parliamentary briefing

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Chartered Institute of Environmental Health

The Clean Neighbourhoods and Environment Bill

The government's Clean Neighbourhoods and Environment Bill, introduced on 8 December, is scheduled to receive its second reading in the House of Commons on January 10. Though the Chartered Institute believes some of its provisions have merit, it believes others are unnecessary or through misunderstanding of the current law will be ineffective or, in at least one particular case, will actually be a backward step. The Chartered Institute also has misgivings about some enforcement provisions.

Provisions with merit

Litter, promotional material, fly-tipping, disconnecting alarms, deferring abatement notices and others

The quality of local environments is undoubtedly important to the quality of life of those who live in them. While better environments are not immune from litter, graffiti *etc*, they tend to be more respected and taken better care of while areas suffering chronically from these problems seem to invite more. Though generating real, self-sustaining pride in these areas will take much more than simply keeping them clean, the government is right to look for ways of breaking the downward spiral and the Chartered Institute approves of measures such as creating an offence of **dropping litter on private land** (Cl.18), **restricting the distribution of flyers** (Cl.23) and the **sale of spray paints** (Cl.32), and enhanced powers to deal with **fly-tipping** (Part 5)

On a more detailed level, the control of neighbourhood noise is a big issue for local authority environmental health officers and they need **clearer powers to disable mis-sounding intruder alarms**, in particular without having to trouble a Magistrate to get a Warrant if the alarm can be disconnected from outside a building. They also need an **ability to recover their costs** without prosecuting first. In welcome changes (Cl.77, 79), the Bill will deal with these issues.

On noise again, Clause 86 of the Bill will allow the **deferral of an Abatement Notice** under the Environmental Protection Act while

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alternative means of dispute resolution are explored. We think this is useful. We have known for a long time that many instances of noise nuisance occur through thoughtlessness; neighbours do not realise how noisy they are or how thin their walls are. Whereas all that is needed to resolve complaints in these circumstances is an old-fashioned "word in their ear", the Environmental Protection Act currently obliges local authorities to serve a formal Abatement Notice. The Bill recognises and legitimises what is a widespread and good practice subject to a 7 day time limit, *ie* so that formal action cannot be deferred indefinitely where informal action is unsuccessful.

The Bill proposes this in connection only with noise nuisances, however, but there seems no reason in principle why it should not extend to all the statutory nuisances, including those to do, for example, with offensive smells and housing defects.

Unnecessary provisions

Noise from licensed premises, "light pollution" and nuisance insects

Noise can be as much of a problem as litter *etc* and the growing night-time economy brings a particular threat from licensed premises. Acknowledging that, Clause 84 of the Bill proposes to **extend to licensed premises the provisions of the 1996 Noise Act** (*ie* the threat of fixed penalties if a fixed sound pressure level is breached between 11.00pm – 7.00am). These currently apply only to noise emitted from dwellings.

We think this is unnecessary: controls over noise from these premises exist now under the Environmental Protection Act 1990, the Licensing Act 2003 and the Anti-social Behaviour Act 2003. They face fines, seizures of noise-making equipment, the loss of their licences and even summary closure already. The proposal requires the local authority to be present in a nearby home to measure the noise – unpopular with householders and resource-intensive for local authorities – and introduces a different (and potentially contradictory) intervention standard to that which applies now while that standard - of "nuisance" - will continue to apply concurrently.

While the Noise Act has, in any event, failed spectacularly (only 14 local authorities having chosen to adopt its night noise offence), much the greater problem is noise arising *outside* these premises, *ie* from people leaving, hanging around *etc* which this proposal will not affect. It is duplicative and confusing. It is not helpful. We believe it should be withdrawn.

The Bill proposes to add **artificial lighting** to the list of potential statutory nuisances in the Environmental Protection Act 1990 (Cl.102). Though

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there may be energy-saving reasons for restricting some forms of artificial lighting, the government's rationale is to do simply with amenity, following comment made early in 2003 to a sitting of the Science & Technology Select Committee.

Whereas complaints are made occasionally to local authorities about the floodlighting of sports pitches, lorry parks, supermarkets and the like which is bright and continues often late into the night, these, as well as street lighting, will either be exempt or will enjoy the statutory defence that the "best practicable means" are used to counteract any nuisance. The lighting of many of these facilities is also controllable currently under planning legislation, leaving the focus of the new provision on domestic security lighting.

The Chartered Institute has no data to suggest that this represents a problem sufficient to justify legislation and we do not believe the government has either; though Defra has recently set up a research project to investigate it, that has not yet reported. We understand nevertheless that it has found that only *c.*100 complaints, both justified and otherwise, are made throughout the country each year and, unsurprisingly, when the idea of creating this new nuisance was canvassed among local authorities by Defra earlier this year, it found little support. This would seem, therefore, to be a premature, if not disproportionate response, notwithstanding that Parliament has considered it before - during the passage of the Environmental Protection Bill in 1990 - and rejected it as unwarranted.

By its nature, complaints would be practically difficult to deal with while they would put local authorities in conflict with householders concerned about home security. The most compelling reason against this proposal, however, is that few, if any instances of this kind will fulfil the criteria of a "nuisance" given the specialist meaning of that word in the Act. That is not synonymous with "annoyance" and it is narrower than "nuisance" at common law; it is not about aesthetics either, rather the statutory nuisances are essentially about public health and while lights briefly turning on and off, triggered by cats and foxes, may be irritating to light-sleeping people with thin curtains, they will rarely, if ever, be harmful. Mere intrusion will not satisfy the test. The government appears unaware of all of this yet, as a result, this proposal will be quite ineffective.

Like that for artificial lighting, the government has offered no justification for the similar proposal to add **insects arising on trade or business premises** to the list of statutory nuisances (Cl.101) too. Again, though we know members of the public occasionally complain about insects, including bees, we are not aware that insects *per se* represent a sufficient problem to justify the application of the criminal law. As with artificial lighting, there will be few circumstances in which insects themselves will be likely to cause disease or will amount to a nuisance of a public health kind sufficient to become a statutory nuisance. At the same time,

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however, the proposal misses a need; we know that concern is growing about the possibility of West Nile virus emerging in the UK, as it has in recent years in the US. Cases may be fatal but the way to prevent it is not to wait until infected mosquitoes – the vectors - appear but to drain the ponds, water butts *etc* on which they might breed. At the least, we believe this proposal requires amendment to make it effective.

Backward provisions

Intruder alarms and contaminated land appeals

The Bill contains measures in Part 7 to **control intruder alarms**, centred on a duty to register the name and address of a keyholder with the local authority. Such a provision has existed since 1991 in London where the names and addresses of two keyholders are required (in case one is away), moreover, on the basis that prevention is better than cure, alarms there are also required to be fitted with a 20-minute cut-out. Successful experience with this model led to the enactment of almost identical provisions in the 1993 Noise and Statutory Nuisance Act which would have applied nationally but have never been brought into effect.

The ability for a local authority to 'phone a keyholder when it gets a complaint of an alarm misfiring in the middle of the night is a potentially very efficient way of dealing with the problem. It is popular with local authorities and we approve of it. The Bill nevertheless proposes to repeal the current provisions while their replacement will, however, not contain a requirement for 20-minute cut-outs, it will be adoptive, *ie* alarm owners will not have to register keyholders' details unless the boroughs expressly adopt it, boroughs will be able to adopt it for parts and not necessarily all of their areas, and it will not provide for the sharing of data held by Police. That will surely irritate many householders and businesses who will have to register again and reduce compliance. In our view, these Clauses require substantial amendment if they are not be less useful than the current provisions.

Clause 104 contains a measure to **transfer appeals against remediation notices for contaminated land** served by local authorities from Magistrates Courts (where the Environmental Protection Act currently places them) to the Secretary of State. The reason seems to lie in doubts that lay Magistrates are competent to determine appeals on technical matters – an argument being made currently in other areas of environmental crime too – though with little evidence.

Underlying that is concern about "environmental justice" but whereas competence in decision-making is, of course, important, so too is transparency in the process. The question arises whether justice would be better served by placing this function with the executive or the judiciary – with civil servants sitting in office blocks or with Magistrates

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drawn from the community and sitting in public? The Chartered Institute is unconvinced that change is necessary, at least while one obvious alternative – to appoint lay experts to support Magistrates - seems not to have been explored.

Enforcement provisions

We have serious misgivings about the number of new instances in which local authorities will be empowered to levy **fixed penalties**, **setting the level of those for themselves** (albeit, perhaps, subject to centrally-set limits) and **keeping the proceeds**. These include various noise offences.

Whereas we believe the likelihood of apprehension is a stronger deterrent than the size of a fine, the Chartered Institute also believes there are arguments of principle against the idea that different local authorities should set their own levels of fixed penalties; they are immediately somewhat less “fixed”, of course, and, arguably, determining variable penalties is a judicial, not a political function. If fines were raised in “hot spots”, it would be in a sense to increase one offender’s penalty because of the offences of others. That is clearly unfair. Moreover, being by definition still unrelated to the circumstances of individual offences, it is not difficult to characterise the variation of fines between districts as "post-code justice". Ironically, those who might support this proposal would probably be quick to criticise Magistrates for inconsistent sentencing for apparently identical offences.

When coupled with the power to retain receipts, however, it is a plain invitation to use the law for revenue-raising. That is not only likely to skew priorities but it is a short step from there - by way of incentives to officers to serve fixed penalty notices - to selecting enforcement tools for reasons of corporate and personal gain, rather than in the public interest. That would be corrupt. There are already widespread concerns, and some evidence, that this is happening in the parking/traffic enforcement field. It risks bringing both the law and local authorities into disrepute and ultimately complicates, rather than facilitates, enforcement.

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