facilities defaced by graffiti.

CiNI notes that Part 3 of the draft Bill proposes to introduce penalty notices for graffiti and fly-posting. It is stated that the intention is to levy the penalties only on the persons actually committing these acts. Offenders will have 14 days in which to pay the penalty (up to a maximum of £75) after which prosecution for the offence may be initiated. A person who is to be subject to the penalty notice will be required to provide their name and address and it will be an offence either to fail to give that information or to give false or inaccurate information. This can lead to the imposition of a level 3 fine (£1000).

CiNI also notes that the sale of aerosol spray paints to persons aged under 16 is to be made an offence and the stated objective in relation to this proposed offence is to reduce the incidence of criminal damage caused by acts of graffiti. Therefore it is clear that the assumption underpinning the creation of this proposed offence is that children aged under 16 are the main perpetrators of graffiti, this is despite the fact that research evidence does clearly highlight that children and young people themselves are concerned about the impact that graffiti has on the condition of their neighbourhoods and communities. It does appear that should the draft legislation proceed in its current format the proposed power to issue penalty notices for graffiti and fly posting

would be used in relation to children aged under 16 and the penalty notice would be levied directly on to the child. In the absence of any information to the contrary we also assume that a child under the age of 16 would be required to pay a fee of the same level as an adult would be required to pay.

The draft legislation in a similar manner also proposes to introduce new offences and powers to issue penalty notices in relation to vehicles, litter, dogs and noise.

Community Safety in Northern Ireland

CiNI notes that the issue of so-called environmental crime was addressed as part of the consultation on Community Safety in Northern Ireland which concluded in February 2009. We note that subsequently the NIO has published the Summary of Responses to the Consultation and on the question of environmental crime the views expressed as part of the consultation indicated that while local authorities would welcome powers to tackle graffiti, litter, vandalism, abandoned vehicles, dog mess and fly-tipping "there was agreement [from respondents who expressed views] that the best way to tackle environmental crime and anti-social behaviour was to identify, treat and resolve, the underlying reasons for this behaviour, rather than having to deal with the consequences of the behaviour. It was recognised resolution of this issue could only be achieved by a multi-agency approach which included government, statutory, voluntary and community groups in developing and delivering preventative and diversionary programmes. Respondents suggested true partnership and collective action would only be possible when the duty to co-operate was placed on a statutory basis^[17].

It is CiNI's view that the draft proposals contained within the Clean Neighbourhoods and Environment Bill are not reflective of the agreement flowing from the consultation on Community Safety, which the NIO has articulated in its summary document, given the Bill's emphasis on dealing with the consequences of behaviour through the imposition of Fixed Penalty Notices, rather than a partnership and multi-agency approach focused on developing and delivering preventative and diversionary programmes.

CiNI notes that the draft Community Safety Strategy has not been progressed and considers that it will now fall to the newly established Department of Justice in partnership with other relevant departments, to determine the way forward on community safety, through engagement in comprehensive consultation with local communities to identify the issues that are relevant and important to local people in Northern Ireland. We therefore firmly believe that given the considerable linkages between community safety and environmental improvement issues and the proposed creation of offences relating to environmental crime and associated FPNs, these must also be actively considered by the Department of Justice and the Assembly's Justice Committee in the overall context of creating safe communities for all of our citizens.

Equality Impact Assessment

CiNI notes that an equality screening exercise has been undertaken in respect of the proposals and it has subsequently been concluded that the proposals do not impact on equality of opportunity for any of the nine section 75 categories.

We have considered the summary of the screening paper at Annex B. However we note the full screening paper which was to be posted on the DOENI Equality Unit website. At the close of consultation on 23rd April 2010 the full screening paper was not available on the website. A fundamental element of the screening process is consultation with section 75 groups to seek their views on whether all equality impacts have been identified. Therefore we would highlight

that the department is in breach of its section 75 obligations by failing to make the full screening paper publicly available as part of the public consultation process on the draft legislation.

We believe that the proposals introducing fixed penalty notices will have a differential and adverse impact on children and young people, where these will be levied directly against children and young people, who will be unable to pay the fines, which could lead to prosecution.

It is particularly important that information relating to the evidence base which has informed the screening exercise is made available. It is our firm view that in respect of children and young people there does exist a strong evidence base relating to their needs, experiences, issues and priorities in respect of their neighbourhoods and environments. While some of this evidence drawn from research has been alluded to above, we would advocate that the Department undertake a comprehensive trawl of research sources to properly inform the screening exercise.

We note that a Partial Regulatory Impact Assessment (RIA) has been undertaken in respect of the draft legislation. As part of the Partial RIA the consultation material does indicate that there has been "limited informal consultation with stakeholders but in the main they [the proposals] are based on experience and developments in England and Wales^[18]".

While we do appreciate that experience and developments relating to the implementation and roll-out of legislation in England and Wales can provide useful learning, we would urge great caution in adopting legislation which is a straight read across of legislation applying in England and Wales in the absence of any consideration of the particular circumstances of Northern Ireland and in the absence of full and comprehensive engagement and consultation with affected individuals and groups as required by section 75.

CiNI is deeply concerned by the scant evidence base on which this draft legislation is predicated. The Partial RIA states "our evidence to date, in the absence of any formal initial policy consultation process, is that the need for change is generally supported by district councils and other key interests^[19]".

It is entirely unsatisfactory and in total disregard of their obligations under section 75 of the Northern Ireland Act 1998 that the Department have proceeded directly to the stage of draft legislation in the absence of a comprehensive policy development process that takes proactive steps to mainstream equality of opportunity and is in full engagement with affected individuals and groups as recognised under section 75.

We would highlight to the Department the Equality Commission NI's Guidance on Implementing Section 75 of the Northern Ireland Act 1998^[20] which provides clear and unambiguous direction in relation to the requirement for consultation:

Consultation enables an assessment to be made of the views of those who are affected by policy decisions or the design of services. It can help authorities become aware of issues and problems which policies may pose for various groups which the organisation might not otherwise discover. Consultation provides an important means of enabling those who may be adversely affected by public policy to participate in the process of policy making.

In its Equality Scheme^[21] the Department does commit to consultation that is timely, open and inclusive and the Department has committed to adhering to the guidance provided by the EC NI. We would therefore highlight that in failing to build into the process a formal policy development phase in engagement with affected groups and individuals the Department has acted in breach of its own Equality Scheme. Therefore we believe the progress of the legislation should be halted to allow the full and proper consultation and engagement with all stakeholders to ensure that all

potential equality impacts of the proposals are identified and steps taken to address adverse impact where this arises in respect of any of the proposals.

Consultation with children and young people

As highlighted above we are deeply concerned by the Department's decision to circumvent the proper processes of policy development and proceed directly to draft legislation on this crucial issue in the absence of timely and inclusive engagement with affected groups and individuals.

We would highlight to the Department that children and young people are important stakeholders as customers of the Department who routinely and regularly access services provided by the Department's statutory agencies namely the play parks and leisure centres run by local government.

In addition to the requirement placed on the Department to consult directly with children and young people as members of the section 75 age category we would highlight the Department's obligations in relation to the UNCRC. Government in Northern Ireland has signed up to the UNCRC and in doing so committed to actively taking forward delivery of its provisions for all children and young people. The UNCRC places specific obligations on Government in relation to seeking and responding to the views of children and young people when developing public policy. Article 12 of the UNCRC requires State Parties to assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

CiNI does note that in respect of the obligation on the DOENI to consult directly with children and young people in accordance with the Section 75 duty to promote equality of opportunity, the DOENI, in its Equality Scheme, has committed to giving consideration to how best to communicate information to children, young people and those with learning disabilities, in consultation with representatives of the affected groups under Section 75.

However, following contact with the Department we are aware that the Department has not produced a child accessible version of the consultation materials. We would highlight that the production of accessible consultation materials is essential in supporting and enabling children and young people to contribute to the consultation process in an informed manner. We would be keen to hear from the Department of any direct consultation with children and young people it has undertaken or is planning in relation to the draft legislation.

CiNI would seek information on the details of the system which will be used to analyse responses to this consultation process including the degree of weight which will be attributed to both individual and organisational responses. This is a vital element to drawing conclusions from responses and progressing with identified areas for immediate action. For this reason, we would appreciate information both on the system itself and on its operation for the purposes of analysis.

CiNI would highlight that support is available to DOENI to help ensure effective consultation with children and young people. CiNI hosts the Participation Network^[22], which is an OFMDFM supported initiative, set up to provide training, signposting and consultancy support to public bodies, such as DOENI, to help in fulfilling section 75 obligations to consult with children and young people. We understand that the Road Safety Division has engaged with the Participation Network with regard to the development of its new draft Road Safety Strategy. We would advocate that DOENI Children's Champion must now work to ensure that best practice in participation and consultation evidenced within a single division of the Department is

mainstreamed across all divisions/business areas within the Department. We would urge the Climate and Waste Division to visit the Participation Network website and set up a meeting with the Network staff.

Conclusion

In conclusion, we trust that this submission can usefully inform the development of proportionate and appropriate responses to issues and concerns that communities themselves identify in relation to their neighbourhoods and environment. In line with the views expressed in response to the Community Safety Strategy consultation we would advocate the need for multi-agency approaches that embrace prevention and early intervention as the key to ensuring neighbourhoods and communities are safe areas where everyone can feel secure and have pride in.

[1] Clean Neighbourhoods Consultation Summary June 2010 p.37

[2] Clean Neighbourhoods Consultation Summary June 2010 para 24

[3] Annex A – Discussion Paper on the Future Community Safety Strategy (July 2010)

[4] Ibid p.3

[5] OFMDFM Our Children and Young People Our Pledge A Ten Year Strategy for Children and Young People in Northern Ireland 2006-2016

[6] Families Matter – Supporting Families in Northern Ireland A Regional Parenting and Families Strategy

[7] <http://www.participationnetwork.org/>

[8] Monteith and McLaughlin (2004) Severe Child Poverty in NI Key Research Findings

[9] Monteith, Lloyd and McKee Persistent Child Poverty in Northern Ireland

[10] Ibid p.326-327

[11] Ibid. p.328

[12] McAlister, Scraton and Haydon (2009) Childhood in Transition Experiencing Marginalisation and Conflict in Northern Ireland. QUB Belfast.

[13] Ibid p.84

[14]

<http://www.defra.gov.uk/environment/quality/local/legislation/cnea/documents/juveniles.pdf>

[15] CRC/C/15/Add. 188 Paras 57 and 58

[16] UN CRC (2007) GC No. 10 Children's Rights in Juvenile Justice Paras 32 and 33

[17] NIO (2009) Summary of response to Together. Stronger. Safer. Community Safety in Northern Ireland Consultation
p. 10-11

[18] Clean Neighbourhoods and Environment Bill Partial Regulatory Impact Assessment p.2

[19] Draft Clean Neighbourhoods and Environment Bill Annex C Partial Regulatory Impact Assessment p.2

[20] ECNI (2005) Section 75 of the NI Act 1998 Guide to the Statutory Duties. ECNI Belfast

[21] DOENI (2001) Equality Scheme p.24-34

[22] <http://www.participationnetwork.org/>

Fermanagh Trust Submission to the Clean Neighbourhoods and Environment Bill



The Fermanagh Trust

Our ref: LMC/MMG

The Committee Clerk
Room 247
Ballymiscaw
Parliament Buildings
Belfast
BT4 3XX

10th August 2010

Dear Sir/Madam

RE: CLEAN NEIGHBOURHOODS & ENVIRONMENT BILL

The Fermanagh Trust welcomes the opportunity to submit our feedback on the proposed Bill.

We welcome the Bill and the overall objective of improving the quality of the local environment by giving district councils additional powers to deal with litter, nuisance alleys, graffiti and fly posting, abandoned and nuisance vehicles, dogs, noise and statutory nuisance.

It is interesting to note the similarities between the proposed Bill and the Clean Neighbourhoods & Environment Act 2005 in England and Wales. Sadly the Bill and in particular section Part 4 – graffiti and other defacements completely fails to mention, consider or propose any actions to address an issue many neighbourhoods and areas face across Northern Ireland namely the use of public spaces for thousands of flags and emblems which seek to stigmatise and polarise communities and people.

The Bill if amended provides the potential for district councils and all other public authorities to address this issue satisfactorily by creating a positive template for action.

The Fermanagh Trust believes the issue of fly-posting and graffiti which the Bill addresses is a minor issue in many areas, compared to the need to address flagging and the use of emblems and consider it is of critical importance the Bill incorporates appropriate actions to address this issue.

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Registered as a Charity - Inland Revenue Reference No. XR22590

I have enclosed a copy of a report completed 6 years ago by the Enniskillen Cultural Expression Working Group. The report identifies a number of possible steps including the potential of district councils to develop a civic charter on this issue which would help address these issues, improve the local environment across N Ireland while not threatening any communities identifying or belonging.

The Fermanagh Trust notes the recent consultation document on the Programme for Cohesion, Sharing and Integration which recognizes that;

1.) 'The whole of Government here have a role to play' with the – 'aim to build a strong community where everyone, regardless of race, colour, religion or political opinion, age, gender, disability or sexual orientation can live, work and socialize in a context of fairness, equality, rights, responsibilities and respect.'

2.) The Proposed CSI Programme recognises a number of themes for action are already clear. These include:

Short-term

- Developing 'shared space.'
- Ensuring good relations, considerations are embedded within all government policy making.
- Early and strategic intervention to tackle anti-social behaviour and tensions around interfaces; and
- Promoting Cohesion, Sharing and Integration through a process of community renewal.

Medium-term

- Ensuring the sharing of best practice projects aimed at improving cohesion, sharing and integration across all areas where appropriate and when required.

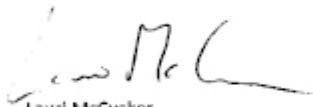
Long-term

- Encouraging shared neighbourhoods;
- Cultural Identity, including issues around flags and emblems, murals, bonfires, cultural expression, language and popular protest.

The proposed 'Clean Neighbourhoods and Environment Bill' if amended to include a series of potential steps to address the use of flags and emblems through the establishment of agreed civic charters in each district council area would ensure the Department of the Environment would be making a huge contribution both to improving the quality of the local environment and contributing to the proposed programme for Cohesion, Sharing and Integration and the agreed 'themes for action' outlined above.

We urge the Department to include legislation which facilitates the development of local civic charters to tackle this issue across N Ireland. The Fermanagh Trust believes the Bill in its current format fails to address (in fact fails to mention) one of the most critical issues which impacts on neighbourhoods and the environment in N Ireland. We urge the Department to address this critical issue in the proposed Bill and make a major contribution to community renewal, neighbourhoods and the environment across Northern Ireland.

Yours sincerely



Lauri McCusker
Director

Northern Ireland Environmental Quality Forum (NIEQF) Submission to the Clean Neighbourhoods and Environment Bill

Introduction

The cost of cleaning our streets stands at nearly £100,000 per day; not surprising given that 46% of people still admit to dropping litter. The enforcement measures covered in this Bill cover one of several approaches required if we are to change people's anti-social behaviour (as has been successfully achieved with seat belt laws, drink driving and smoking in public places). This in turn will reduce the rate bill to taxpayers, improve the quality of life for us all and help Northern Ireland make the most of its world-renowned environmental assets, drawing in businesses and tourists and increasing the economic prosperity of us all. Therefore, the Northern Ireland Environmental Quality Forum welcomes this Bill and the increased powers it intends to give to councils to tackle endemic environmental crime.

This evidence is based largely on our response to the CNEB Consultation.

We see several areas where changes could be made to strengthen the proposed legislation. Some of these are fairly small; others require more substantial changes or may be dealt with using secondary legislation at a later date. We recognise that several areas may not be dealt with due to time and resource constraints, but wish to make clear that these elements must be given due consideration as soon as reasonably possible in order to provide enforcement teams with the best framework in which to deal with these crimes.

We want to see the inclusion of a requirement to incorporate environmental crime within anti-social behaviour strategies as it is felt that this would bring wider benefits. We consider that Anti-Social Behaviour Orders are a significant and powerful weapon in this area. In England, this is aided by section 1 in the CNEA (inclusion of acts harming the environment as crime and disorder) which is not reproduced in our draft CNEB. We want to see this statement included in the Bill.

Councils inevitably take the blame for virtually all litter related issues. Yet, as TIDY Northern Ireland has noted from its extensive survey data, councils are the most effective bodies in clearing up litter. It is more often other landowners that fail to clean up their land, even where they have a statutory duty to do so. We therefore also want council powers (including litter clearing notices, street litter control notices, defacement removal notices) extended to include not only privately owned land (such as in private housing associations, car parks, retail parks or industrial areas) but also land managed by other government agencies (such as the NI Housing Executive, Roads Service and Forest Service).

It may be that some of the requests for increased council powers contained in this consultation response will be dealt with by the transfer of planning powers to councils but we would ask for this to be confirmed or otherwise in all such cases.

Finally, there is a concern that, despite some increased income from fines these new powers will still generally require additional resources and we would ask that these be made available to councils to support implementation.

Note that throughout the response we make reference to the following:

Clean Neighbourhoods and Environment Bill CNEB

Clean Neighbourhoods and Environment Act (2005) CNEA

Climate Change Act 2008 CCA

Environmental Protection Act (1990) EPA

Fixed Penalty Notice(s) FPN(s)

Northern Ireland Environmental Quality Forum NIEQF

Planning Northern Ireland Order (1994) PNIO

Town and Country Planning Act (1990) TCPA

Part 1 – Gating Orders

The NIEQF welcomes the development of these orders and the benefits they will bring to the public, local communities and businesses.

A number of councils have already been involved in alley gating schemes and would like to highlight the issue of resourcing such schemes (eg costs of installation, staff, long-term maintenance, public liability etc). The NIEQF recommends that this new legislation is accompanied by sufficient resources to ensure it is effectively utilised.

Part 2 - Vehicles

Nuisance Parking

There is a definite advantage in having this provision. However, it needs to be noted that the requirement for sale of two or more vehicles within 500 metres does provide for a number of loopholes in terms of enforcement. Such loopholes have been exploited in England, where sellers of vehicles simply park vehicles sufficiently far apart to avoid committing an offence or by frequent rotation of single vehicles. In England and Wales these loopholes have been partially shut by use of street trading legislation or legislation allowing removal of nuisance articles from the highway. The NIEQF welcomes the clarification that other legislation will be available and that a level 4 penalty will be available.

Part 3 – Litter

Offence of dropping litter in lake, pond or watercourse

There is an assumption that litter dropped into water is covered by the existing Article 3 of the Litter Order 1994. The NIEQF welcomes the further clarification of this point in future guidance.

Penalty for failing to provide name

In the Litter Order 1994 the ability of councils to obtain information applied "for the purposes of any function conferred on the council by this Order". The NIEQF would expect the penalty for failing to provide the correct name and address to apply similarly across all relevant enforcement powers covered by the CNEB.

Litter Offence: fixed penalty notice

Without sight of the upper and lower levels of the fines being proposed it is difficult to comment on this aspect. However, we strongly believe that the upper level of fines should be modestly raised beyond the £75 in the draft Bill. The NIEQF accepts that the current proposals bring parity

with the CNEA. However, there are specific reasons why we want to see higher upper limits for penalties and fines.

At £75 it leaves us issuing FPNs that are lower than in the Republic of Ireland where leaving or throwing litter in a public place is an offence that can be subject to an on-the-spot fine of €150 or a maximum fine of €3,000 upon conviction.

Fines and FPNs should be sufficiently high to act as a serious deterrent to the majority of the population.

They should also be sufficiently robust to also help pay towards the £94m annually (£93,000 per day) that councils spend cleaning our streets of litter – a bill which is currently footed by all ratepayers. This brings in the principle of polluter pays and helps councils cover some of the extra cost of implementing the new legislation.

This should apply to all Fixed Penalties throughout the Bill and not only those issued for littering.

The NIEQF welcomes the facility for councils to vary the level of fines.

New powers for the councils, which enable them to authorise non-council staff to implement certain enforcement powers in the Bill are also to be welcomed. Again, these should apply to all enforcement sections of the Bill and not just in respect of littering.

Litter Clearing Notices

In England, Section 92A Environmental Protection 1990 Act (EPA) (as introduced by England's CNEA 2005) is heavily used in cleaning up neighbourhoods. Thus Litter Clearing Notices may well become the primary means of land management in relation to litter (and potentially waste) problems. We therefore welcome the strengthening of this legislation. These are extremely effective notices, but the definition of "occupier" needs to be clarified and remain sufficiently wide to confirm that it will include persons actively exercising rights over the land. In future this may become more important, for example, to include occupiers storing bins in private alleyways.

Appropriate definitions of waste may also be required to also assist this litter clearing provision.

A general concern is the fact that councils regularly face criticism for land that is controlled by other bodies that have statutory cleansing duties. These bodies do not invest the same time and effort into cleansing services. Often litter is left to lie indefinitely on their land. Contractors, where employed for eg to cut Housing Executive land, often fail to fulfill their duty to lift litter before commencing grass cutting operations, resulting in shredded litter that is almost impossible to lift. There exists a great disparity between what councils have to do re litter etc and what other landowning bodies have to do and the result is a degraded environment across Northern Ireland. As mentioned in the introductory section of this response, a measure of the cleanliness of land by owner is something that needs to be incorporated into the National Indicator.

Councils need some mechanism to maintain standards within their geographic boundaries. Expecting other bodies to 'do their duty' clearly does not work. The rationale in England and Wales is that the exempted bodies already have statutory cleansing obligations that may instead be enforced by a section 92 EPA notice – a notice requiring statutory undertakers to comply with cleansing obligations. We would request that serious consideration is given to removing the exceptions to which litter clearing notices shall not be served under Article 17(10). Some more detail on this is given under Additional Comments - General.

Street Litter Control Notices

The Street Litter Control Notices Order (Northern Ireland) 1995 (No.42) has been made in regard to Article 14(1) Litter Order 1994. A new order is required, which needs to be sufficiently broad to include offices and commercial tenancy premises, to also play a role in controlling waste created by smokers outside offices and waste being left outside commercial multi-occupancy tenancies where it is often left on or spilling onto the street. This may be more easily done by secondary Order and need not be in the primary legislation. Similarly, any Order, as stated under Article 14(2) needs to be sufficiently broad to allow both the owner and/or the occupier to be served with street litter control notices.

This aspect also needs FPN provision for parity with England. FPN provision in England is covered in section 94(8) and 94A EPA, as inserted by section 22, CNEA. It applies to all land in the open air and highways that the recipient of the notice may access or is given ability to access, whether public or private, but not including vehicular carriageways.

Part 4 – Graffiti and Other Defacement

These provisions only work to amend pre-existing powers to prosecute beneficiaries and to summarily remove offending fly posting. The CNEB amendments on fly posting and graffiti will not have the same effect as those in the CNEA in England and Wales as the legislation it is amending is different. The proposed legislation is in effect far weaker and does not offer parity.

The NIEQF welcomes the acknowledgment that Planning Service powers to prosecute are to be made available to District Councils.

Unlawful Display of Advertisements

A massively beneficial provision in England (to the extent that many authorities have re-delegated powers to enable their waste control officers to use it) lies within England's planning legislation. This provision did not prove to be particularly useful until extended beyond planning enforcement. The section concerned is section 215 TCPA. It provides power to take action by notice to require abatement of any element of land / premises considered to be detrimental to amenity of the area. Unlike section 92A EPA it is not limited to litter / refuse and can therefore be used on matter such as the storage of vehicles creating visual detriment, graffiti and fly posting. The NIEQF would like confirmation of how parity is being achieved in this instance. If there is no equivalent provision this would ideally be introduced, with a FPN provision.

In England graffiti and fly posting is sometimes dealt with by section 215 TCPA. However, all studies (including Fly-tipping: Causes, Incentives and Solutions. A good practice guide for Local Authorities,

Jill Dando Institute of Crime Science, University College London 2006, show that this type of problem is most effectively dealt with by immediate removal powers. England currently utilise section 132 Highways Act 1980 and 224 / 5 TCPA to remove fly posting. Importantly, the ability to prosecute beneficiaries has proven to be very beneficial given the inherent difficulties of apprehending persons carrying out these acts.

Local authorities also do not have the fall back equivalent of England's section 149 Highways Act 1980 to remove any item placed on a highway and considered to be a nuisance (many use this provision to deal with people selling cars but trying to get around the CNEA offence).

Councils in Northern Ireland must therefore be given powers to issue FPNs to any beneficiaries of fly posting and to prosecute where these are not paid or where the seriousness of the offence requires it. Without these powers there is a huge gap that will allow increased levels of fly posting; the opposite to the desired outcome. Powers simply to fine those caught fly posting are inadequate and it is known in England that organisers of events have simply built in the costs of FPNs issued in this way.

Penalty notices for graffiti and fly-posting

The Crown Prosecution Service and other legal bodies in England consider ASBOs to be a significant and powerful weapon in reducing fly-tipping and graffiti. The Anti-Social Behaviour (Northern Ireland) Order 2004 does contain a similar provision for ASBO on conviction, although Northern Ireland Environmental Quality Forum accepts that Northern Ireland legislation provides less detail as to what offences ASBOs can be used to combat. In England ASBOs have been used to ban fly-tippers from problem areas, ban persons from being in charge of dogs and threaten imprisonment to those running commercial fly-posting operations (for example, Camden became fly posting free on the back of one conviction ASBO against their main perpetrator). However, this has been aided by section 1 CNEA (inclusion of acts harming the environment as crime and disorder) which is not reproduced here in our draft CNEB.

Part 5 - Dogs

The NIEQF welcomes the confirmation that district councils will be able to draw up a "Fouling of Land by Dogs Order" for its entire district if it chooses to do so, but cautions that the transfer of powers to deal with dog fouling from the Litter Order to the Dog Control Order regime should not dilute the range of enforcement options available to local authorities.

As stated generally throughout this response, the level of fines under Article 40 needs to be raised to a maximum of level 4, in keeping with the polluter pays principle. Similarly the level of FPN should be higher than £75.

Part 6 – Noise

The extra powers afforded to councils are welcomed.

Part 7 – Statutory Nuisances

The recognition that artificial light can be prejudicial to health and/or cause nuisance Article 61(h) is welcome, not only from the individual benefits that this can bring but also from a broader desire to see Northern Ireland lead the way in reducing unnecessary energy use and limiting the negative environmental impact.

Part 8 – Miscellaneous and Supplementary

The NIEQF welcomes the intention to raise the levels of fixed penalty notices but strongly urges the maximum levels of fines and FPNs to be increased for the reasons given above under Litter Offence: fixed penalty notice.

Additional Comments

General

It is recognised that councils in England and Wales have responsibility for roads and planning functions and as such can operate a more holistic street scene approach. If we are to achieve parity then the CNEB must address areas where simply mirroring the legislation from CNEA leaves significant loopholes.

In general, we want to see councils have powers of enforcement across all land within its boundaries. The current list of statutory undertakers, along with other exclusions such as educational establishments and crown land, results in councils having little control over litter levels across extensive areas of land within their boundaries. This needs to change if we want to make a real difference. We feel removing such exclusions will help deliver an effective joined up management of street scene. This also sits well with the power of wellbeing currently being considered by the RPA, given the negative impact of littering etc on people's health and wellbeing.

Failing this the CNEB needs to incorporate a clear effective methodology to enable councils to deal with the many complaints they receive in relation to non-council owned land. This methodology should focus on how it can ensure that the public see positive results from such complaints. Councils face various issues in relation to dealing with these such as ascertaining who the land owner is, finding the 'right' contact within the (often government department) organisation and actually getting progress made in relation to a clean up.

Performance measurement

To provide feedback on the efficacy of the new legislation and to inform its future development, the NIEQF is calling for the introduction of a central government funded National Indicator for Local Environmental Quality. Various measures already exist across the rest of the UK (eg National Indicator 195 which superseded Best Value Performance Indicator 199 in England) and we are asking at least for parity on this. In addition to measuring LEQ (through litter, graffiti, fly-posting etc) and cost of street cleansing services, an indicator for Northern Ireland could lead on this issue if it were to include council level measures for enforcement, media campaigns, community engagement, education and monitoring, thus ensuring behaviour change was being tackled on all fronts. As an example for enforcement, specific measures might include, for each area of the legislation:

Number of FPNs issued

Number of FPNs paid

Number of prosecutions taken

Number of successful prosecutions

The measure for LEQ should allow direct comparison with at least one other jurisdiction within the UK. A measure of cleanliness by landowner is also absolutely necessary to determine which bodies that have statutory cleansing duties are performing to the necessary standards. This should be developed in conjunction with TIDY Northern Ireland and can be developed from the current Northern Ireland Litter Survey and Litter Fines Survey.

Waste issues

Although household waste receptacles are regulated by councils they are hampered by the lack of particular provisions:

Article 76, CCA, amended the EPA Section 46(11) 1990 to provide in England that any household waste not placed in accordance with directions no longer falls within the local authority's duty to collect. This had a significant beneficial impact on regulation, but was not included in England's original CNEA provisions. It is an extremely important provision. It is not merely to allow for charges for collection of improperly sited waste; it also opens the door for effective land management. This would require an amendment to Article 20 of the Litter Order 1994 (section 46 equivalent) which is a Council power rather than Departmental. It could be placed within miscellaneous and supplementary.

A Divisional Court case in England (Leeds City Council v Gordon Hoyland Spencer), based on identical provisions, states that improper storage and placement of household waste does not displace the duty to collect free of charge. In that case Leeds City Council had issued a notice (section 4, Prevention of Damage by Pests Act 1949) to a landlord to clean up land and had then prosecuted and sought to recover default monies. The Court held that the landlord could not be prosecuted and the local authority was not entitled to recover any default monies, as the authority nevertheless had a duty to collect the waste free of charge.

In the absence of the CCA amendment, given the otherwise identical waste collection provisions, Northern Ireland authorities will remain subject to challenges on the same basis whenever attempting to secure clearance and proper management of land defaced by household waste. If the Leeds case were followed here in Northern Ireland this could seriously hamper councils in clearing up the environment.

The London provision allowing regulation for the purposes of amenity as well as collection is not reproduced in Northern Ireland. Accordingly, councils are limited in their control of waste while stored within the boundary of the property.

Local authorities remain unable to use the wider investigation powers provided by Article 72, the equivalent was extended to local authorities in England by section 53 CNEA, but it appears (subject to confirmation) that this section was not reproduced when Northern Ireland dealt with Part 5 CNEA. Accordingly, although there is a provision to require information within Article 20, this is restricted by the need to require the information by way of notice, rather than direct application. Direct application can be used directly to conclude at the end of PACE interview to demand documentation etc, from individuals. This can be used on the doorstep to identify occupants. Experience from England shows that individuals will ignore notices at a distance in a way that they cannot face to face.

Further, English local authorities were given powers to require production of waste transfer notes in addition to the Environment Agency. This allows them to cut out fly tipping at source by ensuring waste producers operate using legitimate waste disposal arrangements. Auditing waste producers and using the leverage of the FPN for failure to produce waste transfer notes encourages compliance without prosecution. As this power was extended by secondary legislation it is worth considering whether the power should be extended in Northern Ireland also by secondary legislation. It would not be done in the same way as in England and Wales, but regulations may be made imposing further obligations pursuant to CNEA 5(7) of The Waste and Contaminated Land Northern Ireland Order 1997. Authorities in England and Wales highly value these powers.

Northern Ireland would benefit from enabling of generic service of waste receptacles notices e.g. by publication or service by affixing to the receptacle.

Include Youth Submission to the Clean Neighbourhoods and Environment Bill

April 2010

Introduction

Include Youth promotes best practice with young people in need or at risk. We achieve this through the development and promotion of resources, the provision of training, information and support of practitioners and organisations. We also undertake activities aimed at influencing public policy and policy awareness – both locally and nationally.

Amongst the young people at risk with whom, and on whose behalf, Include Youth works are young people from socially disadvantaged areas, those with a learning disability, those with special needs, those who have been truanting, suspended or expelled from school, those from a care background, those who had a negative parenting experience, young people who have committed or are at risk of committing crime, misusing drugs or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves.

The Give and Take Scheme aims to improve the employability and increase the self esteem of young people in need or at risk from across Northern Ireland. The Scheme works with approximately 135 young people from a care or criminal justice background. The Scheme aims to support young people to overcome particular barriers that prevent them from moving into mainstream training or employment and towards independent living. 75% of people on the Scheme are care experienced and we have strong partnership with all Trusts, YJA, PBNI and Careers service. The Scheme provides essential skills training (ICT, English and maths) to all of the young people.

Include Youth manages the LACE (Looked After Children in Education) Project which is a multi-agency partnership with the aim of promoting better educational outcomes for children and young people in care.

In addition, Include Youth a Practitioners Forum, which draws together professionals from a range of statutory, voluntary and community organisations working directly with young people in need or at risk.

Include Youth's Young Voices project is a way of delivering participative democracy to marginalised young people in Northern Ireland. Its main aim is to support young people at risk or with experience of the criminal justice system, as well as young people marginalised for a variety of reasons, to become involved in decision making processes which impact on their lives, particularly in social welfare, education and criminal justice matters. The project works with a range of groups of young people in the community and both juvenile and youth custody facilities in Northern Ireland.

General Comments

We apologise for sending in our response to the Draft Bill after the closing date but having spoken to Mark Allison from the Clean Neighbourhoods Team about our concerns about the content of the Bill, we agreed that our response would be accepted after the closing date. Given the gravity of our concerns we are grateful that this response will be considered.

Information about the Bill was delayed in coming to our attention as we were not one of the named organisations on the list of consultees. We would request that we are now included on the mailing list for any further consultations.

Given that we are limited by the time schedule to respond to the document we are unable in this short time to present a full and comprehensive response. However, we are familiar with the content of CiNIs response and fully endorse their position.

We would like to use this opportunity to briefly raise several aspects of the draft Bill which most concern us. We firmly believe that if implemented the Bill will lead to unnecessary criminalisation of children and young people and will act as a fast track to the juvenile justice system.

Specific Comments

FPNs

Include Youth are against the proposal to introduce Fixed Penalty Notices (FPNs) to children and young people. It is unacceptable that these penalties can be applied directly onto children under 16 years of age. We are equally opposed to the suggestion that failure to supply a name and address or to give false or inaccurate information would be an offence and could lead up to a fine of £1000.

It is our understanding that a precedent has been set under current legislation which makes the giving of fines to under 16 year olds against the law. Para 69 of the Criminal Justice (NI) Order 2008 states that:

Where a person whose age is lower than 16 is given a notice, for a parent or guardian of that person to be notified of the giving of the notice and for that parent or guardian to be liable to pay the penalty under the notice

The Criminal Justice Children order 1998 further states that:

It shall not be lawful for a court of summary jurisdiction to impose a fine exceeding –

In the case of a child under the age of 14, level 1 on the standard scale (£200); or

In the case of any other child, level 3 on the standard scale (£1,000)

Para 35. – (1) Where a child is found guilty of any offence for the commission of which a fine may be imposed ... shall if the child is under 16 order that the fine ... be paid by the parent or guardian of the child instead of by the child.

The Guidance on Issuing Fixed Penalty notices contained within the Clean Neighbourhoods and Environment Act 2005 from DEFRA states that authorities are recommended to adopt special procedures for issuing notices to young offenders. This is to ensure that they are acting in accordance with their duty under the Children Act 2004. Different procedures are recommended for 16 and 17 year olds, and for children between 10 and 15, in order to ensure that the welfare needs, legal issues and other concerns relevant to children and young people are adequately highlighted and observed.

Child Safety/ Child Protection Issues

We would like to know if the Department has considered any child protection issues which may arise as a result of the practice of giving FPNs to children and young people. Has the Department considered that if a child is accompanied home and their parent/ guardian is informed of the proposed fine, that a child's safety could be at risk as a result of the parents'/ carers reaction?

Human Rights

The use of FPNs for young people is in contravention of Article 6 of the European Convention on Human Rights (ECHR) – the right to a fair trial and public hearing. This is supported by Article 40 of the United Nations Convention on the Rights of the Child (UNCRC) which states that a child should be informed promptly of any charge made against him; that if appropriate this should include informing his parents or carers; and that the matter should be determined without delay by an independent and impartial authority. Include Youth are concerned that the process by which FPNs are given may not fulfil these requirements.

Contributing to Outcomes for Children and Young People

The introduction of FPNs is completely in contradiction to the Executive's commitment made in the Programme for Government to reduce child poverty. It is likely that these FPNs will be issued to children and young people living in our most financially disadvantaged and deprived areas. It also runs counter to the commitment made to children under the Children and Young People's Strategy.

Section 75

It is clear that many aspects of the Bill are going to have a differential impact on children and young people. We note the Bill suggests that the sale of aerosol spray paints to persons under the age of 16 is to be made an offence. This would suggest that there is an assumption that children in this age range are the main perpetrators of graffiti and will be directly targeted for FPNs.

We would also suggest that the introduction of Gating Orders will have a differential impact on children and young people.

We note that an equality screening exercise has been undertaken and it has been decided that the proposals do not impact on equality of opportunity for any of the nine section 75 categories. We categorically disagree with this conclusion. We have examined the Screening Paper and do not accept the basis on which decisions were taken. We would ask the Department to undertake an immediate review of its Section 75 responsibilities with regard to this draft legislation. We would concur from the evidence presented that the department is in breach of its section 75 obligations by failing to provide sufficient evidence of the grounds on which decisions were taken. We would also like to know what steps were taken to engage directly with children and young people on this consultation and screening exercise.

As part of the Partial Regulatory Impact Assessment we note that it does state that there has been "limited informal consultation with stakeholders but in the main they are based on experience and developments in England and Wales." We reject this as a justification for not conducting a full consultation here in NI. There has not been a concerted attempt to ensure that introduction of this legislation to NI is based on a full and comprehensive body of evidence which supports it. The Partial RIA states "our evidence to date, in the absence of any formal initial policy consultation process, is that the need for change is generally supported by district councils and other key interests." This is a far from an adequate response to the obligations under section 75.

Concluding Comments

Include Youth would strongly recommend that the legislation process be halted until such time as there is a full consultation with all affected groups.

We would welcome the opportunity to work with the Department on moving a full consultation process forward and would be able to facilitate direct engagement with children and young people.

Kennel Club Submission to the Clean Neighbourhoods and Environment Bill



Briefing on the Northern Ireland Clean Neighbourhoods & Environment Bill

Summary

The Bill creates powers for local authorities to manage access for dog walkers to public land through dog control orders covering dog fouling, keeping dogs on leads, excluding dogs and limiting the number of dogs which may be walked by one person.

The Kennel Club's position:

Dog fouling/dogs on leads by direction

- Supports the introduction, use and promotion of these orders as a basic principle of responsible dog ownership.

Dogs on leads

- Believes the 'dogs on leads by direction' order provides adequate powers for the control of dogs in public places in most circumstances. New 'on-leads' restrictions must be balanced by the creation of alternative 'off-leads' access so that dog owners can exercise their dogs, a welfare requirement supported by local authorities.

Dog exclusions

- Opposes the use of dog exclusion orders in most cases except where this is absolutely necessary for example to ensure compliance with European nature conservation regulations.

Maximum number of dogs to be walked by one person

- Opposes the use of these orders as arbitrary and not pragmatic. Understands the need to regulate professional dog walkers but believes on-leads and fouling orders are adequate to deal with the potential negative consequences, and would instead suggest establishing a permit scheme to help regulate this group.

Suggested amendments:

The Kennel Club has monitored the use of dog control orders in England & Wales since their introduction in 2005. Based on this experience the Kennel Club believes the following amendments are necessary to greatly improve practical implementation on the ground:

- Introduction of a right of appeal following public consultation.
- Requirement on local authorities to consult through a variety of channels, as well as placing public notices in local newspapers. For instance through officer presence in areas affected by the proposals, consultation with local dog training clubs/the Kennel Club etc.
- Requirement on local authorities to specify the land to which the order shall apply, in order that meaningful public consultation can take place.
- Requirement on local authorities to report access restrictions made to ^{DOE} DARD (or other body) to enable a record to be kept and subsequent monitoring.
- Requirement for authorised officers tasked with enforcing legislation to hold or undergo training in dog behaviour enabling them to adequately determine when to use the 'dogs on leads by direction' order.

The Northern Ireland Federation of Housing Associations (NIFHA) Submission to the Clean Neighbourhoods and Environment Bill

Response to Consultation

11 August 10

Consultation: Clean Neighbourhoods and Environment Bill

The Northern Ireland Federation of Housing Associations (NIFHA) represents registered and non-registered housing associations in Northern Ireland. Collectively, our members provide 32,000 good quality, affordable homes for renting or equity sharing. Further information is available at www.nifha.org

NIFHA welcomes the opportunity to be consulted on the content of the Clean Neighbourhoods and Environment Bill. We have examined the Bill and welcome many of the proposals contained therein. The additional powers given to councils through the Bill should hopefully make a positive contribution to our neighbourhoods and environments.

The contents of the Bill are noted by the Federation and its members.

Submitted on behalf of NIFHA by:

Maire Kerr
Housing Policy and Research Manager

PlayBoard Submission to the Clean Neighbourhoods and Environment Bill

Introduction

PlayBoard is the lead agency for the development and promotion of children's and young people's play in Northern Ireland. To this end, the organisation provides a range of innovative services designed to strengthen service delivery. Since its inception in 1985, PlayBoard has campaigned, lobbied, raised awareness and developed partnerships in order to put play on the agenda of policy makers and resource providers.

PlayBoard is a membership organisation with 300 plus members. The agency exists to promote, create and develop quality play opportunities aimed at improving the quality of children's lives. This is achieved through three key functions:

- Championing Children's Play – rights and needs
- Developing, expanding and promoting membership services to assist stakeholders provide better play experiences and opportunities for all children: and
- Improving and enhancing PlayBoard ensuring the organisation is progressive and fit for purpose.

All children and young people have the right to play and have an intrinsic need to play: opportunities for children to be free to choose what they do– with the chance to challenge themselves, take risks and enjoy freedom. The right to play is enshrined in Article 31 of the UN Convention on the Rights of the Child.

OFMDFM are currently in the process of developing the Play & Leisure implementation plan and it is imperative that links are made for the outworking of the clean neighbourhoods and environment bill.

Comments

The state of our neighbourhoods and general environment are issues of crucial importance for children and young people in Northern Ireland. Clean neighbourhoods and environments are highly valued by children and young people as it is in these areas that children spend much of their free time playing and meeting friends. The local neighbourhoods and environments where children grow up have major impact on childhood experiences and can impact on a child and young person's general health and well-being, and are also important in promoting positive community identity and a sense of pride and belonging for children and young people.

Ideally, towns and cities should be places where children and youth can socialise, observe and learn about how society functions and how they can contribute to the cultural fabric of their community. They should also be places where they can find refuge, discover nature and be supported by tolerant and caring adults who will support them.

Positive examples of children's authentic participation and social mobilisation in creating better cities around the world are beginning to emerge. It is important that these stories are shared and used as models of good practice in emerging local sustainability discourses.

If having rich local environmental experiences and feeling safe and secure, connected and valued are universal indicators of quality of life, then what better place to start than to evaluate sustainable cities through the lives and eyes of its children. A child-friendly city is a people-friendly city.

Children and young people consistently raise issues relating to their neighbourhoods and environments to share their views on what they identify as being problems within their areas and offering solutions to addressing these problems. These views need to inform the out workings of the clean neighbourhoods and environments bill.

Unfortunately living in a clean Neighbourhood and pleasant environment is not the lived experience of all children and young people in Northern Ireland. For children living in areas where levels of poverty are high it is more likely that their will be significant environmental problems in these areas.

Northern Ireland has high levels of child poverty with 10% (44,000) of children living in severe poverty (children who were poor on 3 measures – low level of household income, child deprivation and parental deprivation)^[1] and 21% of children living in persistent child poverty (being poor 3 years in a 4 year period) which is more than double the GB rate of persistent child poverty^[2].

Save the Children research on severe child poverty revealed that one in ten severely poor children live in an area viewed by their parents as a bad place to live in, compared to one in sixteen non-severely poor children and one in one hundred non-poor children. Amongst the issues reported as 'major problems' were rubbish and litter; dog mess; vandalism and graffiti.

Children and young people also consistently raise issues in relation to a lack of places to go and things to do in their local areas. Recently it has been raised by children and young people who participated in the NI Commissioner for Children and Young People's Review of Children's Rights in Northern Ireland. Notably as part of the review children commented on the places where they currently spend time. The review noted that these places were deemed to be far from ideal in terms of safety and security. Children and young people had a lot to say about the poor state of their parks and other public spaces. Issues raised included broken and poorly maintained equipment, broken glass and rubbish lying around, vandalism, dog dirt and a lack of public conveniences[3].

The review highlights that councils need to fulfil their duty, not only to provide adequate space for play, but to maintain it and ensure that it is a safe and clean place for children and young people[4].

Recent research undertaken by QUB, The Prince's Trust and Save the Children NI[5] with 196 children and young people from across 6 communities significantly affected by the conflict revealed that the main issues for these children and young people in relation to their communities were in order of priority, the nature of play/leisure facilities; street fighting/violence; alcohol; and the general state of the area. The general environment or state of the neighbourhood was raised by children in discussions about litter and rubbish on the streets, graffiti, dog fouling and the consequent smell. They were concerned that the general appearance of their communities was drab and unkempt. Children had recommendations to make and focused on reconstruction, maintenance and the security of parks, young people desired more facilities, improved choice and diversity[6].

PlayBoard would strongly advocate that the DOE respond to and engage children and young people as primary stakeholders with an active contribution to make in promoting their neighbourhoods and environments. We do believe that action is required to improve the environments where the poorest children live. However, these actions must be developed through engagement with children, young people, their families and communities so solutions can be arrived at. It is essential that communities feel ownership of and can deliver on collectively, in a way that respects and values their contribution.

Specific Comments on Clauses of the Bill

Fixed Penalty Notices (FPNs)

PlayBoard notes that the Bill proposes the introduction of Fixed Penalty Notices (FPNs). While it is not explicitly stated within any of the consultation documentation at what age a Fixed Penalty Notice can be applied. It is clear that in the case of penalty notices for graffiti and fly posting these will apply to children and young people aged under 16 and can be levied directly onto children and young people (see below re Part 4). PlayBoard also notes that failure to supply a name and address or to give false or inaccurate information would be an offence and could lead to a fine of up to £1000.

We do note that under the Clean Neighbourhoods and Environments Act 2005 which applies in England and Wales, FPNs can be issued to anyone over the age of 10, that is, the current age at which a child is deemed to be capable of being criminally responsible. Different procedures are in place for 10-15 year olds and 16 and 17 year olds. The only caveat placed on the issuing of these notices is set out in guidance issued by DEFRA to local authorities which states that they must act in accordance with their obligations under the Children Act 2004, to discharge their functions with regard to the need to safeguard and uphold the welfare of children[7]. In England

and Wales parents and legal guardians are not responsible for paying penalties issued to children and young people.

PlayBoard is entirely opposed to the use of FPNs against children and young people. Given that in respect of graffiti and fly posting these could be levied directly onto the child and young person we have real concerns regarding a child or young person's ability to pay such a fine given their dependent status. Fines such as these are an onerous burden to place on a child given that they are likely to have limited means to pay these. Clearly failure to pay a fine would result in a child or young person being fast tracked into the youth justice system.

As noted by the research evidence referred to above issues such as litter and graffiti disproportionately impact on areas where the poorest children, young people and their families live. Therefore it is likely that the poorest children will be targeted, and it is these children and young people who will be even less likely to be able to pay such fines and will therefore find themselves pushed further into poverty or fast tracked into the youth justice system. The proposed introduction of FPNs is entirely contrary to the Executive's commitment made in its Programme for Government and PSA targets to end child poverty by 2020, by reducing child poverty by 50% by 2010 and eliminating severe child poverty by 2012.

Part 1 Gating Orders

PlayBoard notes that Part 1 of the draft Bill proposes the introduction of Gating Orders which it is stated will predominantly be used to address crime and anti-social behaviour in built-up areas. Gating orders will allow the erection of a physical barrier to restrict public access to a road over which the public would normally have a right of passage.

Again PlayBoard would highlight that it is imperative in compliance with the requirements of section 75 that proper screening and equality impact assessment of the proposed introduction of gating orders is undertaken.

We would highlight that children and young people potentially will experience significant adverse impact from the introduction of such orders. It is likely that these roads in built up areas may be used by children and young people as pedestrians to have convenient, safe and easy access to school, play and leisure facilities. We would also highlight that consideration should be given to the needs of those who are disabled. The introduction of Gating Orders may also potentially raise issues in relation to physical access and therefore consideration must also be given to the requirements of Disability Discrimination legislation.

Part 4 Graffiti and Other Defacement

PlayBoard recognises the detrimental impact graffiti and other defacement can have on neighbourhoods and the extent to which it can contribute to negative perceptions regarding particular areas. It is an issue which children and young people are keenly aware of and consistently reference in conversations regarding the condition of their local areas. Children and young people do not want their play parks, public spaces and facilities defaced by graffiti.

PlayBoard notes that Part 3 of the draft Bill proposes to introduce penalty notices for graffiti and fly-posting. It is stated that the intention is to levy the penalties only on the persons actually committing these acts. Offenders will have 14 days in which to pay the penalty (up to a maximum of £75) after which prosecution for the offence may be initiated. A person who is to be subject to the penalty notice will be required to provide their name and address and it will be an offence either to fail to give that information or to give false or inaccurate information. This can lead to the imposition of a level 3 fine (£1000).

PlayBoard also notes that the sale of aerosol spray paints to persons aged under 16 is to be made an offence and the stated objective in relation to this proposed offence is to reduce the incidence of criminal damage caused by acts of graffiti. Therefore it is clear that the assumption underpinning the creation of this proposed offence is that children aged under 16 are the main perpetrators of graffiti, this is despite the fact that research evidence does clearly highlight that children and young people themselves are concerned about the impact that graffiti has on the condition of their neighbourhoods and communities. It does appear that should the draft legislation proceed in its current format the proposed power to issue penalty notices for graffiti and fly posting would be used in relation to children aged under 16 and the penalty notice would be levied directly on to the child. In the absence of any information to the contrary we also assume that a child under the age of 16 would be required to pay a fee of the same level as an adult would be required to pay.

The draft legislation in a similar manner also proposes to introduce new offences and powers to issue penalty notices in relation to vehicles, litter, dogs and noise.

Community Safety in Northern Ireland

PlayBoard notes that the issue of so-called environmental crime was addressed as part of the consultation on Community Safety in Northern Ireland which concluded in February 2009. We note that subsequently the NIO has published the Summary of Responses to the Consultation and on the question of environmental crime the views expressed as part of the consultation indicated that while local authorities would welcome powers to tackle graffiti, litter, vandalism, abandoned vehicles, dog mess and fly-tipping "there was agreement [from respondents who expressed views] that the best way to tackle environmental crime and anti-social behaviour was to identify, treat and resolve, the underlying reasons for this behaviour, rather than having to deal with the consequences of the behaviour. It was recognised resolution of this issue could only be achieved by a multi-agency approach which included government, statutory, voluntary and community groups in developing and delivering preventative and diversionary programmes. Respondents suggested true partnership and collective action would only be possible when the duty to co-operate was placed on a statutory basis^[8].

It is PlayBoard's view that the draft proposals contained within the Clean Neighbourhoods and Environment Bill are not reflective of the agreement flowing from the consultation on Community Safety, which the NIO has articulated in its summary document, given the Bill's emphasis on dealing with the consequences of behaviour through the imposition of Fixed Penalty Notices, rather than a partnership and multi-agency approach focused on developing and delivering preventative and diversionary programmes.

PlayBoard notes that the draft Community Safety Strategy has not been progressed and considers that it will now fall to the newly established Department of Justice in partnership with other relevant departments, to determine the way forward on community safety, through engagement in comprehensive consultation with local communities to identify the issues that are relevant and important to local people in Northern Ireland. We therefore firmly believe that given the considerable linkages between community safety and environmental improvement issues and the proposed creation of offences relating to environmental crime and associated FPNs, these must also be actively considered by the Department of Justice and the Assembly's Justice Committee in the overall context of creating safe communities for all of our citizens.

Conclusion

In conclusion, we trust that this evidence can usefully inform the committee to issues and concerns that communities themselves identify in relation to their neighbourhoods and environment.

We would advocate the need for multi-agency approaches that embrace prevention and early intervention as the key to ensuring neighbourhoods and communities are safe areas where everyone can feel secure and meet their diverse needs.

If having rich local environmental experiences and feeling safe and secure, connected and valued are universal indicators of quality of life, then what better place to start than to evaluate sustainable cities through the lives and eyes of its children. A child-friendly city is a people-friendly city.

References

Malone K (2001) Children, Youth and Sustainable Cities. Local Environment, Vol. 6, No. 1, 5–12, 2001. Accessed 01.08.10: <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN012799.pdf>

Woolcock G, Gleeson B and Randolph B (2010) Urban research and child-friendly cities: a new Australian outline. Children's Geographies Vol. 8, No. 2, May 2010, 177–192

[1] Monteith and McLaughlin (2004) Severe Child Poverty in NI Key Research Findings

[2] Monteith, Lloyd and McKee Persistent Child Poverty in Northern Ireland

[3] Ibid p.326-327

[4] Ibid. p.328

[5] McAlister, Scraton and Haydon (2009) Childhood in Transition Experiencing Marginalisation and Conflict in Northern Ireland. QUB Belfast.

[6] Ibid p.84

[7]<http://www.defra.gov.uk/environment/quality/local/legislation/cnea/documents/juveniles.pdf>

[8] NIO (2009) Summary of response to Together. Stronger. Safer. Community Safety in Northern Ireland Consultation p. 10-11

Royal Town Planning Institute (RTPI) Submission to the Clean Neighbourhoods and Environment Bill

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Patron HRH The Prince of Wales KG KT PC GCB

Sean McCann
Assistant Clerk
Environment Committee
Room 247
Parliament Buildings
Stormont Estate
Belfast BT4

12th August 2010

Our ref: BS/Committee for the Environment

Dear Mr Sean McCann

Subject: Clean Neighbourhoods and Environment Bill

Thank you for the opportunity for the Royal Town Planning Institute in Northern Ireland to respond to the above proposed Bill.

The content of the proposed Bill was discussed at the RTPI NI Branch Executive Committee meeting on the 5th August. The Institute noted the content of the Bill but the Institute does not wish add any further comment at this stage.

Yours sincerely,

Brian Sore
Northern Ireland Policy Officer

**Tom Ekin Submission to the Clean Neighbourhoods
and Environment Bill**

From: Tom Ekin [t.ekin1@ntlworld.com]
Sent: 08 July 2010 11:37
To: +Comm. Environment Public Email
Subject: Clean Neighbourhoods

Comments on "Summary paper"

Following a cursory read I have the following comments

1 Time is of the essence, we must have this passed before the end of this Current Assembly term, or else we have to start again

2 Because there is a considerable period of time between initial legislation and subsequent amendments, why dont we introduce a base level of fines (in today's money) and have an inflation factor for future years, Say use RPI

3 Is there an all embracing nuisance Clause, (nuisances which we can't anticipate yet would have to deal with later) which would permit Councils to act expeditiously.? We need a "Catch All" clause

4 How do we deal with derelict land , deliberately burned buildings, rubble on site of demolished buildings, etc?

5 Clauses 26/30 re Fly posters, It is impractical to catch the people who actually paste the posters, so what is the point of making them the only people who can be fined, as seems to be the case proposed. Any sensible solution(ie one that works) is to fine the beneficiaries, in the event of the perpetrator not being found in action

This has been consistently raised for years and I dont know what is wrong with it

6 Councils must be free to erect Official Fly Poster sites, they have been held up in the past by other Civil Servant departments.

Regards

Tom Ekin
Councillor Belfast

Ards Borough Council Submission to the Clean Neighbourhoods and Environment Bill



**ARDS
BOROUGH
COUNCIL**

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Ashley Boreland, LLB (Hons) FCS
Chief Executive

Our Ref.
CG 9860


Mark Allison
Clean Neighbourhoods Team
Calvert House
23 Castle Place
Belfast
BT1 1FY

Your Ref.

Date
2 August 2010

Dear Sir

Consultation on draft Clean Neighbourhoods and Environment Bill

I refer to the above mentioned consultation advisement and subsequent Email response to you of late April from my colleague Richard Brittain.

I note further advisement that the Bill has now commenced Committee stage.

At its meeting of 28 July, it was agreed by Ards Borough Council that it reaffirms its position in relation to the proposals and requests that the Committee has due regard to the Council's views.

I therefore hereby advise accordingly and enclose a copy of the response previously submitted.

Please be assured, if you have any queries, I am happy to be at your service on **02891 824041** or at philip.maginnis@ards-council.gov.uk

Yours faithfully


PHILIP MAGINNIS
Deputy Borough Inspector



To: mark.allison@doeni.gov.uk
Cc: Graeme Bannister,

Consultation on Draft Clean Neighbourhoods and Environment Bill

Dear Mark

I can confirm that following careful consideration at the meeting of the Ards Borough Council Services Committee held on the 20th April 2010 it was agreed to comment on the above draft Bill as follows, namely that

1. the Council welcomes the overall aim to address anti-social behaviour, crime and fear of crime through environmental improvements and controls.
2. careful consideration should be given to the resources required for the implementation of the powers detailed within the Bill and that funding is provided to ensure that the full cost does not have to be met by the local rate payer.
3. the proposed 28 day notice period provided to allow a land owner/occupier to comply with Litter Clearing Order is shortened to 14 or 7 days.
4. a business or service provider advertised through fly posting can, within certain controls, be fined.
5. the proposed 28 day notice period to allow fly posting and graffiti to be removed is shortened to 14 or 7 days.
6. proposals to repeal Article 4 of the Litter NI Order 1994 which relates to dog fouling, is reconsidered and that any new legislation should not cause ambiguity or diminish the Council's ability to address dog fouling or obtain information that would be needed for the investigation of an offence.
7. a standard is introduced for overcrowding in a dwelling similar to GB equivalent legislation.
8. in order to persuade an offender to remedy the nuisance identified within a abatement notice, that courts are given the option to impose, rather than a one off fine, daily fines on businesses, that have failed to comply with an abatement notice.
9. the Council asks the Department, before the new legislation takes effect, to make appropriate regulations under Schedule 2 prescribing cases in which an abatement notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings. This is of particular concern in relation to its implications for situations equivalent to Article 65 of the Pollution Control & Local Government Order (NI) 1978 (emergency works seven day notice) and for all other urgent works.
10. guidance documents referred to within the legislation are made available for consultation and are subsequently in place prior to its implementation.

I trust that due cognisance will be given to the Council's comments, I have attached for your information and background reading a copy of the report which was presented to the Committee.

Should you require any further details then please do not hesitate to contact me at 028 91 824040.

Report

To Chief Executive
CG 9880 9th April 2010

From Borough Inspector & Principal
Environmental Health Officer

Consultation on Draft Clean Neighbourhoods and Environment Bill

Introduction

Correspondence has recently been received from the Department of the Environment Clean Neighbourhoods Team seeking comments on the draft Clean Neighbourhoods and Environment Bill. All comments are required to be submitted by the 23rd April 2010.

Background

The Department has published the above Bill which contains a range of measures to improve the local environment by giving district councils powers to deal with:

- Litter
- Fly-posting and graffiti
- Dogs
- Noise
- Statutory nuisance
- Nuisance alleyways
- Abandoned and nuisance vehicles, and
- Abandoned shopping trolleys

It is suggested that the implementation of these powers will assist in addressing anti-social behaviour, low level crime and the fear of crime which impacts on residents' quality of life

The Proposals

Part 1 - Gating Orders

Gating Orders will provide district councils with the means to erect or allow the erection of a physical barrier to restrict public access to a road which the public would normally have right of passage over. The aim of the order is to deny opportunities to access the rear of properties for illegal entry and concealment and cover for criminal acts and anti-social behaviour.

The introduction of Gating Orders would be welcomed as alleyways etc can be a source of anti-social behaviour, noise and criminal activity. The procedure proposed to introduce a Gating Order are, understandably, onerous requiring the Council to publish notice of its intentions in the local press, service notice on relevant properties likely to be affected by the Order and hold an enquiry should objections be received. This process will be time consuming and will require an appropriate level of resources.

Part 2 - Vehicles

It will be an offence for a person as part of a business to park a vehicle on the road for the purposes that it may be sold. Furthermore it will also be an offence, except for a couple of exceptions, to carry out repairs to a vehicle parked on the road. It is noted that these activities may not only be a nuisance to local residents but also take up valuable parking spaces for long periods of time.

The Council does from time to time receive complaints about vehicles being displayed for sale and repaired on roads. The powers will address most of these concerns. It is however likely to have an impact on some businesses particularly car sales who will find that the space available to display vehicles will be significantly reduced.

The draft Bill would also extend the Council's powers to tackle abandoned vehicles by giving it powers to issue fixed penalty fines, of up to £200, for such offences, by simplifying the process by which abandoned vehicles can be removed from private land and allowing abandoned vehicles which are in a poor condition to be removed immediately. This streamlining of the abandoned vehicle process is welcomed

Part 3 - Litter

Under the Litter NI Order 1994 it is a defence for depositing litter where it is done with the consent of the owner or occupier having control over the place in which the item was deposited. The draft Bill will amend the Order stating that consent may only be given in relation to a lake, pond or watercourse if the same person owns all the surrounding land.

It is proposed that the level of fixed penalty fine for a littering offence may be set by the district Council but, where no such amount is established, the minimum fine will be £75

The Bill proposes to repeal district councils' powers to designate Litter Control Areas under the 1994 Order and replace it with powers to serve Litter Clearing Notices. The Notices would enable the Council to serve notice on a land occupier/owner where the Council is of the view that defacement caused by litter is detrimental to the amenity of the area.

Powers to impose requirements on occupiers of premises to deal with litter in an adjacent street will be extended to cover moveable structures such as mobile vendors thus improving councils' powers to address litter arising from these commercial activities.

It will be an offence without council consent to distribute, commission or pay for the distribution of free literature in a designated area. Material distributed for charitable, religious and political purposes would be exempt nor would it extend to material being placed in a letter box or public service vehicle.

Overall the new powers to help address litter are welcomed and in particular the power to serve a Litter Clearing Notice. This Notice, depending on guidance on its implementation to come from the Department at a later date, will potentially improve the Council's ability to have land in private ownership cleaned. This will help address problems, particularly in towns and villages across the Borough where litter builds up in vacant land often earmarked for redevelopment.

It is proposed however that a 28 day notice period would need to be given so that the land owner/occupier could address the problem and clean the land. It is expected that this period may be regarded as excessive and would not lead to a speedy resolution of a problem location.

Part 4 - Graffiti and Other Defacement

New powers will be provided to allow councils to issue fixed penalty fines on those persons actually fly-posting or writing graffiti but not on those whose goods or services are being advertised. It is however extremely rare that a person is observed actually perpetrating the act of fly posting and therefore the issue of a fixed penalty notice would be very rare. The ability to fine, within certain controls, a person whose business or service is advertised would act as a

much greater deterrent and would have a much greater effect in eliminating indiscriminate fly posting.

It is proposed that powers would also be provided to enable a district council to serve a Defacement Removal Notice on the owners of street furniture to remove graffiti etc within a specified period, the minimum of which would be 28 days. Failure to comply with the notice would enable the Council to clean the defacement and recover costs accordingly. Furthermore district councils following the service of a 2 day notice may arrange for a notice or placard to be removed or obliterated following which it may recover costs. The 28 day notice period suggested would cause concern as it would not appear to enable a speedy resolution and a shorter period should be considered

It will also be an offence to sell aerosol spray paints to a person under 16.

Part 5 - Dogs

It is proposed that new "model" offences will be provided which councils may adopt and apply to specified areas of land accessible to the public through Dog Control Orders. Offences could include dog fouling, dogs to be kept on a lead, the number of dogs walked at anyone time by a person and the exclusion of dogs from certain areas.

The introduction of these powers is welcomed. This power will enable the Council to more effectively manage dogs in areas such as in parks and open spaces. Although similar powers are available through bye-laws, their introduction can be slow and therefore the more streamlined approach will be of assistance.

It is however proposed that the dog fouling offence contained within Article 4 of the Litter NI Order 1994 be repealed and that the powers contained within the Dog Control Order proposals be used to address the fouling offence. It would appear that the fouling offence would then only be available for officers to enforce on land designated by the Council. It is also noted that dog control order would only apply to land which is open to the air and to which the public are entitled or permitted to have access and that land in private ownership, such as private sports grounds, would be excluded. The overall impact would appear to reduce the areas in which dog fouling would be an offence and therefore would diminish the Council's ability to tackle problems arising. It is also noted that the repeal of Article 4 of the Litter NI Order would also impact on an officer's ability, under Article 20 of the same Order, to obtain information leading to the identification of a possible offender.

Part 6 - Noise

There are additional powers introduced by the draft bill with respect to the control of noise nuisance and existing powers are to be significantly updated and consolidated. In addition, the introduction of fixed penalties for certain noise nuisances is being proposed, which should result in faster remedies to these nuisance situations. All of this is to be welcomed, and in future action may be taken with regard to situations where presently only advice can be given. Clearly additional guidance will be required with respect to such scenarios.

1. It is proposed to strengthen the powers available to deal with audible intruder alarms. Under existing provisions, Councils must ascertain the owners of buildings with alarms that are sounding and causing a nuisance and require them to take action, serving an abatement notice if required. It is now proposed that alarm owners must register key-holder details with the Council (presently this is voluntary involving ourselves and the PSNI but not widely used), allowing officers to contact a responsible person quickly. If this does not result in abatement of the noise,

Councils will have the power to enter premises, disable the alarm, and claim the costs of this activity from the owner.

2. Noise from plant or machinery in the street will fall under this new legislation, allowing officers to take action to require individuals to deal with noise from, for example, vehicles being repaired, car alarms, roadworks by contactors, and other situations where presently the Council has no powers to act. Clear guidance however will be required delineating the responsibilities between councils and the PSNI with respect to The Road Vehicles Construction and Use Regulations.

3. Presently, powers contained in The Noise Act 1998 can be adopted by Councils in Northern Ireland if they choose to do so in order to deal with noise at night in a particular way. By adopting the Noise Act however, Councils are required to provide an on call night time noise service every day of the year. This does bring additional powers to bear, such as being able to serve fixed penalties and seize equipment. The cost of adopting the Noise Act in Ards was assessed in 1999 by the Principle Environmental Health Officer, and found to be in the order of around £100,000 per annum, and therefore was not recommended at the time. To date, Belfast City Council is the only Northern Ireland authority to have adopted it. This new legislation however proposes to provide the powers of the Noise Act on a discretionary basis to Councils. This is to be welcomed, as the Council could then have the powers to serve fixed penalties and seize equipment, for example, during planned monitoring as part of an on going complaint investigation, without providing the expensive night time on call system. This will also apply to commercial premises as well as domestic ones, and has the potential to significantly enhance council powers to resolve noise nuisance complaints more effectively. This is to be welcomed.

Part 7 - Statutory Nuisance

Presently, the powers to deal with statutory nuisance are contained within the Public Health Ireland Act 1878, and are surprisingly still very effective. However, it is proposed to strengthen, enhance and update these powers and remedies for nuisance with this proposed legislation in a number of ways, which is to be welcomed. This will also bring Northern Ireland legislation in this area into line with legislative provisions that are currently already in place in England and Wales.

1. It is proposed to allow smoke from the chimney of a private dwelling that is causing a nuisance to be deemed a statutory nuisance. Presently only advice can be given in this regard where complaints of this nature are received. A defence that 'best practicable means' is being employed by the owner of an offending chimney will serve to ensure that only practical remedies can be required to deal with this situation.

The defence of 'best practical means' will in fact now be applied to all statutory nuisance remedies, and not just sources involving a trade or business, which is currently the case.

2. It is proposed to introduce a statutory nuisance caused by artificial light. Again, such complaints are received from time to time by Environmental Health, but at the moment officers can only provide advice in such matters. Where a complaint is received in the future, if this bill becomes law, Councils will require clear guidance from the Department as to how to assess if artificial light is causing a nuisance or not in order for us to take appropriate action on behalf of affected individuals.

3. It is also proposed to extend the definition of statutory nuisance to include infestations arising from industrial, trade or business premises.

4. All other existing statutory nuisances that exist not only in the 1878 Act, but in Clean Air legislation and the Pollution Control & Local Government (NI) Order 1978 will be streamlined,

consolidated and transferred into the new legislation, so that existing powers will not be lost, and that the new enforcement powers are equally applicable to all of these related situations.

5. There will be increased fines and penalties for failure to abate a statutory nuisance, which should further enhance the incentive for offenders to comply.

6. The concept of 'anticipatory powers' is to be introduced. Presently, Councils can only take action if a nuisance occurs or is likely to recur. However, if, given the evidence available to an officer in a particular case, in their opinion a nuisance may occur at some stage in the immediate future, they will have the power to serve a notice requiring action to be taken that will prevent that nuisance arising. Currently such situations are presented to officers on a reasonably frequent basis (for example businesses stockpiling waste where there is a history of open burning, or on going deterioration of a dwelling house which will clearly eventually cause dampness), and so this additional power is to be welcomed.

7. Councils will be given the option to carry out works in default for non compliance with all nuisance abatement notices. Such a power is presently only available in certain circumstances and therefore this too is to be welcomed.

8. There is however, no proposal to introduce a Northern Ireland standard for overcrowding in a dwelling, whereas there is in the GB equivalent legislation. Further consideration should be given to this omission.

9. Regrettably, the power of the Court to make an order requiring offenders to comply with an abatement notice seems to have been removed. However, this has been replaced with a daily fine order, imposing a financial penalty at the discretion of the court on offenders until nuisances are eventually dealt with. The bill indicates that this will not be applicable to industrial, trade or business premises, but in these cases the maximum fine for non compliance has been increased to £20,000 presumably to take account of this.

10. Finally it is proposed to introduce an appeal mechanism for persons on whom a nuisance abatement notice has been served. The Bill suggests that works that are required by the notice being appealed are suspended until the appeal is heard. The Department, before the new legislation takes effect, should make appropriate regulations under Schedule 2 prescribing cases in which an abatement notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings. This is of particular concern in relation to its implications for situations equivalent to Article 65 of the Pollution Control & Local Government Order (NI) 1978 (emergency works seven day notice) and for all other urgent works.

General Comments

Overall the draft Bill attempts to address a range of issues that can adversely impact on peoples' quality of life. It is likely that the public will soon become aware of these new powers and expect that the Council will use them to address problems arising leading to increased expectations. It is however clear that in order to fully implement the full range of powers available additional resources would need to be made available. The draft Bill does perhaps try to address this by allowing any monies received through the issue of fixed penalty fines to be kept by the Council. It is however extremely unlikely that this new revenue stream would cover the likely costs involved in implementing the powers.

Recommendations

In view of the above the following is recommended namely that:

1. the Council welcomes the overall aim to address anti-social behaviour, crime and fear of crime through environmental improvements and controls.
2. careful consideration is given to the resources required for the implementation of the powers detailed within the Bill and that funding is provided to ensure that the full cost does not have to be met by the local rate payer.
3. the proposed 28 day notice period provided to allow a land owner/occupier to comply with Litter Clearing Order is shortened to 14 or 7 days.
4. a business or service provider advertised through fly posting can, within certain controls, be fined.
5. the proposed 28 day notice period to allow fly posting and graffiti to be removed is shortened to 14 or 7 days.
6. proposals to repeal Article 4 of the Litter NI Order 1994 which relates to dog fouling, is reconsidered and that any new legislation should not cause ambiguity or diminish the Council's ability to address dog fouling or obtain information that would be needed for the investigation of an offence.
7. a standard is introduced for overcrowding in a dwelling similar to GB equivalent legislation.
8. in order to persuade an offender to remedy the nuisance identified within a abatement notice, that courts are given the option to impose, rather than a one off fine, daily fines on businesses, that have failed to comply with an abatement notice.
9. the Council asks the Department, before the new legislation takes effect, to make appropriate regulations under Schedule 2 prescribing cases in which an abatement notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings. This is of particular concern in relation to its implications for situations equivalent to Article 65 of the Pollution Control & Local Government Order (NI) 1978 (emergency works seven day notice) and for all other urgent works.
10. Guidance documents referred to within the legislation are made available for consultation and are subsequently in place prior to its implementation.



Richard Brittain Graeme Bannister
Borough Inspector Principal Environmental Health Officer

Lisburn City Council Submission to the Clean Neighbourhoods and Environment Bill

The following comments were prepared by Lisburn City Council in response to the Draft Clean Neighbourhoods and Environment Bill. The draft legislation has a wide-ranging remit affecting a number of council services and Environmental Health core functions. Substantive comment related to Environmental Protection / Pollution matters has been provided to Parts 5,6 and 7 only. Overall, the legislation proposals are welcomed and address many of the omissions in the

portfolio of controls available to District Councils in Northern Ireland when compared to their constituents in GB, as Lisburn City Council pointed out to the Department in correspondence dated 30th March 2005.

Part 1 – Gating Orders

Alley gating is a very simple crime prevention measure in urban areas and Local Councils welcome the more streamlined procedure that will now be available for those authorities that would wish to initiate such schemes in their Council area. Although these powers are discretionary it may be the case that our ratepayers will now expect Councils to enact them. For this reason there must also be some requisite funding available for Councils to “avail of” as and when these schemes are required as they can be expensive and demanding on resources. We do acknowledge the many benefits to local communities in terms of crime prevention, disorder, noise nuisance and dumping etc. and in this respect the new provisions are welcomed as potentially an alternative means of resolving such issues. Early guidance on a range of issues would be welcomed, for example, access for emergency services, the role of the DRD, the need for neighbourhood approval, practical issues such as who is to open and close the gates and the impact on rights of way.

Part 2 – Vehicles

Proposals include giving an authorised officer of a Council the power to issue a fixed penalty notice regarding the offence of abandoning a vehicle. Further powers provided include the removal of the requirement to serve notice on a vehicle where it is considered to be in such a condition that it ought to be destroyed e.g burnt out vehicles. These proposals are welcome as they streamline the process for dealing with abandoned vehicles.

Councils have problems dealing with abandoned caravans under the current legislation so this new Bill would need to explicitly make reference to applying to caravans to enable Councils to deal with this issue.

Similarly these provisions will inter alia allow councils to take action to address works / repairs to vehicles on the street which often can cause noise disturbance. In this respect these provisions are welcomed.

Prescribed periods for landowner objections under Art 30 (2) (removal), and vehicle owner objections under Art 31(1)(ii) (disposal) of the PC&LGO remain unprescribed.

It is recommended that the opportunity be taken to provide clarity on such periods within the revised legislation, with 15 days and 21 days being prescribed respectively as per similar GB and NI legislation. (Section 3(2) of the Refuse Disposal (Amenity) Act 1978, and Art 52 of the Road Traffic Regulation (NI) Order 1997)

In relation to vehicles being exposed for sale Lisburn City Council would advise that the existing provisions at the Street Trading (NI) Act 2001 are satisfactory to deal with such scenarios and that the implementation in this new provision may well confuse this enforcement as it is not an offence unless 2 vehicles are within 500 metres.

Part 3 – Litter

The Bill proposes making it an offence to give false information relating to name, address etc when questioned by an authorised officer regarding an alleged litter offence. It is Councils’

experience that Magistrates do not give such matters much weight. It might therefore be more appropriate to make such an offence punishable by issue of a fixed penalty notice.

Lisburn City Council welcomes the introduction of Litter Clearing Notices that may be served on an occupier or owner of land requiring the land to be cleared of litter within a specified timeframe. Previously private land was outside of the Litter enforcement domain and only intervention through Public Health Acts or Rats & Mice Destruction (1919) Act could be used to resolve such problems. A 28 day compliance period from when the notice is served may be considered too long.

Controls on free distribution of printed matter - clarity is required on this if Councils will have the power to investigate companies who have commissioned the leaflet in question. These materials are often distributed by students or people on low incomes and issuing fines to them will not ultimately stop the practice

Part 4 – Graffiti and other Defacement

With regards to flyposting the Bill only provides powers to Councils to target those actually posting the information as opposed to the beneficiaries. The power to target the beneficiaries lies with the Planning Service. It is more effective to target these groups however Planning Service in Northern Ireland do not see this as a high priority area. If flyposting is to be properly addressed Councils require the full powers of prosecution.

Generally while the Clean Neighbourhoods Bill is to be welcomed it is unlikely that it will lead to full cost recovery by Councils for the areas they are responsible for enforcing through the income generated by Fixed Penalty Notices etc. The officer and administrative time required to adequately investigate and enforce many of these issues will still be significant therefore meaning that there will still be costs to the Council.

It is also noted that new guidance on the Bill and its uses is scheduled to be issued prior to the introduction of the actual legislation - it is crucial that this guidance is issued in a timely manner to ensure Councils have adequate time to fully prepare for the enhanced powers proposed within the Bill, however, it is noted that there does not appear to be any enforcement powers for officers investigating potential offences for sale of aerosol paint to children (Clause 36)

Part 5 – Dogs

Lisburn City Council welcomes the new proposals in relation to dog enforcement. The Litter Order (Northern Ireland) 1994 Article 4 has served Councils well to date and would be considered to be ground breaking and forward thinking for its time. We would certainly require the same unambiguous nature in any new legislation in regard to dog fouling.

Council Byelaws were however less articulate in dealing with other matters such as play parks etc and it is now welcome to see the department bringing forward new dog control orders for Draft Clean Neighbourhoods and Environment Bill to replace any antiquated Byelaw system.

These new provisions will be discretionary for Councils, with the ability to continue with the Litter Order, and so Lisburn City Council would welcome the inbuilt choice that Councils will now have in regard to dog enforcement so that Councils can adopt provisions locally, set fine levels, decide local options and priorities and continue to retain all fixed penalties.

We would however have concerns in that we are now adopting legislation and practice for England and Wales but on the occasion of having to resort to prosecution for failure to pay fixed

penalty the Council does not recover costs due to the Northern Ireland Magistrates rules. These charges are limited to £75, and will therefore incur great cost on Northern Ireland Councils.

We would also have concerns in relation to the repeal of Article 4 of the Litter Order and how that would diminish our ability to obtain information as in Article 20 of the same Order. The new Dog Control Order regime must ensure that we retain equivalent powers to those of Article 20 in the Litter Order.

Part 6 – Noise &

Part 7 Statutory Nuisance

General comments:

The additional powers introduced by the draft Bill are welcomed and will significantly update the existing Northern Ireland legislative position. It will give District Councils new powers to address noise problems which currently are not covered by the existing provisions in Northern Ireland but which can be addressed by GB local authorities. Therefore these powers are welcomed as a means of addressing local noise problems and therefore will assist in improving quality of life and health.

The additional powers will introduce an additional workload for councils as new types of noise complaint will require thorough investigation where currently only advice and / or informal action may be taken. Furthermore, detailed policy and procedures will be required within councils to ensure the successful implementation of these new and amended provisions.

Whilst the draft Bill allows for fixed penalty notices for a range of offences and the retention of fixed penalty receipts by councils, to be used in the exercise of specific functions, this will not make any significant contribution to the costs associated with the additional work. Furthermore, the successful resolution of noise problems is often best achieved without recourse to formal action (which may attract fees and hence income). Therefore the monies obtained from these provisions are likely to be small relative to the investigatory / resolution work associated with such complaints. Notwithstanding these comments the use of fixed penalties with amounts set by councils and the retention of fees for use in qualifying functions is welcomed.

In addition, a number of the new provisions such as noise in the street (dealing with car alarms or plant / equipment) will frequently result in councils having to carry out works in default. Works of this nature (such as the removal of a vehicle) can be costly and therefore to successfully resolve noise nuisances of this type there will be considerable costs to councils.

In view of these matters we would ask the Department to consider what additional resource could be made available to councils to successfully undertake these new and enhanced powers and therefore improve environmental conditions within our areas.

We are aware that a number of important guidance documents have been issued in Great Britain to support similar legislation. We would ask that Northern Ireland guidance be issued as soon as possible to assist in the understanding and uniform application of the provisions.

The issue of nuisance caused by pigeons can be a significant issue in urban areas. It is recommended that an additional category of nuisance be included to address, "any premises providing harbourage for pigeons so as to be prejudicial to health or a nuisance."

As previously mentioned the issue of costs in relation to cases in the Magistrates Court would need to be addressed as Statutory Nuisance cases, with no fixed penalty regime, can only be progressed through this route. The award of costs is controlled by Magistrates Rules (Max £75) and so this results in a more expensive regime in NI as opposed to that in Eng & Wales.

In terms of consolidation we believe that Art 65 Pollution Control & LG Order (NI) 1978 is of a similar standing to Art 70 of the same order, in Statutory Nuisance procedure, and should be brought forward to Clean Neighbourhoods and Environment Bill.

The remainder of provisions left in Public Health Acts 1878 –1907 should also be revised and consolidated in this or any new miscellaneous provisions such as sections 25 & 26 that have previously proved useful in our enforcement portfolio

Specific comment is provided as follows on the following chapters:

Part 6 – Noise - Chapter 1 – Audible Intruder Alarms

It is noted that this chapter introduces new provisions related to audible intruder alarms which undoubtedly can cause significant noise nuisance in urban areas. However, it is the experience of officers currently dealing with these situations under existing nuisance powers, that it is often impossible to determine whether a sounding alarm is associated with an intruder system or a heat/smoke system. Indeed it is often only having gained entry to the premises containing the alarm that such a distinction can be made. Therefore, the Department should consider including noise associated with other alarm types within the provisions.

Whilst it is essential to make residents and owners aware of a new alarm notification area with a view to securing compliance with the requirements of that designation, the consultation and administrative process given in clause 46 is likely to be very costly. Many councils communicate directly with every address within their area by way of 'newsletter' publications. The Department should consider allowing councils the option of using such a newsletter as a cost-effective means of providing information regarding alarm designation areas rather than using newspapers (which only a proportion of addresses will actually view).

It is noted that the clauses in the draft Bill make no mention of the approved Department of the Environment – Code of Practice on Audible Intruder Alarms 1982. In accordance with that document the Department may wish to consider requiring the nomination of more than one key-holder as in practice it is often difficult to get in contact with just one individual.

It is our interpretation of the power of entry that a warrant is not required to enter a property boundary in order to externally silence an alarm and that a warrant is only required to enter any buildings. We would be grateful if the Department could advise if this interpretation is incorrect.

Part 6 Noise - Chapter 2 – The Noise Act

The removal of the adoptive nature of the Noise Act is welcomed together with the discretionary duty for councils to take reasonable steps to investigate a night-time noise complaint. The Noise Act provides an expedited procedure for investigating, quantifying and formally addressing a noise problem. It also provides a very useful Warning Notice procedure which has proven very successful in resolving complaints made to Belfast City Council (being the only council in NI to have adopted the Noise Act).

Whilst it is unlikely that all councils will deem it necessary or appropriate to establish a reactive night-time noise service to make use of the Noise Act, the provisions nonetheless offer a useful mechanism to address specific types of noise complaint and are therefore welcomed.

It is anticipated that the use of Noise Act provisions that have been extended to apply to licensed premises and fixed penalties will lead to more expeditious complaint resolution with a reduced burden on the courts.

These provisions may have implications for Part 13 of the DOE Model Terms - Technical Requirements for Indoor Entertainment Licensing in relation to Inaudibility clause.

In draft clause 59(4) the amendment to the Noise Act Section 11(3) is noted, however, Section 11 (3) contains the word 'order' rather than 'orders'.

Part 7 – Statutory Nuisance

Lisburn City Council welcomes the new consolidation and addition to statutory nuisance provision provided by the Clean Neighbourhoods and Environment Bill. The overhaul of the statutory nuisance provisions will require a significant review and amendment to councils' internal guidance and procedures, involving officer authorisations, standard notices, letters etc. Our existing statutory nuisance has been on statute since 1878 while the England & Wales legislation has been updated on a number of occasions. It is requested that once the legislation has been finalised, a reasonable period of time is given to councils to prepare for the commencement of these provisions. A period of 3 months is suggested between the making of the legislation and the commencement date.

It is unclear why the words "within the meaning of Article 4" as in Clean Air (NI) Order 1981 Art 23(1)(c) have been removed from Part 7, Section 61 (3) (d). It is recommended that these words be retained to maintain clarity for this exemption.

It is not clear why a best practicable means defence is applicable to smoke nuisance (61(b)) arising from a chimney of a private dwelling, but such a defence is not available for fumes and gases (61(c)) arising potentially from the same source. These are both new categories of statutory nuisance in NI and, due to their similar nature in terms of probable source, it is suggested that both should attract a best practicable means defence.

It is recommended that opportunity is taken to extend the power to request information as to ownership of property under Art 69 of the PC and L G Order 1978 (for the purposes of Part 7 of the CN&E Act 2010), to (1) be applicable to any person, and (2) also include "any information so specified which the council reasonably considers that it needs for the purpose of any function conferred on the council by the Order (Act)" as per Art 72 of the PCLG Order 1972. This will allow greater scope to acquire whatever information may be necessary for statutory nuisance investigations from a wider range of people.

The streamlining of the procedure for the abatement of nuisances, bringing it into line with that which applies in England under the Environmental Protection Act 1990, and the inclusion of an offence for non-compliance with the requirements of a Notice are welcomed. It is anticipated these measures will expedite the abatement of nuisances with a reduced input from the courts.

It is noted that the principle of using a 'daily fine' following conviction to secure the abatement of a nuisance only applies to premises other than industrial, trade or business premises.

Whilst a maximum fine of £20,000 applies to industrial, trade or business premises there is no provision for a further fine should the nuisance remain unabated. For the most serious nuisances associated with industrial, trade or business premises, abatement costs may be greater than the maximum fine that may be applied. Therefore in order to have an effective abatement procedure, the Department should consider the need for the introduction of a 'daily fine' to encourage abatement or alternatively provide clear legal guidance on the use of further convictions where the requirements of a notice remain unmet following first conviction.

The recovery of costs by way of a charge on premises with appropriate interest is welcomed.

The inclusion of a discretionary informal action step in the noise nuisance abatement procedure, i.e. deferring the service of a notice by up to 7 days, is welcomed as a means of achieving the abatement of a nuisance, where appropriate, without the service of a Notice.

There are many changes within this new legislation apart from the headline changes such as artificial light and insects.

61.1 (m) There is no Northern Ireland overcrowding standard. The provision of such a standard would be helpful.

61.1 (g&h) DEFRA guidance is available in the UK to give Local Authorities direction on these two statutory nuisances. It is presumed this guidance will be reproduced for use in Northern Ireland.

61 (10) The definition of owner is not listed in Article 61(10) but instead can be found in 66(9). Does the definition of owner (similar to Public Health Acts) not relate to the whole statutory nuisance section or just to expenses recovery.

63 (i) The council welcomes the new power to serve an abatement notice in anticipation of a statutory nuisance occurring. It also welcomes the provision which removes the requirement to specify the "execution of such works, etc" in every instance.

63.8 This is a major change for Public Health practitioners in NI as there is now a facility to appeal an abatement notice within 21 days to a Court of Summary Jurisdiction. Lisburn City Council assumes that the Department will, before the new legislation takes effect, make appropriate regulations under Schedule 2 prescribing cases in which an abatement notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings. This is of particular concern in relation to its implications for Art. 65 Poll.Control & LG Order (NI) 1978 and for all other urgent works.

63.10 The council regret that the power of the court to make an order has been removed but do welcome the 'daily fine' principle for premises other than industrial, trade or business premises.

While the level of fine has been increased, presumably to take account of this major change, the council are of the opinion that the judiciary should be issued with guidance directing them to impose fines (including a daily fine) which are substantially significant to send a message to the person committing the offence that he/she must comply with the abatement notice.

61 (11) Land forming part of an agricultural unit is excluded from the meaning of "relevant industrial, trade or business premises". Under the Agriculture Act (NI) 1949, it may be argued that poultry houses and farm buildings are included within the meaning of agricultural land" and "agriculture". DEFRA guidance on "Statutory Nuisance from Insects" states that poultry houses/farm buildings on agricultural land are not exempt from statutory nuisance from insects even though the land surrounding them may be exempt. To clarify this issue and to avoid

lengthy and costly arguments in court on this issue the council would like a specific statement in this paragraph indicating poultry houses/farm buildings on agricultural land are included with the term "relevant industrial, trade or business premises".

Lisburn City Council
April 2010

Northern Ireland Local Government Association (NILGA) Submission to the Clean Neighbourhoods and Environment Bill



NILGA Response to the Assembly Environment Committee Call for Evidence on the Clean Neighbourhood and Environment Bill 13th August 2010

The following is the NILGA response to the Environment Committee call for evidence on the Clean Neighbourhood and Environment Bill. This paper has been drafted in liaison with the NILGA Health and Environment Working Group, the Technical Advisers Group, the Chief Environmental Health Officers Group and local authority cleansing officers, and was presented to the NILGA Executive Committee on 13th August 2010.

For further information or to discuss any of the issues highlighted, please contact Karen Smyth at the NILGA Offices: Email: k.smyth@nilga.org

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INTRODUCTION

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties in Northern Ireland. The upkeep of the public realm is a key issue for local government due to the huge impact it has on our communities and investment in our districts. The overall impression of a neighbourhood has an impact on many areas of importance to local government, including tourism, economic development, well-being and social capital. It is the NILGA view that the provision of appropriate legislation to enable councils to take better care of the public realm and develop better enforcement practices is to be encouraged.

NILGA is keen to ensure that councils can have a positive impact on the environment and is pleased to be able to have an opportunity to comment on this consultation on the proposed Clean Neighbourhoods and Environment Bill, for which we have been lobbying for some time.

We trust that our comments will be taken into account when developing the final proposals. This response has been developed in liaison with the NILGA Health and Environment Working Group, the Technical Advisers Group, the Chief Environmental Health Officers Group and local authority cleansing officers.

For further details on this response, please contact Karen Smyth at the NILGA Offices. k.smyth@nilga.org (028) 90798972.

In considering our response to the Environment Committee, NILGA has made a number of observations in relation to our earlier response to the Department on the development of the Bill. We would ask the Committee to note the following:

NILGA has observed that the Department has chosen not to take forward a number of the suggestions we made in our response to their consultation.

Of greater concern is the observation that a large part of the NILGA response to the Department seems to have been disregarded. We would therefore encourage the Committee to pay particular regard to our comments on Parts 6 and 7 of the Bill.

Given the above observations, we have structured this response in such a way as to enable the Committee to see our original comments to the Department. The comments particularly directed to the Committee are highlighted in grey boxes.

BACKGROUND

NILGA has been working for number of years towards development of appropriate legislation in Northern Ireland which would better assist councils to improve environmental quality, providing a suite of tools within an easily understood, rationalised piece of legislation, similar to the Clean Neighbourhoods and Environment Act 2005 introduced in England and Wales. This Act gave councils additional powers to deal with litter, nuisance, alleys, fly-posting and graffiti, abandoned and nuisance vehicles, dogs, noise and statutory nuisance. NILGA views legislation of this kind to be vital in complementing the forthcoming power of well-being which will soon be introduced in Northern Ireland.

However, we are also aware that there are a number of pieces of existing legislation in Northern Ireland which are different to, and perhaps stronger than the legislation in place in England pre-2005. In introducing a new Clean Neighbourhoods and Environment Act in Northern Ireland, it will be important to ensure that the new legislation does not weaken the existing powers of councils, as an unwelcome side effect of introducing new, convenient and rationalised powers. A benefit of introducing this legislation will be to give councils in Northern Ireland a greater facility to draw on GB case law and training, which we have been unable to do previously.

NILGA is keen to ensure that there is a joined up approach between DOE and the Community Safety Unit on the related policy within the Community Safety Strategy. It will be important for the future community planning partnerships to ensure that there is complementarity on enforcement of related issues, and that the development of an area based approach by the different enforcement agencies can be further facilitated in future. Particular interest has been expressed by NILGA members regarding potential powers and funding to deal with partisan murals.

Overarching Issues

Resourcing

It is the policy of NILGA that any new policy or initiative which increases the cost of providing local authority services must be then adequately resourced by government, in line with the New Burdens Doctrine in place in England and Wales.

<http://www.communities.gov.uk/localgovernment/localgovernmentfinance/newburdensdoctrine/>

It is the NILGA view that much of the proposed Clean Neighbourhoods and Environment Bill is a new burden on local government in Northern Ireland, and we would disagree with the department view that implementation of this legislation will be cost neutral across local government.

Even though the fixed penalties included in the bill are intended to come to councils, it will be the case, for reasons more fully outlined later in this response, that fixed penalty funding will not be nearly enough to resource the powers included in the CN&E Bill, particularly regarding alley gating, night time noise investigation, graffiti, fly-posting, removal of vehicles and the new dog control orders.

Provision of discretionary powers

NILGA has concern regarding the proposals for a number of discretionary powers e.g. alley gating. It is the NILGA view that if a discretionary power is provided, this may raise public expectations, and will necessitate the provision of accurate and easily understood guidance, so that these expectations can be managed. It will be up to each council to decide, within its corporate and community plan, which of these discretionary powers it intends to implement according to the limited resources available. Clearly the finer detail is still to come, within the commencement orders, regulations and guidance documents forthcoming, and NILGA looks forward to further consultations.

Dealing with derelict property

NILGA members are keen that a zero tolerance approach is taken to graffiti, fly-tipping, fly-posting etc and would like to see a strong educational package delivered to schools and community groups in order to engender civic pride. NILGA would suggest that the department might be able to develop a suitable programme in liaison with councils, Tidy NI and schools.

NILGA believes that the Clean Neighbourhoods and Environment Bill has merely put a 'sticking plaster' on some issues and that there is an urgent need to provide powers to tackle derelict land, overgrown gardens and derelict premises, with councils given the power to vest land and develop it for local communities.

NILGA notes that the Department has commented at length on this issue in its synopsis of responses, and we would ask the Committee to note that we would welcome further discussion between local government and the Department to work towards resolution of current difficulties with derelict premises and to develop guidance for councils on this matter.

Rural Proofing

NILGA is keen to ensure that appropriate rural proofing of this legislation takes place, as rural district councils can have a very different experience of some issues to urban councils, particularly regarding the source of nuisance noises and smells, with rural dwellers having potentially different needs than the urban population.

Guidance

Many of the proposals will need clear and concise technical guidance to enable consistent and satisfactory implementation. NILGA would encourage the department to work with local government to produce appropriate new guidance or to revise existing guidance, and to allow sufficient time for this vital activity. Appropriate guidance is necessary, both for councils and for the public.

Enforcement and technical issues

PART 1: Gating Orders

More streamlined alley-gating powers have been sought by some councils for some time. NILGA believes that the proposed legislation will provide a streamlined ability for councils to work with communities in providing gates, but we have some concern regarding potential cost of providing gates. NILGA would be keen for the department to explore potential resourcing for this function, particularly with the Community Safety Unit. Some members have expressed the view that this function should not be a council responsibility, but the concerns largely centre on cost to councils.

NILGA would value early guidance being produced on alley-gating, to address concerns such as access for emergency services, the DRD role, the need for neighbourhood approval, practical issues such as who is to open and close gates, impact on rights of way.

PART 2: Vehicles

NILGA would welcome the simplification of the legislation regarding the removal of abandoned cars from the streets and their subsequent disposal. We would also welcome the two new offences to help district councils deal with nuisance parking, i.e. exposing vehicles for sale on a road; and repairing vehicles on a road.

We welcome the Department's intention to provide guidance on nuisance parking in due course.

One issue which is not adequately addressed is the parking of vehicles on the street which are "in for repair". Many of the repair garages are small with little parking space. Vehicles in for repair are parked on the street, taking up residents spaces. Although no work is carried out on them in the street they are still regarded as a nuisance by residents.

We would encourage the Committee to bring forward a provision for vehicles 'in for repair' within this Bill, but if this is not possible, we would encourage legislation to be brought forward within the next legislative programme. We would propose that this legislation should also cover taxi businesses operating from domestic premises.

Another omission in the draft Clean Neighbourhoods and Environment Bill is that of caravans (to include abandoned, located without necessary permissions or unoccupied). Councils often receive enquiries regarding abandoned or illegally located caravans and as such more clarification would be welcomed on this issue, related to the Pollution Control and Local Government Order.

The Department has noted its belief that this definition does include caravans, but the current definition of the "motor vehicle" within the Pollution Control and Local Government (NI) Order 1978 does not in our view explicitly state that the definition covers caravans. The absence of the word "caravan" within the current definition will lead to confusion and varying interpretations and it would be beneficial if the term "caravan" could be inserted into the definition to avoid future debate and confusion.

PART 3: Litter

Offence of Dropping Litter

The proposed changes to the litter legislation will have little impact, as the Article 3 offence remains unchanged. In England and Wales, the Clean Neighbourhood and Environment Act (CNEA) 2005 clarified that the offence of littering applied to litter whether it was deposited on land or water. The Litter (NI) Order 1994 does not define littering in water as an offence. The CNEA 2005 also clarifies that smoking related materials and chewing gum constitute litter. NILGA believes that some rewording to this part of the bill would provide a much more robust piece of legislation for councils to enforce.

NILGA believes that it would be valuable for the department to clarify its interpretation of the Litter (NI) Order 1994 in its current format and to consider if amendments are required to ensure the definitions are as comprehensive as the CNEA in England and Wales regarding litter deposited into water and smoking related/chewing gum.

The Department has noted its belief that the definition of litter and the offence of littering in water are well provided for, when Clause 14 of the CNE Bill is taken into account. NILGA does not agree with this assertion, and would reiterate the above points.

NILGA welcomes the proposed Code of Practice and Guidance on Litter and looks forward to the consultation. NILGA would propose that the department liaises with local government to ensure appropriate input in the development of these documents prior to public consultation.

The inclusion of an offence for failure to provide a name and address to an authorised person or to give a false name and address is welcome. However, it would be beneficial to allow fixed penalty notices to be issued in respect of this offence, as experience of these matters before a magistrate is that they do not attract any greater fines than would be the case for littering offences. It is the NILGA view that the use of a FPN provision in these circumstances could reduce the time and expense involved in bringing these cases before the court.

NILGA welcomes the flexibility to set the levels of fines under the proposed changes but we have strongly encouraged the Department to set out the minimum and maximum ranges for fixed penalties prior to the commencement and implementation of the CNE Bill in Northern Ireland. We welcome the Department's stated intention to consult on this issue prior to issuing regulations.

District Council Notices

NILGA welcomes the new provision of a litter cleaning notice as it will enable effective control of pockets of land throughout districts which are detrimental to the amenity of the area. To date, council officers have relied on our persuasive abilities to get areas tidied up but where there is no co-operation, there has been no legal basis to achieve compliance. These new powers will address this problem and will improve the cleanliness of local neighbourhoods.

NILGA members remain of the view that 28 days is too long a time for compliance and would continue to suggest 7 days as an alternative, although we note the Department's reasoning for a longer time period.

NILGA agrees with the rationale for making Street Litter Control Notices more effective and easier to enforce, and the extension of the use of Street Litter Control Notices to include mobile vendors is welcome.

However the following comments should be noted:

- In England, the Street Litter Control Notices Order 1991 defines the premises where a street litter control notice can apply. After the CNEA 2005 was implemented in England, a gap in the provisions for dealing with smoking related litter from certain types of premises was highlighted in the wake of the implementation of the Smoke free legislation.
- In July 2007, the Street Litter Control Notices (England) (Amendment) Order was introduced to address litter (including smoking related litter) generated from those premises which were not covered by the existing provisions e.g. pubs, bars, cafes and restaurants.

- In Northern Ireland, the Street Litter Control Notices Order (NI) 1995 specifies the premises which can be targeted using Street Litter Control Notices and the definition of premises to which the legislation applies, replicates the legislation in England prior to amendment i.e. the Street Litter Control Notices Order 1991.

Therefore, in order to ensure parity with England and Wales, NILGA believes that the same amendment is required to our legislation to enable councils to effectively tackle litter (including cigarette litter) from pubs, clubs, restaurant and cafes.

There is no doubt that the introduction of Smoke Free legislation in April 2007 has increased levels of smoking related litter outside office blocks. Employees and visitors who cause smoke related litter on the street outside these office blocks fall outside the scope of the CNEA street litter control provisions as office blocks are not defined as relevant premises for this provision.

Street Litter Control Notices (SCLNs) would be an effective tool for dealing with businesses that fail to make provision for their customers/employees who smoke outside of their premises. Currently, in some council areas (e.g. Belfast), litter wardens have fined employees caught discarding cigarette butts outside their place of work but this has not been found to reduce the overall level of littering from others in that same building

In the event that these provisions were extended to include office blocks, it is important that there is provision for councils to serve SCLNs on either the owner or the occupier of the premises. It is anticipated that Notices would have to be served on the owners of multiple occupancy office blocks rather than the occupiers. It would be impossible to enforce SCLNs if they had to be served on several occupiers in one building.

NILGA believes that the change to the legislation to enable councils to prosecute for non-compliance with a Street Litter Control Notice instead of seeking redress through a court order is more streamlined and should prove to be more effective.

The use of the fixed penalty notice provisions in respect of these offences may be a more effective means of seeking compliance and will reduce the time and cost involved in referring such cases to court.

NILGA welcomes the Department's proposal to consider these issues further within the context of the proposed guidance document on litter, and through subordinate legislation and we would encourage the committee to ensure this occurs.

Free Distribution of Printed Matter

NILGA believes that the proposed controls will help to reduce the impact of leaflet distribution, which is a persistent problem for some councils, particularly in town centres and student areas.

NILGA notes that the proposed CNE Bill for Northern Ireland makes a distinction in the offence of distributing leaflets without consent between those who distribute the leaflets and those who cause another person to distribute the leaflets. In determining if an offence has been committed in the first instance by the person who is distributing the leaflets, a Council must prove that the person distributing the leaflets knew that the area was designated. In practice, it will be difficult to prove that the person distributing the leaflets was aware of the designation and it is envisaged that few fixed penalties will be issued for this offence.

In the case of the person commissioning the distribution of the leaflets, the burden of proof is less onerous, but in order for council enforcement officers to successfully determine the identity of the person responsible for commissioning the distribution of the leaflets, a council will require powers of investigation to request this information.

NILGA notes the power available in Article 20 of the Litter (NI) Order, and Departmental comments regarding designation of land but again will welcome the clarification of the enforcement powers available to councils regarding this legislation, in a clearly set out guidance document.

NILGA notes that a council may grant consent with conditions to prevent defacement; however, but we would advise the Department to provide clarification on the possible redress that is available to a council in the event of non-compliance with the conditions. NILGA would propose that the Department considers making it an offence for failure to adhere to conditions set in respect of leaflet distribution which could be addressed through the use of a fixed penalty provision.

Again, NILGA would strongly recommend that the Department issues guidance, in liaison with local government, in relation to arrangements for leaflet designation to include matters such as administration of consents and size of areas to be designated. There is some concern regarding potential for restriction of religious and cultural activity and NILGA would be keen for appropriate equality proofing of this proposal in particular.

Shopping and luggage trolleys

The new provisions are noted, however, in addition to nuisance caused by shopping trolleys, NILGA believes that it would be useful if this provision could be extended to cover cages and baskets which are also left in public places and for which councils incur the costs for removal and disposal.

NILGA would encourage the Committee to ensure that legislation is extended to cover the issue of cages and baskets within an appropriately short timescale. We would also encourage the Committee to ensure that this legislation covers designated 'trolley free' and 'trolley amnesty' areas

PART 4: Graffiti and other Defacement

NILGA welcomes the Department's comments in relation to this section of the Clean Neighbourhoods Bill. We are also pleased to note that at the request of NILGA and a number of councils, the requirement to give two days notice of intention to remove or obliterate fly-posting or graffiti has been removed from the Bill.

Sale of Aerosol Paints to Children under the age of 16

NILGA welcomes actions that will help to reduce graffiti and fly posting and would make the following observations regarding the sale of aerosol paints to children under the age of 16: There are potential health benefits in controlling the sale of aerosol paints to children in terms of reducing substance abuse, which NILGA would strongly support.

Councils already successfully regulate the sale of tobacco products and butane gas lighter refills to young people. There is a robust procedure for test purchasing based on national guidelines developed by the Local Authority Coordinators of Regulatory Services (LACORS) and with an annual test purchasing programme. The minimum age for the sale of tobacco products and butane gas lighter refills is 18 and NILGA would be of the view that 18 should also be the minimum age for the purchase/sale of aerosol paints. Maintaining a standard minimum age would enable councils to combine regulatory and test purchasing activities, which would be more cost effective and which would comply more readily with government Better Regulation policies.

NILGA notes the Department's reasoning for not taking the above comments on board, but would again recommend the age of 18 to the Committee.

NILGA would highlight to the department that additional resources will be required for councils to identify premises selling aerosol paints and to raise awareness of the new legislation before test purchasing can take place, and we would encourage the department to work with councils in promoting and publicising the new requirements. There will also be additional costs for businesses selling aerosol paints in establishing new procedures and training staff (this could involve a number of large national companies and parity of regulation with GB could potentially be an issue under the Better Regulation agenda).

Advertisements

Whilst the amendment to the legislation is to be welcomed as it is more difficult for the beneficiaries of illegal advertisements to evade prosecution and brings local government in Northern Ireland into parity with councils in England and Wales, it should be again noted that it is our experience that the Northern Ireland Planning Service does not intend to enforce their

legislation in respect of fly-posting activities. Furthermore, Planning Service has also declined to enter into a partnership arrangement with councils who are keen to proactively pursue the beneficiaries of fly-posting activity.

Although it will be the case that councils will become responsible for planning legislation in the medium to long term, NILGA would reiterate the view it would be more useful for the powers to address fly-posting activities to be passed to district councils as a matter of priority, as councils are keen to control and reduce the impact of fly-posting within their areas.

Under the Local Government (Miscellaneous Provisions) (NI) Order 1985, councils have a right to remove or obliterate fly-posters that are displayed in contravention of the Advertisement Regulations, and NILGA is extremely concerned that the proposed changes remove this power to remove or obliterate without giving prior notice of not less than two days. NILGA views this proposal as a retrograde step which will severely hamper local government efforts to reduce the visual impact of fly-posters within their districts.

E.g. Belfast and Derry City Councils are extremely pro-active in the removal or obliteration of posters which reduces the advertisement opportunity of the posters, removing or obliterating approximately 2500 fly-posters per month, with Derry City Council removing up to 200 per month.

NILGA believes that the proposed requirement to serve removal notices in respect of this quantity of fly-posters will be onerous, costly, time consuming and in realistic terms, impossible to administer. It is recommended that this power remains non-mandatory so that councils can retain the necessary flexibility to obliterate or remove posters without the need to serve Removal Notice on every occasion.

NILGA is disappointed to note that in the event of non-compliance with a Removal Notice, local government has not been afforded powers to prosecute.

The recovery of costs for the removal of the notices is not an appropriate substitute for powers of prosecution, which would act as a better deterrent and allows a more robust control measure to deal with the problem of fly-posting.

We note the Department's belief that prosecution powers for failure to comply would be inappropriate but would disagree with this view. We would encourage the Committee to investigate the possibility of developing appropriate legislation of this nature.

NILGA understands that a draft legislative provision has been submitted for the Department's consideration which would enable Councils to prosecute both the perpetrators and the beneficiaries of fly-posting activities.

NILGA notes that the determination of the person responsible for displaying or causing a poster to be displayed may require some degree of investigation and it would be helpful if the Department could confirm if the powers to carry out investigations for this purpose will be reviewed to ensure that they are commensurate with legislative provisions imposed to enable effective enforcement.

We note the Department's comments regarding lack of clarity on the powers we have requested, and would recommend that the Committee advises the Department to consult with Councils on what powers they believe are necessary to properly fulfil this piece of the Bill.

PART 5: Dogs

The problem of dog fouling continues to be a major nuisance and irritant for the public. Despite provisions in the Litter (NI) Order 1994 making it an offence not to clean up after a dog has fouled, detection and enforcement remains difficult. Many public places, including parks and other open spaces, are often contaminated by dog fouling. NILGA therefore welcomes the focus in the draft Bill on dogs and, in particular, dog control orders. Local government encourages responsible dog ownership as the foundation for dealing with dog related problems generally such as fouling and attacks on people, and views additional enforcement options, including the zoning of land and specifying the maximum number of dogs that a person can take on to land, as essential tools to encourage responsible dog ownership and to change the behaviour of those who fail to control their dogs. NILGA also welcomes powers to give District Councils the authority to make it an offence not to keep a dog on a lead in a designated area as people are often intimidated when dogs are allowed to run free in public places.

NILGA would be keen to ensure that the making of a dog control order is a streamlined and practical procedure which allows a council to readily incorporate its designation into existing and forthcoming community planning processes. NILGA would therefore strongly encourage Department to engage with local government at an early stage when preparing the proposed regulations associated with dog control orders, particularly in relation to the public consultation to be undertaken before a dog control order is made and the subsequent publicising of the order.

It is the view of NILGA that Article 4 of the Litter Order was well written, and if the new Act is to repeal this legislation it must be ensured that the new provisions must be similar or an improvement in relation to dog fouling enforcement. We note the Department's view that to retain Article 4 would cause confusion, but NILGA does not believe that provisions currently available to councils should be weakened.

Problems associated with dogs can arise anywhere within a district council area and NILGA notes the comprehensive description of land to which dog control orders can be applied, but we would strongly encourage the Department to ensure that it does not unduly restrict the options

available to a district council by prescribing land to be exempt from designation without full consultation with the district council in whose area the land is located.

NILGA welcomes the discretionary option of an authorised officer issuing a fixed penalty offering the offender the opportunity of discharging any liability to conviction by payment of the penalty. Payment of the fixed penalty to the district council will also offset some of the costs and will facilitate delivery of the services.

The current penalty for dog fouling under the Litter Order is £50, and NILGA welcomes the discretion specified in Clause 43 that councils can set a fixed penalty of up to £75 for offences under a dog control order. This may require replacement signage, at a cost to councils.

Clause 45 suggests that councils cannot make byelaws in respect of any land to which it has power to make a dog control order. NILGA is concerned that the option of designating dog control orders in England, where this legislation has been in force for several years, appears to be somewhat intermittent across local authorities, and would encourage the Department to enable councils to retain the element of flexibility inherent in the ability to create appropriate byelaws – particularly where there may be required elements that would make designation difficult or prohibitive, depending on the requirements for prescribing dog control orders in the proposed regulations.

NILGA has noted the Department's intention to consult on regulations and to proceed with associated guidance, and this is welcomed. We also welcome the intention of the department to consult on land to which Dog Control Orders do not apply

There is some feeling within local government that it would be useful to have all legislation pertaining to dogs in one piece of legislation, and a suggestion has been made that this section is moved into the proposed new dogs legislation. NILGA has noted that the Department has liaised with DARDNI, and notes the reasoning given for keeping the two regimes of legislation separate. We can assure both the Committee and Department that councils are unlikely to become 'confused' at the implementation stage if a 'joined up' piece of legislation is created. However, we appreciate the difficulties of creating such a piece of legislation where two departments have linked responsibilities.

NILGA notes that the parts of the Departments Summary of Consultation Responses dealing with Parts 6 and 7 of the Bill don't seem to have taken the NILGA Consultation Response into account. Thankfully many of the issues we raised were also raised by a number of councils and local government groupings, so some Department responses to our comments are available.

PART 6, Chapter 1: Audible Intruder Alarms

Alarm Notification Areas

NILGA welcomes these powers in general, but has a number of concerns about the practical outworking of the proposed legislation.

A key requirement to make this new power more effective is to also make reference to audible alarms in general rather than solely intruder alarms. It is regularly the case, particularly in areas with a high concentration of shared housing flats and HMOs, that where a complaint arises and a noise nuisance is established, the alarm is sounding from a fire alarm system. Obtaining the details of a named key-holder and responsible person for this type of accommodation is often difficult, and NILGA would therefore be of the view that to differentiate between an alarm and an intruder alarm weakens the proposed power.

NILGA notes the Department's response to this request, but would disagree with their conclusion and would request the Committee to re-examine the above view.

We would recommend that an amendment should be made to allow an advertised public notice to be sufficient cover, similar to other statutory advertisements. It is the NILGA view that the requirement to send a copy of the notice to all premises in the area would be an unnecessary cost. Feedback from local authorities in England is that very few have ever found it worthwhile or effective in terms of costs to the council of declaring an area.

NILGA welcomes the Department's statement that guidance will make it clear that utilising magazines and newspapers will be an acceptable mechanism for notifying premises of the proposed alarm notification areas.

Nomination of Key holders

A DOE code of practice currently exists and this, whilst voluntary, asks for 2 nominated key holders. NILGA would seek an amendment to Clause 49 to refer to at least 2 key holders, but we have serious concern that the process identified for obtaining a nominated key-holder is lengthy and potentially costly.

NILGA welcomes the Department's intention to give further consideration to the nomination of two keyholders, but is concerned that this will not be a statutory requirement, and would request that the Committee revisit this issue.

Fixed Penalties

NILGA welcomes the flexibility within the proposals to enable district councils to set an appropriate rate. The administration burden, particularly in high density urban areas of introducing this new power will be considerable and the suggested amount of a fixed penalty of £75 is not likely to be a sufficient deterrent to encourage compliance. NILGA would highlight that in areas of high density and privately rented housing, it is more difficult to trace responsible persons or obtain landlord details to apply regulatory powers. It would therefore be helpful if there was clarity on whether a council can set rates for different types of premises or for different tenure occupancies within the district. NILGA also believes that it might be useful for incentives to go alongside fixed penalty notices, e.g. costing less if paid during a shorter time period.

There is no indication that the Department considered the above comment

Powers of Entry

NILGA welcomes the powers under Clause 54 in relation to the conditions for the test of whether action can be taken. There is a shift away from proving a noise nuisance to one of 'reasonable cause for annoyance', but would reiterate the need to amend this power to refer to 'audible alarms', rather than 'intruder alarms'.

NILGA would also highlight, the approved Code of Practice on alarms. It would be helpful to have reference made to this code in relation to the requirements for the occupier/ responsible person, in particular around the installation and maintenance of alarms.

Warrant to Enter Premises

NILGA believes, from evidence supplied by district councils, that the application of Clause 55 will add another administrative layer to the abatement of noise. Where an alarm is sounding, particularly at night, the existing procedure used by some councils works effectively, whereby a nuisance is established and works are carried out in default to silence the alarm. The requirement of seeking a warrant from a lay magistrate during the night for this offence may be difficult and we would seek clarity on the process for this. It is the experience of local government that entering premises to silence an alarm has only ever been required in the early hours of the morning as day time alarms are often resolved.

NILGA believes that it should not be required to obtain a warrant to enable councils to apply this clause if an alarm can be silenced from an alarm box mounted externally on the wall of the property. To silence an alarm box on the outside still requires entrance to the property boundary and execution of works but does not require forced entrance internally to the property.

There is no indication that the Department considered the above comments.

PART 6, Chapter 2: Amendments to the Noise Act 1996

NILGA broadly welcomes this introduction of the power, noting that to date only Belfast City Council has implemented the provisions of the Noise Act 1996, which it has found to be an effective tool in addressing night time noise. Belfast provides a dedicated out of hours Night Time noise service (NTNS), responding to almost over 6000 noise complaints a year, the majority of which are dealt with by the NTNS. The additional tools available under the Noise act and subsequently under the Clean Neighbourhood and Environment Act are therefore welcomed, and it is noted that investigation after hours remains a discretionary function.

Given the experience of Belfast, which has used the £100 penalty since 2000, NILGA would support the ability of councils to determine a fixed penalty rate over the specified £100, should they deem this appropriate, as £100 is not a deterrent in all cases.

NILGA is deeply concerned that although the ability to retain sums from fixed penalties to exercise the duties under the Act, it is unlikely that this will in any way address the costs of providing a service and the additional costs of extending the powers and duties under this part of the Act or in relation to any of the additional noise duties. We would request that the Department explore options for greater resourcing for these proposals to ensure that the burden for covering the cost of this new activity is not borne by ratepayers.

It is the local government experience that in the main, noise issues between neighbours are often resolved through informal warnings, both verbal and written, negating the need to pursue a more formal route. Our view is that this is the most sustainable solution to resolving complaints and that warnings are an effective deterrent. Therefore even with additional powers to extend to licensed premises etc., it is unlikely there will be significant income from the use of fixed penalties to assist in providing the level of service and responding to complaints.

NILGA notes that the provision of the noise act powers are extended to cover premises with an exhibition, entertainment, liquor or any form of licensed premises including clubs. The provisions also cover premises where meals and refreshments are served, therefore include restaurants etc. This is a welcome extension and provides an additional tool to responding to complaints.

The Noise Act allows for a warning period to be given to the offending premises before a more formal route is taken and we note this is extended to the premises listed above. This should allow that in most cases a warning period resolves a situation and the service of a fixed penalty would only be necessary when corrective action is not taken within the specified time. We also note that the fixed penalty is set at £500. NILGA would recommend that the department reviews this level regularly in consultation with councils, as there is no provision for councils to consider setting a level.

NILGA would highlight to the department that councils currently have powers under the Local Government (Miscellaneous Provisions) Northern Ireland Order 1985 for the administration of entertainment licensing and enabling councils to deal with issues of unreasonable noise emanating from relevant premises. NILGA would recommend that the department examines any

potential duplication in regulatory burden to relevant premises due the extension of the Noise Act 1996 and Clause 60 to premises which are subject to an entertainments licence.

In Northern Ireland, district council officers with responsibilities for entertainments licensing and matters of noise work closely together to ensure a joined-up approach where necessary in trying to reduce the impacts of noise and noise breakout to neighbouring premises. Issues of noise and associated breaches by entertainment venues are a material consideration for councils when making determinations on future licensing applications.

There is no indication that the Department considered the above comments

PART 7: Statutory Nuisances

Statutory Nuisance and Noise in the Street

NILGA notes that under Part 7, a number of Articles of the Pollution Control and Local Government (NI) Order 1978 will be repealed. These articles are relevant to the applications of powers to deal with noise and the changes will result in a need to revise local government applications and procedures; however the same powers are contained within the new Act.

The additional duties and powers to deal with noise caused by a Vehicle, Machinery or Equipment in the street under section 64 and schedule 2, 3 (B) is also noted. Experience of councils in England and Wales is that new procedures will need to be put in place in relation to the application of this power as often they result in councils carrying out work in default, e.g. silencing a car alarm by forcing entry then securing the vehicle or having it removed to a secure other location. To exercise such powers will incur considerable additional cost to councils, and should be appropriately resourced, yet there appears to be no process for doing so. NILGA would therefore urge the department to consider this as a 'new burden'.

NILGA would encourage the department to provide clarity on the interpretation of definitions, in that they allow and include action for loudspeakers not used for advertising, radios and buskers playing musical instruments.

NILGA welcomes the extension of the list of statutory nuisances to include artificial light and nuisance caused by insects. Many complaints however are received by councils with regard to nuisances arising from pigeons, particularly in relation to vacant urban premises. NILGA would suggest that a specific category of nuisance is included under Clause 61 relating to "...any premises providing harbourage for pigeons so as to be prejudicial to health or a nuisance".

NILGA notes the Department's response to the issue of pigeons. We would request that the Committee considers the suggestion that a specific category of nuisance is included under Clause 61 relating to "...any premises providing harbourage for pigeons so as to be prejudicial to health or a nuisance".

Although the proposed statutory nuisance definition has been in existence in England and Wales, by virtue of the Environmental Protection Act 1990, councils would not normally have used this power to deal with nuisances of a structural nature in dwelling houses. Structural defects, particularly in privately rented property, would normally be dealt with under the Housing Act 2004 (formally the Housing Act 1995). Therefore this limb of the statutory nuisance procedure has not yet been widely tested.

NILGA welcomes the continuation of the obligation under the Public Health Act for Councils to inspect their districts for statutory nuisances. NILGA also welcomes the streamlining and updating of the nuisance abatement procedure and the re-enactment that, where a nuisance arises due to a defect of a structural character, an abatement notice must be served on the owner of the premises. Under s2 of the Public Health (Ireland) Act 1878 the word "Owner" includes the person receiving the rack rent of the property. This allows the majority of abatement notices to be served on rent agents. This definition of owner has been included in the draft Bill under Clause 66(9) in relation to expenses recoverable from owners of premises but does not appear to include Clause 63. NILGA would therefore recommend that the definition of "owner", as set out in Clause 66(9), be applied to the rest of the Bill to ensure that this important element of the statutory nuisance procedure is retained.

NILGA notes the Department's response to the issue of definition of owner. We would request that the Committee considers application of the Clause 66(9) definition of 'owner', to the rest of the Bill.

NILGA welcomes Clause 65(5) which allows the district council to ensure that, in any circumstances, it can take action to abate a nuisance if necessary. We also welcome the extended powers of entry detailed in Schedule 2 which are consistent with local government powers to abate nuisances.

NILGA would welcome the inclusion in the Bill of prescribed forms to provide clarity and to deliver uniformity across councils whilst ensuring compliance with the European Services Directive. We would be keen to ensure that councils are involved in the design of these forms and would recommend that the department contacts the local government Chief Environmental Health Officers' Group to ensure there is dialogue on this issue.

There is no indication that the Department considered the above comments

Expenses recoverable from Owner to be a charge on the premises

Expenses incurred by a district council in abating a nuisance should be recoverable from the person responsible for the nuisance or from the owner of the property. NILGA therefore welcomes the provision in Clause 66 that expenses thus incurred will become a charge on the property and will attract an appropriate rate of interest.

We welcome the ability to serve a notice for the payment of expenses and to add reasonable interest rate, noting the right to appeal through the court. We also agree with and welcome the provision to allow recoverable expenses to be paid in instalments.

REGULATORY IMPACT ASSESSMENT

- The finances of local government in Northern Ireland are increasingly constrained. While the proposals are welcomed consideration must be given to financially compensating Councils for any potential costs in terms of application, investigative and enforcement activity associated with new powers.
- The ability of Councils to use fixed penalty receipts is welcomed but it is extremely unlikely to fully fund the new powers.
- The proposal regarding removal notices for fly posters is exceptionally unwieldy and costly, and NILGA would strongly encourage further discussion with local government on this particular issue.

Northern Ireland Tourist Board (NITB) Submission to the Clean Neighbourhoods and Environment Bill

Mr Sean McCann
Assistant Clerk
Environment Committee,
Parliament Buildings, Room 247

Belfast
BT4 3XX

Dear Mr McCann

Thank you for your letter of 2nd July, on behalf of the Environment Committee, inviting written evidence from NITB for consideration by the Committee in its scrutiny of the Clean Neighbourhoods and Environment Bill.

NITB has been kept advised of the Bill and had previously made its views known to DETI. Our principal response at the time recognised the importance of providing a welcoming environment for all visitors and the fact that it was essential that we work together to protect the natural beauty and built heritage of Northern Ireland, including the reduction of litter, graffiti and dog fouling. These issues have been addressed in the current Bill.

NITB has no further comments to add.

Thank you for giving us the opportunity to comment.

Yours sincerely

Alan Clarke
Chief Executive NI Tourist Board
19 August 2010

Police Service of Northern Ireland (PSNI) Submission to the Clean Neighbourhoods and Environment Bill

From: comsec1@psni.pnn.police.uk
Sent: 13 August 2010 10:37

To: McCann, Sean

**Subject: 1.Not Protectively Marked-All Networks:: CLEAN
NEIGHBOURHOODS AND ENVIRONMENT BILL COMSEC 10\4644**

Mr McCann,

Thank you for sight of bill and your letter dated 2 July 2010.

Please note PSNI have no comment to make as it will have no impact on the PSNI Estate.

Kind regards

Karen Donald

Command Secretariat
PSNI HQ, Brooklyn, 65 Knock Road, Belfast, BT5 6LE

Ext: 20126 Tel: 02890700026
Email: Karen.Donald@psni.pnn.police.uk

Pubs of Ulster Submission to the Clean Neighbourhoods and Environment Bill

Background

Founded in 1872, Pubs of Ulster is the trading name of the Federation of the Retail Licensed Trade NI and is the professional body of the Retail Licensed Trade in Northern Ireland. With membership consisting of pubs, bars, café-bars, restaurants and hotels that offer the complete customer experience.

Pubs of Ulster is also at the forefront in promoting the Responsible Retailing of Alcohol. We recognise that there is a moral responsibility to ensure that alcohol is sold and consumed in a responsible manner, in addition to the legal requirements that come with a Liquor Licence.

With Pub property rates based on their turnover, pubs pay on average 30% higher rates than any other commercial property in the same location, meaning pubs pay a substantial Social Levy within their rates. It is also worth noting that pubs are the only licensed retailers who pay this Social Levy, despite the fact that pubs only sell c25% of the alcohol in Northern Ireland.

The Licensed Trade in Northern Ireland is estimated to contribute c.£1 Billion to the Northern Ireland economy every year, employing over c.34,000* people. (*PricewaterhouseCoopers)

The Pub Trade makes an important contribution to the Northern Ireland Tourism product, with visiting a pub rated as the most popular activity for visitors to Northern Ireland (c80%*). Pubs are also rated as the most popular place to eat (c70%*). In fact, a third (33%*) of the overall money spent by tourists in a year goes on food and drink, even more than is spent on bed and board! (*Northern Ireland Tourist Board)

The DHSSPS estimates that local pubs contribute c.£2 Million annually into Northern Ireland Arts, Sports and Charity.

Pubs of Ulster supports the aims and objectives of the Minister and the Northern Ireland Assembly Environment Committee and welcomes the Clean Neighbourhoods & Environment Bill. To improve and strengthening existing legislation to deal more effectively with problems associated with local environmental quality.

However with a large proportion of our membership consisting of small locally owned independent businesses, Pubs of Ulster have concerns as to the impact some of the proposals would have to the commercial viability of our members businesses if no cost effective alternative is put in place, namely:

- Penalty notices for fly-posting
- Controls on free distribution of printed material

Pubs of Ulster fully support the control of both illegal fly-posting and the irresponsible distribution of printed material. We agree that such activity adversely impacts on the quality of local environments and the overall quality of life for its residents and users.

However given that both these methods often provide the only way a small business can afford to advertise and the resulting economic impact in the loss of jobs and income. We would seek an amendment to the proposed bill, namely:

- With regard to Fly-posting, District Councils are required to provide legal poster sites on which small local businesses can advertise for a not for profit fee, which covers the operational cost to the Council. But that would allow an alternative to the normal commercial sites which are well beyond the means of a local small business.
- The proposals with regard to the distribution of printed material are amended to specify a nominal fee for a licence to distribute printed material. Supported by strict conditions and controls that ensure all licence holders are required to cleanse all discarded material immediately. Backed by financial penalties and the loss of their distribution licence should they fail to comply with any of the conditions.

Pubs of Ulster is also concerned at the lack of consultation with the business community with regard to these proposals and the subsequent lack of balance within the responses. In particular there has been no consultation with the small business sector and their representative bodies, both within and outside our own sector, despite the fact that these proposals will have severe consequences on the sustainability of their businesses.

Countryside Alliance Submission to the Clean Neighbourhoods and Environment Bill

6th August 2010

The Committee Clerk
Room 247
Ballymiscaw
Parliament Buildings
Belfast
BT4 3XX



Dear Sir/Madam

Ref: Clean Neighbourhoods and Environment Bill – Call for Evidence

Countryside Alliance Ireland welcomes the opportunity to respond to the Committee for the Environment's public notice to receive comments on the proposed Clean Neighbourhoods and Environment Bill.

There are many aspects of the Bill which we welcome and fully support. However, we would like to express our concerns in relation to Part 5 of the Bill. We believe that evidence from the Kennel Club has shown that when the power has been devolved to local councils they have a tendency to bring draconian laws into force that will not benefit the local communities or their dogs.

Clause 38 Power to make dog control orders

Dog fouling

- We support the introduction, use and promotion of this order as a basic principle of responsible dog ownership.

Dogs on leads

- We believe the 'dogs on leads by direction' order provides adequate powers for the control of dogs in public places. However, we support the use of this order only in very limited circumstances for example in cemeteries. Where this order is used, alternative off-lead access must be made available for dog walkers to balance the needs of all access users.

Dog exclusions

- We oppose the use of dog exclusion orders in most cases except where this is absolutely necessary for example "to ensure compliance with European nature conservation regulations".

Maximum number of dogs to be walked by one person

- We oppose the use of these orders which we consider to be arbitrary and not pragmatic.

Countryside Alliance Ireland understands the need to regulate professional dog walkers which provided the original impetus for this order. However, we believe the other orders introduced under this Bill are adequate to deal with the potential negative consequences of professionals walking a large number of dogs and would instead suggest establishing a permit scheme/licensing system to help regulate this group.

./././ cont'd

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Countryside Alliance Ireland suggested amendments:

Based upon our experience and information we have received from other organisations we believe that the following amendments are necessary and would greatly improve practical implementation on the ground:

1. Introduction of a **right of appeal** following public consultation. This is an absolute necessity to ensure a fair process is followed taking into account the needs of all access users and that any failings in the process may be challenged and addressed.
2. Requirement on local authorities to **consult widely** through a variety of channels, as well as placing public notices in local newspapers. For example, consulting with wardens from the areas affected by the proposals, consultation with local dog training clubs, Countryside Alliance Ireland, the Kennel Club and other stakeholder organisations and groups.
3. Requirement on local authorities to **specify land** to which the order shall apply, in order that meaningful public consultation can take place. It is impossible to run a meaningful consultation without first identifying the land to which proposed access restrictions would apply.
4. Requirement on local authorities to **report restrictions made to monitoring body** e.g. NIEA to enable record to be kept and subsequent monitoring. In England & Wales nobody is responsible for recording restrictions (except where these affect land covered under the CROW Act) making it impossible to monitor the overall provision of publicly accessible land for dog walkers.
5. Requirement for authorised officers tasked with enforcing legislation to hold or **undergo training in dog behaviour** enabling them to adequately determine when to use the 'dogs on leads by direction' order. As in the Control of Dogs (Scotland) Act 2010: *"the person is skilled in the control of dogs and has the capacity to instruct and advise others in matters relating to the control of dogs."* This would ensure the orders are enforced to an agreed standard.

I hope you find our comments constructive. If you require any further information please do not hesitate to contact us.

Yours sincerely



LYALL PLANT
Chief Executive

Appendix 4

List of Witnesses

List of witnesses who gave Evidence to the Committee

Mr Robert Gray, Department of the Environment

Mr Jackie Lambe, Department of the Environment

Mr Denis McMahon, Department of the Environment

Ms Suzie Cave, Assembly Research and Library Service

Mr Colin Neill, Pubs of Ulster

Mr Seamus Donaghy, Northern Ireland Local Government Association

Ms Vivienne Donnelly, Northern Ireland Local Government Association

Mr Donal McLaughlin, Northern Ireland Local Government Association

Ms Karen Smyth, Northern Ireland Local Government Association

Mr Chris Allen, Northern Ireland Environmental Quality Forum

Dr Ian Humphreys, Northern Ireland Environmental Quality Forum

Ms Elaine Conway, Children in Northern Ireland

Dr Linda Moore, Children's Law Centre

Ms Jacqueline O'Loughlin, PlayBoard

Ms Koulla Yiasouma, Include Youth

Appendix 5

Research Papers Requested by the Committee



Research and Library Service
Briefing Paper

27 September 2010 NIAR 000-00

Suzie Cave

Clean Neighbourhoods and Environment Bill

This paper looks at the draft Clean Neighbourhoods and Environment Bill by comparing it with legislation and similar provisions in other jurisdictions such as England and Wales, and the Republic of Ireland. It also looks at possible areas of contention in relation to the responses to the consultation exercise. Finally it considers possible lessons from the implementation of the Clean Neighbourhoods and Environment Act (2005) in England and Wales.

Paper XX/XX xx xxxxxxxx 2010

Key Points

- The Bill the Bill tries to strengthen the laws to enable district councils to deal more effectively with a wide range of low-level environmental crime issues. It received its introduction in the Assembly in June and its Second Stage at the end of June.
- The draft Bill is based on corresponding provisions in the Clean Neighbourhoods Act 2005 for England and Wales (CNEA) in relation to vehicles; litter; fly-posting; graffiti; controls on dogs; noise; and various miscellaneous issues including fixed penalty receipts and statutory nuisances.
- There is not one sole piece of legislation in the Republic of Ireland that reflects the extent of the 2005 Act in the UK - but there are a number of different statutory instruments relating to similar issues
- The Department states that the Northern Ireland Bill is amidst a very tight legislative timetable, and that it may not be possible to bring forward additional new provisions. The concern is that it would delay the progress on the Bill through the Assembly and becoming law before dissolution of the Assembly
- One of the major areas of the Bill is the provision surrounding alley gating. Similar legislation exists in England and Wales, but not in the Republic of Ireland.
- provisions will give district councils new powers to make "gating orders" to deal with problem alleyways, subject to approval from the Department for Regional Development. An issue is the exclusion of 'unadopted' back alleyways from the legislation, which are not classed as 'roads' by DRD.
- Concerns have also been expressed on the restriction of the Bill in relation to nuisance parking, and the fact that the Bill does not have provisions to deal with parking on footpaths.

In relation to the 2005 Act in England and Wales:

- almost four years on from its implementation, there are still questions as to whether local authorities are fully utilising these new powers. There are still problems with smoking litter, especially since the indoor smoking ban; the remains and stains of discarded chewing gum; and unintentional littering.

Executive Summary

The Bill is largely based on legislation that is already in force in England and Wales, namely the Clean Neighbourhoods and Environment Act 2005. A consultation exercise on the Bill was completed at the end of April this year. Basically, the Bill tries to strengthen the laws to enable

district councils to deal more effectively with a wide range of low-level environmental crime issues. As a complete package, the Bill is substantial and important legislation and means something to people on the street who recognise that those issues degrade their local neighbourhoods.

The Bill is designed to help district councils to deal with those issues more effectively. It deals with litter, fly-posting and graffiti, dog control issues, noise nuisance issues, statutory nuisance issues, gating orders, nuisance parking and abandoned vehicles, and even abandoned shopping trolleys. It also gives councils a greater remit to issue fixed penalty notices as an alternative to prosecution.

While provisions in the Bill closely mirror those in the 2005 Clean Neighbourhoods and Environment Bill in England and Wales, the case in the Republic of Ireland is different. There is not one sole piece of legislation, similar issues are covered under: Protection of Environment Act 2003, The Waste Management Act 1996, The Waste Management (Amendment) Act 2001, Waste Management (Landfill Levy) Order 2008, Litter Pollution Act 1997, as amended by the Waste Management (Amendment) Act 2001, and the Protection of the Environment Act 2003.

A number of concerns were raised during the consultation process and these have been in relation to the amount of guidance that is required to give further detail on provisions at a later date; where or who funding will come from for local councils in relation to gating alleyways, nuisance parking of footpaths. In relation to the 2005 Act in England and Wales, almost four years on from its implementation, there are still questions as to whether local authorities are fully utilising these new powers. There are still problems with smoking litter, especially since the indoor smoking ban; the remains and stains of discarded chewing gum; and unintentional littering.

The Bill received its introduction in the Assembly in June, its Second Stage at the end of June and is now with the Environment Committee.

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1 Introduction

On the 1st of March 2010, the Department of the Environment released the draft Clean Neighbourhoods and Environment Bill for consultation. It received its introduction in the Assembly in June and its Second Stage at the end of June, and is currently at Committee Stage.

The aim of the NI Clean Neighbourhoods and Environment Bill (CNEB) is to give district councils a range of powers to assist them in managing their local environments in an efficient and effective manner which reaches the expectations of the public. If legislated and implemented in an effective way, the new powers should lead to significant improvements in environmental conditions in local neighbourhoods and, consequently, in the quality of people's lives. In addition, clean, safe and green neighbourhoods should encourage the generation of economic investment and tourism, and attract people to live, work and socialise in the community. Businesses also have a role to play in supporting the environment in practicing corporate social responsibility, and helping to maintain the quality of the local environment.

The CNEB aims to introduce tougher, clearer, and more flexible powers to facilitate district councils, in comparison to the ones that currently exist, to deal with irresponsible individuals and specific nuisances.

The draft Bill is based on corresponding provisions in the Clean Neighbourhoods Act 2005 for England and Wales (CNEA) in relation to vehicles; litter; fly-posting; graffiti; controls on dogs; noise; and various miscellaneous issues including fixed penalty receipts and statutory nuisances. In England and Wales, provisions concerning graffiti and other defacement and some provisions concerning noise are also based on corresponding provisions in the Anti-social Behaviour Act 2003, as amended by the Clean Neighbourhoods and Environment Act 2005.

The Northern Ireland Office has conducted similar work in relation to community safety in October 2008 entitled "Together. Stronger. Safer"^[1]. The consultation document focused on three cross-cutting themes: creating safer neighbourhoods; building strong, confident communities; and the importance of families and young people. Responses to the consultation document were reported on in July 2009, which provided a strong backbone of information to help formulate provisions in the proposed Clean Neighbourhoods and Environment Bill.^[2]

For detail on the individual clauses of the Clean Neighbourhoods and Environment Bill for Northern Ireland, see the EFM produced by the Department of the Environment: http://archive.niassembly.gov.uk/legislation/primary/2009/niabill31_09_efm.htm

For a brief summary of the issues covered in the Bill see: [http://minutes.belfastcity.gov.uk/Published/C00000317/M00009689/AI00008943/\\$Appendix1DraftCleanNeighbourhoodsandEnvironmentBill.docA.ps.pdf](http://minutes.belfastcity.gov.uk/Published/C00000317/M00009689/AI00008943/$Appendix1DraftCleanNeighbourhoodsandEnvironmentBill.docA.ps.pdf)

2 Comparison with other Jurisdictions

CNEB (NI):

The Bill has a total of seventy six clauses and four Schedules. The Bill is split into eight different parts:

Part 1: Gating Orders

Part 2: Vehicles

Part 3: Litter

Part 4: Graffiti and Other Defacement

Part 5: Dogs

Part 6: Noise

Part 7: Statutory Nuisances

Part 8: Miscellaneous and Supplementary.

CNEA (England and Wales) (2005):

Areas covered by the Act include: -

1. Abandoned and Nuisance Vehicles
2. Litter and Refuse
3. Defacement (graffiti and fly-posting)
4. Waste
5. Dog Control Orders
6. Noise
7. Statutory Nuisance (light and insects)
8. Abandoned trolley

ROI

Legislation in regards to Environment and Clean Neighbourhoods provisions there is not one sole piece of legislation that reflects the extent of the 2005 Act in the UK - but there are a number of different statutory instruments relating to similar issues which are covered under:

- The Protection of Environment Act 2003[3]
- The Waste Management Act 1996[4]
- The Waste Management (Amendment) Act 2001[5]
- Waste Management (Landfill Levy) Order 2008[6]
- Litter Pollution Act 1997[7], as amended by the Waste Management (Amendment) Act 2001 and the Protection of the Environment Act 2003

Comparison across Jurisdictions

Areas	CNEA 2005 (England and Wales)	CNEB (Northern Ireland)	Environment and Clean Neighbourhoods Provisions in the ROI
Alley Gating	Section 1: Crime and Disorder The Act requires that local Crime and Disorder Reduction partnerships take anti-social behaviour affecting local government into account within crime and disorder reduction strategies. Local authorities have powers to gate nuisance alleyways.	Part 1: Gating Orders Proposals within this part of the Bill aim to amend the Roads (Northern Ireland) Order 1993 by introducing new gating order provisions, to make the existing procedure for closing off nuisance back alleys more effective. Such provisions will give district councils new powers to make "gating orders" to deal with problem alleyways, subject to approval from the Department for Regional Development ⁸ .	Having been in touch with the Oireachtas, there does not appear to be any similar provisions for alley gating in existing legislation.
Vehicles	The Act amends the 1978 Disposal Amenities Act. Local authorities have power to remove abandoned cars immediately. Two further offences were established helping local authorities to deal with nuisance parking: (i) Offering for sale two or more vehicles is an offence (ii) Repairing a vehicle on the road as part of business.	Part 2 of the Bill will make it an offence to offer for sale two or more vehicles; or repair a vehicle on the road as part of a business, and gives a district council the power to issue a fixed penalty notice to offenders (the amount specified is £100, which may be altered at the discretion of the district council) ⁹ .	Waste Management Act 1996 s71 Section 71: Abandoned vehicles. This makes it illegal to abandon a vehicle on any land. The registered owner and/ or the person who placed the vehicle there can each be guilty of an offence. ¹⁰ Road Traffic (Removal, Storage and Disposal of Vehicles) Regulations 1983 Part II: Removal and Storage of Abandoned Vehicles: Any vehicles

Areas	CNEA 2005 (England and Wales)	CNEB (Northern Ireland)	Environment and Clean Neighbourhoods Provisions in the ROI
Litter	<p>Act extends offence of dropping litter to all land, including private land and rivers, ponds and lakes.</p> <p>Local authorities: • have new powers in the form of Litter Clearing Notices, which require businesses and individuals to remove litter from their land. • have stronger powers to require local businesses clear up litter generated through Street Litter Control Notices. • can restrict distribution of flyers, handouts and pamphlets. Definition of litter extends to cigarette butts, cigars and chewing gum.¹² Abandoned trolleys: This is dealt with under the Miscellaneous Section 10 of the 2005 Act: Local authorities have the power to recover the costs of dealing with abandoned shopping trolleys from their owners.</p>	<p>Part 3: • Makes it an offence to drop litter in a lake, pond or watercourse; • Strengthens provisions in respect of failing to provide name and address; • Gives Councils new powers (litter clearing notices) to require businesses and individuals to clear litter from their land; • Strengthens existing powers for Councils to require local businesses to help clear up litter they generate (street litter control notices); and • Enables Councils to restrict the distribution of flyers, hand-outs and pamphlets that can end up as litter.</p> <p>Abandoned shopping and luggage trolleys: In order to encourage the recovery of abandoned trolleys, the NI Bill will give district councils the power to regain the costs of recovery from the trolley owners.</p>	<p>abandoned on a public road or car park may be removed by the road authority. Unlawfully parked cars: An illegally parked car may be removed by or on request of a member of the Garda Síochána or the road authority.¹¹</p> <p>Litter Pollution Act 1997¹³, as amended by the Waste Management (Amendment) Act 2001 and the Protection of the Environment Act 2003 This provides new powers and duties to local authorities in regards to litter and fly tipping: Section 24 provides that leaving or throwing litter in a public place is an offence subject to an “on the spot fine” of €150 and maximum fine of €3,000 on conviction in the District Court. Council cost/expenses paid by the convicted. The definition of litter is widened to anything large or small that is likely to become unsightly. In regards to fly-tipping, the onus is upon the person whose name and address are located within fly tipped rubbish to prove they are not responsible for the litter. Section 6: • Business owners have an obligation to clean up litter that is in front of or surrounding their premises (car parks) despite how the litter got there</p> <p>• Provides that commercial and residential occupiers of premises along a public road where there is a speed limit must keep the</p>
Litter (continued)			

Areas	CNEA 2005 (England and Wales)	CNEB (Northern Ireland)	<p>Environment and Clean Neighbourhoods Provisions in the ROI</p> <p>footpath outside their premises free from litter. • Prohibits persons from depositing any substance or object onto a roadway which would constitute as litter. This is to prevent people from transferring litter from the front of their premises onto the public road. The Act also empowers local authorities to make general bye laws:</p> <ul style="list-style-type: none"> • requiring occupiers of specified premises to take measures limiting the creation of litter and provide for its removal, or • requiring that promoters of events attended by large numbers do the same (Sections 17 and 18)
Graffiti and Defacement	<p>Graffiti and Fly-Posting • The Act extends graffiti removal notices to include fly-posting. • Local authorities have greater powers to tackle sale of spray paint to minors • The Act clarifies that all beneficiaries of fly-posting can face prosecution. • Local Authorities can recover the costs for removing illegal posters. The Act (section 33) removes the obligation for a local authority to prove that the person consented to the display of an advertisement in contravention of the regulations; This makes it more difficult for the beneficiaries of fly posting to avoid prosecution by simply claiming they never consented to the advertisement.</p>	<p>Part 4: • Gives councils the ability to issue fixed penalty notices to graffiti and fly-posting offenders; • Enables councils to serve "defacement removal notices" in respect of graffiti and fly-posting; • Makes it an offence to sell spray paints to children; • Makes it an offence to unlawfully display advertisements • Strengthens the legislation to make it harder for beneficiaries of fly-posting to evade prosecution.</p>	<p>Posters and Advertisements: Section 19 of the Litter Pollution Act prohibits signs being placed on structures (land, doors, gates, windows, trees, poles or posts) visible from a public place, unless written permission is given in advance from the owner or occupier. Graffiti Litter Pollution Act 1997: Section 19 makes it an offence to deface property without written consent from the owner/ occupier/person in charge. A local authority may enter and take the necessary remedial action.</p>

Areas	CNEA 2005 (England and Wales)	CNEB (Northern Ireland)	Environment and Clean Neighbourhoods Provisions in the ROI
Graffiti and Defacement (continued)			<p>Section 20 enables a local authority to take action on graffiti, by serving a notice on the occupier requiring steps to remove/ remedy the defacement within a specified period of not less than seven days. The local authority may give effect to the notice and recover costs. The local authority may also by arrangement with the occupier take steps to remedy the defacement. Penalties under the litter Acts range from an on-the-spot fine of €125 to a fine, on summary conviction, not exceeding €3,000 or, on indictment, a fine not exceeding €130,000. The Criminal Damage Act 1991: provides for the offences of damaging or defacing property. When gardaí detect such offences, culprits are processed through the courts or via the juvenile liaison system, as appropriate.</p>
Waste	<p>Part 5 of the Act provides measures to improve the ability of local authorities to deal with fly-tipping, including:</p> <ul style="list-style-type: none"> • removing the defence of acting under instructions of employer; • increasing maximum penalties; • Local Authorities and Environment Agency have power to recover the costs of investigation and clear-up; and • Provisions extended to the landowner to clear up where there is no occupier. Local Authorities and the Environment Agency have power to 	<p>In NI, all powers concerning waste are dealt with under the Waste (Amendment) (Northern Ireland) Order 2007 which is already in action.</p>	<p>Local Government Act 200114 and regulations made under the Waste Management Acts, 1996 to 2008, local authorities are provided with the power to make Bye laws governing the storage, presentation, segregation and collection of household waste within their area. These bye-laws include issues regulating that:</p> <ul style="list-style-type: none"> • Waste is stored in appropriate container or bin • Waste segregated at source according to collection service provided. • Waste will be presented to the collector in a proper manner. • There are

Areas	CNEA 2005 (England and Wales)	CNEB (Northern Ireland)	Environment and Clean Neighbourhoods Provisions in the ROI
	<p>issue fixed penalty notices to the following: • Businesses who fail to produce waste transfer notes • Waste carriers that fail to produce registration details or evidence that they do not need to be registered. • Waste left out on streets outside specified collection times • Local Authorities have power to retain receipts from such penalties</p>		<p>enforcement provisions in the case of non-compliance. Section 67 provides that Local Government is to “do such things as is necessary or desirable to promote the interests of the local community.” This is defined in the Act as including civic improvements, general environmental and heritage protection and improvement and the promotion of public safety. Section 71 of the Act further provides that there be “a unified local government service provided” alongside</p>
Waste (continued)	<p>More effective systems for stop, search and seizure of vehicles used in illegal waste disposal; enabling courts to require forfeiture of vehicles. Act establishes a new provision covering the waste duty of care and registration of waste carriers. There is a requirement for developers to include site waste management plans for construction and demolition projects. Repeals the divestment provisions for waste disposal functions – giving local authorities greater flexibility to deliver waste management services in the most sustainable way. Reform of recycling credits scheme to provide increased local flexibility and provide incentives for more sustainable waste management.</p>		<p>improving “customer service to the public generally.”¹⁵</p>

Areas	CNEA 2005 (England and Wales)	CNEB (Northern Ireland)	Environment and Clean Neighbourhoods Provisions in the ROI
Dogs	<p>Dogs: A simplified system of Dog Control Orders replaced dog bye laws, and enables local Governments and District Councils to deal with fouling by dogs, banning dogs from designated areas, requiring dogs to be kept on a lead and restricting the number of dogs walked by one person. Local Authorities have sole responsibility for stray dogs (this responsibility had previously been shared between the local authorities and the police)</p> <p>The 2005 Act replaces byelaws with new Dog Control Orders. Offences will include: dog fouling, not keeping dogs on a lead, and taking more than the specified number of dogs on a lead for one person.</p>	<p>Part 5: New arrangements in the Bill will introduce greater control by replacing the local byelaws system with one that is easier to operate by district councils. This includes the introduction of a new system of dog control orders which will enable councils to deal with:</p> <ul style="list-style-type: none"> • dog fouling; • the banning of dogs from designated areas; • the requirement of dogs to be kept on a lead; and • the restriction of the number of dogs that can be walked by one person. 	<p>Dog Control legislation in the Republic of Ireland is established through The Control of Dogs Acts 1986 and 1992¹⁶ and provides that Local Government may make bye laws in regards to the control of dogs within their areas, specifying certain areas where owners must keep their dogs on a leash or where dogs are forbidden. The Act provides that dog owners must remove their pets' waste from public places and dispose of it in the appropriate manner. This obligation applies to:</p> <ul style="list-style-type: none"> • Public roads and footpaths • Areas around shopping centres • School and sport grounds • Beaches • The immediate area surrounding • another person's house • Excessive barking causing a nuisance to any person is an offence. <p>Protection of the Environment Act 2003 - Litter Wardens and Gardai are empowered through the Act to issue on the spot fines for dog related offences.</p>
Noise	<p>Noise Local authorities have stronger powers to: Deal with burglar alarms</p> <p>Impose fixed penalty fines on licensed premises that ignore warnings to reduce excessive noise levels. Local Authorities have greater flexibility in dealing with noise nuisance</p>	<p>The Bill will give district councils the power to deal with nuisance audible intruder alarms, and will extend provisions under the Noise Act 1996 dealing with noise from private premises to include noise from licensed premises. The aim is to provide a solution to noise problems caused by false alarms when the key holder is absent at the time, and when licensed premises</p>	<p>Environmental Protection Agency (EPA) Act, 1992: Any individual person/ local authority may complain to a District Court seeking an Order to deal with the noise nuisance (loud, continuous, repeated, of such pitch or duration or occurring at such times that it gives a person reasonable cause for annoyance). A complainant must notify the offender of their</p>

Areas	CNEA 2005 (England and Wales)	CNEB (Northern Ireland)	Environment and Clean Neighbourhoods Provisions in the ROI
		ignore warnings to lower noise levels. The NI Bill also deals with excessive noise coming from licensed premises	intention to make a formal complaint to the District Court. The District Court can order the person/ body making the noise to reduce it to a specific level, to limit it e.g. to specified times, or to stop it altogether.
Statutory nuisances	Dealt with under Section 10 Miscellaneous: The UK Act deals with nuisance of artificial lighting e.g. from domestic and commercial security lighting, sports facilities, domestic decorative lighting, lazer shows etc. It also deals with nuisance insects coming from all premises other than domestic, to include poultry houses/farms, sewage treatment works etc. Difference: The NI Bill does not have similar provisions for this.	Part 7: Existing law under the Public Health (Ireland) Act 1878 is outdated being 131 years old. Although the legislation has been amended over the years, it has not kept up with development is legislation in other jurisdictions. The Bill will bring provisions relating to the definition of statutory nuisance and the powers given to district councils into line with amendments made in England and Wales under the Clean Neighbourhoods and Environment Act 2005.	
Fixed Penalty Notices	Section2: Fixed Penalty Notices The Act makes greater use of fixed penalties as alternative to prosecution Mostly, the Act provides local authorities with power to set their own rates. Parish Councils have power to issue fixed penalties for litter, graffiti, fly posting and dog offences	Part 8: Miscellaneous and Supplementary The Bill will make greater use of fixed penalty notices as a deterrent and an alternative to court action. District councils will have the power to set their own fixed rates within upper and lower limits determined by the Department. At present, councils can use fixed penalty notices for littering, dog-fouling and some noise offences. In relation to this, the Bill aims to extend the use of fixed penalty notices to offences related to nuisance and abandoned vehicles, litter controls, other dog controls and additional noise controls. The Bill also makes provisions allowing the	

Areas	CNEA 2005 (England and Wales)	CNEB (Northern Ireland)	Environment and Clean Neighbourhoods Provisions in the ROI
Fixed Penalty Notices (continued)		<p>receipts from fixed penalty notices to be retained by Councils and used, for example, for the new functions in relation to audible alarms and noise statutory nuisance.</p> <p>Pollution offences: Amendments are made to the maximum fine in the Magistrates Court which adjusts the value from £30,000 to £50,000 for offences under the Pollution Prevention and Control Regulations (Northern Ireland) 2003, in relation to emissions from specified industrial premises and mobile plants. The increase in the maximum fine falls in line with the maximum stated under the Waste and Contaminated Land (Northern Ireland) Order 1997, in dealing with illegal waste activity, and the 2005 Act in England and Wales.</p>	

[\[8\]](#)[\[9\]](#)[\[10\]](#)[\[11\]](#)[\[12\]](#)[\[13\]](#)[\[14\]](#)[\[15\]](#)[\[16\]](#)

Table Notes:

3 Contentious Areas

A consultation exercise was carried out by the Department of the Environment (the Department) on the proposed CNEB for Northern Ireland. The purpose of the exercise was to invite comments from interested stakeholders. There were 48 responses to the consultation, and according to data from the Department:

- 42% were District Councils;
- 29% were associations/societies or other organisations;
- 12% were members of the public;
- 9% were local representatives;
- 4% were businesses; and
- 4% were from others.

According to the Department, many of the provisions in the draft Bill were welcomed by respondents, while at the same, there were a number of comments and observations concerning the detail and extent of the provisions. This section will look at both recurring issues throughout the Bill, and issues that are related to specific sections.

Tight Legislative Timetable

The Department states that the Northern Ireland Bill is amidst a very tight legislative timetable, and that it may not be possible to bring forward additional new provisions. The concern is that it would delay the progress on the Bill through the Assembly and prevent it becoming law before dissolution of the Assembly. Many of the responses from stakeholders have requested further guidance on issues that they consider are not clearly defined in the Bill. In some cases the Department's response to suggestions made, has been that greater detail will be provided in forthcoming subordinate legislation and guidance. This could also result in delays down the line due to the need for consultation on many pieces of subordinate legislation.

The following table shows suggestions and comments from stakeholders and the response from the Department which highlights:

- the Department's reliance on forthcoming subordinate legislation and guidance, and
- how the tight legislative time timetable is effecting the final content of the Bill, by not being able to add new provisions suggested by stakeholders.

For the purpose of this table, the responses from the Department are categorised into the following:

1. To be dealt with at a later stage through guidance/ subordinate legislation/regulations, subject to a consultation exercise in due course.
2. This is a significant proposal which would require detailed consideration and amendment to the Bill. Given the very tight legislative timetable it is not possible to bring forward significant new provision at this point. The matter will be clarified through guidance/regulations subject to consultation at a later date.

Area of Bill	Consultation Response	Department's Response
Vehicles	Further guidance needed on the provisions under the Street Trading (NI) Act 2001 in relation to the sale of vehicles on a road	Response 1
	Clarification and guidance required on when a vehicle has been abandoned and when it is fit for destruction	Response 1
	Clear guidance is needed on the respective roles and duties of district councils, the PSNI and the Department for Regional Development in relation to abandoned vehicles	Response 1
	Nuisance caused by vehicles parked on the street awaiting repair	Response 2
	Nuisance caused by the parking of taxis where such an operation is run from domestic premises	Response 2

Area of Bill	Consultation Response	Department's Response
Litter	The amendment to the Litter (NI) Order 1994 Article 3 should include dropping litter into water, which would bring NI into line with the CNEA 2005 in England and Wales	Response 1 + Clause 14 of the new CNEB covers the dropping of litter in "any place".
	There was a request for a definitive description of the difference between litter, fly-tipping and illegal dumping	Response 1 + The department is also working with Councils to develop a Fly-tipping Protocol
	Fixed Penalty Notices should be available for failing to provide name and address or providing false details	Response 2 + The Department also noted that Clause 15 of the CNEB increases the fine for such an offence from £200 to £1000
	The Department should set minimum and maximum levels of fines for littering prior to the commencement and implementation of the Bill and should consult on them.	Response 1
	Street Litter Clearing Notices-the definition of 'occupier' needs to be clarified to confirm that it will include persons actively exercising rights over the land.	Response 2
	Request for the Bill to be expanded to include offices, commercial premises, cafes, bars etc to include cigarette litter, needs to be sufficiently broad enough to allow the owner and/or occupier to be served with the notice	Response 1 + The Department intend to amend the Street Litter Control Notices Order (NI) 1995 No 42 (specifies the description of commercial or retail premises) to bring NI into line with England.
	Requests for the abandoned trolley legislation to be extended to include baskets and cages	Response 2
	Councils should be able to designate car parks as 'shopping trolley free zones' during supermarkets' closed hours	Response 2
	Council powers should be extended in respect of all land within its boundaries	Response 2
	Guidance required on what is meant by "the person who is responsible for the defaced surface" and "taking account of local circumstances".	Response 1
Graffiti and Fly-posting	Powers for district councils to deal with any element of land/premises considered to be detrimental of the amenity of an area i.e. to mirror provisions of the Town and Country Planning Act 1990 s215.	Response 2
	District councils to be given powers similar to section 149 of the Highways Act 1980/Article 59 of the Roads (NI) Order 1993 – removal of nuisance from a road.	Response 2
	Introduction of fixed penalty for offence of selling aerosol paint to children	Response 2
	Investigative/enforcement powers for offences of selling aerosol paint to children.	Response 2

Area of Bill	Consultation Response	Department's Response
Dogs	Exemptions should be made from Dog Fouling Orders for Registered Assistance dogs.	Response 1
	The Bill should include some detail about the Dog Control Order consultation process.	Response 1
	The Department will need to consult with district councils on the proposed Regulations associated with dog control orders.	Response 1
Statutory Nuisance	Clarification needed on whether poultry houses/farm buildings on agricultural land are included within the term "relevant industrial trade or business premises"	Response 1
	Guidance should be issued in respect of the new noise and statutory nuisance regime as in England and Wales	Response 1
Gating Orders: Approval Process	Guidance needed on requirements relating to local inquiries and the circumstances under which they must be held, and the element of discretion councils have to determine 'reasonableness' of objections.	DRD states they do not have any guidance on the circumstances an inquiry must be held. It is hoped that objections can be dealt with by correspondence and meetings to avoid an inquiry.
Operational Issues	Unanswered questions around who will open and close gates, the DRD role, the need for neighbourhood approval, access for emergency services or impacts on rights of way. Clear guidance will be required.	Response 1. DRD will contribute.
Clarification on what can be gated	Strict criteria for this must be laid down as residents could make unrealistic demands	DRD's response has no mention of guidance, but further guidance may be required.
	Clarification on the difference between a back street (alley) and a walkway is required to deal with public expectations.	While DRD states that the Bill only provides for gating 'relevant roads' which are defined, guidance may be required.

Partial Regulatory Impact

The Consultation document contained a partial Regulatory Impact Assessment, in which the Department was of the opinion that:

"taken as a whole, the proposals in the Bill would be cost-neutral to district councils. Indeed they could well lead to overall savings in district council costs through increased efficiency and effective, well-publicised, enforcement."^[17]

Respondents to the Consultation exercise have expressed general concerns regarding the perceived cost implications. However, the Department remains of the view that, with having regard to the Full Regulatory Impact Assessment on the corresponding Clean Neighbourhoods and Environment Act 2005, taken as a whole the Bill would be cost-neutral to district Councils. The Department's reasoning behind this is that the Bill provides district councils with additional powers rather than duties. Therefore, district councils will only use these powers when it is considered as a net benefit to doing so in the local context. Where there are new duties e.g. relating to aspects of statutory nuisance and noise nuisance, the Department stresses that it is

not possible to predict the level of complaints in this area, as it is unknown at this stage how often these powers will be utilised. At this stage the Department feels that it should be possible for Councils to deal with these issues through existing and well established structures, not causing any extra expense to councils. The Department intends to draw up a Full Regulatory Impact Assessment in due course.

Equality of Opportunity

Several responses to the consultation exercise from Children's' organisations disagreed with the Department's view, as indicated in the Consultation Document^[18], that the provisions in the Bill do not impact on equality of opportunity. Concerns were expressed about:

- restrictions on children's' movement in relation to Gating Orders and the possibility of issuing fixed penalty notices to children, and the impact of banning the sale of spray paint to children under 16.
- Consideration of Gating Orders on the needs of those who are disabled.
- the consultation process itself and the absence of a formal policy development phase prior to the drawing up of the draft Bill.

A suggestion was also made that many of the issues in the draft Bill should be dealt with through the development of a regional strategy on community safety. All of the 3 children's organisations indicated that the progress of the legislation should be halted.

In response to the children's organisations, the Department emphasised that the main focus of the Bill is to improve the quality of our local environments and neighbourhoods, which in turn will improve the quality of life for all people in NI, including children.

The Department is willing to take a different approach to fixed penalty notices in relation to children and the development of detailed guidance on the issue, which will be subject to further consultation.^[19]

The Department finalises its response by stating that it does not accept that the Bill has a significant negative impact on equality of opportunity on any of the groups specified in section 75 of the Northern Ireland Act 1998^[20]. Unfortunately, until further guidance is consulted on, this issue may remain inconclusive.

Gating Orders

Concerns were expressed amongst respondents in relation to the funding of the process. Under its Alley-Gating Scheme, Belfast City Council states that a gate for an average sized alleyway costs around £3000. The Council explains that the cost is high due to the specifications needed for the gates to be certified as being safe and fit for their purpose. The cost includes:^[21]

DRD Road Service – Consent Costs: This covers the cost of repairing the surfaces of the entry if work is not carried out to a satisfactory standard. The minimum fee, set by the Roads Service, is £300 per gate. This is refunded if an inspection six months after installation of the gates finds the entry surfaces in satisfactory condition.

DRD Engineering / Technical Costs: DRD Guidance requires the gates to be checked by a Chartered Civil/Structural Engineer and certified as safe and fit for purpose.

Keys: Each resident, the emergency services and other service providers need keys to access the alleyway. The keys needed are specialised security keys which can only be cut under license.

Additional Security: Costs may also be necessary for additional work to secure, improve or build up the surrounding fencing or walls to secure the entry.

Insurance: It is necessary to obtain insurance for the gates in the event of compensation claims arising from accidents that occur through usage of the gate.

Maintenance: Belfast City Council has estimated that the cost of maintaining the gates will be approximately £130 per gate per year. This may include: hinge condition, replacement of locks, spraying and painting. The council notes that if communities follow the manual guidelines,^[22] and they provide and install gates to the Council's specifications, they can apply to the Council who may assume long-term responsibility for maintenance and insurance.

DRD states in its response that it does not have any budgetary allocation for alley gating schemes. According to DRD, in 2002, the Minister at the time announced that funding for such schemes would lie with the local community to obtain before the scheme would advance. DRD also states that since funding is a matter for district councils, resourcing of the scheme would have to be taken forward by DOE and DFP.

During discussion of the CNEB by the Committee for Regional Development in September 2010, DRD explained that the legislation will restrict access to alleys and will not permanently extinguish a right of way. This is because the legislation deals with roads only. In some cases these may be the sole means of access to premises/dwellings/businesses, in which case gating would only take place during times when businesses etc will not be affected. During the discussion it was established that unadopted alleys are not covered by the legislation as DRD is not responsible for back alleys that are not roads. In these circumstances it is up to the owner of the premises running along the back of an alley and the owner of the alley to reach an agreement.^[23]

Graffiti and Fly-posting

It is worth noting that a number of responders suggested that District Councils should be given responsibility for taking prosecutions in respect of fly-posting offences. In agreement with this, the Department has said that it will include an amendment to the Bill during its progress through the Assembly to ensure that Planning Service powers to prosecute, both against the perpetrators and the beneficiaries, are made available to District Councils.

In England, ASBOs have been used to threaten imprisonment to those running commercial fly-posting operations. For example, Camden became fly posting free due to an ASBO conviction against the area's main perpetrator, Tim Horrox, MD of Diabolical Liberties.^[24] However, according to the Northern Ireland Environment Link (NIEL),^[25] this has been aided by section 1 of the CNEA, 'Crime and disorder reduction strategies'. This allows for strategies (such as ASBOs) to be applied to 'anti-social and other behaviour adversely affecting the local environment', for which fly posting would fall under.^[26] In their response, NIEL highlights that this is not reproduced in the NI CNEB.

Under this section the Department stated that Clause 38, which requires a period of 2 days notice of a council's intention to remove or obliterate fly-posting or graffiti under Article 18 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, will be completely removed from the Bill^[27]

Some of the responses suggested that district councils should be given the necessary investigative powers to determine the person responsible for displaying a poster or causing it to be displayed. The Department is unclear as to what additional powers would be needed to identify the guilty person in cases where the poster does not display their name.^[28]

A number of concerns were raised in relation to the ban on the sale of aerosol paints, which some felt should be raised from 16 to 18 year olds. According to the Department this would be different from the UK which could lead to confusion amongst businesses and producers of aerosol paints. Also, the Department feels that 16-18 year olds may have legitimate cause for using aerosol paints, such as vehicle and house repair.^[29]

Dogs

The Kennel Club is concerned that provisions unfairly penalise responsible dog owners, and could lead to a major reduction in public access for dog owners. Their chief concern is the lack of a dog control order to require an owner to put their dog on a lead. In their opinion this approach would allow those with control of their dogs the freedom to enjoy off-lead access, whilst ensuring local authorities have the powers to deal with irresponsible owners. According to The Kennel Club, the CNEA (2005) in England and Wales already has provision for this in operation, as they state that it is "one of the most sensible aspects of the Clean Neighbourhoods and Environment Act 2005 in England & Wales."^[30]

Some respondents wish to retain the power to make byelaws in relation to dogs. The Department advises that the current system for making byelaws is very time consuming and unwieldy, and that the Dog Control Order system will be more streamlined and easier for councils to operate. This is an area that will need to be reviewed in due course, as it is not possible to assume how the new system will operate at this stage.

Vehicles

The PSNI suggested a reduction to the period of time before a vehicle can be disposed of under Articles 51 and 52 of the Road Traffic Regulations (NI) Order 1997, from 21 days to 7 days. In agreement with this, the Department has stated that new provisions will be included in the draft Bill to allow for the reduction of the period of time by regulations. This suggests that while the period will be reduced, the amount of reduction is not certain until a consultation exercise has been completed on the proposed regulations.

During a briefing from DRD to the Committee for Regional Development, issues were discussed in relation to nuisance parking. As it stands the Bill focuses on businesses that use the street or road to park vehicles for sale or businesses that repair vehicles causing oil leaks on the road. Members commented on the restriction of the Bill to those areas, and suggested the need to include provisions to deal with parking on footpaths, which can obstruct the use of them, causing particular nuisance to those with disabilities.

According to DRD, there is currently no specific law to prevent vehicles from parking on footways, but under certain circumstances it does constitute an offence. For example, article 30 of the Road Traffic (Northern Ireland) Order 1995 makes it an offence to park a heavy commercial vehicle on the footway. The PSNI can enforce legislation when a vehicle is parked on a footway and causes an obstruction or a danger to other road users, provided that the owner is present at the time.^[31]

Statutory Nuisance

The NI Bill says that will bring NI up to date with provisions in England and Wales, yet there are provisions in the CNEA which are not included in the NI Bill. These include provisions which deal with:

- nuisance of artificial lighting e.g. from domestic and commercial security lighting, sports facilities, domestic decorative lighting, lazer shows etc;
- Nuisance insects coming from all premises other than domestic, to include poultry houses/farms, sewage treatment works etc; and
- standards for overcrowding in a dwelling. According to the Department this is an issue for the Department for Social Development, which it intends raising the concern to.

Respondents requested that guidance should be issued in respect of the new noise and statutory nuisance regime in England and Wales. Production of guidance in relation to this will have to take account of the above differences in provisions between the NI Bill and the CNEA for England and Wales.

4 Possible lessons from the operation of the CNEA (2005) in England and Wales

The following section will look at suggestions to improve the new CNEA in England since its implementation in 2005.

Having had the CNEA established and running for 5 years, the experiences of England might highlight important lessons that can be considered in the implementation of the NI CNEB.

Utilisation of powers

Discussions at Keep Britain Tidy consultation events, and at a special plenary of the 2008 Cleaner, Safer, Greener Conference in Brighton, have commended the CNEA 2005 at improving the range of powers available to local authorities. However, the opinion of Keep Britain Tidy is that the overall impression is one of missed opportunity. Almost four years on from the implementation of the CNEA 2005, there are still questions as to whether local authorities are fully utilising these new powers and it is unclear whether public space management is a strategic consideration by the majority of local authorities.

Despite these concerns, according to Keep Britain Tidy, the use of the CNEA has been far more effective than the implementation of the Environmental Protection Act (EPA) 1990. Based on the annual ENCAMS survey of the implementation of the EPA:[\[32\]](#)

- Nine years after the introduction of the EPA, 74% of local authorities had not issued a fixed penalty notice for littering and only 22% had adopted a fixed penalty notice system (ENCAMS, 1999).
- Furthermore, by 1999 between 3-4% of local authorities had issued or set a Litter Control Area, Litter Control Order or Street Litter Control Notice whilst only 24% of local authorities had adopted a schedule regarding abandoned trolleys.

A review of the uptake of CNEA powers in 2007 (only 2 years since its implementation, in comparison to the nine year review of the EPA) states that:

- 77% of local authorities were using litter powers and 79% had issued a fixed penalty notice (ENCAMS, 2007).

- Litter Control Notices and Street Litter Control Notices have been adopted by 30% and 27% of local authorities respectively, whilst 25% have adopted a schedule regarding abandoned trolleys, 56% of local authorities had partnership agreements in place (ENCAMS, 2007).

Litter

Keep Britain Tidy has suggested in its paper 'Delivering Improved Local Environment Quality' (2010)^[33] that government should review the legislative framework surrounding littering from vehicles and the potential for introducing a penalty point on driving licences for littering offences. The current legislation does not allow the owner of the vehicle to be issued with a fixed penalty notice when the identity of the person littering from a vehicle is unclear.

Results from the Local Environmental Quality Survey of England (LEQSE)^[34], conducted by Keep Britain Tidy on behalf of DEFRA, have shown a plateau in recent years in local environmental quality, for example, smoking litter has remained the most prevalent type of litter for the last four years, being present at 78% of sites surveyed in the latest LEQSE survey.

According to Keep Britain Tidy, the long-term impact of the indoor smoking ban is still to be determined but circumstantial evidence from local authorities suggests smoking related litter problems have increased around pubs, clubs and restaurants. In places such as Australia, Scotland, Ireland and America where indoor no-smoking policies have been in existence longer, there are reports of increased cigarette litter (R.W. Beck, 2007).^[35]

Chewing Gum

It is a criminal offence for a person to drop, throw down, or otherwise deposit and then leave litter. The offence of littering is covered in Sections 87 and 88 of the Environmental Protection Act (EPA) 1990. This act has been updated and amended by the CNEA 2005 to make it clearer that the term 'litter' now includes smoking related litter and other discarded items such as chewing gum. However, according to the Chewing Gum Position Paper by the Welsh campaign: Keep Wales Tidy, the CNEA does not put any requirements on local authorities to clean impacted gum or stains. The paper also cites that a Keep Wales Tidy public opinion survey in summer 2003 showed that chewing gum staining on pavements was the fourth-worst local environmental quality factor in Wales out of 14 options: only litter, dog fouling and fly-tipping were more reviled by the Welsh public.^[36]

Before the CNEA had passed through Parliament, further additions were suggested in relation to addressing the problems of chewing gum, these included:

- How producers and consumers may be made jointly responsible for the disposal and remains of discarded chewing gum
- The introduction of a gum levy of one penny on each pack of chewing gum which would be fed back to local authorities. This was based on evidence from a survey of the 33 London Boroughs by the London Assembly Liberal Democrat Group which stated that 81% of people believe that chewing gum companies should concentrate on developing biodegradable gum and 53% didn't believe fines would reduce the amount of chewing gum discarded. It also stated that London Underground spent £2m a year and councils £2.3m per year on cleaning up gum (Sue Doughty MP, House of Commons, 2005, Col. 56-57c).^[37]

Dogs

Dog fouling remains a problem in relation to the way it is disposed of. According to the latest LEQSE survey^[38] there is an increase in the amount of bagged dog fouling, suggesting that facilities and education for the appropriate disposal of bagged dog fouling needs to be provided.

Unintentional Littering

According to the report by R.W Beck, there are generally two types of litter: accidental and deliberate litter. Accidental litter is material deposited unintentionally through poor management practices, such as items that fly out of open bed trucks. Plastic bag and foam litter can be blown off of trucks, out of overfull trash cans and dumpsters, and out of landfills.^[39]

Beck points out that a review of 31 American litter surveys from 1986 found that 65% of litter was deliberate while 36% was unintentional. Therefore, it is argued that a drop in overall littering in the USA is masking a suspected increase in unintentional litter over the past 15 years.

The increase in segmented waste collection through separate waste and recycling collection may also have had an impact on litter levels over the last 20 years. R.W. Beck argues that recycling programs which proliferated between 1988 and 1994 in the USA have created twice the number of vehicles collecting materials from residential areas. Without strict controls on the source separation of recyclables at the kerb-side, this could also prove to be a potential problem for NI.

Keep Britain Tidy has suggested that whilst there may be difficulties in identifying accidental and deliberate litter, "it would seem prudent to utilise this approach in future surveys of England to investigate the impact of the increase in household recycling schemes on litter levels in England."^[40]

[1] http://www.nio.gov.uk/together_stronger_safer.pdf

[2] DOE, Clean Neighbourhoods and Environment Consultation Document.

[3] For full text of Protection of Environment Act 2003:
<http://www.irishstatutebook.ie/2003/en/act/pub/0027/index.html>

[4] For full text of the Waste Management Act 1996:
<http://www.irishstatutebook.ie/1996/en/act/pub/0010/index.html>

[5] For full text of the Waste Management (Amendment) Act 2001:
<http://www.irishstatutebook.ie/2001/en/act/pub/0036/index.html>

[6] For the full text of the Waste Management (Landfill Levy) Order 2008:
<http://www.irishstatutebook.ie/2008/en/si/0168.html>

[7] Full text: <http://www.irishstatutebook.ie/1997/en/act/pub/0012/index.html>

[8] DOE, Clean Neighbourhoods and Environment Consultation Document.

[9] See Part 2 Clause 4 (8)

[10] Waste Management Act (1996) section 71
http://www.bailii.org/ie/legis/num_act/1996/0010.html#zza10y1996s71

[11] Road Traffic (Removal, Storage and Disposal of Vehicles) Regulations 1983
<http://www.irishstatutebook.ie/1983/en/si/0091.html>

[12] For full text of Clean Neighbourhoods and Environment Act 2005:
http://www.opsi.gov.uk/acts/acts2005/ukpga_20050016_en_1

[13] Full text: <http://www.irishstatutebook.ie/1997/en/act/pub/0012/index.html>

[14] For full text: Local Government Act 2001:
<http://www.irishstatutebook.ie/2001/en/act/pub/0037/index.html>

[15] <http://www.irishstatutebook.ie/2001/en/act/pub/0037/sec0083.html#partix-chapv-sec83>

[16] For full text of The Control of Dogs Act 1986 and 1992 see:
<http://www.irishstatutebook.ie/1986/en/act/pub/0032/index.html> and respectively
<http://www.irishstatutebook.ie/1992/en/act/pub/0013/index.html>

[17] Consultation document- Partial Regulatory Impact Assessment (Annex c) p.137
http://www.doeni.gov.uk/pdf_version_of_clean_neighbourhoods_consultation_document.pdf

[18] Consultation Document -Equality Screening (AnnexB) p.132
http://www.doeni.gov.uk/pdf_version_of_clean_neighbourhoods_consultation_document.pdf

[19] Synopsis of Responses p.8
http://www.doeni.gov.uk/clean_neighbo...ynopsis_of_consultation_responses.doc

[20] Full text of Northern Ireland Act 1998
<http://www.legislation.gov.uk/ukpga/1998/47/contents>

[21] See Belfast City Council – Alley gating Manual [online] available from:
<http://www.belfastcity.gov.uk/communitysafety/Docs/Alleygatingmanual.pdf>

[22] Belfast City Council – Alley gating Manual [online] available from:
<http://www.belfastcity.gov.uk/communitysafety/Docs/Alleygatingmanual.pdf>

[23] Hansard, Committee for Regional Development's discussion of the CNEB 15/09/10)
http://archive.niassembly.gov.uk/record/hansard_committees.htm

[24] At the time, Horrox's company Diabolical Liberties was thought to be the UK's largest flyposting firm, and reportedly had a turnover of £10m and 100 employees. H was ordered to pay Camden Council £46,00 in court costs.
See:<http://www.camden.gov.uk/ccm/content/press/2005/press-releases-september-2005/flyposting-boss-ordered-to-pay-for-his-asbo.en> (Page last updated 21 April 2010, and accessed 08/09/10)

[25] NIEL (2010) Comments on the Consultation of the Draft CNEB NI.
[http://www.nienvironmentlink.org/cmsfiles/files/Publications/Draft-Clean-Neighbourhoods-+-Environment-Bill-\(NI\).pdf](http://www.nienvironmentlink.org/cmsfiles/files/Publications/Draft-Clean-Neighbourhoods-+-Environment-Bill-(NI).pdf)

[26] CNEA (2005) <http://www.legislation.gov.uk/ukpga/2005/16/contents>

[27] Synopsis of Responses p.19
http://www.doeni.gov.uk/clean_neighbo...ynopsis_of_consultation_responses.doc

[28] Ibid p21

[29] Ibid p.23

[30] The Kennel Club (13/07/10), 'Northern Ireland Introduces the Clean Neighbourhoods and Environment Bill'[online]

<http://www.thekennelclub.org.uk/cgi-bin/item.cgi?id=3171&d=23&h=5&f=3> [accessed: 23/09/10]

[31] Hansard, Committee for Regional Development's discussion of the CNEB 15/09/10)
http://archive.niassembly.gov.uk/record/hansard_committees.htm

[32] Keep Britain Tidy (March 2010) Where Are We Now: A Reflection on Sixty Years of Keeping England Tidy: Evidence Paper 1

www.keepbritaintidy.org/ImgLibrary/Evidence_Paper_One_1722.pdf

[33] Ibid

[34] Keep Britain Tidy, for DEFRA (2007/2008) Local Environmental Quality Survey of England: Year 7 Report

http://www.keepbritaintidy.org/ImgLibrary/Local_Environmental_Quality_Survey_of_England_2007-2008_223.pdf

[35] RW Beck, for Keep America Beautiful. "Literature Review – Litter. A Review of Litter Studies, Attitude Surveys, and Other Litter-related Literature." July 2007.

http://www.kab.org/site/DocServer/Litter_Literature_Review.pdf?docID=481

[36] www.keepwalestidy.org/1535.uploadfile.dld

[37] Keep Britain Tidy (March 2010) Where Are We Now: A Reflection on Sixty Years of Keeping England Tidy: Evidence Paper 1

www.keepbritaintidy.org/ImgLibrary/Evidence_Paper_One_1722.pdf

[38] Keep Britain Tidy, for DEFRA (2007/2008) Local Environmental Quality Survey of England: Year 7 Report

http://www.keepbritaintidy.org/ImgLibrary/Local_Environmental_Quality_Survey_of_England_2007-2008_223.pdf

[39] RW Beck, for Keep America Beautiful. "Literature Review – Litter. A Review of Litter Studies, Attitude Surveys, and Other Litter-related Literature." July 2007.

http://www.kab.org/site/DocServer/Litter_Literature_Review.pdf?docID=481

[40] Keep Britain Tidy (March 2010) Where Are We Now: A Reflection on Sixty Years of Keeping England Tidy: Evidence Paper 1

www.keepbritaintidy.org/ImgLibrary/Evidence_Paper_One_1722.pdf



Research and Library Service Briefing Paper

27 August 2010

Gareth Mulvenna

Clean Neighbourhoods and Environment Bill: Alleygating

Paper 000/00 NIAR 364-10

1 Introduction

This briefing paper examines topics which arose from the Clean Neighbourhoods and Environment Bill - specifically the issue of alleygating. Issues highlighted for further investigation in relation to alleygating included costs, processes and provisions in the Belfast City Council alleygating scheme, including any impact assessment or evaluation of the scheme, and briefing on examples of alleygating schemes in operation in other jurisdictions, including costs, procedures, appeals and impacts.

2 Background

The Clean Neighbourhoods and Environment Bill^[1] was introduced in the Assembly on 22nd June 2010 by the Environment Minister Edwin Poots MLA. The Bill completed Second Stage on 30th June 2010 and is now at Committee Stage. The Gating Order included in the Bill - 69A (2)^[2] - is an administrative order (which is an enforceable order issued by a public authority) - in this case enforceable by district councils. This differs from a statutory rule/order in that they are issued by a government or its agencies for the enactment or enforcement of a specific statute.

3 Belfast City Council Alley-Gating Scheme: Costs, Processes and Provisions

The implementation of alleygates involves various costs. Belfast City Council states that a gate for an average sized alleyway costs around £3000. The Council explains that the cost is high due to the specifications needed for the gates to be certified as being safe and fit for their purpose. The breakdown of likely costs for alleygating is outlined by Belfast City Council and incorporates the following:

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Additional Security: Costs may also be necessary for additional work to secure, improve or build up the surrounding fencing or walls to secure the entry.

Insurance: It is necessary to obtain insurance for the gates in the event of compensation claims arising from accidents that occur through usage of the gate.

Maintenance: Belfast City Council has estimated that the cost of maintaining the gates will be approximately £130 per gate per year. The council states that hinges need to be kept in good condition, locks may need to be replaced if they are damaged and the gate may need sprayed or painted on occasion. The council notes that if communities follow the manual guidelines^[3] they provide and install gates to the Council's specification they can apply to the Council who may assume long-term responsibility for maintenance and insurance.

Process for installing alley gates in Belfast

Belfast City Council has provide an 11 step guide for residents wishing to avail of an alleygating in their area, the steps are summarised here:

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2. Contact Roads service to establish legal status of alleyway;
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- 87% of residents believed that the gates had a positive impact on reducing crime^[4]

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Salford City Council, Greater Manchester, England

Salford City Council states that it will pay up to £1110 for the applications for planning permission and closure for a standard alley gating scheme.^[5] The procedures for installing alleygates in Salford City Council are generally similar to those described previously for Belfast City Council, with the prerequisite that consultation has been made with neighbours and planning permission has been sought and granted.^[6]

According to Salford City Council a number of local authorities have successfully pursued alleygating schemes. Many of these are yet to be fully evaluated but interim findings indicate a reduction in burglary rates of up to 50% in terraced housing areas. Publicity surrounding some of these schemes and the designation of some parts of the city under the Countryside and Rights of Way Act 2000 has led to a dramatic increase in requests for alleygating across the city.^[7]

The alleygating schemes could contribute towards the delivery of many of the pledges contained in the city council's Mission Statement, namely, according to the council;

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- Pledge 5 – Promoting Inclusion in Salford
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Further, alleygating schemes can also contribute towards the achievement of strategic objectives in the following strategies and policies – Housing Strategy, Crime and Disorder Reduction Strategy, Community Plan, Neighbourhood Renewal Strategy and the Housing Market Renewal Pathfinder Initiative.^[8]

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[9] Cardiff County Council – Strategy for Alley Gating Schemes [online] available from:
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[10] Ibid (page 3)

[11] Ibid



Research and Library Service
Briefing Note

17 November 2010 NIAR 000-00

Suzie Cave

Stray Dog Statistics
for 2009

Paper 000/00 NIAR 000-00

The following information was provided by the Dog Control Bill Team from DARD.

The "Dealt with" figures are the number of straying dog incidents each council area was involved in, which includes: the number of stray dogs the dog wardens either lifted while on their rounds, were called out to collect by someone who found the stray, or were handed in to the warden.

Of all the stray dog incidents "dealt with", 79% were subsequently impounded (6,745 of 8,579). The other 20% of incidents dealt with were resolved without taking the dog back to the pound- they were returned to owners through ID tags, microchips or local knowledge of the wardens.

Of the 6,745 dogs that were impounded, some were "sold", "reclaimed", "destroyed", or "other" (mainly relates to dogs either given or sold to animal charities, who then sell or re-home them)

Councils tend to follow one of several trends:

- Some are good at returning dogs without impounding them (e.g. Coleraine)
- Some will just impound all dogs they pick up (e.g. Cookstown)
- Some are good at reuniting (either through returning before impounding or having them reclaimed (e.g. Carrickfergus with 80%)
- Some (like Antrim and Moyle) pass on a large number to charities, while others destroy quite a large number (e.g. Fermanagh). Those that tend to return or re-unite the least, tend to destroy the most.

Council	Dealt with	Impounded	Sold	Reclaimed	Unclaimed/ destroyed	Other
Antrim	281	244	36	70	13	125
Ards	251	234	80	124	29	1
Armagh	436	436	158	100	43	135
Ballymena	219	173	16	84	43	30
Ballymoney	108	97	36	33	9	19
Banbridge	317	113	21	39	17	36
Belfast	668	668	265	251	146	6
Carrickfergus	212	158	38	115	1	4
Castlereagh	245	215	79	120	16	0
Coleraine	510	201	74	93	33	1
Cookstown	144	144	102	31	9	2
Craigavon	667	654	257	129	125	143
Derry	585	327	40	84	97	106
Down	713	622	315	135	107	65
Dungannon	502	502	371	53	59	19
Fermanagh	149	149	37	24	88	0
Larne	127	108	35	52	9	12
Limavady	260	80	15	25	17	23
Lisburn	420	309	36	124	46	103

Council	Dealt with	Impounded	Sold	Reclaimed	Unclaimed/ destroyed	Other	
Magherafelt	126	126	79	30	17	0	
Moyle	83	56	0	21	13	22	
Newry	461	380	10	62	209	99	
Newtownabbey	532	311	60	187	20	44	
North Down	142	112	67	28	17	0	
Omagh	261	166	17	17	90	42	
Strabane	160	160	44	43	73	0	
Total	8579	6745	2288	2074	1346	1037	
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Belfast	668	668	265	251	146	6	668
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Newtownabbey	532	311	60	187	20	44	311
North Down	142	112	67	28	17	0	112
Omagh	261	166	17	17	90	42	166
Strabane	160	160	44	43	73	0	160
Total	8579	6745	2288	2074	1346	1037	6745

Appendix 6

Other Papers Submitted to the Committee

Waste: Clean Neighbourhoods Bill



“Low-level environmental crime” such as littering, dog fouling, graffiti, noise and unwanted behaviour in back alleys is targeted in the Clean Neighbourhoods Bill, which passed its second stage on 30 June.

Street litter control notices could soon be issued to businesses – for example street vendors – to force them to clean up after themselves. Owners of land that is defaced with litter could also face litter clearing notices and anyone who fails to provide their name and address could receive a

fine of up to £1,000, if the Bill is passed.

The money spent by councils on fishing shopping trolleys out of rivers will become the financial responsibility of the shop from which the trolley was stolen.

The Bill will only allow charitable, religious and political groups to distribute flyers, handouts and pamphlets because these can end up as litter, especially if they are left under windscreen wipers.

Environment Minister Edwin Poots told the Assembly that when the offences contained in the Bill are looked at in isolation they may seem “trivial”, but collectively they are real problems.

The Bill is based on the English and Welsh Act of the same name that was implemented in 2005. Its aims are to give district councils additional powers to deal with waste, reduce anti-social behaviour and cut the “massive” street cleaning costs councils currently have to pay. Importantly, district councils will have the power to enforce fixed penalty notices for most offences and the revenue from these will return to local authorities. It is for this reason the environment department predicts that the Bill will be cost-neutral.

According to Poots, “a staggering £34 million” was spent on street cleansing in Northern Ireland last year. That amounts to almost £100,000 every day that could be spent on other important council services, he said.

In addition, if a case goes to court under the 2003 Pollution Prevention and Control Regulations Act, the maximum fine for a summary conviction (e.g. failing to have a permit to operate an installation or mobile plant) will increase from £30,000 to £50,000.

An addition to the 1993 Roads (Northern Ireland) Order would give councils the power to make a gating order to restrict public access to a road. This order is currently granted by the Roads Service. The council will only be able to issue the gating order with permission from the DRD and if crime and antisocial behaviour is affecting businesses and residents on the road.

At the moment, residents have to approach the Roads Service for a gating order. They also have to pay approximately £3,000 for the gates, plus the costs of locks, keys, third party liability insurance

AgendaNI Article

Scrutiny of Delegated Powers

Advice to the Committee for the Environment from the Examiner of Statutory Rules on the Clean Neighbourhoods and Environment Bill

1. I have considered this Bill, in conjunction with the Delegated Powers Memorandum submitted by the Department of the Environment, in relation to powers to make subordinate legislation.

2. The Bill contains a number of powers to make subordinate legislation (including some vested in the Department for Regional Development –for example in amendments to the Roads (Northern Ireland) order 1993 in respect of gating orders – Part 1 of the Bill).

3. Most powers to make subordinate legislation and powers are regulations subject to negative resolution, which seems to be an appropriate level of Assembly scrutiny. See clause 72(2).

4. Regulations under clauses 38(4) and 39(1) are, however, subject to draft affirmative procedure: this is appropriate given that they involve the creation of criminal offences. See clause 72(3).

5. There are seven powers under which the Department may make orders subject to negative resolution substituting a new amount for the amount of a fixed penalty payment specified on the face of the Bill. These are in:

- clause 4(9);
- clause 7 (new Article 29A(9) of the Pollution Control and Local Government (Northern Ireland) Order 1978);
- clause 22 (new Article 18A(3) of the Litter (Northern Ireland) Order 1994);
- clause 27(5);
- clause 42(6);
- clause 50(6) and
- clause 58(2) (new section 8A of the Noise Act 1996).

There seems to be a strong argument that these powers should be subject to draft affirmative procedure and I recommend that suitable amendments be considered: clause 72(2) of the Bill, and also the Pollution Control and Local Government Order (Article 86), the Litter Order (Article 25) and the Noise Act (the amendment in clause 58(2) of the Bill and also section 14(4)(f) of the Noise Act. Those powers allow for direct amendments of penalty provisions set out on the face of the Bill. There are precedents for draft affirmative procedure in such circumstances in other Bills currently before the Assembly, namely, the Sunbeds Bill and the Dogs (Amendment) Bill. I made a similar point to the Committee in relation to the Waste and Contaminated Land (Amendment) Bill, where the same issue arises.

6. For completeness, I mention that commencement orders under clause 75 are not subject to Assembly procedure in accordance with the standard practice.

7. There are no other matters to which I draw the attention of the Committee for the Environment in this regard.

Gordon Nabney
Examiner of Statutory Rules
21 September 2010

Regional Development Committee Comments on Clean Neighbourhoods and Environment Bill



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Mr Cathal Boylan
Chairperson
Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
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Belfast
BT4 3XX

22 September 2010

**Regional Development Committee comments on the Clean
Neighbourhoods and Environment Bill**

Dear Cathal,

1. As you are aware, at the Regional Development Committee meeting of 15 September 2010, the Committee received briefings from Assembly Research and Library Services, DRD officials and an official from the Department of the Environment in relation to the elements of the Clean

Neighbourhoods and Environment Bill that relate to the work of DRD and my Committee. A copy of the research briefing paper and the Hansard report of these briefings are attached for information.

2. At the Committee's meeting of 22 September 2010, the Committee decided to submit the following comments on this Bill in response to your public call for evidence.
3. On a general note, the Committee is broadly supportive of the Bill's objective to improve the quality of the local environment by giving district councils additional powers to deal with litter, nuisance alleys, graffiti and fly posting, abandoned and nuisance vehicles, dogs, noise and statutory nuisance.
4. Members identified Part 1 of the Bill, on gating orders, as the most relevant in the Bill however the Committee's comments also make reference to Part 2 on the issue of nuisance parking.

Part 1 – Gating Orders

5. Members considered Clause 1 of the Bill and were content with its provisions. Members noted that this clause proposes to insert in the Roads (Northern Ireland) Order 1993 (NI 5), after Article 69, clauses making provision for gating orders, effect of gating orders, variation and revocation of gating orders, procedure for orders, and publication and availability of gating orders.

Gating orders

6. The Committee welcomed the giving of powers to local councils to make orders for the erection of gates where a need is identified. Members did, however, raise concerns in relation to unadopted alleys that the Department for Regional Development does not have an interest in, and would be of the

view that unadopted alleys also need to be included as part of this legislation. Members felt that it was unreasonable to expect the owner of a property to reach agreement with the owner of an alley on the need for a gating order.

Effect of gating orders

7. Members did not make any comments in relation to this section of Clause 1.

Variation and revocation of gating orders

8. Again, Members did not make any comments in relation to this section of Clause 1.

Procedure for gating orders

9. The Committee, in welcoming the giving of powers to make gating orders to local councils, recognises the positive implications that this will have in terms of time taken to make orders. With the existing system the Department for Regional Development is required to make standing orders and this can be a lengthy process. The proposals of this Bill would greatly reduce the time taken for applicants to receive a gating order, although Members did raise an issue in relation to there being no stipulated maximum time limit for Councils to make the orders. Members would be of the thought that there should be consideration given to having such a stipulation as applications for gating order will often arise as a result of a problem in a community that needs to be promptly addressed.
10. Members did accept that certain aspects of the process, such as publication of a notice of intention and time to receive responses to that notice, do have a time-bound element but felt that the overall process should also be time-bound.

11. Members also questioned the criteria that must be met in order to obtain a gating order and were informed that the detail of this will be worked out through non-statutory guidance that will be prepared jointly by DOE and DRD, following consultation with councils. Members of this Committee would wish to see the detail of this guidance when it has been development.

Publication and availability of gating orders

12. Members noted the provisions at 69 (E)(1)(a) and 1(b) for the publication and availability of gating orders. In relation to 69(E)(2), Members were of the view that "reasonable charge" referred to should be more clearly defined.

Part 2: Vehicles: Nuisance Parking Offences

13. Although this part of the Bill is not within the remit of the Regional Development Committee or the Department for Regional Development, Members made general comments in relation to issue of nuisance parking. Whilst welcoming the specifics to deal with parking of vehicles for sale or repair, and also taking account of the fact that parking legislation is in place, Members felt that more needs to be done in order to stop all vehicle types from parking in places where they might be considered a nuisance.
14. Thank you for the opportunity to contribute to the Committee Stage of this Bill, and Members are looking forward to seeing your Committee's Bill Report.

Yours sincerely,



Fred Cobain

Committee Chairperson



Research and Library Service Briefing Paper

27 August 2010

Clean Neighbourhoods and Environment Bill: Alleygating

Paper 000/00 NIAR 364-10

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

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[11] Ibid

Departmental Briefing on Clean Neighbourhoods and Environment Bill

Central Management Branch Mrs Alex McGarel
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Email: una.downey@doeni.gov.uk
Your reference:
Our reference:

Date: 5 February 2010

Dear Alex

Officials from the Department are due to brief the Committee on 11 February 2010 on the draft Clean Neighbourhoods and Environment Bill.

The Department's last update on the current status of the Clean Neighbourhoods and Environment Bill was considered by the Committee on 3 December 2009. The Committee expressed its support for the Bill and encouragement for it to progress quickly. The Committee subsequently asked for confirmation of when the Bill is expected to be introduced in the Assembly. The Department responded to advise that it is currently aiming to have the Bill introduced in the Assembly in June 2010. That is still the position.

By way of advance briefing for the Committee meeting on 11 February I attach a further update from the Department together with a brief outline of the proposals in the draft Bill.

Yours sincerely,

Una Downey
DALO

Draft Clean Neighbourhoods and Environment Bill

Background

None of us want to live in neighbourhoods affected by poor local environmental quality, nor do we wish to see the appearance of our public spaces spoiled by, for example, litter, graffiti and illegal fly-posting. Good quality local environments reduce anti-social behaviour and the fear of crime. They attract more investment; they have a positive impact on our health, well-being, confidence and civic pride and help to promote tourism.

It was with this in mind that the UK Government introduced legislation for England and Wales which led to the Clean Neighbourhoods and Environment Act 2005. This Act contains provisions designed to improve the quality of the local environment by giving local authorities in England & Wales additional powers to deal with litter, nuisance alleys, fly-posting and graffiti, abandoned and nuisance vehicles; dogs, noise and statutory nuisance (including nuisance from insects and artificial lighting).

Since the 2005 Act was enacted the Department has received numerous enquires from MLA's, MP's, District Councils, Tidy Northern Ireland, the NI Local Government Association, the Chief

Environmental Health Officers' Group and other interests calling for the introduction of similar legislation in Northern Ireland. Up until now however the Department has been unable to respond positively to these representations because our limited policy and legislation development resources have had to be allocated to other higher priorities.

Current Position

Following a review it has now been possible to allocate the necessary resources to the consideration of how we might help district councils in Northern Ireland deal more effectively with a range of problems associated with local environmental quality. As a result of this work, the Minister's view, informed by the representations from the local government sector in particular, is that we should aim to provide councils in Northern Ireland with broadly the same powers which their counterparts in England and Wales have under the Clean Neighbourhoods and Environment Act 2005.

Consultation exercise

Before introducing legislation on this subject in the Assembly, however, the Department wishes to consult on a draft Clean Neighbourhoods and Environment Bill to ensure that the proposed provisions address our local circumstances properly.

Subject to Executive agreement, the Department is aiming to start a full public consultation exercise on the draft Bill this month (February 2010).

Draft Clean Neighbourhoods and Environment Bill 2005 Brief Outline of Proposals

The draft Bill aims to strengthen the law available to District Councils to help them to deal more effectively with a wide range of local environmental problems. Issues covered include:-

Litter

Litter continues to be a major concern for many people in Northern Ireland. It reduces the quality of our lives by degrading our public spaces and our local neighbourhoods. Litter in all of its forms e.g. chewing gum, cigarette butts, fast food, drinks containers, wrapping paper etc. if left unchecked, is an eyesore which can lead to dirty and unhealthy streets and unsightly local environments. The Bill will strengthen the existing law to enable district councils to deal more effectively with a range of litter problems:-

- amends the offence of dropping litter in lake, pond or watercourse;
- strengthens provisions in respect of failing to provide name and address;
- gives Councils new powers (litter clearing notices) to require businesses and individuals to clear litter from their land;
- strengthens existing powers for Councils to require local businesses to help clear up litter they generate (street litter control notices);
- enables Councils to restrict the distribution of flyers, hand-outs and pamphlets that can end up as litter.

Fly-posting and graffiti

Fly-posting and graffiti are very visual signs of neglect and degradation within a local environment. The Bill will strengthen the existing law to enable district councils to deal more effectively with fly-posting and graffiti:-

- gives councils the ability to issue fixed penalty notices to graffiti and fly-posting offenders;
- enables councils to serve "defacement removal notices" in respect of graffiti and fly-posting;
- makes it an offence to sell spray paints to children;
- strengthens the legislation to make it harder for beneficiaries of fly posting to evade prosecution.

Dogs

Irresponsible dog ownership gives rise to complaints from the public with dog fouling contributing towards the spread of harmful infections. The Bill will introduce new arrangements for controlling dogs by replacing the local byelaws system with a more streamlined and straightforward system, easier for district councils to operate:-

- replaces dog byelaws with a new, simplified system of dog control orders which will enable councils to deal with fouling by dogs, ban dogs from designated areas, require dogs to be kept on a lead and restrict the number of dogs that can be walked by one person.

Noise

Noise is a form of nuisance which is still regarded as a major problem by members of the public. The Bill will give district councils new powers to deal with audible intruder alarms and extend the provisions of the Noise Act 1996 in relation to noise from private premises to noise from licensed premises. These provisions are designed to deal with noise nuisance problems caused by false alarms when the key-holder is away and licensed premises that ignore warnings to reduce excessive noise levels.

Statutory Nuisance

The existing law is 131 years old and despite having been amended from time to time the definition of what can be considered a statutory nuisance and the enforcement powers available to district councils have not kept pace with developments in statutory nuisance legislation applying outside Northern Ireland. The Bill will update the current archaic law on statutory nuisance by bringing it into line with that which applies in England and Wales as amended by the Clean Neighbourhoods and Environment Act 2005.

Fixed Penalty Notices (Fines)

Fixed penalty notices are a simple and visible way of dealing with environmental offences. If used properly, they provide an effective deterrent and avoid the cost of court action. At present fixed penalty notices can be issued for littering and dog-fouling offences and also for some noise violation offences. The Bill makes greater use of fixed penalty notices as an alternative to prosecution and gives district councils the flexibility, subject to upper and lower limits, to set their own fixed rates. The proposals in the Bill extend the use of fixed penalty notices for

offences related to nuisance and abandoned vehicles, litter controls, other dog controls and additional noise controls.

Gating Orders

Back alleys or entries can attract a range of anti-social and environmental problems that reduce the quality of life in our local neighbourhoods. They can be magnets for litter, fly-tipping, abandoned vehicles and graffiti offenders. They can also attract other problems such as domestic burglary and drug dealing and can make the lives of local residents a misery. The Bill will contain proposals to make the existing procedure for closing off nuisance back alleys more effective. The Bill will contain amendments to the Roads (Northern Ireland) Order 1993 to give effect to the gating order provisions. The Bill will give district councils new powers to make, with the approval of the Department for Regional Development, "gating orders" to deal with problem alleyways.

Nuisance parking

The Bill will give district councils new powers to deal with nuisance parking in respect of businesses that sell or repair cars on the road. Such vehicles can be a nuisance, they can reduce parking opportunities and cause pollution (for example where oil is spilled or leaked). Two new offences will be created: offering for sale two or more vehicles, or repairing a vehicle, on the road as part of a business.

Abandoned vehicles

Abandoned cars degrade streets and can become targets for anti-social behaviour and arson. The Bill will give district councils the power to remove abandoned cars from the streets immediately.

Abandoned shopping trolleys

Abandoned trolleys can be a visible problem affecting the quality of our streets and public places and can also be a hazard. When dumped in watercourses they can cause particular problems and they may also cause harm to wildlife. The Bill will give district councils the power to recover the costs of dealing with abandoned shopping trolleys from their owners.

Offences relating to pollution etc: penalties on conviction

The Bill increases the maximum fine, from £30,000 to £50,000, on summary conviction that may be provided for in Regulations made under pollution prevention and control provisions in the Environment (Northern Ireland) Order 2002. This will enable the maximum fines on summary conviction in the Pollution Prevention and Control Regulations (Northern Ireland) 2003 concerning, for example, contravention of the requirement for a permit to operate an installation or mobile plant, failure to comply with or to contravene a condition of a permit and failure to comply with the requirements of an enforcement notice or a suspension notice, to be brought into line with the equivalent maximum fines in respect of illegal waste activity set out in the Waste and Contaminated Land (Northern Ireland) Order 1997 in order to ensure consistency in this area of regulation. The increase to £50,000 also brings the level of fine into line with that which applies in England and Wales.

Department reply on costs of Clean Neighbourhoods and Environment Bill

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	Your reference:
	Our reference: CQ148/10

Date: 13 October 2010

Dear Alex

Response to a Question from Roy Beggs MLA during Departmental Briefing on the Clean Neighbourhoods and Environment Bill

Please find below the Department's response to a question asked by Roy Beggs MLA about whether the Bill provides the power for an innocent party to recoup costs for the removal of posters that have been fly-posted from the beneficiaries of the advertisement.

The Bill does not, as currently drafted, contain such a provision.

There is a provision in Article 18 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (removal of graffiti and fly posters) whereby a district council may recover summarily as a civil debt from "the responsible person" any expenses reasonably incurred by it in removing illegally displayed posters.

Article 18 of the 1985 Order states that a person is "the responsible person" –

"(a) in relation to any ----- poster, if it is displayed on land of which he is the owner or occupier; and

(b) in relation to any -----poster, if it gives publicity to his goods, trade, business or other concerns."

Although the above provision does not cover the specific point raised by Mr Beggs it does, nevertheless, seek to ensure that in line with the "polluter pays principle" a power is currently available to district councils to recover the removal costs associated with illegal fly posting from the beneficiary of the advertisement in certain circumstances.

Under clause 31 of the Clean Neighbourhoods and Environment Bill, a district council may serve a Defacement Removal Notice (DRN) on a person who is responsible for a relevant surface which is defaced with graffiti or fly-posting requiring that person to remove the defacement within a specified period (a minimum of 28 days). Examples of relevant surfaces are street furniture such as telephone kiosks, bus stops and shelters and other structures owned by a statutory undertaker or educational institution. Privately-owned buildings such as shops would not

normally be covered by this provision. If the person fails to comply with the DRN, the council may remove the defacement and recover the costs it incurs from the responsible person.

The Department is mindful of the fact that property owners are often the victims of graffiti and fly-posting but is of the view that the owners of street furniture, such as telecommunications companies should share responsibility with district councils for the state of the structures they erect in the street. As stated above, DRNs would not normally be issued in relation to privately-owned buildings and therefore the owners of these buildings will be unaffected by the proposals.

Matters of detail surrounding the issue of DRNs will be dealt with in statutory guidance. In the guidance, it will be made clear that district councils must make reasonable attempts to enter into partnerships with the owners of relevant surfaces so that all parties can work together constructively to remove graffiti and fly-posting within agreed times and minimise the need for DRNs i.e. DRNs should only be issued as a last resort. This guidance will be subject to a full consultation in due course.

I trust this information is of assistance. However, should you require anything further please contact me.

Yours sincerely

ÚNA DOWNEY
DALO

Query on Waste Transfer Notes

From: info@castleuptongallery.com [mailto:info@castleuptongallery.com]
Sent: 11 November 2010 11:51
To: McGarel, Alex
Subject: Litter

Can we raise 'waste transfer notes' next week. David Armstrong of Mallard Consultancy (01302 710467) here at the Litter Summit says it is one of the main failings of our legislation. He has made many good points.

We need a brief from him if possible on the Clean Neighbourhoods Bill.

Regards Danny

Departmental Reply re Consultation Process and Equality Impact Assessment of Clean Neighbourhoods and Environment Bill

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Our reference: CQ/188/10

Date: 16 November 2010

Dear Alex

Response to Comments from the Environment Committee concerning the Clean Neighbourhoods and Environment Bill

Please find below the Department's response to the comments raised by the Committee following the meeting on Thursday 4 November 2010.

Length of consultation period.

The consultation exercise on the draft Clean Neighbourhoods and Environment Bill ran from 1 March 2010 to 23 April 2010 (8 weeks), however, the Department continued to take into account responses received for several weeks after that date.

Which children and youth groups were consulted?

A copy of the Consultation document was sent to the Children's Law Centre at the start of the consultation exercise. A copy of the Consultation Document was also sent to the Northern Ireland Commissioner for Children and Young People on 16 March. The Department also advertised the Consultation Exercise in the Belfast Telegraph, News Letter and Irish News and included a copy of the Consultation Document on the Departmental Website.

Detailed responses to the Consultation Document were received from the Children's Law Centre, Children in Northern Ireland, and Include Youth.

The Consultation Document was also issued to several equality bodies e.g. the Equality Commission for Northern Ireland, the Equality Forum NI and also the Human Rights Commission.

Why was it decided that an Equality Impact Assessment was not needed on the Bill.

As indicated in the Consultation Document the Department completed a screening analysis and stated:-

"As a result of the screening analysis, we consider that there will be no significant implications for equality of opportunity as a result of the policy and legislative proposals outlined in this consultation document. A full Equality Impact Assessment is therefore not required."

Following criticisms made by a range of children's organisations in their responses to the Consultation Document the Department included a section on Promotion of Equality of Opportunity in its Consultation Summary Document dated June 2010. This also indicates why the Department does not accept that the Bill has a significant negative impact on equality of

opportunity on any of the groups specified in section 75 of the Northern Ireland Act 1998. The Department stated:-

"Promotion of equality of opportunity

Several late responses to the consultation exercise from Children's' organisations disagreed with the Department's view, as indicated in the Consultation Document, that the provisions in the Bill do not impact on equality of opportunity. Concerns were expressed about restrictions on children's' movement in relation to Gating Orders and the possibility of issuing fixed penalty notices to children, and the impact of banning the sale of spray paint to children under 16. Concerns were also expressed about the consultation process itself and the absence of a formal policy development phase prior to the drawing up of the draft Bill. A suggestion was also made that many of the issues in the draft Bill should be dealt with through the development of a regional strategy on community safety. All of the 3 children's organisations indicated that the progress of the legislation should be halted.

Our general response to the comments from the children's' organisations is that the sole purpose of the Bill is to improve the quality of our local environments and neighbourhoods and thereby improve the quality of life for all of the people in Northern Ireland, including our children and our future generations. The people who should be most affected by the measures are those who offend and damage the local environment. The Department accepts that a different approach in terms of fixed penalty notices is required in respect of children and detailed guidance on this issue, which will be subject to consultation before publication, will form part of the overall clean neighbourhoods agenda. The Department of the Environment and the Community Safety Unit of the Department of Justice fully appreciate the fact that the proposals in the draft Bill complement the Community Safety Agenda, however, the problems targeted by the draft Bill are local environmental quality issues and policy responsibility for the legislation relevant to these issues rests with the Department of the Environment. The Department will continue to liaise with the Community Safety Unit concerning the ongoing development of the Clean Neighbourhoods Agenda.

Given the overall aim of the Bill to improve the quality of life for all of the people of Northern Ireland the Department does not accept that it has a significant negative impact on equality of opportunity on any of the groups specified in section 75 of the Northern Ireland Act 1998."

I trust this information is of assistance. However, should you require anything further please contact me.

Yours sincerely

Úna Downey
DALO

[by email]

Letter from Department to Environment Committee advising of Consultation

Mrs Alex McGarel
Clerk to the Environment Committee Central Management Branch
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Your reference:
Our reference:

Date: 26 February 2010

Dear Alex

Draft Clean Neighbourhoods and Environment Bill – Public Consultation

Soon after taking office, the Minister announced his intention to take forward legislation aimed at dealing with local environmental quality issues.

The Executive Committee gave its approval on 25 February 2010 to public consultation taking place on a draft Clean Neighbourhoods and Environment Bill designed to address such problems.

I attach for your attention an advance electronic copy of the consultation package and associated Press Release and I would be grateful if you would draw this to the attention of the Committee. The consultation exercise will start on 1 March 2010 with a closing date of 23 April and officials would welcome the views of the Committee. Please let me know if hard copies of this document are required and I will arrange for them to be provided.

Officials will provide the Committee with a full summary of responses to this consultation in due course and will be available to brief the Committee, as required, during the consultation exercise and thereafter.

Yours sincerely

Úna Downey
DALO

Press Release on Clean Neighbourhoods Bill

Press Release
Department of the Environment
1 March 2010

Time to clean up our neighbourhoods - Poots

Environment Minister Edwin Poots today invited members of the public to have their say on plans to improve the quality of their local environment.

The Minister was speaking as he launched a consultation on a draft Clean Neighbourhoods and Environment Bill.

He said:

"There is little doubt that local environmental quality issues such as litter, abandoned vehicles, dog fouling and fly-posting are major concerns for local residents which impact on the quality of life in our public places and local neighbourhoods. Neglect promotes further deterioration and this can lead to anti-social behaviour and higher levels of crime."

He added:

"People want to live in neighbourhoods that are clean and safe. Our streets, parks, town squares and open spaces are great assets and places that form the heart of our communities. They are where people meet, where they travel to work, where they live and where our children play. They should be places of which we are all proud and which foster a sense of civic pride."

The proposed Bill contains provisions designed to improve the quality of the local environment by giving district councils additional powers, similar to their counterparts in England and Wales. These powers will enable them to deal more effectively with litter, nuisance alleys, fly-posting and graffiti, abandoned and nuisance vehicles, dogs, noise and other nuisance problems.

The Minister added:

"It is now well understood that a cleaner neighbourhood is an integral part of ensuring a safer neighbourhood. We are proposing to help district councils to tackle problems at a local level more effectively by enabling them to address issues through more comprehensive and user friendly legislation and guidance."

The consultation can be viewed and downloaded from:

http://www.doeni.gov.uk/clean_neighbourhoods.htm

The consultation begins today, 1 March 2010 and will run until 23 April 2010.

Notes to Editors:

1. The draft Bill is based on corresponding provisions in the Clean Neighbourhoods and Environment Act 2005 (England and Wales) concerning gating orders; vehicles; litter; graffiti and other defacement; controls on dogs; noise; and various miscellaneous issues including fixed penalty receipts, abandoned shopping and luggage trolleys, statutory nuisances and offences relating to pollution. The provisions concerning graffiti and other defacement and some aspects of the provisions concerning noise are also based on corresponding provisions in the Anti-social Behaviour Act 2003, as amended by the Clean Neighbourhoods and Environment Act.

2. Hard copies and copies of the consultation document in alternative formats can be made available on request from the Department of the Environment by telephone (028) 9025 4878, by text phone (028) 9054 0642, by fax (028) 9025 4732 or in writing from Mark Allison, Department of Environment, Calvert House, 23 Castle Place, Belfast BT1 1FY.

3. For media enquiries please contact DOE Press Office (028) 9054 0014 or out of office hours, contact the EIS Duty Press Officer on pager 07699 715 440 and your call will be returned.

Synopsis of Responses to Clean Neighbourhoods and Environment Bill Consultation

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Date: 7 June 2010

Dear Alex

Draft Clean Neighbourhoods and Environment Bill – Consultation Summary

I refer to my letter of 26 February with which I enclosed an advanced electronic copy of the consultation package relating to the draft Clean Neighbourhoods and Environment Bill for the Committee's attention.

The consultation exercise closed on 23 April and the Department received 48 responses in total, mainly from District Councils. Many of the provisions in the draft Bill were welcomed by respondents to the Consultation exercise, however, as expected there were a significant number of comments and observations concerning the detail and extent of the provisions. There were also particular concerns expressed by District Councils in relation to aspects of Part 4 of the Bill which deals with graffiti and flyposting. In the Consultation Summary document attached the Department has indicated how it intends to address the main concerns. It may also be the case that during the Committee Stage of the Bill the Environment Committee may wish to bring forward new proposals or to tailor the existing provisions to further improve Part 4 of the Bill. The Department would be keen to work with the Environment Committee to consider any alternative proposals which would enhance the effectiveness of the Bill.

The attached Consultation Summary document prepared by the Department provides a synopsis of the issues raised during the consultation exercise and sets out the the Department's response to those comments.

Officials will of course be available to brief the Committee, as required, on any aspects of the draft Bill.

Yours sincerely

Úna Downey
DALO

Annex A

Clean Neighbourhoods Consultation Summary June 2010

Introduction

Background

1. None of us want to live in neighbourhoods affected by poor local environmental quality, nor do we wish to see the appearance of our public spaces spoiled by, for example, litter, graffiti and illegal fly-posting. Good quality local environments reduce anti-social behaviour and the fear of crime. They attract more investment; they have a positive impact on our health, well-being, confidence and civic pride and help to promote tourism.

2. It was with this in mind that the UK Government introduced legislation for England and Wales which led to the Clean Neighbourhoods and Environment Act 2005 (the 2005 Act). The 2005 Act contains provisions designed to improve the quality of the local environment by giving local authorities in England & Wales additional powers to deal with litter, nuisance alleys, fly-posting and graffiti, abandoned and nuisance vehicles; dogs, noise and statutory nuisance.

3. The 2005 Act was the culmination of a significant amount of consultation work with key stakeholders. In 2002 a review of the legislative framework for providing and maintaining a clean and safe local environment was carried out by the Department for Environment, Food and Rural Affairs (Defra) to accompany the cross-Government report Living Places – Cleaner, Safer, Greener. The review found that the powers, duties and guidance for dealing with problems associated with local environmental quality were not working as effectively as they should be, and produced options for delivering changes.

4. Following consultation some of the proposals were introduced into legislation in Part 6 of the Anti-Social Behaviour Act 2003. However, the majority of the options were developed further, consulted on and included in the Clean Neighbourhoods and Environment Act 2005, which applies to England and Wales only.

5. The legislative measures in the 2005 Act designed to tackle low level environmental quality problems are well supported in Northern Ireland and there is a keen desire in many quarters for corresponding legislation, where appropriate, to be introduced in Northern Ireland as soon as possible.

6. Since the 2005 Act was made the Department has received ongoing enquires from MLAs, MPs, District Councils, Tidy Northern Ireland, the NI Local Government Association, the Chief Environmental Health Officers' Group and other interests calling for the introduction of similar legislation in Northern Ireland. Up until now, however, the Department has been unable to respond positively to these representations because our limited policy and legislation development resources have had to be allocated to other higher priorities.

7. Following a review it was possible to allocate the necessary resources to the consideration of how we might help district councils in Northern Ireland deal more effectively with a range of problems associated with local environmental quality. As a result of this work, the Minister of the Environment's view, informed by the representations from the local government sector in particular, is that we should aim to provide councils in Northern Ireland with broadly the same

powers which their counterparts in England and Wales have under the 2005 Act, as soon as possible.

8. A Clean Neighbourhoods Bill team was established within the Department's Climate and Waste Division to take forward the Northern Ireland legislation corresponding to the 2005 Act, except Part 5 thereof. (Part 5 of the 2005 Act makes miscellaneous provision about waste. Northern Ireland legislation based on Part 5, namely the Waste (Amendment) (Northern Ireland) Order 2007, has already been enacted).

General Overview

9. The purpose of the consultation exercise was to invite comments on the draft Clean Neighbourhoods and Environment Bill (Northern Ireland) as set out in Section 2 of the consultation document.

10. The main purpose of the Bill is to improve and strengthen existing legislation to help District Councils deal more effectively with a wide range of problems associated with local environmental quality.

11. Issues covered by the Bill include litter, fly-posting and graffiti, dog control, noise, statutory nuisance, fixed penalty notices, gating orders, nuisance parking, abandoned vehicles, abandoned shopping trolleys and fines for offences relating to pollution.

Responses

12. There were 48 responses to the consultation and of those who submitted comments:

- 4 2% were District Councils;
- 29% were associations/societies or other organisations;
- 12% were members of the public;
- 9% were local representatives;
- 4% were businesses; and
- 4% were from others.

13. Many of the provisions in the draft Bill were welcomed by respondents to the Consultation exercise, however, as expected, there were a significant number of comments and observations concerning the detail and extent of the provisions. Details of specific comments raised on the draft Bill and the Department's response to those comments are set out in Table 2.

14. Concerns were expressed in respect of Part 4 of the Bill concerning graffiti and fly-posting. This was the one area where the proposals contained in the draft Bill have been strongly criticised by key stakeholders, in particular, district councils, mainly on the grounds that they regard them as not sufficiently robust to enable a more effective approach to the graffiti/fly-posting problems.

15. Councils take the view that their ability to deal with the graffiti/fly-posting problems is compromised by the fact that, unlike the position in England and Wales, where local authorities are able to take a holistic approach to deal with the problems, in Northern Ireland Planning Service retains key powers to prosecute the beneficiaries of fly-posting.

16. Councils have urged the Department most strongly to review this section of the draft Bill in order to give councils a comprehensive range of powers to deter fly-posting. The various issues raised during the consultation exercise in relation to Part 4 of the Bill are complex and are set out in Table 2.

17. The Department accepts that Councils have concerns regarding the provisions in Part 4 of the draft Bill. The Department will therefore seek to amend the Bill during its progress through the Assembly to ensure that the key Planning Service powers to prosecute the beneficiaries of fly-posting are made available to District Councils. The Department will also remove Clause 38 from the Bill before it is introduced in the Assembly to ensure that Councils can continue to take action to remove/obliterate illegal fly-posters without first issuing a notice of their intention to do so. It may be also be the case that during the Committee Stage of the Bill the Environment Committee may wish to bring forward new proposals or tailor the existing provisions to improve the effectiveness of Part 4 of the Bill further. In such circumstances the Department would be keen to work with the Environment Committee to consider any alternative proposals for a better way forward.

18. All comments raised during the consultation process were carefully considered and in one instance a minor change was made to the Bill concerning a minor amendment to the Road Traffic Regulation (Northern Ireland) Order 1997. For details see the item highlighted with yellow shading on page 13.

19. (Responses from the Department for Regional Development in respect of the comments raised concerning the Gating Orders provisions are included in Table 3).

20. As pointed out in the Consultation Document the Department, through the Bill, is aiming to provide councils in Northern Ireland with broadly the same powers which their counterparts in England and Wales have under the Clean Neighbourhoods and Environment Act 2005, as soon as possible. It is clear that the Northern Ireland Bill is now subject to a very tight legislative timetable within an overall heavy and comprehensive Assembly legislative programme. Given the very tight legislative timetable it is not possible to bring forward additional significant new provision in the Bill at this stage. To attempt to include significant additional material in the Bill at this stage would inevitably delay progress on the Bill and put at risk the prospect of the Bill completing all of its stages and becoming law before dissolution of the Assembly. The Department will wish to review the effectiveness of the legislation at a later stage, after the detailed consideration and development of the subordinate legislation and guidance and a settling in period following its introduction. The Department would, therefore, not rule out the possibility that such a review may lead to additional strengthening of the legislation and further amendment in the future.

21. 21. The Bill is an important first step in the Department's Clean Neighbourhoods Agenda programme. Most respondents to the Consultation exercise will welcome the fact that the Department intends to follow up the Bill with a series of supporting guidance documents and a subordinate legislation programme covering the various issues dealt with in the Bill. The additional information will inform district councils in much greater detail about the new legislation. The Department will be consulting on this material in due course and also on a series of proposed implementation dates for the provisions in the Bill. Respondents to the Consultation exercise expressed concerns about the absence of detailed supporting guidance on the provisions in the Bill, however, the Department is already working on the preparation of the guidance and subordinate legislation with a view to releasing this material for consultation.

Partial Regulatory Impact Assessment

22. The Consultation document contained a partial Regulatory Impact Assessment. In this initial assessment the Department took the view that, taken as a whole, the proposals in the draft Bill would be cost-neutral to district councils and that through time they could well lead to overall savings in district council costs through increased efficiency and effective, well-publicised, enforcement. Respondents to the Consultation exercise have, in the main, expressed general concerns regarding perceived cost implications. However, the Department remains of the view that, having regard to the Full Regulatory Impact Assessment on the corresponding Clean Neighbourhoods and Environment Act 2005, taken as a whole the Bill would be cost-neutral to district Councils. With limited exceptions the Bill provides district councils with additional powers rather than duties. District Councils will therefore only decide to use them where there is a net benefit to doing so in the local context. Where there are new duties e.g. In respect of some aspects relating to statutory nuisance and noise nuisance it is not possible to predict the level of complaints in this area. We do not know at this stage how often it will be necessary for district councils to use these measures. At this stage the Department feels that it should be possible for Councils to deal with these issues through existing and well established structures. The Department intends to draw up a Full Regulatory Impact Assessment in due course.

Promotion of equality of opportunity

23. Several late responses to the consultation exercise from Children's' organisations disagreed with the Department's view, as indicated in the Consultation Document, that the provisions in the Bill do not impact on equality of opportunity. Concerns were expressed about restrictions on children's' movement in relation to Gating Orders and the possibility of issuing fixed penalty notices to children, and the impact of banning the sale of spray paint to children under 16. Concerns were also expressed about the consultation process itself and the absence of a formal policy development phase prior to the drawing up of the draft Bill. A suggestion was also made that many of the issues in the draft Bill should be dealt with through the development of a regional strategy on community safety. All of the 3 children's organisations indicated that the progress of the legislation should be halted.

24. Our general response to the comments from the children's' organisations is that the sole purpose of the Bill is to improve the quality of our local environments and neighbourhoods and thereby improve the quality of life for all of the people in Northern Ireland, including our children and our future generations. The people who should be most affected by the measures are those who offend and damage the local environment. The Department accepts that a different approach in terms of fixed penalty notices is required in respect of children and detailed guidance on this issue, which will be subject to consultation before publication, will form part of the overall clean neighbourhoods agenda. The Department of the Environment and the Community Safety Unit of the Department of Justice fully appreciate the fact that the proposals in the draft Bill complement the Community Safety Agenda, however, the problems targeted by the draft Bill are local environmental quality issues and policy responsibility for the legislation relevant to these issues rests with the Department of the Environment. The Department will continue to liaise with the Community Safety Unit concerning the ongoing development of the Clean Neighbourhoods Agenda.

25. Given the overall aim of the Bill to improve the quality of life for all of the people of Northern Ireland the Department does not accept that it has a significant negative impact on equality of opportunity on any of the groups specified in section 75 of the Northern Ireland Act 1998.

Summary of proposed measures

Below is a summary of measures set out in the draft Clean Neighbourhoods and Environment Bill.

Table 1

Measures	Amendment of existing power/ working practice	New Power	New Duty	Measure Contained in Bill
Part 1: Gating Orders				
1.1 Create new powers to make, with the approval of the Department for Regional Development, "gating orders" to deal with problem alleyways.				
Part 2: Vehicles				
2.1 Create new offences and powers in relation to nuisance vehicles				
2.2 Give district councils and police the power to remove abandoned cars from the streets immediately				
2.3 Comply with statutory guidance on abandoned vehicles				
Part 3: Litter				
3.1 Amends the offence of dropping litter in lake, pond or watercourse				
3.2 Extend the scope of the Code of Practice on Litter to include wider local environmental quality				
3.3 Replace Litter Control Areas with Litter Clearing Notices				
3.4 Amend offence/penalty provisions in respect of failure to give name and address				
3.5 Extend provisions of street litter control notices (re: mobile vendors)				
3.6 Makes an immediate offence not to comply with street litter control notice – no court order needed				
3.7 New controls on distribution of free printed material				
3.8 Gives district councils the power to recover the costs of dealing with abandoned shopping trolleys from their owners.				
Part 4: Graffiti and Other Defacement				
4.1 Gives councils the ability to issue fixed penalty notices to perpetrators of certain graffiti and fly-posting offences;				
4.2 Enables councils to serve "defacement removal notices" in respect of graffiti and fly-posting				
4.3 Strengthens the legislation to make it harder for beneficiaries of fly posting to evade prosecution.				
4.4 Makes it an offence to sell spray paints to children				

Measures	Amendment of existing power/ working practice	New Power	New Duty	Measure Contained in Bill
4.5 Councils to consider programme of enforcement at least annually			∣	∣
4.6 Councils will comply with statutory guidance on Defacement Removal Notices			∣	∣
Part 5: Dogs				
5.1 Streamline the dog byelaw system by replacing it with dog control orders	∣	∣		∣
5.2 Comply with guidance on Dog Control Orders			∣	∣
Part 6: Noise				
6.1 Introduce new measures to deal with audible intruder alarms		∣		∣
6.2 Extend the provisions of the Noise Act 1996 in relation to noise from private premises to noise from licensed premises.	∣		∣	∣
Part 7: Statutory Nuisance				
7.1 Extend statutory nuisances to include artificial light and nuisance from insects and bring into line with England and Wales	∣		∣	∣
Part 8: Miscellaneous and Supplementary				
8.1 Sets out how a district council may use its fixed penalty receipts.		∣		∣
8.2 Increases the maximum fine, from £30,000 to £50,000, on summary conviction that may be provided for in Regulations made under pollution prevention and control provisions in the Environment (Northern Ireland) Order 2002.	∣			∣
Fixed Penalty Notices – General				
Empower district councils to set the level of fixed penalties		∣		∣
Give authorised officers the power to request names and addresses		∣		∣

Table 2 Consultation Summary Responses

Issue	Raised By	Response
Vehicles		
Definition of "motor vehicle" to include a caravan.	Craigavon BC Banbridge DC Belfast CC Limavady BC Coleraine BC CEHOG Ballymena BC arc21 Antrim BC Fermanagh DC Lisburn CC Cookstown DC NILGA Ballymoney BC Larne BC Armagh CDC	The current definition of "motor vehicle" in the Pollution Control and Local Government (NI) Order 1978 already covers caravans.

Issue	Raised By	Response
Potential loopholes in requirement for there to be 2 or more vehicles parked within 500 metres.	Tidy NI NI Env Qual Forum Larne BC	This power is not intended to cover all situations and existing legislation such as the Street Trading Act (NI) 2001 can still be used where appropriate. This is an additional power being given to district councils to deal with a particular type of nuisance parking i.e. it is intended to specifically target businesses using the road as a "mock showroom". In these circumstances, it gives councils the flexibility to deal with the offence by way of a fixed penalty and allows the councils to retain the receipts. There is also a stiffer penalty on summary conviction for this offence i.e. Level 4 as opposed to Level 3 for an offence under the Street Trading Act (NI) 2001.
As adequate provisions currently exist within the Street Trading (NI) Act 2001 to deal with the sale of vehicles on a road, clarification and guidance will be required in order to avoid confusion in the implementation of the proposed powers.	Limavady BC Newtownabbey BC Coleraine BC CEHOG Ballymena BC Castlereagh BC Antrim BC Lisburn CC Cookstown DC Armagh CDC	Guidance on nuisance parking will be the subject of a consultation exercise in due course.
District councils to be given the power to remove abandoned vehicles from private land and land owned by statutory bodies where there is public access.	Tidy NI Belfast CC NI Env Qual Forum Newtownabbey BC Larne BC	Councils already have this power under Article 30 of the 1978 Order. If the vehicle is not on a road, however, notice has to be given to the occupier of the land.
Clarification and guidance required on when a vehicle has been abandoned and when it is fit for destruction.	SWaMP	Guidance on abandoned vehicles will be the subject of a consultation exercise in due course.
Amendment of period of time before vehicle can be disposed of under Articles 51 and 52 of the Road Traffic Regulation (NI) Order 1997 from 21 days to 7 days.	PSNI	New provisions will be included in the draft Bill to amend Articles 51 and 52 of the Road Traffic Regulation (NI) Order 1997 to allow the period of time before a vehicle can be disposed to be reduced by regulations.

Issue	Raised By	Response
Nuisance caused by vehicles parked on the street awaiting repair.	Banbridge DC Belfast CC arc21 NILGA Ballymoney BC Larne BC	This is a significant proposal which would require detailed consideration and amendment to the Bill. Given the very tight legislative timetable it is not possible to bring forward significant new provision at this stage.
Nuisance caused by the parking of taxis where such an operation is run from domestic premises.	Larne BC	As above.
Prescribed periods for landowner objections under Article 30(2) (removal) and vehicle owner objections under Article 31(1)(ii) (disposal) of the 1978 Order remain un-prescribed.	Coleraine BC CEHOG Ballymena BC Moyle DC Antrim BC Lisburn CC Armagh CDC	The Department undertakes to prescribe the highlighted periods in Regulations to be brought into operation at the same time as the vehicles provisions of the Clean Neighbourhoods and Environment Bill.
Where the person responsible is known, similar powers to recover costs as per Article 32 of the Pollution Control and Local Government (NI) Order 1978 is requested.	Ballymena BC	District councils will continue to be able to recover the costs of removing, storing and disposing of the vehicle under Article 32 of the 1978 Order and the costs of storing and disposing of the vehicle under Article 54 of the Road Traffic Regulation (NI) Order 1997.
Clear guidance is needed on the respective roles and duties of district councils, the PSNI and the Department for Regional Development in relation to abandoned vehicles.	Moyle DC	Guidance on abandoned vehicles will be the subject of a consultation exercise in due course.
Litter		
Request from a number of respondees for clarification that the existing Article 3 of the Litter (NI) Order 1994 as amended by the proposed Bill will cover dropping litter into water and would bring NI into line with the Clean Neighbourhoods and Environment Act (CNEA) 2005 in England and Wales. In addition to the above there was also requests for rewording the litter definition or confirmation that the current definition of litter in the Litter (NI) Order 1994 is as comprehensive as that in the CNEA 2005	TidyNI Northern Ireland Environmental Quality Forum Limavady BC Arc21 Larne BC NILGA Newtownabbey BC Northern Ireland Environmental Link Newry and Mourne DC Moyle DC Ballymena BC Ards BC Belfast CC	The Department is satisfied that Article 3 of the Litter (NI) Order 1994 together with the amendment inserted by Clause 14 of the Clean Neighbourhoods and Environment Bill is very comprehensive and covers the dropping of litter in "any place" and this includes water. The Department is also satisfied that the definition of "litter" is very comprehensive and does not require any further amendment. In addition the proposed Code of Practice and Guidance on Litter will further

Issue	Raised By	Response
There was a request for a definitive description of the difference between litter, fly-tipping and illegal dumping	SWaMP Translink Ballymena BC	clarify this matter. The Department will be consulting on these proposed documents. The proposed Code of Practice on Litter together with the proposed Guidance on Litter will provide further information and definitions. The Department is also working with Councils to develop a Fly-tipping Protocol.
Request to extend the definition of litter to include animal droppings.	TidyNI NI Environmental Quality Forum	The Litter (Dog Faeces) Order (Northern Ireland) 1995 already provides that provisions in the Litter Order apply to dog faeces.
A request was for confirmation that Art.11 of the Litter (NI) Order 1994 will remain in force [Art.11 – Summary proceedings by persons aggrieved by litter]	TidyNI Northern Ireland Environment Link Northern Ireland Environmental Quality Forum	The Clean Neighbourhoods and Environment Bill does not amend Article 11 of the Litter (NI) Order 1994. It will remain in force.
Fixed Penalty Notices should be available for failing to provide name and address or providing false details	Craigavon BC Banbridge BC Belfast CC CEHOG Coleraine BC Northern Ireland Environmental Quality Forum Arc21 Ballymena BC Castlereagh BC Lisburn CC Cookstown DC Larne BC NILGA Newtownabbey BC Newry and Mourne DC Armagh DC Antrim BC	This is a significant proposal which would require detailed consideration and amendment to the Bill. Given the very tight legislative timetable it is not possible to bring forward significant new provision at this stage. It should be noted that Clause 15 amends Article 5 of the Litter (NI) Order 1994 by inserting Art 5(3A) which for the offence of failing to give name and address or giving a false name and address increases the maximum fine on summary conviction from £200 to £1000.
Does the Department propose to introduce a guidance document similar to that issued by Defra and if it would cover such areas as arrangements for leaflet designation areas and smoking related litter?	Craigavon BC Newtownabbey BC Banbridge DC Belfast CC Ards BC Limavady DC Ballymena DC Newry and Mourne DC NILGA Larne BC Arc 21	The Department proposes to issue a number of Guidance documents on Litter similar to those issued by Defra. They will include standards for district councils to work towards, including information on procedures for designation areas and smoking related litter. The Department will be issuing these documents for consultation before being published.

Issue	Raised By	Response
Litter – Fixed Penalty Notice fines should be higher than the set £75	TidyNI Craigavon BC Northern Ireland Environment Link Northern Ireland Environmental Quality Forum Moyle DC	The proposed amendment states that this is the default amount payable if a district council does not specify an amount. As there will be a minimum and maximum range for fixed penalty fines councils may set a fine within the minimum/maximum range. In the case of fixed penalty notices for an offence relating to litter clearing notices or Street litter clearing notices the fine can be set locally again within a minimum and maximum range with the default fine set at £100.
The Department should set minimum and maximum levels of fines for littering prior to the commencement and implementation of the Bill and should consult on them.	Limavady BC NILGA Larne BC	The Department proposes to issue a consultation document in relation to the proposed regulations setting the level of fines.
The proposal to issue Litter Clearing Notices was generally welcomed. They may be served on an occupier or owner of land requiring the land to be cleared of litter within a specified time with a 28 day compliance period effective from when the notice is issued. A number of respondees considered this period too long and requested a shorter period, preferably 7 or 14 days	Ards BC CEHOG Coleraine BC Limavady BC Arc21 Ballymena BC Fermanagh DC Lisburn CC Cookstown DC Banbridge DC NILGA Lower Shankill Residents Voice Antrim BC	This is a new provision proposed in the Clean Neighbourhoods and Environment Bill. It replaces 'litter control areas' and simplifies the procedure. Within the 28 day compliance period a person who has a litter clearing notice served on him may appeal to a court. He is given a 21 day period also starting from the day on which the notice is served. The court must quash the notice, modify it or dismiss the appeal. The 28 day compliance period is not therefore considered an unreasonable period given it includes the 21 day appeals procedure.
Street Litter Clearing Notices – the definition of 'occupier' needs to be clarified and remain sufficiently wide to confirm that it will include persons actively exercising rights over the land. Request for the Bill to be expanded to include offices, commercial premises, cafes, bars etc to include cigarette litter, needs to be sufficiently broad enough to allow	TidyNI Belfast CC Environment Link Limavady BC Arc21 Fermanagh DC Northern Ireland Environmental Quality Forum Larne BC NILGA Newtownabbey BC	This is a significant proposal which would require detailed consideration and amendment to the Bill. Given the very tight legislative timetable it is not possible to bring forward significant new provision at this stage. However, the Department will consider this issue further in the context of

Issue	Raised By	Response
the owner and/or the occupier to be served with the Notices.		<p>the proposed guidance document on litter which will be subject to full consultation. In relation to the request for expanding the legislation to cover offices, commercial premises etc this relates to the control of litter from smokers outside pubs, clubs and restaurants. The Department proposes to handle this through subordinate legislation. The Street litter Control Notices Order (NI) 1995 No 42 specifies the description of commercial or retail premises. The Department proposes to amend this legislation to bring NI into line with England.</p> <p>Article 12A(9) inserted by the proposed Bill makes it clear that ' where a district council proposes to serve a litter clearing notice in respect of land but is unable after reasonable enquiry to ascertain the name or proper address of the occupier of the land (or if the land is unoccupied, the owner)- (a) may post the notice on the land and may enter any land to the extent reasonably necessary for that purpose and (b) the notice shall be treated as having been served upon the occupier (or if the land is unoccupied the owner) at the time the notice is posted. The Department intends to issue a guidance document which will cover this point.</p>
A request was made for clarification as to who is responsible for clearing litter from land which is unregistered and no legal owner can be identified	SWaMP Lower Shankill Residents Voice	
The suggestion has been made that Article 12B- (3) (d) should be removed – or reworded. This relates to appeals against litter clearing notices and is one of the grounds for an appeal i.e. "the action required is unfair or unduly onerous"	Belfast CC Larne BC	<p>This is in line with legislation introduced in England and Wales and is regarded as reasonable grounds for an appeal.</p>
Free distribution of printed literature – Councils should be given	Craigavon BC Belfast CC Ards BC CEHOG Coleraine	The Clean Neighbourhoods and Environment Bill is

Issue	Raised By	Response
enforcement powers to target owners of literature and investigate the companies who have commissioned the leaflet etc	BC Antrim BC Limavady BC Arc21 Ballymena BC Moyle DC Castlereagh BC Fermanagh DC Lisburn CC Cookstown DC Larne BC NILGA Newtownabbey BC	designed to bring Northern Ireland legislation into line with the legislation in England and Wales. It should be noted that Article 20 of the Litter (Northern Ireland) Order 1994 already provides district councils with a power to obtain information.
Free Distribution of literature - The Council must prove that the person distributing leaflets knows that an area is designated – in practice this will be difficult to prove that the person was aware of the designation. Therefore the councils seek clarification of powers available.	Craigavon BC Banbridge DC NILGA Arc 21	Each Council will need to ensure that they adequately publish details of land in their area which has been designated. Details and information related to this matter will be covered in the proposed guidance document on litter.
A number of respondees asked if the abandoned trolley legislation could be extended to include baskets and cages	Belfast City Council Ballymena BC Arc21 Larne BC NILGA Newtownabbey BC	This is a significant proposal which would require detailed consideration and amendment to the Bill. Given the very tight legislative timetable it is not possible to bring forward significant new provision at this stage.
Shopping Trolleys – the Department should provide the power to district councils to designate certain areas, such as car parks, as ‘shopping trolley free zones’ during the hours when local supermarkets are closed. The suggestion is to also consider establishing authorised shopping trolley bays in car parks where trolleys are being abandoned this would mean an amendment to Road Traffic legislation.	Newry & Mourne DC NILGA	As above.
Request for a Northern Ireland National Indicator for performance measurement/local environmental quality.	TidyNI NI Environmental Equality Forum	As above.
Request for council powers to be extended in respect of all land within its boundaries	TidyNI NI Environmental Equality Forum	As above.
Graffiti and Fly-posting		
District councils should be given responsibility for taking prosecutions in respect of fly-posting offences (holistic street scene approach).	Craigavon BC Tidy NI Banbridge DC Chris Murphy Belfast CC Ards BC Coleraine BC CEHOG Limavady BC Ken	It is acknowledged that district councils need to have powers to take prosecutions in respect of fly-posting, both against the perpetrators and the

Issue	Raised By	Response
	Robinson MLA Ballymena BC arc21 Newtownabbey BC NI Env Quality Forum Moyle DC Castlereagh BC Antrim BC Fermanagh DC Lisburn CC Cookstown DC Larne BC NILGA Newry & Mourne DC Ballymoney BC Armagh CDC	beneficiaries. The Department will therefore seek to include an amendment to the Bill during its progress through the Assembly to ensure that Planning Service powers to prosecute are made available to District Councils.
Removal of requirement to give 2 days' notice of a council's intention to remove or obliterate fly-posting or graffiti under Article 18 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985.	Craigavon BC Tidy NI Banbridge DC Belfast CC Ballymena BC arc21 Newtownabbey BC NI Env Quality Forum Larne BC NILGA Newry & Mourne DC Ballymoney BC	Clause 38 will be removed from the Bill prior to its introduction in the Assembly.
Retention of graffiti provisions in Article 18 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985	Craigavon BC Banbridge DC Belfast CC Ballymena BC arc21 Newtownabbey BC Larne BC NILGA Newry & Mourne DC Ballymoney BC	As above.
Powers for district councils to prosecute for failure to comply with a Defacement Removal Notice.	Craigavon BC Banbridge DC Belfast CC Ballymena BC arc21 Newtownabbey BC Larne BC NILGA Newry & Mourne DC Ballymoney BC	The aim of the introduction of Defacement Removal Notices is to encourage owners of street furniture to work in partnership with district councils to keep streets free of defacement. In view of this the Department considers it to be inappropriate to provide powers to prosecute for failure to comply with a Defacement Removal Notice – powers for district councils to recover costs where necessary is a more appropriate course of action.
Period of notice given in a Defacement Removal Notice to be reduced from 28 days to 14 or 7 days.	Ards BC	Defacement removal notices are meant to enable district councils to address situations in which relevant surfaces are defaced by graffiti and/or fly-posting, in particular to remove the remains of old flyers or a build-up of flyers and stickers over time. It is the Department's view that the owners of street furniture, such as telecommunications companies, should share responsibility with district

Issue	Raised By	Response
Concern that Defacement Removal Notices will target local businesses rather than the perpetrator.	Lower Shankill Residents' Voice	<p>councils for the state of the structures they erect in the street. However, it is appropriate that they be given a reasonable period of time to comply with a Defacement Removal Notice before the council takes action to remove the defacement. A minimum of 28 days is viewed as being the appropriate period of time.</p> <p>It is the Department's view that the owners of street furniture, such as telecommunications companies, should share responsibility with district councils for the state of the structures they erect in the street. Defacement removal notices are not to be used as an alternative to the powers to deal with those who commit acts of graffiti or fly-posting or those who benefit from such acts.</p>
Guidance required on what is meant by "the person who is responsible for the defaced surface" and "taking account of local circumstances".	Lower Shankill Residents' Voice	<p>Guidance on Defacement Removal Notices will be the subject of a consultation exercise in due course.</p> <p>It is not clear from the comments raised what additional powers would be required to help with the determination of the identity of the person responsible for displaying a poster or causing a poster to be displayed. In cases where the poster identifies the person who displayed it or caused it to be displayed there should not be any need for additional investigative powers. If it is impossible to determine from the poster who displayed it or caused it to be displayed it is difficult to see how any specific additional powers could help.</p>
Investigative powers for district councils to determine the person responsible for displaying a poster or causing it to be displayed.	Craigavon BC Belfast CC arc21 Newtownabbey BC Larne BC NILGA Newry & Mourne DC Ballymoney BC	<p>In cases where the poster identifies the person who displayed it or caused it to be displayed there should not be any need for additional investigative powers. If it is impossible to determine from the poster who displayed it or caused it to be displayed it is difficult to see how any specific additional powers could help.</p>
Introduction of powers for district councils to deal with any element of	Tidy NI NI Env Quality Forum	This is a significant proposal which would require detailed

Issue	Raised By	Response
land/premises considered to be detrimental of the amenity of an area i.e. mirroring the provisions of section 215 of the Town and Country Planning Act 1990.		consideration and amendment to the Bill. Given the very tight legislative timetable it is not possible to bring forward significant new provision at this stage.
District councils to be given powers similar to section 149 of the Highways Act 1980/Article 59 of the Roads (NI) Order 1993 – removal of nuisance from a road.	Tidy NI NI Env Quality Forum	As above. Article 14 of the Planning Reform (NI) Order 2006 amended Article 84 of the Planning (NI) Order 1991 to increase the maximum level of fine for the offence of displaying an advertisement in contravention of the Planning (Control of Advertisements) Regulations (NI) 1992 from level 3 to level 4 on the standard scale.
Penalty for graffiti and fly-posting offences should be level 4 and not level 3.	Tidy NI NIEL NI Env Quality Forum	The Department is liaising with the Community Safety Unit in the Department of Justice regarding any possible developments concerning arrangements for community safety partnerships in terms of local environmental quality issues.
Provisions relating to crime and disorder reduction strategies not replicated in NI	Tidy NI NIEL Translink NI Env Quality Forum Children in Northern Ireland	Schedule 3 Part 1 to the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992 covers the display of temporary advertisements relating to the sale or letting, for residential, industrial or commercial use or for development for such use, of the land or premises on which it is displayed. Details of certain classes of advertisements are contained therein which are deemed to have planning consent subject to certain conditions being met, i.e. size of boards, removal dates, etc. The enforcement of this legislation
Rules governing Estate Agent Signs	PRS Consultation Network NI	

Issue	Raised By	Response
Flags and Emblems	A.N. Other	<p>rests with the Department's Planning Service.</p> <p>In April 2005 the cross-departmental joint Flags Protocol was launched. It set out an agreed partnership approach to deal with flags issues. The parties included the Police Service of Northern Ireland, the Department of Environment, Department for Regional Development, and Department for Social Development, Office of the First Minister and deputy First Minister and the Northern Ireland Housing Executive. The main aim of the protocol has been to work proactively, with communities, to address the removal of flags and emblems from arterial routes and town centres and to remove all paramilitary flags and displays. The protocol set out an agreed mechanism to deal with the flags issues, focussing on local dialogue, and presented an important opportunity for all those key stakeholders to play a constructive role with local communities in the promotion of better relations.</p> <p>The Department views under-16s as being the appropriate age for the ban as many 16 – 18 year olds are likely to have a legitimate reason for needing to buy aerosol paints, e.g. they may be a householder in their own right or they may own a vehicle which needs repair. These people would be unfairly hindered by a ban on the sale to under-18s. Setting a different age to GB is also likely to cause difficulties and confusion for businesses who sell aerosol paints, particularly those which operate right across the UK.</p>
Ban on the sale of aerosol paints to be raised to 18 rather than 16.	Craigavon BC Banbridge DC Belfast CC Ballymena BC arc21 Newtownabbey BC Larne BC NILGA Newry & Mourne DC Ballymoney BC	

Issue	Raised By	Response
Introduction of fixed penalty for offence of selling aerosol paint to children.	Banbridge DC	This is a significant proposal which would require detailed consideration and amendment to the Bill. Given the very tight legislative timetable it is not possible to bring forward significant new provision at this stage.
Investigative/enforcement powers for offences of selling aerosol paint to children.	Coleraine BC CEHOG Ballymena BC Antrim BC Lisburn CC Cookstown DC Armagh CDC	As above.
<p data-bbox="199 667 264 689">Dogs</p> <p data-bbox="199 707 655 1037">A Dog Control Order to limit the number of dogs that can be walked by one person could potentially restrict responsible owners unnecessarily and allow less responsible owners with little control over fewer dogs to remain a nuisance. Such Orders are superfluous if other Orders are enforced properly.</p>	Dogs Trust	This will be a matter for district councils to deal with during consultation on Dog Control Orders.
<p data-bbox="199 1391 655 1615">Authorised officers should have the power to instruct an owner to put their dog on a lead, keep it on a lead and to muzzle it as is the case in England and Wales under the Clean Neighbourhoods and Environment Act 2005.</p>	Dogs Trust	<p data-bbox="1007 1055 1386 1955">District councils will be able to make it an offence not to put and keep a dog on a lead when directed to do so by an authorised officer by making a "Dogs on Leads by Direction Order". There are no powers for authorised officers to direct an owner to muzzle their dog under the CNEA 2005 in England and Wales and the Department doesn't see the need for these powers to exist in NI. In NI a dog may be muzzled under the Dogs (NI) Order 1983 but this applies to dangerous dogs, fighting dogs and dogs that have attacked someone. Following its recent consultation on changes to dog control legislation, DARD is considering proposals to allow district councils to make muzzling one of the conditions of a licence for individual dogs where a breach of the Dogs (NI) Order has occurred.</p>

Issue	Raised By	Response
Exemptions should be made from Dog Fouling Orders for Registered Assistance dogs.	Dogs Trust	Exemptions will be covered in the Regulations which will be consulted on in due course.
Councils must be required to provide adequate facilities for owners to walk their dogs both on and off the lead.	Dogs Trust Craigavon BC	This will be a matter for district councils to deal with during consultation on Dog Control Orders
Dog Control Orders which exclude dogs from certain areas should be minimised to allow dogs as much freedom as possible to exhibit normal behaviours.	Dogs Trust	This will be a matter for district councils to deal with during consultation on Dog Control Orders.
Concern that some Dog Control Order consultations in GB have been very unclear to local dog owners. The Bill should include some detail about the Dog Control Order consultation process.	Dogs Trust	Matters of detail will be covered in regulations and guidance on Dog Control Orders which will be consulted on in due course.
The Department should work closely with the Department of Agriculture and Rural Development on measures to reduce problems with stray dogs	Environment Committee	The Department will continue to work closely with DARD on areas of mutual interest.
The making of a Dog Control Order needs to be a streamlined and practical procedure which allows the council to readily incorporate its designation into the planning processes. The Department will therefore need to consult with district councils on the proposed Regulations associated with dog control orders.	Craigavon BC Banbridge DC arc21 Belfast CC NILGA Ballymoney BC Newry & Mourne DC	A consultation exercise on regulations and the associated guidance will be undertaken in due course.
Significant drawback is the loss of any enforcement powers outside of areas designated using dog control orders, even for dog faeces, unless a single dog control order for an entire council area can be drawn up for this single issue.	Tidy NI NI Env Qual Forum NI Environment Link	Under the proposals, district councils will be able to draw up a "Fouling of Land by Dogs Order" for its entire district if it chooses to do so.
It would appear that the fouling offence would only be available for officers to enforce on land designated by the Council. It is also noted that dog control order would only apply to land which is open to the air and to which the public are entitled or permitted to have access and that land in private ownership, such as private sports grounds, would be excluded. The overall impact would appear to reduce the	Ards BC	Sports grounds, playing fields and recreation grounds in private ownership would be covered by the existing wording as they would be areas to which the public are entitled to have access. The Department will have the power to make orders designating land to which Part 5 does not apply. Any such orders will be subject to a

Issue	Raised By	Response
<p>areas in which dog fouling would be an offence and therefore would diminish the Council's ability to tackle problems arising.</p>	<p>Ards BC Limavady BC Coleraine BC CEHOG Ballymena BC Newtownabbey BC Moyle DC Castlereagh BC Antrim BC arc21 Lisburn CC Cookstown DC Belfast CC Larne BC NILGA Ballymoney BC Newry & Mourne DC Armagh CDC</p>	<p>consultation exercise in due course.</p> <p>The powers to deal with dog fouling currently available under the Litter (NI) Order 1994 will be brought into the new Dog Control Order regime alongside other environmental dog controls. To retain Article 4 of the Litter Order would be confusing for district councils and members of the public. Clause 44 of the Bill provides district councils with the power to require a name and address. The Department is not aware of any circumstances in which other information would be required.</p>
<p>Article 4 of the Litter (NI) Order 1994 should be retained and the offence of fouling should not be predicated on the designation of an area. Article 4 currently provides for more comprehensive enforcement across a whole council area and any new provisions must be the same or better. Repeal of Article 4 would diminish the ability to obtain information under Article 20 of the Order.</p>	<p>arc21 Belfast CC Larne BC NILGA Ballymoney BC Craigavon BC Banbridge DC Newry & Mourne DC</p>	<p>The present system for making byelaws in respect of dog control matters system is unwieldy and very time consuming. The Dog Control Order system will be a more streamlined and straightforward system which will be easier for councils to operate.</p>
<p>Would still wish to retain the power to make byelaws in relation to dogs.</p>	<p>arc21 Newtownabbey BC Larne BC Belfast CC Craigavon BC NILGA Ballymoney BC Newry & Mourne DC</p>	<p>Land designated as being land to which Dog Control Orders do not apply will be kept to a minimum. A draft Order detailing this land will be the subject of a consultation exercise in due course.</p>
<p>Problems associated with dogs can arise anywhere within a district council area and the comprehensive description of land to which dog control orders can be applied is noted, but the Department must ensure that it does not unduly restrict the options available to a district council by prescribing land to be exempt from designation without full consultation with the district council in whose area the land is located.</p>	<p>arc21 NILGA Fermanagh DC Ballymoney BC Newry & Mourne DC</p>	<p>Our proposals are aimed at improving local environmental quality, whereas the DARD proposals relate to the control of dangerous dogs and the promotion and support of responsible dog ownership through changes to the dog</p>
<p>All dogs-related legislation should be in one place. It is recommended that the Department discusses this issue with the Department of Agriculture and Rural Development.</p>	<p>arc21 NILGA Fermanagh DC Ballymoney BC Newry & Mourne DC</p>	<p>Our proposals are aimed at improving local environmental quality, whereas the DARD proposals relate to the control of dangerous dogs and the promotion and support of responsible dog ownership through changes to the dog</p>

Issue	Raised By	Response
Noise	Cookstown DC Lisburn CC Fermanagh DC Antrim BC Castlereagh BC Ballymena BC arc21 Newtownabbey BC CEHOG Craigavon BC Coleraine BC Limavady BC Belfast CC	licensing system. We are liaising with DARD to ensure that there is no overlap between the two regimes and to avoid any confusion for district councils when they come to implement the relevant legislation.
The Department should consider including noise associated with other alarm types within the provisions	Cookstown DC Lisburn CC Fermanagh DC Antrim BC Castlereagh BC Ballymena BC arc21 Newtownabbey BC CEHOG Craigavon BC Coleraine BC Limavady BC Belfast CC	The new provisions dealing with audible intruder alarms supplement, not replace, the existing council powers to deal with audible alarms under the Pollution Control and Local Government (NI) Order 1978. Councils will therefore still be able to use those powers to deal with nuisance caused by other types of audible alarms. The new powers will make it mandatory to notify the council of a key-holder. Failure to do so will be an offence liable on summary conviction to a fine not exceeding level 3 (£1,000) on the standard scale. The requirement for those in an alarm notification area to notify the council of a key-holder is targeted specifically at those premises which have audible intruder alarms.
The Department should consider allowing councils the option of using a news-letter as a cost-effective means of notifying businesses/householders of proposed alarm notification areas and that 2 rather than one key-holders should be nominated	C'town DC L'burn BC F'agh DC Antrim BC Castlereagh BC arc21 Newtownabbey BC Craigavon BC Coleraine BC Limavady BC Belfast CC	The Departmental guidance on Audible Intruder Alarms will make it clear that utilising existing news-letters /magazines etc., is an acceptable mechanism for notifying premises in a proposed alarm notification area. The Department will give further consideration to making it clear within the guidance that, whilst not a statutory requirement, a responsible person may nominate more than one key-holder in order to assist councils with the efficient implementation of their new powers.

Issue	Raised By	Response
<p>Statutory Nuisance</p> <p>The power in Art 69 of the Pollution Control and Local Government Order 1978 should be extended to apply to any person (rather than just the owner or any person with an interest in the land) and should include provision to include "any information which the council reasonably considers that it needs" This will allow greater scope to acquire whatever information may be necessary for the statutory nuisance investigations from a wider range of people</p>	<p>Lisburn CC Antrim BC Ballymena BC CEHOG Coleraine BC</p>	<p>Article 69 of the Pollution Control and Local Government (NI) Order 1978, as amended by the proposed CNEB, brings NI into line with England and Wales. The Department is not convinced that widening the scope of the power to allow the service of a notice on "any person" would serve any worthwhile purpose.</p>
<p>It is not clear why a best practicable means (bpm) defence is applicable to smoke nuisance (Clause 61(1)(b) from dwellings but such a defence is not available for fumes and gases nuisance (Clause 61(1)(c) arising potentially from the same source</p>	<p>Cookstown DC Lisburn CC Fermanagh DC Antrim BC Newtownabbey BC CEHOG Craigavon BC Coleraine BC</p>	<p>Clause 61(3) exempts smoke from a private dwelling in a smoke control area from being dealt with under the statutory nuisance regime. Therefore a council can only serve an abatement notice in respect of smoke from a private dwelling if it is outside a smoke control area. So as not to disadvantage those residing in private dwellings outside a smoke control area, the bpm defence applies. No such bpm defence is available in respect of fumes or gases emitted from private dwellings under the statutory nuisance regime. The new statutory nuisances provisions in respect of smoke, fumes and gases, when enacted will maintain parity of treatment between Northern Ireland and England and Wales.</p>
<p>The Department should consider the need for the introduction of a "daily offence" where businesses fail to comply with an abatement notice</p>	<p>Cookstown DC Lisburn CC Antrim BC Castlereagh BC Ballymena BC Newtownabbey BC CEHOG Craigavon BC Ards BC Coleraine BC</p>	<p>The levels of fines and penalties that can be imposed by the courts for non-compliance with an abatement notice are being considerably enhanced in Clauses 63(10) and (11) the proposed CNEB (from £200 to £5,000 in respect of dwellings (£20,000 in respect of industrial, trade or business premises). In addition, by virtue of Clause</p>

Issue	Raised By	Response
There is no Northern Ireland standard for overcrowding in a dwelling whereas there is one in E&W. The Department should consider introducing one	Cookstown DC Lisburn CC Antrim BC Castlereagh BC Ballymena BC Newtownabbey BC CEHOG Craigavon BC Ards BC Coleraine BC	66(7) of the proposed CNEB if a council is of the opinion that proceedings for an offence in a court of summary jurisdiction would afford an inadequate remedy in the case of a statutory nuisance it may take proceedings in the High Court where there is no upper limit on the amount of fine that can be imposed by the court. The Department accepts that there is no standard in Northern Ireland for overcrowding as there is in England and Wales. However, as primary responsibility for housing policy, including setting the standard for overcrowding, in Northern Ireland rests with the Department for Social Development we intend raising with DSD the concerns expressed by councils with regard to overcrowding standards.
The definition of owner is not listed in Clause 61(10) but instead can be found in Clause 66(9). Does the definition of owner not relate to the whole statutory nuisance section or just to expenses recovery?	Cookstown DC Lisburn CC Antrim BC Ballymena BC arc21 Newtownabbey BC CEHOG Coleraine BC Belfast CC	No. The definition of owner applies only to expenses recovery in Section 66(9) and this is consistent with the approach taken in E&W. Elsewhere in the Bill the normal dictionary definition of owner applies as it is not defined in statute.
The Department should provide clarity on whether poultry houses/farm buildings on agricultural land are included within the term "relevant industrial, trade or business premises"	Cookstown DC Lisburn BC Antrim BC Castlereagh BC Ballymena BC Newtownabbey BC CEHOG Craigavon BC Coleraine BC	The Department will clarify this in its proposed guidance for district councils and other interested parties on statutory nuisances
The Department should give serious consideration to the introduction of stronger powers to allow councils to effectively regulate derelict structures that are detrimental to the amenity of an area	Cookstown DC Fermanagh DC Newtownabbey BC CEHOG Declan O'Loan MLA Craigavon BC Coleraine BC Belfast CC	With regard to any possible legislative solution for tackling dereliction, legislation could only be contemplated following a rigorous assessment of any alternative possible options to address the issue. If there was to be a case for undertaking such an assessment it would be appropriate to consider

Issue

Raised By

Response

relevant legislation within the UK such as section 215 of the Town and Country Planning Act 1990. Section 215 enables a local planning authority, in certain circumstances, to take steps requiring land to be cleaned up, when its condition adversely affects the amenity of the area. No direct equivalent exists in Northern Ireland planning legislation and the recent Planning Reform Consultation did not include any proposals for similar legislation in Northern Ireland. It should be noted that the use of the discretionary section 215 power is in practice limited by the scope of the right of appeal conferred by section 217 of the Town and Country Planning Act 1990. Under section 217 the recipient of a notice may claim not only that the condition of the land does not adversely affect amenity, but that even if it does, it is attributable to, and results in the ordinary course of events from, the carrying out of operations on or a use of land which is not in contravention of planning control.

Presently, there are considerable powers across government departments / local councils for dealing with such issues. For example, powers district councils have powers under Articles 65 and 66 of the Pollution Control and Local Government (Northern Ireland) Order 1978 to deal with defective premises that are in such a state as to be prejudicial to health or a nuisance, and to deal with ruinous and dilapidated buildings and neglected sites that are seriously detrimental to the amenities of a

Issue

Raised By

Response

neighbourhood. In addition, the Northern Ireland Housing Executive has powers under Article 63 of the Housing (Northern Ireland) Order 1981 which give it authority to secure or demolish premises in order to either prevent damage or to protect housing accommodation and to recover costs from the owner where appropriate. The Department for Regional Development also has powers under Article 51 of the Roads Northern Ireland Order 1993 to serve notice on the owner/occupier of a building to carry out such works so as to remove a hazard if in their opinion they consider the building, wall or other structure is in such a condition that it could present a danger to road users. Where an owner/occupier does not comply with the requirements of the notice or cannot be identified Roads Service may carry out the necessary remedial works to ensure the safety of road users and will seek to recover the costs where possible.

Although there are a wide range of existing powers it is appreciated that neglected or derelict buildings can attract large amounts of litter and this can be detrimental to the amenity of the local neighbourhood. This is one of the issues that will be addressed in the Bill which will enable district councils to deal more effectively with a wide range of local environmental problems, including litter and will update the current Northern Ireland legislation on statutory nuisances and improve the procedures for dealing with them. The Bill also provides district councils

Issue

Raised By

Response

An additional category of nuisance be included to address "any premises providing harbourage for pigeons so as to be prejudicial to health or a nuisance!"

Lisburn CC, Castlereagh BC Ballymena BC arc21 Newtownabbey BC Limavady BC Belfast CC

with new and strengthening powers to help them manage their local environments in an efficient and effective manner in line with the public's expectations. When taken with other and existing legislation the new provisions will give district councils a comprehensive "toolkit" of powers which are robust and enforceable and should lead to significant improvements in the state of the environment.

The issue of dereliction may also be addressed through effective town centre regeneration measures where a range of stakeholders – including government departments, district councils, utility providers, the business sector and others come together in partnership with a holistic approach to tackle physical and economic regeneration issues. Given the wide range of legislation currently available and the proposals contained in Bill the Department has no plans to bring forward a legislative provision equivalent to section 215 at this time.

The Department considers that the existing powers available to councils in Clauses 61(1)(a) "any premises in such a state as to be prejudicial to health or a nuisance" and 61(1)(e) "any accumulation or deposit which is prejudicial to health or a nuisance" are sufficient to allow councils to serve an abatement notice where there are problems associated with pigeons. In addition, councils have powers under Section 90 of the Local Government Act 1972 to make bye-laws for the good rule and government and prevention and suppression of nuisance for the whole or any

Issue	Raised By	Response
The remainder of the Public Health Acts 1878 – 1907 should be revised and consolidated	Lisburn CC Antrim BC Castlereagh BC CEHOG	part of or area within their district and could use these to control pigeons. Councils also have powers under Article 71 of the Pollution Control and Local Government (NI) Order 1978 "to take any steps for the purpose of abating or mitigating any nuisance, annoyance or damage caused by the congregation in any built-up area of feral pigeons...". Responsibility for most of the remainder of the content of the Public Health Acts 1878 – 1907 are out-with the Department's policy responsibility and we intend raising with other relevant Departments councils' concerns in respect of the remainder of the Public Health Acts 1878 – 1907.
It is unclear why the words "within the meaning of Article 4" as in Clean Air (NI) Order 1981 Art 23(1)(c) have been removed from Part 7, Section 61(3)(d). It is recommended that these words be retained to maintain clarity for this exemption	Antrim BC, B'mena BC, C'avon BC,	The words "within the meaning of Article 4" as in Article 23(1)(c) of the Clean Air Order 1981 are rendered superfluous as a consequence of the consolidation of the statutory nuisance regime in the CNEB.
Appropriate guidance should be issued in respect of the new noise and statutory nuisance regime as in E&W.	Cookstown DC Lisburn BC Fermanagh DC Antrim BC Castlereagh BC Ballymena BC BC Newtownabbey BC CEHOG Craigavon BC Ards BC Coleraine BC Limavady BC Belfast CC	The Department proposes consulting district councils on draft guidance covering noise and statutory nuisances before the Act comes into operation.

Table 3
Gating Orders provisions - Department for Regional Development response

Issue	Raised by	DRD Response
1. General Comments Welcome the new provisions and the benefits they will bring to the public, local communities and business.	Tidy NI NIEQF	Support noted.

Issue	Raised by	DRD Response
Welcomes the Bill as it will allow allow for a faster and more effective procedure. Acknowledge the potential benefits to local communities in terms of crime prevention, disorder, noise nuisance, dumping etc.	CEHOG Coleraine BC Ballymena BC Castlereagh BC Antrim BC	Support noted.
Welcomes that Local Authorities can make gating orders/Supports in principle.	Craigavon BC Banbridge DC Belfast CC Ards BC Newtownabbey BC Larne BC	Support noted.
Councils having primary responsibility for issuing and revoking Orders should help to speed up process and take account of the wishes of the local community who may be experiencing difficulties.	Ken Robinson MLA	Noted.
2. Approval Process		
Article 69A. A district council may, with the approval of the Department make an order...Level of approval from department would need more clarification.	Craigavon BC Banbridge DC	The need for DRD approval is intended to enable DRD, as road authority, to take account of any road safety or traffic management issues that may arise as a result of an intention to make a gating order.
Important that need to obtain approval from Department does not add undue delay and as such clear timeframes need to be established.	Larne BC	It is not anticipated that Departmental approval would add greatly to the timeframe necessary to make a gating order.
Council would not wish this to be a lengthy process and perhaps should be time bound in statute.	Craigavon BC	
Parameters/effective controls should be put around response times to avoid delay in the process.	Belfast CC Newtownabbey BC	
Agreement would be needed from the Department, of the possibility of refusal to the order, during the process, therefore negating any unnecessary expenditure.	Craigavon BC Belfast CC Newtownabbey BC Larne BC	The Department is likely to withhold approval for a gating order only where there is a public interest in retaining rights of passage; where there are road safety concerns or where the proposes gating order would create traffic management concerns.
Further guidance needed on the requirements relating to local inquiries, in particular the circumstances under which such an inquiry must be held and what element of discretion councils might have to determine 'reasonableness' of objections.	Belfast CC Newtownabbey BC Larne BC	DRD does not have guidance on the circumstances under which an inquiry must be held. However, it understands that objectors have a right to have their objection considered, particularly where contentious issues arise. It is possible that, in most cases,

Issue	Raised by	DRD Response
Clear guidance will be required along with DSD approval.	CEHOG Coleraine BC Ballymena BC Castlereagh BC Antrim BC	<p>objections relating to gating orders could be dealt with by means of correspondence and meetings and the need to convene a local inquiry may be avoided. Any decision to hold or not to hold an inquiry should take account of relevant principles of law such as the need for a decision making process in accordance with the requirements of administrative and Human Rights law. An inquiry must be held if, before the expiration of the period referred to in Article 69D(1)(b), the district council receives an objection from – (a) the occupiers of premises adjacent to or adjoining the road; or (b) the owners of any cables, wires, mains, pipes or other apparatus placed along, across, or under any road to which the order applies, and the objections is not withdrawn.</p> <p>No approval from DSD is required. (Although it is recognised that there may be occasions when DSD has an interest due its responsibilities for regeneration schemes).</p>
Imperative that proper s75 screening and equality impact assessment is carried out on proposed gating orders due to potential adverse impact on children and young people and to ensure that consideration is given to the needs of those who are disabled.	CiNI CLC	<p>DRD agrees that Section 75 screening should be carried out. Under existing arrangements, where an alleygating scheme is proposed, the Department requests promoters to carry out screening on each proposal. The alleygating information manual produced by Belfast City Council and Bryson Charitable Group also refers to the need for the promoter to question people on the possibility of gates affecting their human rights under section 75 of the NI Act 1998.</p>
3. Operational Issues		
Unanswered questions around issues such as who will open and close gates, the DRD role, the need for neighbourhood approval, access for emergency services or impacts on rights of way. Clear guidance will be required.	Limavady BC arc21 NILGA	<p>DRD accepts that guidance on these issues would be helpful and would be content to contribute to it. DRD has not generated any alley gating schemes. It has simply made the necessary Traffic Regulation Order, by Statutory Rule, to give legal force to the</p>

Issue	Raised by	DRD Response
		restriction on traffic. Operational issues such as access for emergency vehicles and the arrangements for opening and closing the gates have been matters for the promoters to determine. Belfast City Council and Bryson Charitable Group produced an alley gating information manual as part of the Belfast Alley gating Pilot Project. It contains clear guidance on these practical issues.
4. Resource Implications		
This process will involve additional costs - e.g. administration, advertising, legal advice, inquiries, erection, operation and maintenance of gates. Provision of funding needs to be addressed by central government.	Belfast CC Limavady BC Newtownabbey BC Larne BC	Funding for the Belfast Alleygating Pilot Project was provided by the Northern Ireland Office and Belfast Regeneration Office. DRD does not have any budgetary allocation for alleygating schemes. Its function, under the existing arrangement is to put in place the necessary subordinate legislation to achieve the gating while the actual alley gates are erected by the promoter. When the alleygating initiative was announced in October 2002 the (then) Minister stressed that the initiative for promoting individual schemes would lie with the local community, probably working in partnership with other agencies and that such groupings would have to obtain the necessary funding to advance a scheme.
Question of funding to be addressed/clarified.	CEHOG Coleraine BC Ballymena BC Castlereagh BC Antrim BC Fermanagh DC	Since the provision of gates will be a matter for district councils the resourcing of them would probably be for the Department of the Environment, in consultation with the Department of Finance & Personnel to take forward.
Recommends that new legislation is accompanied by sufficient resources to ensure it is effectively utilised.	NIEQF	
Department should explore resourcing for provision of gates, particularly with Community Safety Unit.	arc21 NILGA	The proposed powers relate to "relevant roads" which are roads other than special roads, trunk roads, classified roads or roads of such other description as may be prescribed in regulations made by the Department for Regional Development. Consequently councils may undertake work on land comprised in a road. The
5. Clarification on what can be gated		
Will Council be given authority to undertake such work on land which it does not directly own e.g. properties located on land owned by NIHE/DRD or in private ownership?	Newtownabbey BC	

Issue	Raised by	DRD Response
Strict criteria for such action must be laid down as otherwise residents could make unrealistic demands.	Fermanagh DC	powers do not extend to roads which are not maintainable by the Department. Gating orders may only be made in respect of "relevant roads". All relevant roads are public roads maintainable by the Department.
Provisions may create an expectation by residents that all alleys and secondary access ways could be gated when there is no necessity to do so.	CEHOG Coleraine BC Ballymena BC Castlereagh BC Antrim BC	The public has a right to pass or re-pass along a public road. A gating order restricts this public right of way over to road to the extent specified in the gating order. A 'relevant road' can be gated provided that the Department approves the proposal and the conditions specified in section 69A(3) and 69B(3) to (5) are satisfied.
Concern that many back alleys do not fall within the definition of "road" and therefore could not be made the subject of a gating order. This may lead to unreasonable public expectation about what can be achieved.	Larne BC	None of the terms "back street, alley or walkway" are used in the Bill. The legislation provides for the gating of 'relevant roads' and the term 'relevant road' is defined.
Clarification is required on a definition of what is termed as a back street as there could be confusion between a back street (alley) and a walkway. 69B(4) goes some way to addressing the issue of public rights of way to a residential dwelling however a fuller definition would prove invaluable for Councils when dealing with public expectations.	Banbridge DC Belfast CC Newtownabbey BC	
6. Variation and revocation 69C(2) - helpful if could include a clause of antisocial behaviour directed to the gates or within the restricted space, as a reason for revocation.	Belfast CC Newtownabbey BC Larne BC	The Department considers that proposed new Article 69C(3) should cover this scenario.

E mails to Danny Kinahan re CNE Bill

From: MALLARD CONSULTANCY [mailto:enquiries@mallard-consultancy.co.uk]
 Sent: 17 November 2010 09:48
 To: Castle Upton
 Cc: Ian Humphreys

Subject: Fwd: Good to meet you

In England those areas of land are covered by section 92 Environmental Protection Act (notice from local authority) and this is why litter clearing notices do not apply to that land. There is also a power for individuals to give notice and enforce via the magistrates court.

If N Ireland does not have this equivalent then there will indeed be a very large loophole.

Best regards,

David.

Easily the best weapon we have found to not only send a visible message quickly but also to tackle resource and budget issues for the regulators is the fixed penalty.

The Department cannot possibly have sufficient staffing to tackle this alone and as the district councils are elected by the local community and pick up the tab for clear up and cleansing they have a vested interest in tackling ALL forms of waste, litter, graffiti, etc.

FPN for littering alone will not crack the problem. The threat of street litter control notices alone can make retailers and employers manage litter from and around their premises (also thereby producing cleaner streets, often improving profit to their surprise but also reducing the abnormally raised costs of cleansing by the council). However, your existing designations need updating to include premises selling food or drink for consumption off premises and offices to include staff smoking litter.

My point on dog fouling is that it does fall within your definition of litter BUT is excluded subject to regulations from the Department. A lot of residents complain about neighbours leaving piles of faeces in gardens - this could very easily be dealt with by a Litter Clearing Notice schedule of monitoring and clearing, backed by speedy warning and potential FPN - but only if classed as "litter". Bagging and depositing dog foul may be dealt with as litter, if classed as "litter". Kicking dog foul into a canal from a towpath may be dealt with as littering, if classed as "litter".

Further, most social landlords are unable to effectively manage conditions concerning the state of tenants' outside areas because their options are costly, time consuming, at the discretion of the court, and perceived by tenants as empty threat yet they could work with councils to regulate by litter control notices, backed by FPN, if the definition of litter is broad.

Our councils are the primary enforcers on waste transfer notes and use their more regular presence (can be extended to food and other officer visits) to cut out fly tip at source. They also use it to lessen evidential difficulties where a business is suspected of fly tipping locally - the authority may switch to requiring evidence of transfer notes to prove legitimate waste disposal where the business denies responsibility.

It is important, given budgets and the size of the councils that they do have an ability to retain receipts for this work where possible, use FPN to reduce resource strain and also have financial motivator for businesses to pay attention.

Unlike expensive office based PACE interviews, keeping these doors open for the councils should allow them to get people out faster, spread the load and tackle apathy by being seen to tackle issues as they arise at the point of the problem. It also allows councils more freedom to work with the community and wider agencies, including "green champions".

Again, on flyposting and graffiti it is vital for community confidence that powers exist to remove these immediately.

I hope this hurried note helps.

Best regards,

David.

Departmental reply re DOGs and Derelict Buildings in Clean Neighbourhoods and Environment Bill



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Your reference:
Our reference: CQ/193/10

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
BELFAST
BT4 3XX Date: 17 November 2010

Dear Alex

Response to Comments from the Environment Committee Concerning the Clean Neighbourhoods and Environment Bill

Please find below the Department's response to the comments raised by the Committee following the meeting on Thursday 11 November 2010.

How the Bill will impact on rural sports, particularly in relation to sporting dogs and their freedom of movement.

The Department will be consulting on guidance to be issued to district councils which will state that when considering a dog control order a council has to be able to show that it is a necessary and fair response to problems caused by the activities of dogs and those in charge of them. A council should be mindful of the balance between the interests of those affected by the activities of dogs, bearing in mind the need for people, in particular children, to have access to dog-free areas and areas where dogs are kept under strict control, and the need for those in charge of dogs to have access to areas where they can exercise their dogs without undue restrictions.

There will be defences in all dog control orders of acting with the consent of the owner or occupier of the land, or of any other person or authority which has control of the land. Under this provision, no offence will be committed if a person in charge of a dog acts with the consent of the person who owns or is otherwise in control of the land. There will be no specific

exemption for working dogs, but this provision will cover any dog that is working on land with the consent of the person in control of the land.

Clause 40 of the Clean Neighbourhoods and Environment Bill gives the Department power to designate types of land which are not to be subject to all or some dog control orders. The proposed Controls on Dogs (Non-application to Designated Land) Order (Northern Ireland) 2011 will designate land which is or forms part of a road in respect of a dog control order excluding dogs from land specified in the order. This provision is intended to ensure that dogs are not excluded from roads in respect of which rights of way exist

In effect, the draft Bill will not impact on the freedom of movement of sporting dogs. For example, if dogs crossed from one piece of land for which they had the consent of the owner to be on to another via a road, then that road would not be subject to a dog control order which excludes dogs from specified land.

How the issue of derelict buildings will be dealt with by the Bill.

The new Clause 17 in the Clean Neighbourhoods and Environment Bill will allow a district council to serve a notice (a litter clearing notice) in relation to any land that is defaced by litter so as to be detrimental to the amenity of a locality in its area, which is open to the air. By virtue of the Interpretation Act (NI) 1954 land includes buildings. In addition, litter is defined in the Litter (Northern Ireland) Order 1994 as being "any refuse, filth, garbage or any other nauseous, offensive or unsightly waste; or any waste which is likely to become nauseous, offensive or unsightly".

The above new power is additional to powers already available to district councils to help them to deal with premises, for example:-

- Article 65 of the Pollution Control and Local Government (Northern Ireland) Order 1978 gives councils powers to deal with defective premises that are in such a state as to be prejudicial to health or a nuisance;
- Article 66 of the Pollution Control and Local Government (Northern Ireland) Order 1978 gives councils powers to deal with ruinous and dilapidated buildings or structures that are seriously detrimental to the amenities of the neighbourhood;
- Article 18 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985, gives councils powers to remove or obliterate any graffiti which is detrimental to the amenity of any land in its district and any illegally-displayed placard or poster;

I trust this information is of assistance. However, should you require anything further please contact me.

Yours sincerely

Úna Downey

DALO
[by email]

All Party Parliamentary Group for Children-Child Impact Statement on Clean Neighbourhoods and Environment Bill March 2005



All Party Parliamentary Group for Children Child Impact Statement Clean Neighbourhoods and Environment Bill (HL Bill 31) Second reading – 22nd March 2005

<http://www.parliament.the-stationery-office.co.uk/pa/ld200405/ldbills/031/2005031.htm>

1. Child Impact Assessment - process

Child Impact Assessment involves the analysis of proposed legislation to determine its likely effect on children and young people. Following UK welfare legislation and international conventions, a child is defined as being under 18.

The Children's Legal Centre and the National Children's Bureau (NCB) have been funded by the Nuffield Foundation over two years (October 2004 to September 2006) to undertake child impact assessment of up to four Bills per year. Special consideration will be given to Bills that directly affect children, but where children are not specifically considered.

Child impact assessment will analyse proposed legislation using the framework provided by the UN Convention on the Rights of the Child, the European Convention on Human Rights as incorporated into the Human Rights Act 1998, and the five outcomes for children established under the Children Act 2004.

2. Overview of the Clean Neighbourhoods and Environment Bill

The Clean Neighbourhoods and Environment Bill builds on work undertaken by the Dept for the Environment Food and Rural Affairs (Defra) [<http://www.defra.gov.uk/>] to review the legislative framework for maintaining and improving the local environment. Living Places: cleaner, safer, greener was published in 2002, and was followed by a consultation paper, Living Places: powers, rights, responsibilities, later that year. Some of those proposals became law in the Anti-Social Behaviour Act 2003. A further Clean Neighbourhoods consultation [<http://www.defra.gov.uk/corporate/consult/clean-neighbourhood/consultation.pdf>] was issued in July 2004, leading to this Bill. It was debated in the House of Commons during January, completing its 3rd reading on 22nd February 2005.

The Bill extends the powers of crime and disorder reduction partnerships to take responsibility for considering the effects of and local responses to anti-social behaviour and environmental crime. It also creates offences and/or strengthens powers to deal with the local environment. The Bill affects both England and Wales.

3. Relevant Human Rights considerations

The use of fixed penalty notices or on-the-spot fines for young people raises questions in relation to the application of Article 6 of the European Convention on Human Rights – the right to a fair trial and public hearing. This is supported by Article 40 of the UN Convention on the Rights of the Child, which stipulates that a child should be informed promptly of any charge made against him; that if appropriate this should include informing his parents or carers; and that the matter should be determined without delay by an independent and impartial authority. The process by which fixed penalty notices are given may not fulfil these requirements.

Though it can be argued that the 'charge' is made at the point at which the fixed penalty notice is given to the child, there is no requirement to notify the child's parents. It can also be argued that accepting a fine does not mean that the young person accepts having committed the offence. The third requirement is only satisfied if the child/parent chooses not to pay, and the case goes to court.

4. Contribution to achieving the Outcomes for Children and Young People

Under the Children Act 2004, both the Children's Commissioner and the arrangements made by children's services authorities to promote cooperation with a view to improving the well-being of the children in the authority's area must relate to five broad outcomes for children and young people. These first appeared in Every Child Matters and have been translated into legislation (s.2(3) and s.10(2)(a) Children Act 2004) as:

- a) Physical and mental health and emotional well-being
- b) Protection from harm and neglect
- c) Education, training and recreation
- d) The contribution made by them (children) to society
- e) Social and economic well-being

Although not child-specific, outcomes 'a' and 'e' may be enhanced by the application of the new offences when measuring improvements to a child's local environment. Pollution, noise, road safety, litter, graffiti, fouling by dogs and unhealthy housing can affect children and young people's health and well-being, particularly for children in lower income families. When consulted about how they would improve the environments in which they live children have said they want 'less traffic, better public transport, more green space, trees, dens, hiding places and less litter. Above all they want adults and other children to help protect their local environments.'^[1]

However, the Bill's effect on outcome 'd' could have negative connotations if the contribution made by a child to society is primarily defined in relation to anti-social behaviour, with no clear link to incentives to promote good or pro-social behaviour.

5. Impact on children and young people of the Clean Neighbourhoods and Environment Bill

- There is no clear role for Youth Offending Teams (Yots)

- There is a lack of clarity throughout the Bill in relation to the age at which fixed penalty notices will apply
- If under-18s are to be given fixed penalty notices, the Bill fails to ensure that a consistent level of fine will be applied according to age and ability to pay
- Failure to supply a name and address on the part of the young person would count as an offence, leading to a £1000 fine
- The role and liability of the corporate parent is unclear if a looked after child is given a fixed penalty notice

5.1 Crime reduction strategies and the input of Yots

Clause 1 – inserts a new duty on the responsible authorities that formulate and implement crime reduction strategies (local authorities, chief police officer, police authorities, fire and rescue authorities, and Primary Care Trusts (PCTs)) to take into account anti-social and other adverse behaviours.

Three of the responsible authorities are part of the new local strategic partnerships created by section 10 of the Children Act 2004, and are therefore obliged to plan and commission children's services in order to achieve the five outcomes for children listed in paragraph 4 above. Recent draft guidance from the DfES on 'Interagency cooperation to improve the well-being of children: children trusts'^[2] states that local crime and disorder and misuse of drugs reduction strategies should be aligned with the Children and Young People's Plan (section 17 Children Act 2004) – the new overarching children's services plan. Draft guidance on the Children and Young People's Plan itself has just been published by the DfES.

It is unclear how Youth Offending Teams (Yots) – which are not necessarily involved in the development of crime reduction strategies nor in local responses to the development of anti-social behaviour – are going to input into this process. Defra is currently reviewing the partnership provisions of the Crime and Disorder Act 1998, and as part of this review will look at how crime and disorder reduction partnerships relate to other local partnerships, including the Yot.

Local authorities have a duty under Schedule 2 Paragraph 7 Children Act 1989 to take reasonable steps to reduce the need to bring criminal proceedings against children within their area, and to encourage children within their area not to commit criminal offences. It is unclear how this fits with the above duty and other proposals within this Bill; and with the new duties under the Children Act 2004. This Bill provides an opportunity to make the relationship between these duties more explicit.

5.2 Gating orders to reduce anti-social behaviour

Clause 2 – local authorities may make a gating order to deny access to a highway in which local residents and businesses are experiencing high and persistent levels of crime and/or anti-social behaviour. The local authorities may specify times during which access should be denied, and must consult with local residents and other stakeholders.

Special consideration should be given when the local authority is considering whether or not to close off a route used by children and young people to get to and from school or college, health services, leisure facilities and other child-related facilities. Since children are (mostly) unable to drive and have relatively low levels of disposable income, they are likely to be hardest hit by being denied access to routes they use as pedestrians, cyclists and public transport users.

New subsection 129B(4) provides that if the highway to be gated is a through route, the council must consider the availability of a reasonably convenient alternative route, and subsection 129B(5) restricts the use of gating orders where the highway is the principle means of access to particular types of premises. The Bill fails to mention that these provisions must comply with the Disability Discrimination Act 1995 to ensure that gating orders do not discriminate against people in relation to physical access. Alun Michael, Minister of State for Rural Affairs and Local Environmental Quality, has given an undertaking that regulations will include a requirement to take mobility considerations into account.

If there was a pre-existing court order for shared contact between separated parents, and the non-resident parent lived in an area subject to a gating order, which order would take precedence, and how would the child access their parent's home? As drafted, the Bill would restrict public access while not denying access to individuals, provided they have a key. Thus the child's access to a gated area is dependent on him or her being accompanied by an adult who has access to the necessary key.

5.3 Fixed penalty notices for specific environmental offences

- Clause 10 – abandoning a vehicle, attached to a fixed penalty notice set at £200 to be paid within 14 days. The local authority may set a lower rate for the fine.
- Clause 18 – dropping litter in open places, attached to a fixed penalty notice set at £75 (or an amount set by the principal litter authority). The authority may set a lower rate for the fine.
- Clause 28 – graffiti and fly-posting, attached to a fixed penalty notice set at £75 (amending the current rate of £50). The local authority may set a lower rate for the fine.
- Clause 55 – dog control orders may be made by local authorities, or parish and community councils. The orders themselves may relate to dog fouling, keeping a dog on a lead, excluding dogs from some land, and a restriction on the number of dogs that a person may take onto any land. Failure to abide by regulations may lead to a fixed penalty notice of £75 that must be paid in 14 days, though the public authorities may set a lower rate for the fine.
- Clause 82 – noise offences, attached to a fixed penalty notice of £100 if it involves a private dwelling, though the local authority may set a lower rate of fine; or a £500 fixed rate fine if it involves licensed premises.
- Failure on the part of the person accused of committing the above offences to supply his/her name and address is itself an offence, and can lead to the imposition of a level 3 (£1000) fine.

Existing offences for fixed penalty notices include 'causing harassment, alarm or distress' under section 5 of the Public Order Act 1986; dogs defecating on designated land under section 4 of the Dogs (Fouling of Land) Act 1996; and 'leaving or depositing litter' under section 87 of the Environmental Protection Act 1990. Thus the principle of fining children has been established in law for a considerable period of time.

The fixed penalty notices in the Clean Neighbourhoods and Environment Bill are modelled on those in the Environmental Protection Act 1990, and therefore apply to children aged ten or over. Fixed penalty notices are offered in lieu of prosecution; if paid, there is no criminal liability. If the young person or parent does not pay, the local authority may prosecute for the offence. There is an obvious conflict of interest for those local authorities which have to decide whether or not to take forward a case involving a looked after child in their care. Alternatively, the child or young person may choose not to accept the giving of a fixed penalty notice so, in the event of

prosecution, may challenge the case in court. The amount charged through the fixed penalty notice is not related in any way to age or ability to pay, so there will be no lower rate available to under-16s.

Recently, legislation has increased the use of fines for under-18s. Section 87 of the Anti-Social Behaviour Act 2003 introduced penalty notices for disorder (PNDs) for 16 and 17-year-olds, and the Home Secretary has since reduced this age further to children as young as ten. Relevant offences refer to those listed in the Criminal Justice and Police Act 2001. The power to fine 16 and 17-year-olds is in force nation-wide, with these young people liable to pay the adult rate of fine. Penalty notices for younger children are being piloted for a year from 26 December 2004, in seven police authority areas: Essex, Lancashire, the Metropolitan police (Kingston division), Merseyside, Nottinghamshire, West Midlands, and the British Transport Police (West Midlands Division), and have differential rates reflecting their age and lack of income. In the case of under-16s given PNDs, the child's parent or guardian is liable for payment of the fine within 21 days.

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[1] Green Alliance/Demos (2004) A child's place: Why environment matters to children, p.4

[2] DfES (December 2004) Interagency cooperation to improve the well-being of children: children's trusts guidance, p.42

Include Youth Further Evidence to Environment Committee on Clean Neighbourhoods and Environment Bill



Learning Lessons from England, Wales and Scotland on Adverse Impact on Children of Measures Contained within Clean Neighbourhoods and Environment Bill (Northern Ireland)

November 2010

Introduction

This briefing paper has been provided to the Environment Committee following a request made by the Committee members to forward information on what impact the measures contained within the Clean Neighbourhoods and Environment Bill has had on children and young people in England and Wales.

We remain concerned about the detrimental impact on children and young people of some of the proposed actions arising from the Bill. We agree that creating a safe and clean environment is vital to the well being of all the people of Northern Ireland, including children and young people. We support the aims of the proposed legislation but are concerned that the actions suggested to reach this end will not be effective and most importantly, could actually result in children and young people being unfairly targeted and potentially being fast tracked into the juvenile justice system.

Part One

GATING ORDERS

- As we have already stated, there is a need for early guidance to be produced on alley-gating and in particular on the need to gain neighbourhood approval and on how to ensure young people's voices are heard on that debate. There is a danger that seeking community approval will not necessarily mean that children and young people have been part of that evidence gathering process.

Part Four

Graffiti and Other Defacement

Clause 26:

We are totally opposed to the issuing of Fixed Penalty Notices (FPNs) to children and young people.

We are not alone in our objection as similar concerns have been echoed about the impact of FPNs on children and young people by our counterparts in other areas.

There is much to be learnt from the outworking of FPNs in England, and we would urge the Committee to take full cognisance of the available evidence.

- In England, the nature of the FPN has given rise to some abuse as there is some leeway given to the different local government authorities on when to use and how much to charge in the way of penalties. Having conducted a detailed review of the figures on FPNs in England, NACRO, state that there has been varying use of FPNs from offence to offence and authority to authority. So, for litter offences 33,033 were issued whereas for graffiti only 47. Different localities were shown to have differing priorities as NACRO states:

'it does raise the question to what degree there is national consistency, and whether the use of these measures has created a new meaning to "justice by geography".'

NACRO go on to say that they are concerned about the adverse impact FPNs can have on children:

'The use of summary powers by authorised officers will increasingly bring children/young persons into contact with officials, other than uniformed constables. Those exercising these powers will need to receive appropriate training to ensure anyone from a vulnerable group, who they are dealing with fully understand what the process means, and what they have to subsequently do. In the English guidance and the Juvenile guidance there is clearly indicated a training need when the powers are exercised by the staff of a contractor.'

(NACRO, Youth Crime Briefing on Penalty Notices for Disorderly Behaviour and Fixed Penalty Notices for Children and Young People, June, 2007).

- This inconsistency in approach in England has prompted in November 2009 a review of the use of FPNs in England by the then Justice Secretary, Jack Straw.
- Children's rights organisations such as the National Children's Bureau and the Children's Legal Centre have been involved in carrying out Child Impact Assessments of the Clean Neighbourhoods and Environment Bill in England and Wales. Similar steps must be taken here, particularly given the added legal obligations on government departments under Section 75 of the NI Act and the clear potential for adverse impact on the grounds of age (All Party Parliamentary Group for Children Child Impact Statement on the Clean Neighbourhoods and Environment Bill, Second Reading, 10th January 2005, document attached).
- The introduction of FPNs for low level 'anti-social' behaviour in Scotland was also criticised by a number of children's rights organisations back in 2003. Those opposed to the introduction of FPNs raised four main objections. Firstly, they believed that FPNs were unlikely to be effective, and that a mixture of holistic proactive measures to address the causes of 'anti-social' behaviour should be favoured. Secondly, concerns were raised that FPNs would be disproportionately targeted on groups with very low incomes, leading to increasing financial burdens which may exacerbate anti-social behaviour. There were also concerns that non-payment would lead to custodial sentences for what had originated as minor offences and that FPNs would significantly increase the number of people drawn into the criminal justice system. (A Report on the Consultation Responses to Putting Our Communities First: A Strategy for Tackling Anti-Social Behaviour, The Scottish Government, 2003)
- Some commentators have stated that these types of summary justice actually result in dragging into the criminal justice system offenders and offending behaviour that would not previously have been criminalised.

"This is particularly the case with regard to children and young people, whose offences are typically minor in nature and are committed in groups in public places, thus being supremely easy for the police to process if they decide to do so." (Morgan, 2008, 21)

Morgan states that in England and Wales there has been a marked increase in the number of children and young people being drawn into the justice system, through the use of pre-court sanctions, over the last 5 to 6 years. The question that needs to be asked is does this result in decline of the offending behaviour or does it actually undermine previous work which was being done on a community level to provide interventions and diversionary work.

- In a speech in May 2009, the Shadow Justice Secretary, Dominic Grieve, referred to the increasing rise of the use of administrative penalties and warned that it represented an undermining of justice.

"This kind of justice is neither effective, nor fair. Any notion of a short, sharp shock is undermined by poor enforcement rates for fines. Only half of all penalty notices for disorder, for example, are paid on time... The increasing use of on the spot fines by police and local

authorities, makes them judge and jury, blurring the boundaries between law enforcement and justice. This inevitable undermines public trust not only in law enforcement but in justice to."

(Boydell Lecture, 2009)

"We need to look seriously at the tendency to permanently criminalise relatively trivial misbehaviour in our society that forty years ago would have been dealt with informally by responsible adults within communities and find alternatives to the proliferation of fixed penalties and administrative sanctions that are doing nothing to curb crime, but which undermine freedom."

(Boydell Lecture, 2009)

Concluding Comments

Include Youth welcomes the opportunity to provide the Committee with further evidence on this issue and we hope that this briefing paper will prove useful in your analysis of the Bill. Please do not hesitate to contact us should you require any further information.

Playboard Paper on Alleygating

Youth and Adolescent Perspectives

Just Hanging Out!

The role of play, leisure, space and territoriality in the lives of Children and Young People in Northern Ireland.

Jacqueline O'Loughlin

Submitted as part of Queens University DChild programme

Abstract:

The lives of children and young people in Northern Ireland, as elsewhere in the world, have changed in dramatic ways in recent years. Important changes have taken place in the social structures and processes that help shape young people's lives. Our children and young people are encountering wide ranging societal opportunities and equally wide ranging societal constraints. These include longer periods of schooling and time in higher education, loss of traditional labour market opportunities along side shifts in the nature of family and intimate relationships (Jones, 2002). There is clear evidence that transitions from childhood to adolescence to adulthood are now substantially different from those experienced by previous generations and further that they are increasingly unequal (McAlister et. al., 2009). Despite tangible changes in societal structure, and regardless of the deterioration of public space, one critical element of childhood culture remains constant, the realm of autonomous outdoor play and leisure (hanging out) (Kehily, 2007). This paper draws on autonomous unstructured play and leisure activity in childhood to explore the extent to which this informal activity gives shape to children and young people's lives.

Key words: Play, leisure, children, young people, childhood, adolescence, teenager, hanging out, development.

Aim:

This aim of this paper is to critically explore and debate the meanings, patterns, causes, and consequences of autonomous unstructured play and leisure time activity (e.g. hanging out with peers) in the 8-16 years of middle childhood. Utilising insights from a variety of theoretical perspectives, the role, function and consequence of this formative aspect of children and young people's lived realities will be discussed.

Terms:

For the purposes of this paper the terms 'play' and 'leisure' and 'childhood' and 'adolescence' are used interchangeably and may be considered in the context of this paper as any autonomous unstructured activity or combination of activities that a child or young person aged 8-16 years engages in.

Understandings of play and leisure

Some things are self-evident. One is that children and young people need to engage in play and leisure experiences, opportunities and activities. Fass (2004) suggests, theorists as far back as Plato, and up to the present day concur that play is an inherent and deeply rooted element of the life cycle of human beings. Play and leisure are much aligned with the culture of childhood and adolescence. According to Passmore and French (2001) leisure time activities increasingly help to define the identities of our young people. Hughes (2001) agrees, noting play and unstructured leisure pursuits as the highest expression of a child or young person's participation with, and within their social and environmental construct. Children and young people naturally, explore, test and push social, emotional, physical, creative, cultural, spiritual, and intellectual boundaries and capacity through unstructured activity. In essence, free play and leisure describe a wide range of behaviours that are a manifestation of a child and young person's desire to know and understand his or her world. Hughes (2001) and Passmore and French, (2001) go as far as to say play and leisure denotes the very culture of childhood.

Irrespective of gender, social status, culture, race, ability or disability, play and unstructured leisure are the intrinsically motivated vehicles that children and young people use to explore and to make sense of their world. The right of all children and young people to play, to engage in leisure and cultural activities, and to associate freely are laid out in Articles 31 and 15 of the United Convention on the Rights of the Child (1989) (UNCRC)^[1]. The UNCRC is the only internationally legally binding Convention or Covenant that recognises the child's right to play, recreation and, or leisure activity and in doing so pays particular attention to the right of disabled children and young people, ensuring equity of access to opportunities and to play a full part in community life (Article 23). Age-appropriate and ability-appropriate play and leisure opportunities, and experiences enable children and young people to feel connected to their community. This is particularly important as highlighted by McAlister, Scraton and Haydon (2009, p.153) for those living in deprived urban or rural environments.

Play and leisure permeates all aspects of young people's lives. Due to its restorative and skill building abilities, play and leisure performs an important role in society. Holloway and Valentine (2000) report that in western cultures play and leisure occupies up to forty percent of our waking time. Therefore, over the years play and leisure's complexity and diversity has challenged theorists' across many different disciplines (psychology, sociology, neuroscience, anthropology, and geographies of childhood). One of the biggest challenges theorists have encountered, has been the quest to agree a universal definition of what play and leisure is, or provides, for the player. Definition elusiveness on the subject is well documented (Ellis, 1973; Levy, 1978, Sutton

Smith, 2001, Lester and Russell 2008). Brian Sutton-Smith in the opening missal of his book 'The Ambiguity of Play' highlights that:

"..we all play occasionally, and we know what playing feels like. But when it comes to making theoretical statements about what play is, we fall into stillness" (p.1).

Concurring with Sutton-Smith (ibid) the literature suggests that arriving at a universal understanding is difficult, in the main, this is because adults have consistently sought to impose rational and instrumental explanations on to something that is often seemingly irrational and purposeless (Lester and Russell, ibid, p.14). In discussing the quandary of sourcing a universal meaning for play and leisure, Ellis (1973) suggests, definition '.... is dependant on the vantage point or examination perspective taken' (p.112).

Most attempts at definition reflect the dominant way in which societies, locally and globally view and value the period we call childhood. Consequently, the role of play and leisure is viewed mainly as a medium for learning in preparation for adulthood. Definition difficulty may centre on the fact that scientific and popular accounts of play and leisure have more to say about adult constructs than they do about young people's needs and rights. This is evidenced in social policy which uses play and leisure as a vehicle for academic learning, or as a means of tackling obesity, crime reduction, social development and building community cohesion (McNeish and Gill 2006). Holistic developmental benefits cannot be overlooked, recognising the interconnectedness of genes, brains, bodies and physical, social and cultural environments. However, as suggested by Hakarrainen's (1999) the intrinsic value of play and leisure for play and leisure's sake requires further exploration.

Mary Jane Kehily in her book on adolescent perspectives suggests 'play is often cast in the frame of being either constructive or creative and as such, is regarded as one of the most distinctive features of childhood' (Kehily, 2007, p 249). If this is true of younger children, then equally play is supplanted during adolescence by unstructured leisure time activity. Young people may not label what they do in their free time as play; however they need the same time, space and freedom as their younger counterparts to engage in unstructured social activities.

Leisure activity is about much more than playing sport or being involved in sporting or structured youth activities. According to Hendry et al., (1993, p.2) it is also about "...not doing", about 'hanging about', about 'talking to friends', about 'being alone to think'. Ellis (1973, p.110) supports this view, making a critical breakthrough on a definition.... 'pure play and leisure can only occur in the absence of all extrinsic consequences and when the behaviour is driven by intrinsic motivation'. This classification holds the most resonance with the principles of 'play-work' and 'youth work' which both assert voluntary participation. The play work principles suggest that, play is a process that is freely chosen, personally directed and intrinsically motivated. That is, children and young people determine and control the content and intent of their play, by following their own instincts, ideas and interests, in their own way for their own reasons (SkillsActive, 2009).

Player perspectives:

The availability and quality of play and leisure places and spaces, and how children and young people use their free time instigates animated discussion and debate among the players themselves (Kikelly et al., 2004, McAlister et.al, 2009). When discussing use of free time, teenagers in particular say that they spend time 'hanging out' in the local community, streets, cafés, bus stations or playing fields socialising with friends. Some even admit, that when bored they behave in a manner that could be deemed 'anti-social' (Audit commission, 2009). However, they often frame this admission with disaffection and feeling unwelcome in the public realm. In

research commissioned by the Northern Ireland Commissioner for Child and Young People (NICCY, 2004), young people highlighted a range of environmental and social impediments that prohibited or curtailed engagement in play and leisure activity. Environmental issues ranged from litter, dog fouling, bullying, vandalism, crime, noise, neglect or lack of maintenance (Kikelly et al., 2004). Social factors impacting on mobility and visibility included, over monitoring and over surveillance by parents', wider community and those in authority (e.g. Police).

Young people also identified additional factors, these included poor reputation (perceived delinquency), lack of resources physical (poor build environment) and financial (low spending power). Further, general issues arose, such as overprotective parents, fear of strangers, poor representation in the media, along side nothing to do and no-where to go (OFM/DFM. 2010). Moreover, other people's poor treatment of public space was also often referenced and aligned with young people's negative perceptions of their community environment.

These findings are further supported by McAlister, Scraton and Haydon (2009) their seminal work on transitions found similar issues, young people were extremely vocal about their experiences and the quality of their local environments. When asked they offered many practical and strategic suggestions for improvement. Interestingly, these improvements or changes to the local environment or facilities often took into account wider community stakeholders needs. In this context the concept of place and space is very important and can be conceptualised widely in terms of social inclusion. Place attachment and its connection to location and locale in the context of the neighbourhood are clearly important, the impact of social and economic processes undoubtedly affect the creation of a sense of community. Young people living in areas of high deprivation encounter numerous hardships linked with social exclusion. The cumulative experience of direct inter alia, poverty, personal and family ill-health, criminal victimisation, unemployment, poor schooling, offending, problematic drug use and homelessness, undeniably affects future life chances. It also impacts on the here and now day to day realities (McAlister, Scraton and Haydon, 2009). This is further underscored by Skelton and Valentine's (1998), exploration of the use and availability of physical place and space for play and leisure in everyday environments. They suggest that formal and informal play and leisure environs are greatly affected by social deprivation and dereliction, their findings identified 'areas that enhanced or fostered social interactions as well as highlighting factors that restrict or prohibit such activity' (p.136-137). Percy-Smith (2002) study on suburban environments and Jutras and Lepage's (2006) work with parents add further weight, suggesting that children and young people's psychological health and well-being can be enhanced or impaired by the nature and condition of their immediate neighbourhood environment.

Territoriality

Clark and Uzell's cited in Spencer and Blades (2006, p.184) also highlight environmental usage and young people's developmental needs, noting that they are intricately bound together. Environmental psychology's perspective on socio-environmental affordances aligned with Mehrabian's (1976) 'approach-avoidance' theory has resonance to the discussion on youth territory. According to Gibson (1979) cited in Spencer and Blades (2006) affordance refers to the possibilities that the environment offers. Play and leisure affordances are simply opportunities that arise from the interaction between the physical properties of the environment and the interests, ideas and intent of the players. It is well known that young people vote with their feet, and will move on if there is no affordance or challenge. Consequently, Mehrabian's (1976) work on approach-avoidance theory and Hughes's (1996) work on affect- effect cycle has some validity. In respect of young people's approach and avoidance of any potential play or leisure 'hanging out' space, Mehrabian (ibid) suggests, that two broad reactions to any given environment are demonstrated. They either have a positive affiliation, or 'approach behaviour', or negative affiliation, 'avoidance behaviour'. Corsaro (1997) suggests that approach-avoidance is a key process in the play and leisure experience of young people, the role of emotion, is

central to this concept (Mehrabian, *ibid*). Approach, avoidance and emotions are also illustrated in Hughes's affect/effect cycle (Hughes 1996, p. 6-7). The affect/effect cycle is where the:

"effect of environmental stimulation is that it caused the child to experience something more than just sensory impact.....
That something is called affect, the child is affected by the sensory experience" (*ibid*, p.7-8).

Mehrabian (*ibid*) explains this further:

"An environment causes in an emotional reaction that is a distinctive, measurable combination of arousal, pleasure and dominance.
The emotional reaction in them causes us to approach or avoid the environment" (p. 21).

This is not new theorising, Edith Cobb in her wonderful book 'The Ecology of Imagination in Childhood' has much to say on the interplay between biology, relationships and the environment. Dubos (1964) cited in Cobb (1977) medically speaking, says "...the sort of 'mutuality' that exists between organisms and their normal environment has become a requirement for physiological and psychological well-being" (p.75). Howard, Dryden and Johnson's (1999) work on the concept of resilience has further relevance to this discussion.

Howard, Dryden and Johnson (*ibid*) draw on Bronfenbrenner's (1977; 1979; 1986, 1990) theory of ecology. Ecological theory defines complex 'layers' of environment, each having an effect on a child's development. Recently, renamed 'bioecological systems theory' to emphasise an individual's own biology is a primary environment fuelling development. The interaction between factors in the individual's maturing biology i.e. immediate family, community environment, and the societal landscape fuels and steers development. Thus suggesting, that examination youth culture must not only consider the immediate environment, but also, critically it must consider the interaction and influence of the larger environments.

Howard et.al, (*ibid*) espouse bioecological development as a socio-cultural condition "which views the child (young person) as developing within a complex system of relationships affected by multiple levels of the surrounding environment" (Howard et al., *Ibid*, p. 316). Lester and Russell (2002) taking creative licence, have adapted Bronfenbrenner's systems model to reflect the quality and context of the play and leisure environ. Their model (see figure 1) has been greatly reduced to reflect implications for play. However, when discussing territoriality it does provide an interesting framework to unpick the influences and barriers that have the potential to impact on play and leisure activity.



Figure 1

Bronfenbrenner, cited in Berk (2000) highlights that 'bi-directional influence' is key to the systems concept. Bi-directional influences occur at all levels of environment, changes or conflict

in any one layer will ripple throughout and impact on other layers. Although, interactions at the outer levels will most definitely impact the inner structures. It is highlighted that at the microsystem level the bi-directional influences are strongest and have the greatest impact on the individual. If the relationships in the immediate microsystem break down, the child or young person will not have the tools to explore other parts of his/her environment. Addison (1992) asserts that young people denied the usual affirmations present in normal child and significant adult (e.g. parent, carer, teacher play-workers and youth-worker) relationships look for attention in inappropriate places. Addison (ibid) further suggests that if normal attachment and affirmation is lacking, then personality and social deficiencies will emerge, especially in adolescence, taking many forms, for example anti-social behaviour, lack of self-discipline, and an inability to self regulate and provide self-direction.

Consequently, attachment and feelings of place resonate as significant markers of identity and sense of community (Spencer and Blades, 2006). Sense of place can be affected by the impact of social and economic processes and therefore can be challenged and eroded by urban and rural development that does not engage with the wider community, in particular its young people. Social mix represents one of the key issues at play in the fight against segregation and urban fragmentation. Therefore, whilst engaging and interacting with peers and their environment young people begin to develop bonds and links, and in the course of this interaction, anonymous spaces turn into places endowed with meaning and therefore serve as objectives of attachment (Taun, 1977, Chawla 1992, Low and Altman 1992). This concept relates to psychological as well as physical features and to variables concerned with feelings, emotions and bonds that people develop to places where they live (Hay, 1998). Based on this acceptance, it can be construed that the 'psychological sense of community' along with the environmental context contributes a critical role in establishing and informing behaviour, social attitudes, sense of belonging and building social capital (Borudieu, 1977, 1984).

Play and leisure value?

Society utilises play and leisure time, experiences and opportunities to, refresh, have fun, socialise, learn new skills and to widen knowledge and understanding (Caldwell and Smith 1988). Theorists argue that play and leisure pursuits, particularly unstructured activities, are important for holistic development assisting health, wellbeing, social networking, emotional literacy and academic achievement (Jenkinson 2001, Clements 2004, Lester and Russell 2008). Socially, unstructured leisure experiences especially outdoors provide young people with opportunities to learn and practice critical social life skills, negotiation, listening, taking turns, managing risk, conducting relationships, dealing with conflict, considering the opinions of others (Crandall, Nolan and Morgan, 1980). Further, the evidence highlights life-long benefits, as asserted by Bruce et.al., (1997) play and leisure time helps to reduce the stress of either work or study for children and adults alike.

During middle childhood and the early teenage years, young people have little earning power therefore limited economic independence. Conversely, it is also during this period of development and major physical transition i.e. puberty. That greater independence from parental gaze is sought. Young people find they have more opportunities to socialise outside the family structure, but little financial independence to engage in either travel or costly structured leisure activities (e.g. cinema, paint-balling, go-carts). Consequently, young people spend a considerable amount of time in a myriad of unstructured street-leisure 'hanging out' pursuits (Csikszentmihalyi et al., 1993, cited in Mahoney and Stattin 2000). This informal 'hanging around time on the streets' is used to explore, extend knowledge and push boundaries. Consequently, children and young people deliberately seek out adventure and uncertainty, both physical and emotional in their play and leisure pursuits (Spinka et.al., 2001, Sutton-Smith 2003, Kalliala 2006). For some, this is simply a case of, trying out, or engaging in, normal growing up, transitional activities (e.g. lighting fires, dabbling in alcohol, smoking cigarettes, drug usage and

forming sexual relationships). This may result in what society deems 'small-scale incidents of anti-social behaviour' that at times has the potential to escalate into more serious, criminal conduct.

Therefore, 'the risk' paradigm dominates a range of policy and strategic developments seen by many as the solution to the 'youth problem' (Crow et. al., 2004, p. 73). Theories of risk vis-à-vis benefit have had considerable influence on studies of young people (for further see, France, 2000; Furlong and Cartmel, 1997; Mitchell et. al., 2004). It must be recognised that young people are predisposed to play and in doing so, use this activity to push and test boundaries and abilities alike. Congregating and socialising in myriad of places and spaces, shopping centres, local streets, cafes, parks and stations, this time is used to create socially interactive private forums away from adult scrutiny. Noteworthy, the 2003 the World Youth Report (WYR) makes a critical point that the terms play, leisure and informal learning imply a casualness of purpose and practice that in no way justifies the way in which the majority of young people use their free time (WYR, 2003). In this context risk-taking, seeking out adventure and challenge are normal adolescent behaviours, moreover they are an essential part of becoming a socially independent adult (Lester and Russell 2008).

The inherent and holistic personal and societal benefits of play and leisure indicate, that time, space and place for this activity is necessary. However, when it comes to public opinion, there is a huge disparity between what children and young people want and what government believes they need (Roberts, cited in Barry, 2005). Government views play and leisure activity simply as a mean of correcting or alleviating socially unacceptable behaviours: criminality, aggressive behaviour, alcohol and drug use, delinquency, school dropout, low academic attainment (Mahoney and Stattin 2000). Interestingly, as highlighted by Mahoney and Stattin (ibid) the literature to support this approach is conflicting. Short-term and long-term reductions in antisocial behaviour, undoubtedly has been linked to engagement in play and leisure activities (Mahoney and Stattin, ibid). Equally though, evidence to refute this claim is available (McCord's, 1978). Further, Hirschi (1969) work on causes of delinquency highlights that only trivial relations to play and leisure and antisocial behaviour can be found (Mahoney and Stattin, ibid).

Despite inconclusive data, society generally endorses structured play and leisure behaviour, especially if it is seen to mirror or simulate socially acceptable behaviour (OFM/FDM, 2009). As highlighted by McAlister, Scraton and Haydon (2009, p.11) 'conformity brings approval and failure to conform invites rejection'. Sutton-Smith and Roberts (1964) suggest that much of 'hanging out' mirrors aspects of the adult world. Concurring, Hendry et al., (1993) in discussing leisure time activity, suggest young people use 'hanging out' time to try out and exchange different lifestyles and personas. It is understandable why we generally view this type of behaviour is a rehearsal for adult roles. However, Burghardt (2005) and Pellis and Pellis (2009) challenge this stance, highlighting there is little empirical evidence to substantiate this assertion. While play might resemble the real thing, it is very different from it. Play and leisure are more about creating a world, where for that moment young people are in control, where they deliberately seek out uncertainty in order to triumph over it. In this way, children and young people use play and leisure to develop a repertoire of flexible rather than fixed responses to situations. Further underscoring, what society expects of children and young people and the way that they are perceived, what is thought to be good or bad for them, and what they are competent or incompetent to perform, depends upon the particular concept of childhood that society has constructed (King 2007, p.196).

Contemporary Concepts and Constructs:

The way childhood and adolescence is conceptualised and understood has significant impact on how law and social policy is formulated and implemented. James and James (2004, p.13) discuss how 'complex interviewing of social structures, political and economic institutions, beliefs,

cultural norms laws, policies and everyday actions' construct societal views. Over the years a number of differing, indeed at times contradictory constructs of the child and childhood have been identified (Jenks, 2005). Moreover, the latter part of the twentieth century has witnessed an expansion of effort to increase and enhance social, historical, and cultural understandings of children, childhoods, age and relationships (for example, James and Prout; 1990, Hendrick 1997; James et al., 1998; Jenks 2005). This new body of work commonly called 'The New Sociology of Childhood', challenges the dominant developmental psychology childhood views. The notion of universal or 'natural' childhood consisting ordered stages of development is countered with the concept of childhood as a social construction. Central to the 'New Sociology of Childhood' is the tenet that children and young people are active, competent, social agents producing and shaping their own culture within society.

The socially constructed character of childhood is now recognised as an important factor in shaping young people's everyday experiences. It is no longer appropriate to view childhood simply as common and universal biological phase in the life course. However, it is important to recognise, that as occupants of the conceptual space of childhood, many things like ages, stages and transitional processes do remain shared. James and James (2004, p.18) discusses this shared experience:

"as much as we might wish to regard children as authors of their own histories, we have to acknowledge their shared experience, as children, of processes of maturation".

To date developmental theories have shaped the way adults treat children and young people. Consequently, they are expected to follow adult-prescribed roles, as the old adage says 'mum knows best'. If they deviate from this path, they are considered 'risky' or 'problematic' requiring sanction or punishment (McAlister, Scraton and Haydon 2009, p.11). This notion of young people as 'a problem both to society and to themselves is a recurring theme in media and youth research' (Wyn and White, 1997, p.21, cited in Muncie, 2009). Children, young people, childhood and adolescence in the western world are often framed and determined by popular media narrative and discourse. A high percentage of journalistic reporting on children and young people is negative. Stories, about feral children, depraved youth, hoodies', 'gangs' and 'knife culture' help frame adult views and in doing so fuel moral panic (see Cohen, 1986; Scraton 1997; Muncie, 2009). It must be noted, that the press do not always reflect the truth. Media spin has a particular, if not sensationalist way of presenting reality. The implication of this imagery carries over to inform adult reactions to fuel the invisible mass. Consequently, it can be ascertained, that power abuse is enacted, reproduced or legitimised by the narrative and discussion of the dominant groups or institutions (see Franklin, 2001 on media reportage).

Further, media representations often present two incongruent perspectives, the child or young person as inherently innocent and equally inherently evil. Young people are either portrayed with the rosy taint of innocence, vulnerability, passiveness and dependence, or painted with much darker hue, perpetrator of crime, deviant, rebellious, anti-social and destructive in nature (Scraton, 1997, Muncie 2009).

Thus we are lead down dual paths of fear; 'we fear for the innocents and we are afraid of the evil ones' (Muncie, *ibid*, p.6). Society has accepted and been able to combine these two opposing constructs, therefore social policy tends to swing wildly between wishing to protect and wishing to correct.

Social Policy Implications

Moss and Petrie (2002) concur, they suggest that the current focus on evidence based outcome policy making, masks an underpinning construct of the child or young person as weak and needy, as innocent or a threat and this is leading to ever increasing surveillance and state

control. Evidence of this located in emerging policy initiatives geared at crime reduction and anti-social behaviour (NIO, 2009, OFMDFM, 2009). Flatley et.al., (2008) highlights, that anti-social behaviour is a major cause of concern across the United Kingdom. Though public interest usually focuses on adults' views of young people, it is worth noting that young people also worry about anti-social behaviour and are often victims of it. Categorising behaviour as anti-social usually entails a consideration of its impact on others. The term 'anti-social behaviour' includes a wide variety of behaviours and activities that are deemed selfish or unacceptable which are perceived blight the quality of community life. Other terms such as 'nuisance', 'neighbour disputes' and 'disorder' are also used to describe some of this behaviour. A legal definition of behaving in an anti-social manner is located in the 2004 Northern Ireland Anti-social Behaviour Order commonly known as ASBO's (NIO, 2004). It defines anti-social behaviour with respect to any person aged ten years or older as:

"acting in an anti-social manner as a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the complainant"(section 3 'application criteria').

Flatley et.al., (ibid) suggests, perceptions and definitions of anti-social behaviour are hard to delineate. The lack of specificity in the NIO definition affirms Flatley's view the narrative in the application criteria, opens anti-social behaviour to wide interpretation. For example, there is no unpicking of the mix of criminal and non-criminal activities, consequently the role of interpretation through the lens of perception means that anti-social behaviour cannot be easily categorised or measured, therefore subject to over generalisation. This is particularly concerning as many agencies statutory and voluntary that are mandated to work with youth or tackle anti-social behaviour have adopted this definition for more general purposes.

Northern Ireland as a region emerging from prolonged and sustained conflict and as such encounters multiple social inequalities and disadvantage. It is worrying therefore, that evidence highlights a strong link between multiple deprivation and high perceptions of anti-social behaviour. Moreover when 'hanging around' on the street as highlighted by Kershaw et.al., (2008) is consistently registered as an adult concern. Further, where the behaviour of children as young as ten years old is subject to legal criminal enforcement (Audit Commission, ibid; McAlister et. al., 2009). As previously noted, to greater or lesser degrees, all youth engage in this type of street leisure. Hanging around the street might intimidate adults, but this as normal recreational activity (Audit Commission, 2009). Caution is needed when defining antisocial behaviour as there may be little connection between unstructured activities and deviance.

In recent years particularly the last decade we have witnessed the exponential growth of social policy initiatives relating to children and young people (Roberts, 2001, McNeish and Gill 2006; Brown 2007). Northern Ireland has seen the introduction of a myriad of legislation and policy frameworks designed to assert and protect the interests and rights of children and young people (Pinkerton 2008). Policy formation has attempted to shift societal attention away from targeting services in an appreciation of meeting children's universal needs (Pinkerton, ibid). Therefore at a cursory glance it would appear that children and young people in Northern Ireland today live with increasing affluence and liberty. However, delve a little deeper and lurking behind the veil of prosperity and development is a widening of regional and social inequalities (OFMDFM, 2006). The sequelae of persistent and pervasive poverty allied with social exclusion, discrimination and marginalisation of children and young people is clearly evident in Northern Ireland's 'post conflict' society (OFMDFM, 2006). We live within a political framework that, on one hand, places great emphasis on inclusive processes (NIO, 1998) yet on the other hand, reinforce the exclusion of our children and young people by policy formation that continues to stigmatise and label children and young people as a homogenous group predisposed to be either a threat or problem to the community (NIO, 2009). As (OFM/DFM 2009) evidences government have sought to use play and leisure as a panacea for all disadvantage; the challenge going forward for policy

makers, is get the balance right between targeted services, universality and being ever vigilant of risk, safety and the over protection of our children and young people.

Conclusions

This paper has highlighted that children and young people have a fundamental right to engage in play and leisure pursuits (UNCRC, 1989). Further, as discussed there are many different and often contradictory explanations of the nature and value of play and leisure. Concurring with Sutton-Smith (2001, p.1) we find 'there is little agreement among us and much ambiguity'. However, despite the myriad of paradigmatic understandings, the importance of play and leisure-time activities and their contribution to psychological, cognitive, physical and social development of children and young people is generally widely agreed and accepted (Bruner, 1975, Caldwell et.al., 1988; Kalliala, 2006; Lester and Russell 2008).

In this context, there is an assertion that play and leisure 'hanging out' in the teenage years is a social activity that enables different forms of self-expression to emerge. It assists the formation of self-identity and underscores the importance of peers and friendship groups (Lester and Russell, 2008). In essence, 'hanging out' or 'hanging about' in this framework is just part of normal growing up play and leisure activity (Hendry et. al., 1993). However, it is noted that for some children and young people, particularly though not exclusively, those from socially and economically disadvantaged backgrounds, habitual 'hanging out' or 'hanging about' post an age where it is deemed more or less acceptable, can predicate participation in what are deemed 'less productive activities'.

This paper touches on, however does not focus upon social disadvantage, it must be recognised that tackling intergenerational and deep rooted deprivation, especially in a post conflict society, government needs to stop focusing on fiscal solutions alone. Deprivation is not just the result of a low income, it is linked to other societal factors such as education, health and housing and it cannot be solved simply by increasing what families earn. Deprivation is a complex issue and the current political rhetoric on families, children and young people needs to be turned into action so that all children and young people, particularly the most vulnerable and neglected, have good childhoods, good school experiences and opportunities to engage in autonomous informal play and leisure pursuits.

Finally, this paper has highlighted that children and young people are often viewed as an unpopular social group. Power abuse is enacted, reproduced or legitimised by the text and talk of dominant groups or institutions, therefore policy geared towards children and young people is destined to attract media attention and criticism. If Government wishes to respond intelligently to questions of youth, developing progressive policies that address the 'realities' of the lives of our most disadvantaged children young people rather than media representational fantasies about them is crucial. The merits of academia in children and young people's lives is well understood and acknowledged, along with the health benefits of structured activities, but a balance must be struck between formal and informal activities as children and young people need freedom to explore, challenge and enjoy themselves without adult control. This paper has also highlighted that play and leisure is relatively under-researched. Most apparent is the seemingly particular shortage of Northern Ireland based evidence. This suggests scope for more empirical research; of course any future work must consider children and young people themselves, as active agents within the process rather than passive recipient's. After all, children and young people are the play and leisure experts.

References:

Addison, J. T. (1992) Urie Bronfenbrenner. *Human Ecology* 20 (2) 16-20.

Adey, P. and Shayer, M. (2006) Failing to teach them how to handle real life. Times online, (online) 29th January. Available at <http://www.timesonline.co.uk/tol/news/article721863.ece> (accessed 29th January 2009).

Audit commission (2009) Tired of hanging around: Using sport and leisure activities to prevent anti-social behaviour by youth people. Local government National report (online) Available at <http://www.auditcommission.gov.uk/hangingaround> (accessed 17th March 2010).

Barry, M. (2005) (Eds) Youth Policy and Social Inclusion: critical debates with young people. London: Routledge.

Bateman T. and Pitts J. (2004) The Russell House Companion to Youth Justice. Lyme Regis: Russell House Publishing.

Berk, L.E. (2000) Child Development (5th Ed.). Boston: Allyn and Bacon.

Beunderman, J., Hannon, C., and Bradwell, P. (2007) Seen and Heard: Reclaiming the public realm with children and young people. London: Demos.

Bronfenbrenner, U. (1977) Towards an Experimental Ecology of Human Development. American Psychologist. 32, 513-531.

Bronfenbrenner, U. (1979) The Ecology of Human Development. Cambridge. Harvard University Press.

Bronfenbrenner, U. (1986) Ecology of the family as a context for human development: Research Perspectives. Developmental Psychology. (22). 723-742.

Bronfenbrenner, U. (1990). Discovering what families do. In Rebuilding the Nest: A New Commitment to the American Family. Family Service America (online) available at <http://www.montana.edu/www4h/process.html> (accessed 20th March 2010).

Bruce, D., Kirkcaldy, Rudiger M., Trimpop, Fischer, C., and Furnham, A. (1997) Leisure and work beliefs of British senior manager. Journal of Management Development. 16 (6) 392-404.

Bruner, J.S. (1975) Play is a Serious Business. Psychology Today. January 81-83.

Bourdieu, P. (1977) "Cultural Reproduction and Social Reproduction." In Halsey, A.H. and Jerome Karabel, (Eds). Power and Ideology in Education. New York: Oxford University Press.

Bourdieu, P. (1984) Distinction: A Social Critique of the Judgment of Taste. London: Routledge.

Burghardt, G.M. (2005) The Genesis of Animal Play: Testing the limits. Cambridge, MA: The MIT Press.

Caldwell, L. L., and Smith, E. A. (1988) Leisure: An overlooked component of health promotion. Canadian Journal of Public Health, 79 (4) 44-48.

Chawla, L. (1992) "Childhood Place Attachment." In Altman, I. and Low, S.M., (eds). Place Attachments. New York: Plenum Press.

Clark, C. and Uzell, D. (2006) The Socio-environmental Affordances of Adolescents' Environments, in Spencer, C. and Blades, M. (Eds) Children and their Environments. Cambridge: Cambridge University Press.

Clements, R. (2004) An investigation of the status of outdoor play. Contemporary Issues in Early Childhood. 5 (1) 68-80.

Cobb, E. (1977) The Ecology of Imagination in Childhood. London: Routledge.

Cohen, P. (1986) Rethinking the Youth Question. London: Post-16 Education Centre/Youth and Policy.

Coles, B. (2000) Joined up youth research, policy and practice. Leicester: Youth Work Press.

Corsaro, W. (1997) The Sociology of Childhood. Thousand Oaks, California: Pine Forge Press.

Crandall, R., Nolan, M., and Morgan, L. (1980). Leisure and social interaction. In S. E. Iso-Ahola (Ed) Social psychological perspectives on leisure and recreation p.285-306.

Crow, I., France, A., Hacking, S., and Hart, M. (2004) Does Communities that Care work? York: Joseph Rowntree Foundation.

Csikszentmihalyi, M., Rathunde, K. and Whalen, S. (1993). Talented Teenagers: The Roots of Success and Failure. Cambridge: Cambridge University Press. cited in Mahoney, J.L and Stattin, H. (2000) Leisure activities and adolescent antisocial behaviour: The role of structure and social context. Journal of Adolescence. 23 (2)113-127.

Dubos, R. (1965) Man Adapting. New Haven: Yale University Press, cited in Cobb, E. (1977) The Ecology of Imagination in Childhood. London: Routledge.

Ellis, M.J. (1973) Why People Play. New Jersey. Prentice Hall.

Fass, P. S. (2004) The Encyclopaedia of Children and Childhood: In History and Society. New York: Macmillan Press.

Flatley, J, Moley, S, and Hoare, J. (2008) Perceptions of Anti-Social Behaviour: Findings from the 2007/8 British Crime Survey. London: Home Office.

France, A. (2000) Towards a Sociological Understanding of Youth and the Risk-taking. Journal of Youth Studies. 3, 317-31.

Franklin, B. (2001) Social Policy the Media and Misrepresentation. London: Routledge.

Furlong, A., and Cartmel, F. (1997) Young people and social change. London: Open University Press.

Gill, T. (2007) No Fear: Growing up in a risk adverse society. London. Central Books.

Hay, R. (1998) Sense of Place in Development Context. Journal of Environmental Psychology. 18 5-29.

Hakarrainen, P. (1999) 'Play and Motivation' in Engestrom, Y., Miettinen, R. and Punamaki, R.L. (Eds) Perspectives in Activity Theory. Cambridge: Cambridge University Press.

- Hendry, L.B., Shucksmith, J., Love, J.G. and Glendinning, A. (1993) *Young People's Leisure and Lifestyles*. London: Routledge.
- Hendrick, H. (1997) *Children, Childhood and English Society 1880-1980*. Cambridge: Cambridge University Press.
- Hirschi, T. (1969) *Causes of Delinquency*. Berkley, CA: University of California Press.
- Holloway, S. and Valentine, G. (Eds.) *Children's Geographies*. London: Routledge.
- Howard, S., Dryden, J. and Johnson, B. (1999) Childhood Resilience: review and critique of literature. *Oxford Review of Education*. 25 (3) 307-323.
- Hughes, B. (1990) Children's Play a Forgotten Right. *Environment and Urbanization*. 2 (2) 58-64.
- Hughes, B. (1996) *Play Environments: A Question of Quality*. London: Playlink.
- Hughes, B. (2001) *Evolutionary Playwork and Reflective Analytical Practice*. London: Routledge.
- James, A. and James, A.L. (2004) *Constructing Childhood: Theory, Policy and Social Practice*. Basingstoke. Palgrave Macmillan.
- James, A. and Prout, A. (Eds.) (1990) *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood*. London: Falmer Press.
- James, A., Jenks, C and Prout, A. (1997) (Eds) *Theorising Childhood*. London: Polity.
- Jenks, C. (2005) *Childhood (2nd Ed)*. New York: Routledge.
- Jenkinson, D. (2001) *The Genius of Play: Celebrating the spirit of childhood*. UK: The Bath Press.
- Jones, G. (2002) *The youth divide: Diverging paths to adulthood*. York: Joseph Rowntree Foundation.
- Jutras, S. and Lepage, G. (2006) Parental Perceptions of Contributions of School and Neighbourhood to children's Psychological Wellness. *Journal of Community Psychology*. 34 (3) 305-325.
- Kalliala, M. (2006) *Play Culture in a Changing World*. Berkshire: Open University Press.
- Kehily, M.J. (Ed) (2007) *Understanding Youth: Perspectives, Identities and Practices*. London: Sage, Open University Press. pp. 249-279.
- Kershaw, C, Nicholas, S and Walker, A, (2008) *Crime in England and Wales 2007/8: Findings from the British Crime Survey and Police Recorded Crime*. London: Home Office.
- Kikelly, U., Kilpatrick, R., Lundy, L., Moore, L., Scraton, P., Davey, C., Dwyer, and C., McAlister, S. (2004) *Children's Rights in Northern Ireland*. Belfast: NICCY.
- King, M. (2007) The Sociology of Childhood as Scientific: Observations from a social systems perspective. *Childhood*. 14 (2) 193-213.

- Lester, S. and Russell, W. (2002) *Playing for Real*. Manchester City Councils. Unpublished.
- Lester, S. and Russell, W. (2008) *Play for a Change: Play, Policy and Practice a review of contemporary perspectives*. London: Play England.
- Levy, J. (1978) *Play Behaviour*. Florida: John Wiley and Sons.
- Low, S.M. and Altman, I. (1992) "Place Attachment." In Altman, I. and Low, S.M., (eds). *Place Attachments*. New York: Plenum Press.
- MacDonald, R. and Marsh, J. (2005) *Disconnected youth? Growing up in Britain's poor neighbourhoods*. Basingstoke: Palgrave.
- MacDonald, R. and Shildrick, T. (2007) *Street Corner Society: Leisure Careers, Youth (Sub) culture and Social Exclusion*. *Leisure Studies*, 26 (3) 339-355.
- Madge, N. (2006) [Children These Days](#). Bristol: The Policy Press.
- Mahoney, J.L and Stattin, H. (2000) *Leisure activities and adolescent antisocial behaviour: The role of structure and social context*. *Journal of Adolescence*. 23 (2)113-127.
- McAlister, S., Scraton, P. and Haydon, D. (2009) *Childhood in Transition: Experiencing Marginalisation and Conflict in Northern Ireland*. Belfast: Queens University.
- McCord, J. (1978) *A Thirty-Year Follow-Up of Treatment Effects*. *American Psychologist*, 33, 284-289.
- McNeish, D. and Gill, T. (2006) *Editorial: UK Policy on Children: key themes and implications*. *Children's Geographies*. 4 (1) 1-7.
- Mehrabian, A. (1976) *Public Places and Private Spaces the Psychology of Work, Play, and Living Environments*. USA: Basic Books.
- Mitzn, P. (2003) *The Best Days of your Life? Youth, Policy and Blair's New Labour*. London. Sage.
- Mehrabian, A. (1976) *Public Places and Private Spaces the Psychology of Work, Play, and Living Environments*. New York: Basic Books.
- Mitchell, W., Bunton, R., and Green, E. (2004) *Young people, risk and leisure*. Basingstoke, United Kingdom: Palgrave.
- Mitzn, P. (2003) *The Best Days of your Life? Youth, Policy and Blair's New Labour*. London: Sage.
- Moss, P. and Petrie, P. (2002) *From Children's Services to Children's Spaces: Public policy, children and childhood*. London. Routledge Falmer.
- Muncie, J. (2009) *Youth and Crime: A critical introduction (3rd Ed)*. London: Sage Publications.
- Northern Ireland Office (NIO) (1998) *Northern Ireland Act*. NIO. HMSO.

Northern Ireland Office (2004) The Anti-social behaviour (Northern Ireland) Order 2004. NIO. Available at <http://www.England-Legislation.HMSO.gov.uk/si/si2004/20041988.htm> (accessed 17th March 2010).

Northern Ireland Office (2009) The Northern Ireland Office's consultation on Together, Stronger, Safer. - Community Safety in Northern Ireland. Belfast. NIO.

Office of the First Minister and Deputy First Minister (2006) Lifetime Opportunities. Belfast: OFM/DFM.

Office of the First Minister and Deputy First Minister (2009) Play and Leisure Policy for Northern Ireland. Belfast: OFM/DFM.

Passmore, A. and French, D. (2001) Development and administration of a measure to assess adolescents' participation in leisure activities. *Adolescence*. 36 (141) 67-74.

Percy-Smith, B. (2002) 'Contested Worlds: Constraints and opportunities in city and suburban environments in an English Midlands City' in Chawla, L. (Ed) *Growing up in an Urbanising World*. London: Earthscan.

Pellis, S. and Pellis, V. (2009) *The playful brain: venturing to the limits of neuroscience*. Oxford. Oneworld Publications.

Pinkerton, J. (2008) *Children's Policy in Northern Ireland 1987–2008: progress and prospects*. Belfast. Queens University and Action for Children.

PlayBoard (2009) *Play and Leisure Policy Consultation. Consultation Paper Findings*. Belfast: Office of the First Minister and Deputy First Minister.

Poole, M.E. (1986) Adolescent Leisure Activities: Social class, sex and ethnic differences. *Australian Journal of social issues*. 21. 42-56.

Riessman, C. (2002) Analysis of Personal Narratives. *Handbook of Interview Research: Context and Method*. Thousand Oaks. Sage.

Scraton, P. (1997) *Childhood in Crisis? Chapter 2 'Crisis': the Demonization of Children and Young People*. London: Routledge.

Skelton, T and Valentine, G. (Eds) (1998) *Cool Places: Geographies of youth cultures*. London: Routledge.

Skelton, T. (2000) Nothing to Do, Nowhere to Go? In Holloway, S. and Valentine, G. (Eds.) *Children's Geographies*. London: Routledge.

Smith, P.K., Cowie, H. and Blades, M. (2003) *Understanding Children's Development*. Oxford: Blackwell Publishing.

Spence, J. Cited in Harrison, R. and Wise, C. (Eds.) (2005) *Working with young people*. London: Sage and Open University Press. 46-56.

Spinka, M., Newberry, R. and Bekoff, M. (2001) 'Mammalian Play: Training for the unexpected'. *The Quarterly review of Biology*. 76 (2) 141-168.

Sutton-Smith, B. and Roberts, J.M. (1964) Rubrics of Competitive Behaviour. *Journal of Genetic Psychology*. 105 13-37.

Sutton-Smith, B. (2001) *The Ambiguity of Play*. USA: Harvard University Press.

Sutton-Smith, B. (2003) 'Play as a Parody of Emotional Vulnerability', in J.L. Roopnarine (Ed.) *Play and Educational Theory and Practice, Play and Culture Studies*, 5. Westport, Connecticut: Praeger.

Thompson, J.B. (1995) *The media and modernity: A social theory of the media*. Cambridge: Polity Press.

Tuan, Y.F. (1977) *Place and Space: the perspective of experience*. Minneapolis: University of Minnesota Press.

United Nations (UN) (1989) *Convention on the Rights of the Child*. New York. United Nations.

Wyn, J. and White, R. (1997) *Rethinking Youth*. London: Sage.

World Youth Report (2003) *The Global Situation of Young People*. Youth and the United Nations (online) 2003. Available at <http://www.un.org/esa/socdev/nyin/wyr03.htm> (accessed 23rd February 2010).

[1]UNCRC Article 31 reads;

"1. State Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. State Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic and recreational and leisure activities."

Departmental Reply re Clean Neighbourhoods and Environment Bill Parts 1 and 3

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Your reference:
Our reference: CQ230/10
Date: 8 December 2010

Mrs Alex McGarel
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Dear Alex

CLEAN NEIGHBOURHOODS AND ENVIRONMENT BILL – RESPONSE TO COMMENTS CONCERNING PART 1 (GATING ORDERS) AND PART 3 (LITTER)

Following their meeting on Thursday 2 December 2010 the Environment Committee commented as follows:-

1. Departmental officials agreed to provide clarification on Clause 17 in relation to exemptions for Crown land and educational establishments. Members would also like to know what enforcement action has been taken to date under the Litter Order in relation to Crown land.
2. On Clause 21 the Committee would like the Department to provide it with legal opinion on the grounds on which a council may base a decision to approve or refuse consent to distribute printed material on the street. The Committee would also like more information on how the Department envisages this working in practice.
3. Officials also agreed to consider an amendment to Clause 22 to make it subject to draft affirmative procedure.
4. The Committee would also like to know if there is legal advice in relation to Clause 1, gating orders, as there was a feeling that the introduction of the Bill will lead to a situation where expectations are raised in relation to installing gates. For example, might citizens see the installation of gates in another area as an indication that they might reasonably anticipate them being installed in their own area and insist there is a duty on the local council to install them?

The Department's responses to the Committee's comments 1 to 4 above are set out in the attached Annexes A, B, C and D.

I trust this information is of assistance. However, should you require anything further please contact me.

Yours sincerely

Úna Downey
DALO

Annex A

1. Departmental officials agreed to provide clarification on Clause 17 in relation to exemptions for Crown land and educational establishments. Members would also like to know what enforcement action has been taken to date under the Litter Order in relation to Crown land.

Department's Response

Clause 17 – Litter Clearing Notices - clarification

By virtue of Article 7 of the Litter (Northern Ireland) Order 1994 the appropriate authority as respects its relevant Crown land and the governing body of each designated educational institution as respects its relevant land are already under a statutory duty to ensure that the land is, so far as is practicable, kept clear of litter. Such bodies are, therefore, already required by law to clear up litter and there is no need for Clause 17 of the Bill to apply to them. Clause 17, therefore, includes a number of exemptions.

Article 12 of the Litter Order includes powers to allow district councils to take formal enforcement action including action in respect of Crown land that is defaced by litter. The Council can, for example, issue a litter abatement notice imposing a requirement that the litter be cleared. Failure to comply is an offence.

In the time available the Department contacted a number of Councils across Northern Ireland. Responses indicated that any concerns Councils might have regarding Crown land that is defaced by litter are addressed voluntarily through an informal approach rather than having to resort to formal enforcement action. None of the Councils contacted indicated that they had found it necessary to take any formal enforcement action.

Annex B

2. On Clause 21 the Committee would like the Department to provide it with legal opinion on the grounds on which a council may base a decision to approve or refuse consent to distribute printed material on the street. The Committee would also like more information on how the Department envisages this working in practice.

Department's Response

Clause 21 – Controls on free distribution of printed matter

The Department cannot provide a legal opinion on the grounds on which a council may base a decision to approve or refuse consent to distribute printed material on the street. Each case received by a council will have to be considered on its merits and a decision made by that particular council. In reaching such a decision the district council may decide to seek a legal opinion relevant to the particular case in question.

Clause 21 of the Bill makes clear that a council may refuse consent where, for example, it considers that the proposed distribution would in all the circumstances be likely to lead to the defacement of the designated land. It also makes clear that consent may be given by a council subject to such conditions as the council considers necessary or desirable for, for example, protecting the designated land from defacement.

Clause 21 of the Bill also includes a process whereby a decision of the council can be appealed to a court of summary jurisdiction. A person aggrieved by a decision of a district council therefore has this option and it is likely that legal opinion relevant to the grounds on which the council's decision was made would be required.

The Department will be bringing forward, as soon as possible after the Bill is passed by the Assembly, comprehensive guidance covering the practical implementation of the new provisions on controlling the distribution of free literature. The Guidance will be subject to full consultation and it is expected that any concerns raised by councils on the practical workings of the new provisions would be addressed in that Guidance.

Annex C

3. Officials also agreed to consider an amendment to Clause 22 to make it subject to draft affirmative procedure.

Department's Response

Clause 22 – Fixed penalty notices: supplementary

The Department agrees that the subordinate legislation under the Bill relevant to the amount of fixed penalty payments is subject to draft affirmative procedure. The Department will be bringing forward the necessary amendments to the Bill.

Annex D

4. The Committee would also like to know if there is legal advice in relation to Clause 1, gating orders, as there was a feeling that the introduction of the Bill will lead to a situation where expectations are raised in relation to installing gates. For example, might citizens see the installation of gates in another area as an indication that they might reasonably anticipate them being installed in their own area and insist there is a duty on the local council to install them?

Department's Response

Clause 1 – Gating orders

The Bill does not impose a duty on district councils to make gating orders; rather it gives them the power to do so in respect of a road which is facilitating high and persistent levels of crime and/or anti-social behaviour that adversely affect local residents or businesses.

Gating orders are not new in Northern Ireland and the Department sees no reason to assume that the provisions contained in the Bill will lead to raised expectations that gates will be installed. A number of gating orders have already been made by the Department for Regional Development and the Bill is simply transferring the power to do so to local government – a case will still have to be made for the gates being necessary and there is no change in how the gates are funded. Funding does not necessarily have to come from councils and, as is currently the case, may come from a number of other sources e.g. the Northern Ireland Housing Executive, community groups or central government.

There is no legal advice in respect of the point raised concerning clause 1 and the Department does not see any need for such advice. It will be a matter for a district council to take a decision as to whether it is appropriate to make a gating order after taking all of the relevant circumstances into account. Such circumstances may include the availability of funding and, for

example, the overall demand for gating orders in the district council area. It will be a matter for the particular district council to consider the implications of any decisions it takes, including the need to take legal advice if it feels it is necessary to do so, in relation to acceding to or refusing a request to make a gating order.

Northern Ireland Local Government Association (NILGA) Views on Costs of Clean Neighbourhoods and Environment Bill

Hi Sean

Sorry for the delay in getting this to you.

Regards
Karen

Lead in times would be helpful perhaps over a 6 month to 18 month period. A lead in time after the issue of the guidance would allow for training to take place and for processes and systems to be organised in advance of the commencement date.

From an operational perspective, the costs of implementing the Bill will involve:

- an additional manpower requirement
- additional administrative support to manage the administration arising out of the new enforcement powers and to deal with the administrative activities associated with issues such as the new alarm notification areas provisions, the new leaflet distribution powers and the administration of the dog control orders.
- Additional legal support to bring cases to Court and to administer the Gating Orders process.
- upgrading existing IT systems.

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Response from Belfast City Council re Alley gating

Background

Alleygates are gates situated at the end of an alleyway to restrict access to residents with keys and allow access to those agencies that provide emergency or statutory services.

As Belfast City Council (BCC) leads the Belfast Community Safety Partnership (BCSP) and supports the delivery of the Safer Belfast Plan 2009-2011, the Council has a civic leadership role in taking forward the Plan and its agreed commitments. The Alleygate Project has been identified

and agreed as a key project and mechanism for the partnership to take forward one of the four themes - tackling anti-social behaviour.

The Safer Belfast Plan states that in tackling anti-social behaviour the focus will be on developing more localised, community-led interventions across north, south, east and west Belfast, building on the interagency forums and engaging communities in delivering preventative approaches as well as responding to anti-social behaviour. The Alleygate Project builds on previous learning and provides a high level of community engagement which is essential for its success reducing anti-social behaviour and helping people feel safer within areas that have been prioritised as suitable for this intervention.

We would like to take this opportunity to answer the queries raised by the Committee and hope that this clarifies any issues.

1. Specification

The gates currently installed have the Home Office "Secured by Design" award; this process identifies technical standards and evaluations, which test the competence of security products and their resistance to criminal attack. The Alleygates that we install have received a level 1 & 2 Standard and have been tested by both Tool Category A and B of the Loss Protection Certification Board. A list of testing procedures can be obtained from BRE Certification Ltd.

Currently the Alleygates are coated to 160 microns, based on the worse case scenario environmental conditions would erode the coating at a rate of 2.5 microns per year, this gives the coating and estimated life expectancy of 64 years.

The locking system currently used is a Mul – T – Lock Integrator System. This provides a higher level of tamper – resistant security for our gates. This system uses a 7- pin tumbler mechanism with a copy protected oval cut. Launcher pins are inserted into the relevant chambers which respond to the appropriately cut key. This enables council to have a key management system, to ensure that each set of gates has their own pin system, and, that we can operate a master key system for emergency services and service providers. These keys are patent protected and can only be copied on presentation of a Key Registration Card by the registered owner. (BCC)

2. Costs

Currently the cost for an alleygate is based on a figure of £4080 per installation. This may seem expensive but when examining the specification above it is evident that the gates are fit for purpose.

It is important that other costs be included within the costing of an Alleygating programme. The revenue costs for the proposed Alleygate Project include costs relating to:

- Key costs;
- BCC staff time to deliver the project; and project management costs
- Maintenance and insurance costs.
- Signage & communication

The Community safety team have given consideration to the additional costs that will be incurred should the Clean Neighbourhoods bill be enacted. There will be considerable costs involved with the legal preparation of the programme currently absorbed by the Department for Regional

Development. This will include the legal scrutiny, notification of intent with the public advertisements and the making of the Road Traffic Order.

A full breakdown of the capital cost for one gating intervention is as follows:

Preliminary Valuation

Gate Reference			WR1/1		
Right Or Left Hand			RH/IN		
Street Name/Area			B View		
	Unit	Cost/Unit		Quantity	Cost
Ground Works					
Break up of concrete	m2	£23.30	3.84	3.84	£89.47
Excavating pits	m3	£35.00	3.2	3.2	£112.00
Rock	m3	£70.00	2.88	2.88	£201.60
Disposal	m3	£23.28	3.2	3.2	£74.49
E In situ concrete	m3	£155.20	3.2	6.4	£496.64
Wood float finish	m2	£3.50	3.84	3.84	£13.44
Single Gates					
Overall 1935 x 2440 high	Each	£1,887.34		0	£0.00
Overall 2150 x 2440 high	Each	£1,941.94		0	£0.00
Overall 2300 x 2440 high	Each	£1,980.44		0	£0.00
Overall 2450 x 2440 high	Each	£2,129.20	1	1	£2,129.20
Gate Posts					
Gate posts 120 x 120 x 5 3000 high	Each	£273.91		0	£0.00
Gate posts 120 x 120 x 6 3000 high	Each	£357.63	2	2	£715.26
Double Gates					
overall 3150 x 2440	Each	£2,581.22		0	£0.00
overall 4250 x 2440	Each	£3,032.66		0	£0.00
Ped Gates					
Ped gate 1000mm	Each	£1,514.24		0	£0.00
Ped gate 1600mm	Each	£2,019.79		0	£0.00
Side Panels					
Overall 200 x 2350 high	Each	£211.85	2	2	£423.70
Side Panels					
Overall 400 x 2350 high	Each	£288.86		0	£0.00
Overall 600 x 2350 high	Each	£315.84		0	£0.00
Overall 800 x 2350 high	Each	£398.94		0	£0.00
Overall 1000 x 2350 high	Each	£431.96		0	£0.00
Gate Stop					
80 x 40 800 high	Each	£72.28	1	1	£72.28
Infill Panels					
40 x 40 angle	Each	£48.36	2	2	£96.72
Overall 60 x 2350 high	Each	£78.46		0	£0.00
Overall 75 x 2350 high	Each	£84.58		0	£0.00

Gate Reference	WR1/1		
Right Or Left Hand	RH/IN		
Street Name/Area	B View		
	Unit Cost/Unit	Quantity	Cost
Overall 90 x 2350 high	Each £92.34	0	£0.00
Overall 110 x 2350 high	Each £103.19	0	£0.00
Overall 130 x 2350 high	Each £114.57	0	£0.00
Overall 150 x 2350 high	Each £126.15	0	£0.00
Overall 180 x 2350 high	Each £142.53	0	£0.00
		Total	£4,424.80

3. Successes of alleygating/ Benchmarking

A review of international crime research states that in the United Kingdom (UK), there have been very positive experiences in recent years with a range of burglary reduction schemes in relatively high crime estates. Research suggests that the installation of locks, alleygates, and even tidying up the appearance of estates as being effective strategies in burglary reduction.

Evaluations have shown that alleygating in particular is successful in reducing crime, and sustaining a reduction in crime and anti-social behaviour over time.

A collaborative crime prevention, employment and training and health and regeneration initiative in Merseyside included an evaluation of alleygates one year after implementation. The results showed that the number of domestic burglaries fell by more than 55 per cent in the same year as a 10 per cent increase was experienced in all other Liverpool Police Districts. 85 per cent of residents also reported that the installation of the gates improved their security. The project was also successful in terms of improved community cohesiveness with increased community spirit through the formation of a residents association and home watch scheme and improved relationships between the police and local people. These benefits are important factors in the sustainability of the impact of Alleygate Projects and enhancing the ability of the community to deal with other issues that may arise.

The study to investigate the sustainability of the impact of alleygates in Liverpool demonstrated that positive impacts on perceptions and experience of crime and anti-social behaviour have been maintained over a four year period. The results also illustrated that gates are being maintained effectively with damage to gates in only 3 per cent of cases. This has been the experience in Belfast where there are fewer problems with alleygates as the community become more familiar with their use and existence.

The long term effectiveness of the Alleygate Project depends wholly on the co-operation of local residents, which needs to be taken account of in the initial design and implementation of any Alleygate Project. This has been the experience of the pilot Alleygate Project in Belfast and remains the case for the Alleygate Phase 2 Project. The researchers noted that the sustainability of gates is likely to be due to gates being durable, providing 100 per cent closure to the defined area and permanently affecting the routine activities of offenders.

An evaluation of the Alleygate Project in Middlesbrough also demonstrated success. It concluded that alleygates had contributed to improvements in all problems in rear entries and reductions in the incidence of domestic burglary in alleygated areas. Significant positive outcomes from the Alleygate Project included reduced crime and disorder; less rubbish and litter; less fear of crime and a greater feel good factor related to the rear of properties as well as reduced burglary rates.

The evaluation noted that alleygates do not resolve all problems in an area and the effectiveness of gates increased in cases where there are other contributing factors within the area, for example, improved street lighting, active community/residents associations etc.

This has been the same process that Belfast City Council has used.

Alley gating is just one tool of many to start to assist communities in addressing anti-social behaviour, its not a total solution and is not always appropriate for an area. It will often need to be combined with other, on the ground programmes and measures, to compliment the community safety work especially were communities feel there is displacement of ASB as a result of gates going up in one street and moving the problems onto a new site. Currently teams of Community Safety Wardens are sometimes deployed into gated areas to deal with any displacement of antisocial behaviour onto the streets. This is complimented with officers carrying out joint enforcement patrols with PSNI to reduce underage drinking and alcohol fuelled violence.

4. Equality screening

The areas chosen for the pilot programme were selected by the Northern Ireland Office.

Belfast City Council has taken steps to ensure that equality has been examined and adhered to. The pilot programme for gates was decided by the Community Safety Unit NIO (now Department of Justice) and Belfast Regeneration Office. This was decided by burglary figures and rankings within the multiple deprivation indices.

A number of focus groups were set up with organisations representing those groups reflected within Section 75 legislation. From these meetings a questionnaire was developed that is conducted with each householder to ensure that equality / human rights considerations are examined.

Community Safety recently accessed capital monies from BCC for a further round of gating interventions. This process was screened with the Equality Officer for Belfast City Council, from this screening it was identified that a process had to be introduced to ensure that the capital spend was equally distributed throughout Belfast and in those areas of greatest need. This process was developed by Deloitte LLP and passed by the Health and Environmental Services Committee in March 2010.

Gavin Bell
Belfast City Council
November 2010

Departmental Reply re Amendments to Clauses 4 and 7 of Clean Neighbourhoods and Environmental Bill

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Your reference:
Our reference: CQ/223/10
Date: 6 December 2010

Mrs Alex McGarel
Clerk to the Environment Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Alex

**Clean Neighbourhoods and Environment Bill - Subordinate
Legislation Relevant to the Amount of Fixed Penalty Payments To Be
Subject To Draft Affirmative Procedure**

Following their meeting on Thursday 25 November 2010 the Environment Committee commented:-

**Departmental officials agreed to report back to the Committee on
the possibility of amendments to Clauses 4 and 7 to ensure that
subordinate legislation is subject to draft affirmative procedure.**

The Department agrees that the subordinate legislation under the Bill relevant to the amount of fixed penalty payments is subject to draft affirmative procedure. The Department will be bringing forward the necessary amendments to the Bill.

I trust this information is of assistance. However, should you require anything further please contact me.

Yours sincerely

Úna Downey
DALO

[by email]

**Committee for Social Development Memo to
Environment Committee re Clean Neighbourhoods
and Environment Bill**

Committee for Social Development
Room 412

Parliament Buildings
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BT4 3XX

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To: Alex McGarel - Clerk to the Committee for the Environment

From: Peter McCallion

Date: 1 December 2010

Subject: Clean Neighbourhoods and Environment Bill

At its meeting of 25 November 2010, the Committee noted correspondence from the Committee for the Environment regarding the Committee Stage of the Clean Neighbourhoods and Environment Bill.

The Committee agreed that it did not wish to make a submission to the Committee Stage of the Bill.

Peter McCallion
Committee Clerk

Tab 8B - CNEB Final Amendments DALO

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Date: 18 January 2011

Mrs Alex McGarel
Clerk to the Environment Committee
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BT4 3XX

Dear Alex

Clean Neighbourhoods and Environment Bill – Further Amendments Concerning Part 4 (Graffiti and Other Defacement)

Please find herewith at Annex A details of further draft amendments concerning Part 4 of the Bill. The further amendments to Part 4 are designed to strengthen the powers of district councils to enable them to deal more effectively with fly-posting. Annex B attached explains the purpose of the amendments.

Details of a minor consequential amendment to Schedule 3 to the Bill are also included.

I trust this information is of assistance. However, should you require anything further please contact me.

Yours sincerely

Úna Downey
DALO

Annex A

Clean Neighbourhoods and Environment Bill Amendments to be moved at Consideration Stage

Clause 26, Page 28, Line 20

At end insert—

‘(12) In Article 87(11) of the Roads (Northern Ireland) Order 1993 at the end add “and to an authorised officer of a district council (within the meaning of section 26 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011) acting in connection with an offence under paragraph (1).”.’

Clause 37, Page 33, Line 26

Leave out “as follows” and insert “in accordance with subsections (2) and (3)”

Clause 37, Page 33, Line 33

At end insert—

“(4) Article 87 of the Roads (Northern Ireland) Order 1993 (NI 15) (control of advertisements, etc.) is amended in accordance with subsections (5) and (6).

(5) In paragraph (9) for “that it was displayed without his knowledge or consent” substitute “either of the matters specified in paragraph (9A)”.

(6) After that paragraph insert—

“(9A) The matters are that—

(a) the advertisement was displayed without his knowledge; or

(b) he took all reasonable steps to prevent the display or, after the advertisement had been displayed, to secure its removal."

Schedule 3, page 71, line 19

At end insert—

'() In Article 7(5) for "paragraph (1)(b) to (f)" substitute "paragraph (1)(b) to (e)".'

Annex B

Amendment to clause 26 (penalty notices for graffiti and fly-posting)

At present the DRD can, in connection with illegal fly-posting on a road or upon any tree, structure or other works in or on a road, under the Printed Documents Act (Northern Ireland) 1970, obtain from the person who printed the advertisement (fly-poster) the details of the person for whom or on whose instructions the advertisement was printed. The amendment to clause 26 ensures that a district council can also obtain such details in connection with a fly-posting offence under Article 87(1) of the Roads (Northern Ireland) Order 1993.

Amendments to clause 37 (Unlawful display of advertisements)

The new amendment to Article 87 of the Roads (Northern Ireland) 1993 mirrors the amendment to Article 84 of the Planning (Northern Ireland) Order 1991 already contained in clause 37 of the Bill. The purpose of these amendments is to make it much less easy for beneficiaries of fly-posting to escape conviction as they will need to prove that they took all reasonable steps to ensure that any advertisement they benefit from is not displayed illegally.

Amendment to Part 2 of Schedule 3 (Minor and consequential amendments)

A consequential amendment to Part 2 of Schedule 3 to the Bill is required as a result of the repeal of Article 7(1), sub-paragraph (f) and the word "and" immediately preceding it, in the Litter (Northern Ireland) Order 1994 by Part 2 of Schedule 4 to the Clean Neighbourhoods and Environment Bill.