

Consultation on Draft Clean Neighbourhoods and Environment Bill

Comments by

Northern Ireland Environment Link

22 April 2010

Northern Ireland Environment Link (NIEL) is the networking and forum body for non-statutory organisations concerned with the environment of Northern Ireland. Its 58 Full Members represent over 90,000 individuals, 262 subsidiary groups, have an annual turnover of £70 million and manage over 314,000 acres of land. Members are involved in environmental issues of all types and at all levels from the local community to the global environment. NIEL brings together a wide range of knowledge, experience and expertise which can be used to help develop policy, practice and implementation across a wide range of environmental fields.

These comments are agreed by Members, but some members may be providing independent comments as well. If you would like to discuss these comments further we would be delighted to do so.

Prof Sue Christie, Director
Northern Ireland Environment Link
89 Loopland Drive
Belfast, BT6 9DW
P: 028 9045 5770
E: Sue@nienvironmentlink.org
W: www.nienvironmentlink.org

Northern Ireland Environment Link is a Company limited by guarantee No NI034988 and a Charity registered with Inland Revenue No XR19598

Introduction

Northern Ireland Environment Link welcomes the introduction of this bill and the increased powers it gives to councils to tackle environmental crime. Use of the powers being introduced in this Bill provide a key foundation to changing anti-social behaviours that directly impact on individuals quality of life, health and standard of living. This legislation introduces excellent opportunities to begin tackling a broader range of local environmental quality issues. In doing so it can, as part of a wider strategy, help Northern Ireland make the most of its world-renowned environmental assets, drawing in businesses and tourists and increasing the economic prosperity for all citizens.

However, there are some areas where we feel changes are required to make the most of this new legislation. Some of these are fairly small; others require more substantial changes or may be dealt with using secondary legislation at a later date.

General Comments

Waste and Litter. Waste and litter are not distinct issues and need to be dealt with as part of an overall strategy. Despite the stated aim of aligning the legislation with England and Wales this creates a large disparity between environmental regulation strategies in the two jurisdictions. While we understand the time constraints which may prevent this being dealt with immediately, this issue will need to be tackled at some stage.

Power separation. A second major limitation in the Clean Neighbourhoods and Environment Bill (CNEB) is the retention of some powers within central government departments that may not have the same priorities as the local councils. In England, the Clean Neighbourhoods and Environment Act 2005 (CNEA) has enabled local authority officers to operate using a holistic street scene approach. To be effective council officers . those at the working end of this legislation . need to be able to effectively and efficiently deal with the full range of environmental crimes they encounter. We therefore believe that there should be a requirement to incorporate environmental crime within anti-social behaviour strategies. We consider that Anti-Social Behaviour Orders are a significant and powerful weapon in this area. In England, this is aided by section 1 in the CNEA (inclusion of acts harming the environment as crime and disorder) which is not reproduced in this draft CNEB. This statement should be included in the Bill.

Indicator of Local Environmental Quality. NIEL supports the call by TIDY NI to introduce a National Indicator for Local Environmental Quality that would include council level measures for enforcement, for example, the number of Fixed Penalty Notices issued/paid and prosecutions taken/successful for various elements of the legislation. The indicator should also include measures for the levels of council involvement in awareness raising and campaigning activities and street cleanliness, with the latter using a system that allows comparison with at least one other jurisdiction within the UK. A measure of cleanliness by landowners is also necessary to determine which bodies that have statutory cleansing duties are performing to the necessary standards.

Penalties. The level of fixed penalties needs to be raised further across all areas. The Polluter Pays Principle would suggest that fines (or costs of other sorts; restitution costs are required in other areas of environmental legislation) should contribute significantly to the costs of cleanup and at least help councils recoup the additional cost of implementing this new legislation and carrying out monitoring and reporting activities.

Light Pollution. This legislation introduces artificial light as a statutory nuisance which we strongly welcome. The impacts of artificial light on human and environmental health are becoming more widely recognized and we believe that this legislation is highly

significant and very welcome. We believe that this brings Northern Ireland in line with England and Wales, but consideration should be given to modifying the phrase: *artificial light which is prejudicial to health, constitutes a nuisance or has negative environmental impacts*. Light from street lighting can have serious negative environmental impacts as well as that from premises. At the same time as the negative impacts are becoming more widely recognized, the costs of ~~wasting~~light are increasing significantly. Luckily, the technology to deliver light when and where needed is also improving. There are opportunities for significant cost and carbon savings by reducing the amount of light wasted, and doing environmental damage. This legislation provides the opportunity to raise this issue.

Integration of Powers. Councils inevitably take the blame for virtually all litter related issues and yet councils are the most effective bodies in clearing up litter. It is more often other landowners that fail to clean up their land, even where they have a statutory duty to do so. We therefore also want council powers (including litter clearing notices, street litter control notices, defacement removal notices) extended to include not only privately owned land (such as in private housing associations, car parks, retail parks or industrial areas) but also land managed by other government agencies (such as the NI Housing Executive, Roads Service and Forest Service). Councils also require the power to recoup costs for this work from these other Agencies.

Enforcement. Without enforcement not only does the environment suffer, but the respect for both environment and council/government deteriorates significantly. Councils should have both the right and responsibility to act to address these issues locally both through on the ground enforcement and promotion of the importance of obeying the law . and the consequences for not doing so.

This legislation should be fully integrated with the other powers being transferred to councils through the RPA and reform of planning.

Specific Comments

Parts 1 and 2 are supported.

Part 3 – Litter

Offence of dropping litter in lake, pond or watercourse

There is an assumption that litter dropped into water is covered by the existing Article 3 of the Litter Order 1994. Clarification of this point in any guidance would be helpful.

Further, the existing definition of litter needs to be extended to include animal droppings to allow problems such as accumulation of dog faeces to be tackled effectively: this may be done by Departmental Order (Litter Order Article 2 (7)). How this might be interpreted in rural areas needs to be tackled in guidance to ensure appropriate use only of the legislation.

Penalty for failing to provide name

The penalty for failing to provide the correct name and address should apply across all relevant enforcement powers covered by the CNEB and not just for Part 3.

Litter Offence: fixed penalty notice

Without sight of the upper and lower levels of the fines being proposed it is difficult to comment on this aspect. However, we strongly believes that the upper level of fines should be raised beyond the £75 in the draft Bill. Although the current proposals bring parity with the CNEA it leaves us issuing fines that are lower than in the Republic of

Ireland where leaving or throwing litter in a public place is an offence that can be subject to an on-the-spot fine of " 150 or a maximum fine of " 3,000 upon conviction.

Fines should act as a deterrent and also should be sufficiently robust to also help pay towards the millions of pounds annually (£93,000 per day) councils spend cleaning our streets of litter . a bill which is currently footed by all ratepayers. This should apply to all Fixed Penalties throughout the Bill and not only those issued for littering. This brings in the principle of polluter pays and helps councils cover some of the extra cost of implementing the new legislation.

We welcome the ability of councils to vary the level of fines. New powers for the councils, which enable them to authorise non-council staff to implement certain enforcement powers in the Bill are to be welcomed. Again, these should apply to all enforcement sections of the Bill and not just in respect of littering.

Litter Clearing Notices

Thus Litter Clearing Notices may well become the primary means of land management in relation to litter (and potentially waste) problems and we welcome the strengthening of this legislation. These are extremely effective notices, but the definition of %occupier+needs to be clarified and remain sufficiently wide to confirm that it will include persons actively exercising rights over the land. In future this may become more important, for example, to include occupiers storing bins in private alleyways. Appropriate definitions of waste may also be required to also assist this litter clearing provision.

Councils need some mechanism to maintain standards within their geographic boundaries. We would request that serious consideration is given to removing the exceptions to which litter clearing notices shall not be served under Article 17(10).

Street Litter Control Notices

It is believed an Order has been made in regard to the Article 14(1) Litter Order, but this needs to be confirmed. Such an order, if sufficiently broad to include offices and commercial tenancy premises, could also play a role in controlling waste created by smokers outside offices and waste being left outside commercial multi-occupancy tenancies where it is often left on or spilling onto the street. This may be done by secondary Order and need not be in primary legislation. Similarly, any Order, as stated under Article 14(2) needs to be sufficiently broad to allow both the owner and/or the occupier to be served with street litter control notices.

This aspect also needs FPN provision for parity with England. FPN provision in England is covered in section 94(8) and 94A EPA, as inserted by section 22, CNEA. It applies to all land in the open air and highways that the recipient of the notice may access or is given ability to access, whether public or private, but not including vehicular carriageways.

TIDY Northern Ireland would like confirmation that Article 11 of the Litter Order will remain in force following introduction of the CNEB.

Part 4 – Graffiti and Other Defacement

We support these proposals and strongly urge that Fixed Penalty Notices are used both as a deterrent to offenders and as a means to promote the entire issue. Bringing Northern Ireland into line with the situation in England is supported throughout this legislation, including for parity the penalty for these offences should be set at level 4 and not level 3.

The Crown Prosecution Service and other legal bodies in England consider ASBOs to be a significant and powerful weapon in reducing fly-tipping and graffiti. The Anti-Social Behaviour (Northern Ireland) Order 2004 does contain a similar provision for ASBO on conviction, although we accept that Northern Ireland legislation provides less detail as to

what offences ASBOs can be used to combat. In England ASBOs have been used to ban fly-tippers from problem areas, ban persons from being in charge of dogs and threaten imprisonment to those running commercial fly-posting operations (for example, Camden became fly posting free on the back of one conviction ASBO against their main perpetrator). However, this has been aided by section 1 CNEA (inclusion of acts harming the environment as crime and disorder) which is not reproduced here in our draft CNEB.

Part 5 - Dogs

The introduction of new powers for councils to control dogs and dog fouling is welcomed. The one significant drawback of the new legislation is the loss of any enforcement powers outside of areas designated using dog control orders, even for the most detested form of litter, dog faeces. This is a serious loss of powers unless a single dog control order for an entire council area can be drawn up for this single issue. We would like clarification on whether this issue can be circumvented using Part 3 - Litter to issue FPNs to people who allow dogs under their control to foul.

For this section to be enforceable and effective the production of dog control orders needs to be simple and fast and to cover entire land use types with a single order where practicable. There is insufficient detail in the draft Bill to enable a considered response as to how fully these needs will be met.

As stated generally throughout this response, the level of fines under Article 40 needs to be raised to a maximum of level 4, in keeping with the polluter pays principle. Similarly the level of FPN should be higher than £75.

Part 6 – Noise

The extra powers afforded to councils are welcomed.

Part 7 – Statutory Nuisances

The recognition that artificial light can be prejudicial to health and/or cause nuisance Article 61(h) is welcome, not only from the individual benefits that this can bring but also from a broader desire to see Northern Ireland lead the way in reducing unnecessary energy use and limiting the negative environmental impact. See additional comments above.

Part 8 – Miscellaneous and Supplementary

We welcome the intention to raise the levels of fixed penalty notices but strongly urges the maximum levels of fines and FPNs to be increased. This is for two main reasons: first, to ensure that the cost itself provides a suitable deterrent to those who carry out environmental crimes, and second, to begin to apply the polluter pays principle, allowing councils to recover more of their costs incurred in cleaning up after people (currently £93,000 per day).

Additional Comment - Waste issues

We support TIDY NI's comments on the issues surrounding waste collection receptacles.