

Research Briefing

Summary of the provision and scope of the Clean Neighbourhoods Legislation in England & Wales and equivalent legislation in the Republic of Ireland

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005¹

The Act divides into several topic areas;

1. *Crime and Disorder:*

- The Act requires that local Crime and Disorder Reduction partnerships take anti-social behaviour affecting local government into account within crime and disorder reduction strategies.
- Local authorities have powers to gate nuisance alleyways.

2. *Fixed Penalty Notices*

- The Act makes greater use of fixed penalties as alternative to prosecution
- Mostly, the Act provides local authorities with power to set their own rates.
- Parish Councils have power to issue fixed penalties for litter, graffiti, fly posting and dog offences.

3. *Nuisance and Abandoned Vehicles*

- Local authorities have power to remove abandoned cars immediately.
- Two further offences were established helping local authorities to deal with nuisance parking:
 - I) Offering for sale two or more vehicles is an offence
 - II) Repairing a vehicle on the road as part of business.

4. *Litter*

- Act extends offence of dropping litter to all land, including private land and rivers, ponds and lakes.
- Local authorities have new powers in form of Litter Clearing Notices, which require businesses and individuals to remove litter from their land.
- Local Authorities have stronger powers to require local businesses clear up litter generated through Street Litter Control Notices.
- Local authorities can restrict distribution of flyers, handouts and pamphlets.

¹ For full text of Clean Neighbourhoods and Environment Act 2005:
http://www.opsi.gov.uk/acts/acts2005/ukpga_20050016_en_1

- Definition of litter extends to cigarette butts, cigars and chewing gum.

5. Graffiti and Fly-Posting

- The Act extends graffiti removal notices to include fly-posting.
- Local authorities have greater powers to tackle sale of spray paint to minors
- The Act clarifies that all beneficiaries of fly-posting can face prosecution.
- Local Authorities can recover the costs for removing illegal posters.

6. Waste

- The Act provides measures to improve the ability of local authorities to deal with fly-tipping, including;
 - a. removing the defence of acting under instructions of employer
 - b. increasing maximum penalties
 - c. Local Authorities and Environment Agency have power to recover the costs of investigation and clear-up
 - d. Provisions extended to the landowner to clear up where there is no occupier.
- Local Authorities and the Environment Agency have power to issue fixed penalty notices to the following:
 - a. Businesses who fail to produce waste transfer notes
 - b. Waste carriers that fail to produce registration details or evidence that they do not need to be registered.
 - c. Waste left out on streets outside specified collection times
 - d. Local Authorities have power to retain receipts from such penalties
- More effective systems for stop, search and seizure of vehicles used in illegal waste disposal; enabling courts to require forfeiture of vehicles.
- Act establishes a new provision covering the waste duty of care and registration of waste carriers.
- There is a requirement for developers to include site waste management plans for construction and demolition projects.
- Repeals the divestment provisions for waste disposal functions – giving local authorities greater flexibility to deliver waste management services in the most sustainable way.
- Reform of recycling credits scheme to provide increased local flexibility and provide incentives for more sustainable waste management.

7. Dogs

- A simplified system of Dog Control Orders replaced dog bye laws, and enables local Governments and District Councils to deal with fouling by dogs, banning dogs from designated areas, requiring dogs to be kept on a lead and restricting the number of dogs walked by one person.

- Local Authorities have sole responsibility for stray dogs (this responsibility had previously been shared between the local authorities and the police)

8. Noise

- Local authorities have stronger powers to:
 - Deal with burglar alarms
 - Impose fixed penalty fines on licensed premises that ignore warnings to reduce excessive noise levels.
- Local Authorities have greater flexibility in dealing with noise nuisance

9. Architecture and the Built Environment

- The Commission for Architecture and the Built Environment (CABE) will have a statutory basis.

10. Miscellaneous

- Local authorities have the power to recover the costs of dealing with abandoned shopping trolleys from their owners.
- Statutory nuisances extend to light pollution² and nuisance from insects. (this deals with insects infestations that may result due to a large amount of uncleared waste or from businesses)
- The Contaminated Land Appeals Process will be transferred to the Secretary of State
- Power to increase fines for various pollution offences.

Parish Councils

The Act provides the Parish Councils with powers and not duties, and therefore it is at the discretion of individual district authorities whether they chose to exercise these powers.

REPUBLIC OF IRELAND - LEGISLATION IN REGARDS TO ENVIRONMENT AND CLEAN NEIGHBOURHOODS PROVISIONS.

- Protection of Environment Act 2003³
- The Waste Management Act 1996⁴
- The Waste Management (Amendment) Act 2001⁵
- Waste Management (Landfill Levy) Order 2008⁶
- Litter Pollution Act 1997⁷, as amended by the Waste Management (Amendment) Act 2001 and the Protection of the Environment Act 2003

² There has been contention over whether street lighting is included within the remit of the Act. Whilst it was intended by Defra that it would be included, there is uncertainty over the wording of the Act. 'Light Pollution now subject to the criminal law of statutory nuisance' <http://www.britastro.org/dark-skies/cleanact.html>

³ For full text of Protection of Environment Act 2003: <http://www.irishstatutebook.ie/2003/en/act/pub/0027/index.html>

⁴ For full text of the Waste Management Act 1996: <http://www.irishstatutebook.ie/1996/en/act/pub/0010/index.html>

⁵ For full text of the Waste Management (Amendment) Act 2001:

<http://www.irishstatutebook.ie/2001/en/act/pub/0036/index.html>

⁶ For the full text of the Waste Management (Landfill Levy) Order 2008:

<http://www.irishstatutebook.ie/2008/en/si/0168.html>

⁷ Full text: <http://www.irishstatutebook.ie/1997/en/act/pub/0012/index.html>

The above Acts

- a. Define non-hazardous and hazardous waste
- b. Define waste management activities and licensing requirements for waste contractors
- c. Prescribe requirements regarding the management of waste on-site and off-site for producers.

Litter Pollution Act 1997⁸, as amended by the Waste Management (Amendment) Act 2001 and the Protection of the Environment Act 2003, provides new powers and duties to local authorities in regards to litter and fly tipping. Litter Wardens and Gardai are empowered through the Act to issue on the spot fines for various offences, including dog related offences. Section 24 provides that leaving or throwing litter in a public place is an offence subject to an "on the spot fine" of €150 and maximum fine of €3,000 on conviction in the District Court. A person convicted of a litter offence can be required to pay the Council's costs and expenses in investigating the offence and bringing the prosecution to Court.

The Act widens the definition of litter to anything large or small that is likely to become unsightly. In regards to fly-tipping, the onus is upon the person whose name and address are located within fly tipped rubbish to prove they are not responsible for the litter.

Business owners have an obligation to clean up litter that is in front of or surrounding their premises (car parks) despite how the litter got there (Section 6 (1)). Section 6 also provides that commercial and residential occupiers of premises along a public road where there is a speed limit must keep the footpath outside their premises free from litter. Section 6 also prohibits persons from depositing any substance or object onto a roadway which would constitute as litter. This provision aims at preventing people from sweeping transferring litter from the front of their premises onto the public road.

The Act also empowers local authorities to make general bye laws to prevent and control the creation of litter within its area and specifically:

- make provision within bye laws requiring occupiers of specified or classes of premises to take measures limiting the creation of litter and provide for its removal, or
- require that promoters of events attended by large numbers of people take measures limiting creation of litter and provide for its removal (Sections 17 and 18)

Posters and Advertisements

Section 19 of the Litter Pollution Act prohibits signs being placed on structures visible from a public place, unless advance permission of the owner or occupier is given in writing or exempt under any other enactment. Structures include land, door, gate, window, tree, pole or post.

⁸ Full text: <http://www.irishstatutebook.ie/1997/en/act/pub/0012/index.html>

Control of Dogs

Dog Control legislation in the Republic of Ireland is established through **The Control of Dogs Acts 1986 and 1992**⁹ and provides that Local Government may make bye laws in regards to the control of dogs within their areas specifying certain areas where owners must keep their dogs on a leash or where dogs are forbidden.

The Act provides that dog owners must remove their pets' waste from public places and dispose of it in the appropriate manner. This obligation applies to;

- Public roads and footpaths
- Areas around shopping centres
- School and sport grounds
- Beaches
- The immediate area surrounding another persons house
- Posters and signs

Excessive barking causing a nuisance to any person is an offence.

Local Government Act 2001¹⁰ - In accordance with the Local Government Act, 2001 and regulations made under the Waste Management Acts, 1996 to 2008, local authorities are provided with the power to make Bye laws governing the storage, presentation, segregation and collection of household waste within their area. These bye-laws include issues regulating that:

- Waste is stored in appropriate container or bin
- Waste segregated at source according to collection service provided.
- Waste will be presented to the collector in a proper manner.
- There are enforcement provisions in the case of non-compliance.

Section 67 provides that Local Government is to “do such things as is necessary or desirable to promote the interests of the local community.” This is defined in the Act as including civic improvements, general environmental and heritage protection and improvement and the promotion of public safety. Section 71 of the Act further provides that there be “a unified local government service provided” alongside improving “customer service to the public generally.”¹¹

⁹ For full text of The Control of Dogs Act 1986 and 1992 see:
<http://www.irishstatutebook.ie/1986/en/act/pub/0032/index.html> and respectively
<http://www.irishstatutebook.ie/1992/en/act/pub/0013/index.html>

¹⁰ For full text: Local Government Act 2001: <http://www.irishstatutebook.ie/2001/en/act/pub/0037/index.html>

¹¹ <http://www.irishstatutebook.ie/2001/en/act/pub/0037/sec0083.html#partix-chapv-sec83>