



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Clean Neighbourhoods and Environment
Bill: Informal Clause-by-Clause
Consideration**

2 December 2010

NORTHERN IRELAND ASSEMBLY

**COMMITTEE FOR THE
ENVIRONMENT**

**Clean Neighbourhoods and Environment Bill: Informal
Clause-by-Clause Consideration**

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) Department for Regional Development
Mr Brian O'Neill)

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 every welcome.

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.

Brian and Gerry will respond. You have heard the issues and complaints about the proposals.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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?

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.

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.

Mr Kinahan:

What does “last resort” mean?

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.

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”.

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.

The Chairperson:

It was only a question, but you can see the opposition to it. I am sorry that I mentioned it.

Mr W Clarke:

What is the definition of antisocial behaviour? Does it include children playing or kicking a football?

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.”

So, there is a clear definition there.

The Chairperson:

So, could it be construed as somebody kicking a football down an alleyway?

Ms Bleeks:

Yes; if that caused harassment, alarm or distress to someone.

Mr W Clarke:

People just standing outside a house could cause that.

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.

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?

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.

The Chairperson:

We have one.

Mr Weir:

Is that to keep people out or to keep them in? *[Laughter.]*

The Chairperson:

They get out when the sun shines and stay in when it is snowing.

Mr W Clarke:

Are we looking at some form of words such as “the last option”?

Mr Gray:

We can look at that in the guidance document.

Mr W Clarke:

Could that not be included in the Bill itself?

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.”

Those are quite strong criteria that must be satisfied.

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?

Mr Gray:

If a council is going to make a gating order —

Mr W Clarke:

Councils will carry those out.

Mr Gray:

As local authorities, they are required to take those issues into account.

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.

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.

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.

Ms Bleeks:

Under the terms of the Bill, that could not happen.

Mr Gray:

We are correcting that.

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.

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?

Mr Gray:

We will have to consult fully with the Committee on those guidance notes.

Mr W Clarke:

When will we see those guidance notes?

Mr Gray:

We cannot proceed with the guidance until the Bill gets Royal Assent.

Mr W Clarke:

Are you drawing the guidance notes up in parallel with the Bill's progress?

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.

Mr W Clarke:

So, you are working on it now.

Mr Gray:

Yes. We are working on all of the guidance documents under the Bill.

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?

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.

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.

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.

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.

The Chairperson:

Are members happy with the Department's explanation? Do you require any more information?

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?

The Chairperson:

I am saying that they will have to make that decision as a group.

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.

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.

Mr T Clarke:

Who are you with?

Mr B O'Neill:

DRD — Roads Service.

Mr T Clarke:

You are not writing the cheque.

Mr B O'Neill:

No.

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?

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.

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.

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.

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.

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 —

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.

Mr Gray:

It is, ultimately, up to the councils to decide whether they want to make a gating order.

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.

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.

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.

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.

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.

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.

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.

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 —

Mr W Clarke:

That is not the council's budget.

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.

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.

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?

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?

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?

Mr Gray:

Yes.

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.

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.

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.

Mr Dallat:

Why?

Mr Gray:

That is what I was told to do; that is our remit.

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.

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.

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.

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.

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.

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.

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?

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.

Mr Weir:

The encouragement to pay is quite a useful device because it brings in the money a lot more quickly.

Mr Gray:

The opportunity for councils to do that is consistent throughout the Bill.

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?

Mr Buchanan:

No, go ahead.

The Chairperson:

Hold on.

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.

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.

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.

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.

The Chairperson:

Are you asking for the Porsche to be removed, Willie?

Mr W Clarke:

That would be a good fine; take the Porsche.

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.

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.

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.

Mr W Clarke:

If you have information like that, you should give it to the PSNI.

The Chairperson:

OK, gentlemen, that is nothing to do with this Bill.

Mr W Clarke:

I think that that was a slander on unemployed people.

Mr T Clarke:

What, the ones who are laundering fuel and are unemployed?

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 —

Mr Gray:

It is a proposal.

The Chairperson:

I know that it is a proposal. There are examples of good practice. Maybe, we should take those on board.

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?

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Mr Gray:

That is not something that we envisage being in this Bill.

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.

The Chairperson:

Both members have raised valid points, and they should be followed up on.

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?

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.

Mr McGlone:

So, it is virtually a read-across then?

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.

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.

Mr Gray:

Broadly speaking, it is very similar to the legislation that is in force in England and Wales.

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?

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.

Mr Buchanan:

What is “sufficient evidence”?

Mr Gray:

That would depend on each case.

The Chairperson:

The enforcement actions and all the criteria that go along with that are important for the warden.

Mr T Clarke:

They have that power at the moment, do they not?

Mr Gray:

Yes.

Mr T Clarke:

Can you tell me how many fixed penalties have been given out in the past 12 months?

Mr Gray:

About 3,500.

Mr T Clarke:

Is that concentrated in particular areas?

Mr Gray:

Well, Belfast, obviously, is the main one.

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.

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.

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.

Mr Gray:

Enforcement is a big issue.

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.

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.

The Chairperson:

We still have to get the guidelines and everything else back.

Mr Gray:

The enforcement guidelines are comprehensive, and they will be subject to full consultation. We are talking about a big document.

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.

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?

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.

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.

Concern was expressed about the fact that clause 17 will exempt Crown land or land belonging to an education institution —

Mr Dallat:

Why will education institutions be exempt?

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.

Mr McGlone:

If they are under a duty and they are to be exempted, will there not be a conflict?

Mr Gray:

No. The Department —

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?

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.

Mr McGlone:

But, not under this legislation?

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.

There is a range of issues, and I will go through them quickly.

The Chairperson:

Go through them very quickly, please. Members have the packs.

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.

Mr Gray:

Beaches and shorelines are not exempt; they are district council land.

Mr W Clarke:

No. That is Crown land. Some elements are council land, but other elements are Crown land.

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?

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 —

Mr W Clarke:

Does it not say that Crown lands are exempt?

Mr Gray:

Crown lands are exempt from the provisions concerning litter control notices.

Mr W Clarke:

I am confused.

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.

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.

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.

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.

Mr Weir:

My point has been clarified.

The Chairperson:

Mr Clarke, you are obviously still not content.

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?

Mr Gray:

Would it be helpful if I were to explain that in a letter? I will set it out in bullet points.

Mr W Clarke:

I would appreciate that.

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.

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.”

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?

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.

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.

Mr Kinahan:

So, are you happy enough that it covers everything?

Mr Gray:

I think so, yes.

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?

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.

Mr Kinahan:

We want to get up speed. It is about the pace of dealing with this.

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.

Mr Kinahan:

What is the timescale? I presume that, if there is a legal challenge —

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.

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?

Mr Gray:

I am not aware of —

The Chairperson:

Is there any way of getting any information on that?

Mr Lambe:

We will do our best.

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.

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?

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.

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.

The Chairperson:

As soon as the Bill is enacted?

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.

The Chairperson:

I agree with you, but they need to hit the ground running. The Committee raised some issues in

that regard.

Mr Weir:

That might not be the most appropriate choice of phrase.

The Chairperson:

OK. Are we happy enough, members? Are there any other questions?

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.

I know that I have gone through those quickly, but you are familiar with them.

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.

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.

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.

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.

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.

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.

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?

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.

The Chairperson:

So, anyone who wants to distribute leaflets in any way, whether on cars or wherever else, will have to get approval.

Mr Gray:

They will have to get consent.

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.

Mr Gray:

The person will have to get permission from the council to distribute material within the council area.

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.

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.

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.

Mr Gray:

Yes.

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.

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?

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.

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.

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.

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.

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?

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.

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?

Mr Gray:

In such a case, the person who dropped the litter will have committed an offence.

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?

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.

Mr T Clarke:

There is no accountability mechanism in this.

The Chairperson:

No, there is. If you request permission from a council to distribute leaflets, you have a responsibility for those leaflets.

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."

Mr T Clarke:

We live in the real world.

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.

Mr T Clarke:

That is absolute nonsense.

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.

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.

Mr W Clarke:

Religious material is exempt.

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.

Mr Gray:

I could not have explained it better myself.

The Chairperson:

That is a typically common-sense approach.

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.

Mr Gray:

They would have the discretion to do that.

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.

Mr W Clarke:

Councils would have a policy.

The Chairperson:

On the legal side —

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.”

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.

Mr T Clarke:

I still think that that leaves councils in a very precarious position. What has NILGA said about that?

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.

Mr Gray:

What would you like to get a legal position on exactly?

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?

Mr Gray:

We will look at that.

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?

Mr Gray:

Is that on affirmative resolution for fixed penalties?

The Chairperson:

Yes.

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.

The Chairperson:

You will bring along an amendment. Thank you.

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?

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.

Mr T Clarke:

I disagree. Shopping trolleys lying in hedges and rivers are easily identifiable.

Mr Gray:

We are talking about shopping baskets.

The Committee Clerk:

The proposals cover trolleys. However, the stakeholders suggested that they should also cover baskets.

Mr T Clarke:

I thought that you meant that trolleys could not be covered in the proposals.

The Chairperson:

No, baskets are not covered.

Are members happy enough with that explanation?

Members indicated assent.

The Chairperson:

Clause 25 is entitled “Section 24: transitional provision”. No issues were raised in relation to this clause.

Robert, we have to move on. However, we will no doubt get you back to finish this.

Mr Gray:

Are we not doing Part 5?

The Chairperson:

We could start Part 5, but we would be here to 5.00 pm. Thank you very much.