



Northern Ireland
Assembly

**COMMITTEE FOR THE
ENVIRONMENT**

**OFFICIAL REPORT
(Hansard)**

**Clean Neighbourhoods and Environment
Bill: Assembly Research Briefing**

30 September 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

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

Witnesses:

Ms Suzie Cave) Assembly Research and Library Service

The Chairperson (Mr Boylan):

I welcome Suzie Cave from the Assembly Research and Library Service.

Ms Suzie Cave (Assembly Research and Library Service):

I shall give as brief a summary of the research paper as possible. The paper looks at the Clean Neighbourhoods and Environment Bill by comparing it with legislation and similar provisions in

other jurisdictions, such as England, Wales and the Republic of Ireland. It also looks at possible areas of contention in relation to the responses to the consultation exercise. Finally, it considers possible lessons from the implementation of the Clean Neighbourhoods and Environment Act 2005 in England and Wales.

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

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

In the Republic of Ireland, there is not a sole piece of legislation that is similar to the Northern Ireland Bill. However, similar provisions can be found in various pieces of legislation. The Protection of the Environment Act 2003 includes the issuing of fines for dog-related offences. The Control of Dogs Act, 1986 and the Control of Dogs (Amendment) Act, 1992 empower local government to make by-laws for the control of dogs. The Litter Pollution Act, 1997 and the Criminal Damage Act, 1991 deal with graffiti and defacement. The Litter Pollution Act, 1997, as amended by the Waste Management (Amendment) Act, 2001, and the Protection of the Environment Act 2003 deal with litter and fly-tipping, whereby the throwing of litter can be subject to an on-the-spot fine of €150 and a fine of €3,000 on conviction in the District Court. The Waste Management Act, 1996 and the Road Traffic (Removal, Storage and Disposal of Vehicles) Regulations, 1983 deal with abandoned vehicles and allow for unlawfully parked cars

to be removed. According to the Oireachtas, there is no similar legislation in the Republic of Ireland in relation to alley-gating orders.

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

That can be seen in greater detail in the table that starts on page 18 of the paper, which highlights that roughly 14 areas mentioned by respondents to the consultation will be dealt with at a later stage through guidance, subordinate legislation and regulations, subject to a consultation exercise in due course. Roughly 11 proposals were made by respondents who were told that, although their proposal was significant, it would require detailed consideration and amendment to the Bill and that, given the tight legislative timetable, it was not possible to bring forward significant new provision at this point. The matter will be clarified through guidance or regulations, subject to consultation at a later date, thereby making the task of commenting on the detail of the Bill at this stage all the more difficult.

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

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

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

fully understood until the Department draws up a full regulatory impact assessment in relation to Northern Ireland's circumstances.

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

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

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

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

the premises running along the back of an alley and the owner of the alley to reach agreement.

With regard to graffiti and fly-posting, it is worth noting that a number of respondents suggested that district councils should be given responsibility for taking prosecutions in respect of fly-posting offences. The Department agreed with that and said that it will include an amendment to the Bill during its progress through the Assembly to ensure that Planning Service powers to prosecute, both against the perpetrators and the beneficiaries, are made available to district councils.

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

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

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

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

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

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

One of the aims of the Northern Ireland Bill is to bring Northern Ireland up to date with legislation in England and Wales, yet there are provisions in the 2005 Act that are not included in the Bill. Those include provisions that deal with statutory nuisances such as artificial lighting, for example, from domestic and commercial security lighting, sports facilities, domestic decorative lighting, laser shows, etc; and insects coming from all premises other than domestic, to include poultry houses or farms, sewage treatment works, etc.

Respondents requested that guidance should be issued in respect of the new noise and statutory nuisance regime in England and Wales. Production of guidance in relation to that will

have to take account of the above differences in provisions between the Northern Ireland Bill and the 2005 Act for England and Wales.

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

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

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

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

Before the 2005 Act had passed through Parliament, the introduction of a gum levy of 1p on each pack of chewing gum, which would be fed back to local authorities, was suggested. That was based on evidence from a survey of the 33 London boroughs by the London Assembly

Liberal Democrats group, which stated that 81% of people believe that chewing gum companies should concentrate on developing biodegradable gum and 53% did not believe that fines alone would reduce the amount of chewing gum discarded. It also stated that London Underground spent £2 million a year and councils £2.3 million a year on cleaning up gum.

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

A report by R W Beck for Keep America Beautiful investigated the issue of deliberate and accidental litter. Accidental litter is material that is deposited unintentionally through poor management practices, such as items that fly out of open bed trucks. Beck points out that a review of 31 American litter surveys from 1986 found that 65% of litter was deliberate and 36% was unintentional. Therefore, the paper argues that a drop in overall littering in the USA could be masking a suspected increase in unintentional litter over the past 15 years.

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

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

The Chairperson:

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

Mr Kinahan:

It was very thorough.

Mr Beggs:

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

The Chairperson:

Be careful, because the comment is simply reported by the researcher.

Mr Beggs:

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

Mr Weir:

I seek some clarification on that point —

The Chairperson:

Be very careful. It is only the researcher. Now, settle down.

Mr Weir:

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

Ms Cave:

There were four organisations.

The Committee Clerk:

The Children's Law Centre, PlayBoard —

The Chairperson:

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

Mr Weir:

I was just looking for clarification on where the responses came from.

Ms Cave:

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

Mr Weir:

Thanks, that is very useful.

Mr Beggs:

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

The Chairperson:

Thank you very much. The members behaved themselves OK.