Northern Ireland
Assembly

COMMITTEE FOR THE ENVIRONMENT

OFFICIAL REPORT (Hansard)

High Hedges Bill and Clean Neighbourhoods and Environment Bill

9 December 2010

NORTHERN IRELAND ASSEMBLY

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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)

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.

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.

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.

The Chairperson:

We would like clarification on clause 5.

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.

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?

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.

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?

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.

Mr T Clarke:

OK; I am content with clause 5.

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?

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?

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.

The Chairperson:

It is an appeals mechanism.

Mr McMahon:

It is a normal appeals mechanism, absolutely.

The Chairperson:

The person is entitled to appeal against it, and that is what we are putting in.

Mr McMahon:

Yes.

Mr T Clarke:

I understand the appeal against the remedial notice, but I cannot understand the appeal against the withdrawal.

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.

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.

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.

The Chairperson:

It is a difficult one to explain, to be fair.

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.

Mr Byrne:

That is exactly it.

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.

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.

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.

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.

Mr McMahon:

That is exactly it.

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.

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?

Mr T Clarke:

Yes.

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?

Mr W Clarke:

Will a code of conduct be drawn up that sets out guiding principles?

Mr Byrne:

That will be in the guidance. This issue is to do with human rights, so there will be a code of conduct.

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.

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.

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.

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?

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 —

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?

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 —

The Chairperson:

Yes; it would be criminal damage if a hedge was removed without consent.

Mr T Clarke:

It says in the clause that councils will have the power to "enter the neighbouring land".

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.

Mr Byrne:

In the Bill, the term "neighbouring land" means the land in which hedges are situated.

Mr T Clarke:

"Neighbouring" makes it sound as though it is —

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.

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.

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.

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?

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.

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.

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?

Mr Byrne:

I am here for the next session anyway.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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?

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.

The Chairperson:

We will have a final explanation of that point, and then we will move on.

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.

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.

The Chairperson:

Clause 27 deals with the amount of penalty. I remind members that the main concern about this clause is the impact —

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.

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.

Mr W Clarke:

OK.

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.

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.

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.

Clauses 29 and 30 —

Mr W Clarke:

What is the age that children can be given a fixed penalty?

Ms Bleeks:

Do you mean the minimum age?

Mr W Clarke:

Yes.

Ms Bleeks:

The minimum age is 10.

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.

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.

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.

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 —

Mr W Clarke:

We are dealing with graffiti.

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 up in cotton wool? If they are guilty of committing a crime, they have to be penalised.

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.

Mr T Clarke:

That is fine. I would probably accept that.

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?

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.

The Chairperson:

That is a valid point. Can we look at the question of who the fixed penalty is issued to?

Ms Bleeks:

That could be looked at in the guidance.

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.

Mr McMahon:

Yes.

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.

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.

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.

The Chairperson:

The legal question of issuing a penalty to a parent would need to be looked at.

Are members content with that clarification?

Members indicated assent.

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.

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, a 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.

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.

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?

Ms Bleeks:

No. Privately owned property will not be affected. It refers only to —

Mr McMahon:

Electricity boxes, for example, would be covered.

Mr T Clarke:

In that example, would the utility company be responsible?

Ms Bleeks:

Yes. We are trying to —

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?

Ms Bleeks:

It is also in the utility's best interest to make sure that their property is kept free of that defacement.

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.

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.

Mr McMahon:

It is not an either/or situation.

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.

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.

Mr T Clarke:

I am confused too, sorry. I apologise for that.

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?

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.

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?

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.

The Chairperson:

No problem. I just sought clarification on that. Thank you. Are members content?

Members indicated assent.

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?

Ms Bleeks:

I am not sure how that clause can be seen as reducing the powers of councils to deal with fly-posting.

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."

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.

The Chairperson:

Thank you. These are issues that were raised and on which we are seeking clarification.

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.

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.

The Chairperson:

Are members content with that explanation?

Members indicated assent.

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.

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?

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.

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.

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.

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.

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.

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?

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.

Ms Bleeks:

Across the water in England and Wales, the legal age to buy aerosol spray paints is 16.

Mr W Clarke:

What about in Scotland?

Ms Bleeks:

I do not know.

The Chairperson:

It does not matter what is done elsewhere. We need to find out what we want to do here.

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.

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.

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.

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?

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.

Mr T Clarke:

They might be old enough to drive, but they still cannot get into some nightclubs until they are 21.

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.

The Chairperson:

You need to consider prospective young artists and everyone else.

Mr McMahon:

That is a really good point.

The Chairperson:

Can you come back to us with more data on that?

Mr McMahon:

Yes.

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.

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 —

Mr T Clarke:

The offence is to sell, not to possess.

Ms Bleeks:

That is right. There is nothing to stop an adult buying —

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.

Ms Bleeks:

That is right. There is absolutely nothing to prevent an adult from purchasing aerosol paint and giving it to —

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.

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.

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.

The Chairperson:

Regardless of whether somebody agrees with the advertising, we are bringing in laws for people to adhere to, and then other people —

Mr T Clarke:

That is not so much to do with fly-posting.

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.

Ms Bleeks:

Are we talking about wider advertising as opposed to fly-posting?

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.

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.

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 —

Mr W Clarke:

Perhaps that should not have been brought up.

The Chairperson:

Councils would then have the power to deal with that.

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.

The Chairperson:

That is the issue that was specifically raised. I am only asking for clarification.

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.

The Chairperson:

That is the point with this matter.

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.

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.

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.

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?

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.

The Chairperson:

Would you like to comment on the age of criminal responsibility?

Ms Bleeks:

That is not really a matter for the DOE; it is a matter for the Department of Justice.

The Chairperson:

OK; obviously we want you to liaise about the issue that we discussed earlier. Thank you very much.

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?

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.

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.

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.

The Chairperson:

Is there a maximum number? I know that the Kennel Club brought this issue to us. What would be a

maximum number?

Ms Bleeks:

There is no maximum number set in the Bill. That would be a matter for a council to determine in individual circumstances.

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?

Ms Bleeks:

Yes.

Mr T Clarke:

That seems fair.

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.

Ms Bleeks:

There could still be a restriction, even for professional dog-walkers.

Mr W Clarke:

There would be a restriction?

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.

Mr W Clarke:

That is people's livelihoods.

Mr McMahon:

Absolutely.

Mr W Clarke:

I know a number of people who walk greyhounds. That is their occupation.

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 —

Ms Bleeks:

It will be for the council to determine.

The Chairperson:

Do you want to comment on the proposed level of fines?

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.

The Chairperson:

OK, gentlemen. I am content with that explanation. Are there any more questions? No. OK.

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?

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.

The Chairperson:

And, just to risk confusion with existing legislation; does this complement what is there already, just to give more powers?

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.

The Chairperson:

That is great: a change to the by-laws. OK; gentlemen, are there any questions? No.

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.

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?

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.

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.

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.

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?

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.

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.

Mr McMahon:

They will need to do a business case.

The Chairperson:

OK. Are members content with clause 43 and the possible need to use draft affirmative resolution?

Members indicated assent.

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.

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?

Ms Bleeks:

To be honest, I was quite surprised that councils wanted to retain by-laws.

The Chairperson:

So was I.

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.

The Chairperson:

I suggest that they do that fairly quickly. Are members content with clause 44?

Members indicated assent.

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?

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.

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?

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.

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.

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.

The Chairperson:

OK. Do members wish to make any comments? I think that we have covered most of the points raised.

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.

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.

The Chairperson:

Do members have any comments to make? Are members happy enough?

Members indicated assent.

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?

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.

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?

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.

The Chairperson:

Are members happy enough with that? We will move on.

The Chairperson:

Clause 50 is about the amount of fixed penalty.

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.

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.

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.

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.

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.

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.

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.

Mr McMahon:

We might need to look into that issue to see what the liability would be and how that would work.

Mr T Clarke:

As long as we do not leave councils unsure.

Mr McMahon:

That is a fair point.

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.

Mr T Clarke:

That is fine. Has that been tested?

Mr Lambe:

It is no different from the current position with councils.

Mr T Clarke:

Councils do not silence alarms at present, generally speaking.

Mr Lambe:

From Belfast, my understanding is that it is a fairly regular occurrence.

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.

Mr McMahon:

We are happy to look into that and satisfy the Committee. We will seek to confirm that it is being used elsewhere.

The Chairperson:

Clause 54 is entitled, "Warrant to enter premises by force". We are seeking clarity on how that would operate in practice.

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.

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.

Mr Lambe:

As previously stated, the Department is content with the amendment.

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.

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.

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.

The Chairperson:

Are members content with that explanation?

Members indicated assent.

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?

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.

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.

The Chairperson:

Is regular review an option?

Mr Lambe:

The Department intends regularly to review the level of all fixed penalties in the Bill.

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.

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.

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.

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".

There is food for thought in those responses.

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.

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.

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.

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",

or in clause 60(1)(e):

"any accumulation or deposit which is prejudicial to health".

Both would enable councils to deal with pigeon droppings and so on. Councils also have powers under their existing good law and government —

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.

Mr Lambe:

Yes, the Department is happy to do that.

The Chairperson:

The Committee will make a recommendation on the importance of doing that.

Mr T Clarke:

There is a lot in clause 60. Is noise anywhere in there?

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".

That tweaks existing noise provisions to separate them into two separate categories.

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?

Mr McMahon:

Are you talking about jet skis?

Ms H Anderson:

No, it is motocross.

Mr T Clarke:

Ones without planning permission. Noise travels into the streets from scrambling tracks —

Mr W Clarke:

That is an issue for planning enforcement.

Mr T Clarke:

No, there is a noise pollution issue. It is a nuisance.

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.

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.

Ms H Anderson:

I appreciate that, but I am not sure that clause 60(1)(j) will capture it. Perhaps we should check.

Mr Lambe:

May we check and come back to the Committee on that matter?

The Chairperson:

Please come back, if necessary with an amendment to the clause.

Mr T Clarke:

I also want to ask about clause 60(1)(l), which deals with watercourses. That intrigues me.

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.

Mr T Clarke:

The relevant paragraph states "choked or silted up", which is natural in bogland watercourses.

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.

Mr T Clarke:

Does that give the council the power to make the landowner clear that?

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.

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.

Mr T Clarke:

That is not what is says there.

Mr McMahon:

I think that it is the definition of the term "choked". It would not be referring just to a natural occurrence.

Mr T Clarke:

It states:

"which is so choked or silted up as to obstruct".

That is natural in some types of watercourse anyway.

The Chairperson:

That is a valid point.

Mr Lambe:

I will look again at that, and come back to the Committee.

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.

Mr McMahon:

I think what you are saying, Jackie, is that the case law would not —

Mr T Clarke:

If that is the proposal, I would welcome that, but I think it will be an interesting one.

Mr McMahon:

We will come back on that.

Mr T Clarke:

Can I ask your colleagues in the Environment Agency what their view is on that?

The Chairperson:

Finally on that clause, there is reference to the exclusion of agricultural land.

Mr Lambe:

The Department intends to clarify the definition of "agricultural land" specifically in the guidance.

The Chairperson:

OK. Thank you.

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.

Mr T Clarke:

Sorry, I missed that.

The Chairperson:

There is already legislation on that.

Mr T Clarke:

That is weak as well.

The Chairperson:

You mentioned clause 61(a)?

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.

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.

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.

Mr McMahon:

Yes, I think that is fair.

The Chairperson:

Are we saying there is enough in legislation at the minute, or do we need to shore it up?

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.

Mr T Clarke:

Are the powers — *[Inaudible due to mobile phone interference.]*

The Chairperson:

If the existing powers are properly applied, it is fine.

Mr McMahon:

If the power was not there and we were building it in, I suppose —

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.

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?

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.

Mr McMahon:

When I heard by-laws again, I must say that I —

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.

Mr McMahon:

We are happy to look at it.

The Chairperson:

Thank you.

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?

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.

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.

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.

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.

The Chairperson:

No issues were raised on clause 63, concerning abatement notice in respect of noise in the street.

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.

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.

The Chairperson:

Are we content with that explanation?

Members indicated assent.

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.

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.

The Chairperson:

Do members have any questions on that? Are members content?

Members indicated assent.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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)

The Chairperson:

We received further clarification on this clause. Mr Clarke, are you happy enough with that clarification?

Mr T Clarke:

Yes.

Question, That the Committee is content with the clause, *put and agreed to*.

Clause 6 agreed to.

Clause 7 agreed to.

Clause 8 (Powers of entry)

The Chairperson:

The Committee sought clarification from the Department, and we were satisfied with the explanation.

Question, That the Committee is content with the clause, *put and agreed to*.

Clause 8 agreed to.

Clause 9 (Offences)

The Chairperson:

The Committee sought clarification in relation to this clause, and we were content with that clarification.

Question, That the Committee is content with the clause, *put and agreed to*.

Clause 9 agreed to.

Clause 10 agreed to.

Clause 11 (Action by council)

The Chairperson:

The Committee sought some clarification in relation to this clause. I think that we are happy enough with the explanation.

Question, That the Committee is content with the clause, *put and agreed to*.

Clause 11 agreed to.

Clauses 12 to 14 agreed to.

Clause 15 (Interpretation)

The Chairperson:

We expressed some concerns about this clause and sought some clarification from the Department, and we are happy enough with that clarification.

Question, That the Committee is content with the clause, *put and agreed to*.

Clause 15 agreed to.

Clauses 16 to 20 agreed to.

Long title agreed to.

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.