



**Northern Ireland
Assembly**

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Clean Neighbourhoods and Environment
Bill**

16 December 2010

NORTHERN IRELAND ASSEMBLY

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ENVIRONMENT**

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Members present for all or part of the proceedings:

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

Witnesses:

Ms Helen Anderson)	
Ms Hazel Bleeks)	Department of the Environment
Mr Robert Gray)	
Mr Jackie Lambe)	
Mr Gerry Anketell)	Department for Regional Development
Mr Brian O'Neill)	

The Chairperson (Mr Boylan):

I initially welcome Robert Gray and Helen Anderson from the Department of the Environment

(DOE) and Gerry Anketell and Brian O'Neill from the Department for Regional Development (DRD). We will go through Parts 1, 2 and 3 of the Clean Neighbourhoods and Environment Bill, and Committee members will be able to seek clarification on any points on which they require it.

Clause 1 (Gating orders)

The Chairperson:

Issues were raised about clause 1. I remind members that, at its meeting of 2 December, the Committee asked whether the Department had received legal advice on clause 1, as there was a feeling that the introduction of the Bill will lead to a situation in which expectations are raised about the installation of gates. The Department's response stated:

“The Bill does not impose a duty on district councils to make gating orders; rather it gives them the power to do so in respect of a road which is facilitating high and persistent levels of crime and/or anti-social behaviour that adversely affect local residents or businesses.”

It continued:

“There is no legal advice in respect of the point raised concerning clause 1 and the Department does not see any need for such advice. It will be a matter for a district council to take a decision as to whether it is appropriate to make a gating order after taking all of the relevant circumstances into account.”

I also inform members that NILGA has provided further details on the costs, specification and benchmarking of the alley gates that are in place. That information is provided in members' packs. Are members content to incorporate those responses into the Committee's report?

Members indicated assent.

Do any members wish to comment on clause 1?

Mr Dallat:

Is the Department sure that there are no section 75 problems with clause 1? Has it checked cases that were taken to the Equality Commission, which recently ordered the payment of fairly substantial sums of money because of obstructions that had been placed in the way of wheelchair users?

Mr Brian O'Neill (Department for Regional Development):

I am not aware of cases being taken for obstructing wheelchair users.

Mr Dallat:

I know of a case that was taken against Coleraine Borough Council. That case was settled out of court, and the council paid £3,000 for obstructing wheelchair users. I am not certain whether that was as a result of alley gates or kissing gates, but I believe that it was gating.

Mr B O'Neill:

The gates that have been approved by Roads Service have primarily been in Belfast, with a few in Craigavon. No issues at all have been raised on your point, Mr Dallat. There have been no complaints about any obstructions to any person in the Belfast area, where all the gates have been put up.

Mr Dallat:

Has the Fire and Rescue Service Board had any input into gating? Does it have issues with access for hoses, and so on?

Mr B O'Neill:

Local councils consult all the relevant statutory authorities before proposals are brought to us.

Therefore, the Fire and Rescue Service Board is consulted by the local council.

Mr Weir:

Will the Fire and Rescue Service not have skeleton keys for gates? I would have thought that, in most cases, they are not likely to want to put hoses down back alleyways. However, I presume that the emergency services will have a means of gaining complete access to those places anyway. I do not know the individual circumstances in Coleraine, but I wonder whether it was an alley-gating situation or whether the gates were blocking general access for the public and had a specific impact on the disabled in a more general area than a back alleyway.

Mr Dallat:

I mentioned previously that there have been a number of very serious fires at backs of houses in Limavady because some clowns were running around lighting oil tanks. Some families were very lucky to escape with their lives.

Mr Weir:

Presumably, if alley gates prevented people getting access to oil tanks, it would stop, or reduce massively, that threat. It could even cut out the problem in a different way.

The Chairperson:

Mr Dallat has raised the issue of disabled people. That is fine. That issue should be incorporated into part of the consultation process that has been happening up to now anyway. I am glad that he made the point, because, during discussions, we should be mindful to invite representatives of such bodies.

Mr Gerry Anketell (Department for Regional Development):

It is fair to say that all the emergency services will be given provision for access to any gated

area.

Mr W Clarke:

The Department is telling me that anybody who installs gates will have to carry out an equality impact assessment (EQIA). Is that correct?

Mr Robert Gray (Department of the Environment):

It is imperative that, under the proposals, if the local council —

Mr W Clarke:

Or the Housing Executive.

Mr Gray:

The councils will make the gating orders.

Mr W Clarke:

For the Housing Executive.

Mr Gray:

They will do so on behalf of the proposer of the gating scheme. The order can be implemented only if the council makes the gating order, and it is imperative that it undertake a thorough section 75 screening.

Mr W Clarke:

I wanted that on the record.

The Chairperson:

I will put that recommendation at the end of the report under matters raised.

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

Clause 1 agreed to.

The Chairperson:

Thank you very much for your input, Gerry and Brian. We now move on to Part 2, and I welcome Jackie Lambe and Hazel Bleeks from DOE.

Clause 2 (Exposing vehicles for sale on a road)

The Chairperson:

One question was asked about the clause, and we sought clarity on the proposals that relate to the sale of two or more cars that are parked within 500 m of each other. We were content with the explanation provided by the Department.

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

Clause 2 agreed to.

Mr Dallat:

I am not sure whether any other members have noticed, but, recently, perhaps in anticipation of the legislation, people have started to put one car out on the road while leaving the rest of them behind a wall. Presumably, that is OK. However, it still creates a road hazard, because people stop and queue, and so on.

Mr T Clarke:

Why can we not just make it that people cannot have any cars for sale out on the road?

The Chairperson:

I remind members that I have already put the Question and got agreement on it. We have previously discussed the issue at length. We are certainly not rushing into it.

Mr Weir:

We will have to wait for the Christmas episode of 'Doctor Who' to go back in time.

Clause 3 (Repairing vehicles on a road)

The Chairperson:

Members were concerned about the impact on broken-down vehicles but were content when advised that there was a 72-hour exemption for breakdowns and accidents. Do members have any comments before I put the Question?

Mr Dallat:

Have we discussed the 72-hour exemption? That is not flexible, no? Seventy-two hours is three days, which is a fair while for a car or lorry to be sitting on a road.

The Chairperson:

We were concerned about broken-down cars being taken away and wanted to give people an opportunity to remove their cars. Are we now saying that we are against an exemption?

Mr Kinahan:

It is needed if someone cannot get the parts.

The Chairperson:

I think that it is quite reasonable.

Mr Dallat:

All right.

Mr W Clarke:

There is also the example of a car that is stuck in snow.

The Chairperson:

It could be snowed in for two days.

Mr T Clarke:

Discretion will be applied if it is snowed in.

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

Clause 3 agreed to.

Clause 4 (Power to give fixed penalty notices)

The Chairperson:

I remind members that subsection (9) provides a power for the Department to substitute a new amount of fixed penalty payment specified in the Bill. The Examiner of Statutory Rules suggests that the power should be subject to draft affirmative procedure, in keeping with all the other Bills that are going through the Assembly. The Department has agreed an amendment to allow for the power to be subject to draft affirmative procedure. That is all very well, but we have not seen the amendment. What has happened?

Mr Gray:

The point about draft affirmative procedure will apply to numerous clauses. There are powers that relate to the amount of fixed penalty notice throughout the Bill, and we have grouped all those together. I have written to the draftsman to seek the amendments. This would be only one of around eight or nine amendments.

The Chairperson:

That is OK. However, I will be putting the Question to the Committee, and we have not seen the amendment. Are you giving us an assurance that we will receive the amendment?

Mr Gray:

We have asked the draftsman for it, so I do not see any problem.

The Chairperson:

Are you listening very carefully, gentlemen? Robert does not see any problem.

Mr McGlone:

Where are we leaving it, then?

The Chairperson:

We have received assurance that subsection (9) will be subject to draft affirmative procedure, which is what we want. Robert, once we have agreed to this, we have agreed to it. Are you giving the Committee an assurance that it will be subject to draft affirmative procedure?

Mr Gray:

The Minister has agreed that it will be subject to draft affirmative procedure.

The Chairperson:

That is fine. Are we happy enough, gentlemen?

Mr McGlone:

What is the time frame for that?

Mr Gray:

I would like to have all the amendments that will be subject to draft affirmative procedure ready in time for the next meeting of the Committee.

Mr McGlone:

Will we see them then?

Mr Gray:

Yes.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 4, subject to the Department's proposed amendment, agreed to.

Clauses 5 and 6 agreed to.

Clause 7 (Offence of abandoning a vehicle: fixed penalty notices)

The Chairperson:

I remind members that subsection (9) provides a power for the Department to substitute a new amount of a fixed penalty payment. Again, it should be subject to draft affirmative procedure. We have received assurances that we will have that.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 7, subject to the Department's proposed amendment, agreed to.

Clauses 8 to 13 agreed to.

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

The Chairperson:

We now move on to Part 3. I remind members that they raised concerns about the definition of “litter” in the clause. We sought clarity, and members were content with the Department’s response.

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

Clause 14 agreed to.

Clause 15 (Penalty for failing to provide name)

The Chairperson:

Members discussed the introduction of fixed penalty notices for giving false name and address information but concluded that those were unworkable. Members were subsequently content with the clause.

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

Clause 15 agreed to.

Clause 16 (Litter offence: fixed penalty notice)

The Chairperson:

Members questioned the level of the default fine, which is £75. We discussed the option for councils to encourage payment of fines by increasing the amount for late payments. The Department confirmed that the age of criminal responsibility — that is, to which fixed penalties can be issued — is 10 years of age and that guidance on issuing fines to minors will be issued.

Does anyone wish to make any further comments? We received clarification at our previous meeting. We had a discussion last week in Limavady about who would pick up the fine. It was also raised during the discussion on a later clause. Can you provide clarification on that? It concerned the parent picking up the fine. Was that the issue that was raised about a later clause? How does that impact on clause 16?

Mr Jackie Lambe (Department of the Environment):

On the question of who is liable for the fine, there is no onus on the parent of a young person to pay the fine on the young person's behalf. The fine would be issued — if it is, in fact, issued — to the person responsible for the offence.

The Chairperson:

Do members have any comments to make?

Mr W Clarke:

I still have serious concerns about criminalising children at 10 years of age. I cannot my head get around that, and I do not care what guidance is given. I have a seven-year-old child, and I am thinking about her coming home at 10 years of age crying her eyes out over being given a fixed penalty. I cannot accept that. It is too young an age at which to criminalise young people.

There has to be an educational aspect to this. The school should get it through to children that if they drop litter, they will have to sit some sort of module, or something similar. If we criminalise 10-year-old children and send them home to their parents with a fixed penalty, we do not know how the home will react. There are a number of issues around that, and I am not happy about it at all. I want it on the record that I do not support the clause.

Mr T Clarke:

That issue came up last week concerning graffiti. I am still of the same opinion. The drive down from Limavady over the mountain did not change my view. If someone commits a crime, he or she has to pay the fine. As I said last week, I have three children myself — all minors — and if they committed a crime, they would have to pay the fine. If we want to try to improve and clean the streets, and we will probably find that most of the litter incidents are down to younger ones anyway, so —

Mr W Clarke:

That is totally wrong.

Mr T Clarke:

I am sorry, but I am speaking. If they take the fine home with them, it is up to the parents to pay it by whatever means, but they have to pay up.

Mr W Clarke:

To say that the majority of litter on the street is left by young people and 10-year-olds is an outrageous comment to make. That is absolutely disgraceful. There is more education in school about the environment than there ever was. It is older people who cause most of the litter problems. I need to put that on the record. I will not support the clause, no matter what guise is put on it.

Mr T Clarke:

Get Willie Clarke out litter-picking.

Mr Dallat:

There is a war between the Clarks.

Mr Kinahan:

I think that I will sit back a little.

The Chairperson:

The problem was raised under a different clause. We were content with the comments, but what I asked about last week was the legal opinion. Do we look at making the parent or responsible person pay the fine? Is there any way of amending it or of looking to another clause as a means of dealing with the issue?

Mr Gray:

Let me take this opportunity to clarify to the Committee what the Department's intention is, and this will hopefully reassure the Committee about the whole business of issuing fixed penalty notices to juveniles. The Department's intention is to issue guidance based on that already in force in other parts of the UK about issuing fixed penalty notices to juveniles. That guidance makes it clear at the outset that councils need to think very carefully about issuing a fixed penalty notice to a juvenile, and it recommends using different procedures. It recommends different procedures for 16- and 17-year-olds, and for children between the age of 10 and 15.

It strongly advises authorities — in our case, councils — to include age-specific policies in operational and enforcement procedures. That includes the kind of thing that you were talking about, such as education in schools, but there will always be the possibility of a fixed penalty notice being issued under this legislation. That is the current position, but the guidance strongly recommends that councils look at the matter very carefully.

The Chairperson:

For clarification, the point is that the Bill will introduce a fixed penalty notice. It does not matter what age the person who drops the litter is. We are saying that a different Department sets the

age group. We cannot do anything about it under the Bill. It is not within DOE's remit.

Mr W Clarke:

We could make a recommendation.

The Chairperson:

We can put it in the report. We can make a recommendation, but can we change the age range or not?

Mr Gray:

There is nothing to prevent the Committee from tabling an amendment that outlaws issuing a fixed penalty notice to a child, but if you do that, the only other course open is to prosecute.

The Chairperson:

I am not saying that. What I am trying to say is that the legislation will issue a fixed penalty notice, but as regards the justice system, I do not think that we can change the age.

Mr Weir:

It is the age of criminal responsibility.

The Chairperson:

That is not for us to say. A different Department has to look at that. Is that correct?

Mr Weir:

As I said, 10 years of age is the age of criminal responsibility.

The Chairperson:

All that I am saying is that we will make a recommendation in the report that it is not correct.

Mr Ross:

People do not get a criminal record for receiving a fixed penalty notice.

Mr W Clarke:

They do if they do not pay.

The Chairperson:

I am trying to deal with how the Committee thinks that the clause should be dealt with by the Department. It is a fixed penalty.

The other issue is the age group. We can put in the report that some members are unhappy with the age group. Beyond that, we cannot change it. My understanding is that it is up to some other Department if it wants to change the age. Is that correct?

Mr Gray:

Yes.

Mr McGlone:

Mr Gray referred to guidance on those matters for local authorities in Britain. It would be very useful if the Committee could see that guidance or some read-across guidance associated with the legislation for the North. At the minute, we are stabbing in the dark a wee bit.

Mr Gray:

A letter has been drafted to the Committee and is awaiting approval. That letter includes the verbatim guidance. That will be with you in the next few days. The deadline for that was tomorrow.

Mr W Clarke:

I feel very strongly that 10 years of age is far too young. I do not care what the other Departments are saying. We have the opportunity to table an amendment stating that an older threshold for fixed penalty notices will have to be reached.

Mr T Clarke:

Grandparents or 85-year-olds?

Mr W Clarke:

I am thinking around 16 or 18 years of age, although I even have doubts about that. It is a serious issue if a 10-year-old is given a fixed penalty. Instead of going home, that child may run away. Who will take responsibility if that happens? If the Committee does not want to table an amendment, that is fair enough. I will put one down. However, we have the power to put down an amendment that fixed penalties not be issued to children between the age of 10 and 16.

Mr T Clarke:

Therefore, we tell them that it is acceptable to throw litter?

Mr W Clarke:

No. Councils would then look at a different policy for that age group, similar to the guidelines that have been explained. A different measure should be used for that age group. What do we do

with a nine-year-old?

The Chairperson:

I want to seek clarification before we move on. If we agree to table an amendment to raise the age to 16, are we saying that that would be legally binding and that it would be up to councils to enforce it? Is that correct or is it outside the Committee's remit to deal with that?

Mr Gray:

If the legislation said that councils could issue fixed penalty notices only to those who are over the age of 16, that is what councils would have to do. The question is how are 15- or 16-year-olds dealt with? What is the deterrent to stop them dropping litter? The Department will try to deal with that through very strong guidance, which the Committee will see very shortly.

The Chairperson:

Until we see the guidance, we will put clause 16 on hold and come back to it.

Clause 16 referred for further consideration.

Clause 17 (Litter clearing notices)

The Chairperson:

I remind members that, at the meeting on 2 December 2010, we asked departmental officials to provide clarification on clause 17 on exemptions for Crown land and educational establishments. Members also asked for more information on enforcement action that has been taken to date under the Litter Order 1994 on Crown land. Members have been provided with a copy of the departmental reply, which states that article 12 of the 1994 Order includes powers to allow

district councils to take formal enforcement action, including action in respect of Crown land that is defaced by litter.

Concerning enforcement action, the Department states that it contacted a number of councils across the North, and responses indicate that any concerns that councils might have regarding Crown land that is defaced by litter be addressed voluntarily through an informal approach, rather than through having to resort to formal enforcement action. No councils contacted indicated that they found it necessary to take any formal action. Are members content with the Department's response, or are there any other questions?

Mr T Clarke:

Is the reply suggesting that there is an exemption? If it is saying that there is an exemption, I do not believe that there should be an exemption for anyone. Crown land should be treated equally to any other public building.

Mr Gray:

We have explained that there is an exemption, because there is already a legal duty to clean up Crown land.

Mr Dallat:

It does not do it.

Mr T Clarke:

Therefore, why should it be exempt?

Mr Gray:

It is already under a duty. We are talking about a litter-clearing notice provision that will apply to other bodies and other landowners instructing them to clean up their land because they are currently not under any statutory duty to do so.

The Chairperson:

An Order is already in place?

Mr Gray:

Yes.

The Chairperson:

I am only seeking clarification, because we discussed that.

Mr Gray:

I said then that it would be a double whammy to remove that exemption.

The Chairperson:

OK. Are members happy enough with that explanation?

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

Clause 17 agreed to.

Clause 18 (Street litter: control notices)

The Chairperson:

Members raised concerns about addressing smoking-related litter outside pubs, clubs, restaurants, and so on, that has arisen since the new smoking laws came in. I have been advised that the Department will address that issue in subordinate regulations. We were content enough with that.

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

Clause 18 agreed to.

Clauses 19 and 20 agreed to.

Clause 21 (Controls on free distribution of printed matter)

The Chairperson:

There were concerns about the clause. At our meeting on 2 December, members asked the Department to provide the Committee with legal opinion on the grounds on which a council may base a decision to approve or refuse consent to distribute printed material on the street and for more information on how the Department envisages that working in practice. The departmental reply states that it cannot provide a legal opinion on that, as:

“Each case received by a council will have to be considered on its merits and a decision made by that particular council. In reaching such a decision the district council may decide to seek a legal opinion relevant to the particular case in question.

Clause 21 of the Bill makes clear that a council may refuse consent where, for example, it considers that the proposed distribution would in all the circumstances be likely to lead to the defacement of the designated land.”

It goes on to say:

“Clause 21 of the Bill also includes a process whereby a decision of the council can be appealed to a court of summary

jurisdiction. A person aggrieved by a decision of a district council therefore has this option and it is likely that legal opinion relevant to the grounds on which the council's decision was made would be required.

The Department will be bringing forward, as soon as possible after the Bill is passed by the Assembly, comprehensive guidance covering the practical implementation of the new provisions on controlling the distribution of free literature. The Guidance will be subject to full consultation and it is expected that any concerns raised by councils on the practical workings of the new provisions would be addressed in that Guidance."

Are members content with the Department's response, or are there any questions?

Mr Dallat:

What will happen with literature on windscreens?

The Chairperson:

It is down to making an application to the council, is that correct?

Mr Gray:

Windscreens are covered if the distribution of free material is on relevant, designated land. However, distributors of such material would need to get permission to put flyers under window wipers.

The Chairperson:

It is down to councils to make that decision, and, if someone is unhappy, there is an appeals process.

Mr McGlone:

Would that also apply to what are loosely described as Crown properties?

Mr Gray:

Do you mean cars that are parked on Crown properties?

Mr McGlone:

Aye, I am picking up on John's point.

Mr Gray:

I would need to check that one. Jackie, do you have any views?

Mr Lambe:

We may have to come back to the Committee on that, as I do not want to give inaccurate information. However, my initial reaction is that Crown properties do not fall into the category of:

“relevant land of the district council”.

My feeling is that councils could not designate an area where the distribution of free printed material requires approval if that included Crown land, unless it is a road that is maintained by Roads Service. However, I would want to be absolutely certain on that.

Mr McGlone:

Forgive my ignorance, but I am thinking about car parks that could be interpreted as being Crown property and that are publically open and accessible to everybody.

Mr Lambe:

I would want to check with colleagues in Roads Service, but my understanding is that Roads Service does not own many car parks. It manages some leased sites in and around Belfast that are

used as car parks, but those sites do not fall into the definition of “Crown land” as they are not owned by the Crown. However, I will seek clarification on that point.

Mr McGlone:

Thank you.

The Chairperson:

I cannot put the Question. However, in reality, when would people ever access Crown land to advertise?

Mr Lambe:

An example that comes to mind is the car park here in Stormont, which is not designated by a council under this provision, because it does not fall into the category of:

“relevant land of the district council”.

It is only land in which councils have a role with respect to litter.

The Chairperson:

What I am trying to get at is whether people would be able to come in and put stuff on car windscreens on Crown land. Are there any examples of that having happened on Crown land anywhere?

Mr Lambe:

I am not aware of any, but primarily —

The Chairperson:

I would not imagine so. The Committee member has asked a question, and we cannot put the Question on the clause until we get a definition from the Department.

Clause 21 referred for further consideration.

Clauses 22 and 23 agreed to.

Clause 24 (Abandoned shopping and luggage trolleys)

The Chairperson:

I remind members that the Committee raised the prospect of including shopping baskets in the clause but recognised that there would be difficulties with that, as those baskets generally have no identifying marks. Members thrashed the issue out last week after Mr Clarke had raised it, but the Committee was content for the Department to consider the issue at a later date. There are no further updates from the Department or views from Committee members, so I will put the Question.

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

Clause 24 agreed to.

Clause 25 agreed to.

The Chairperson:

That concludes the formal clause-by-clause scrutiny of Parts 1, 2 and 3 of the Clean

Neighbourhoods and Environment Bill. The Committee needs to come back to two clauses, and it will do so at its meeting of 13 January 2011. At that stage, we will have all the information from the Department. Thank you very much.