



Draft NILGA Response to the Consultation on Litter Guidance

- *(under the Clean Neighbourhood and Environment Act (NI) 2011)*

The Department of Environment has invited views on the proposals set out in a consultation on draft guidance relating to new powers to deal with litter under the Clean Neighbourhoods and Environment (NI) Act 2011, specifically:

- The offence of littering
- Power to Require the Clearance of Litter from private land
- Street Litter Control Notices
- Controlling the Distribution of Free Literature
- Abandoned Shopping Trolleys
- Preventing Cigarette Litter
- Regulatory Impact Assessment on Extension of Street Litter Control Notices

The Act strengthens the legislative powers available to District Councils to assist them to deal more effectively with a range of local environmental problems and is likely to become operational in April 2012.

The following is the NILGA response to the consultation document and draft guidance published by the Department on 13th June 2011 and requiring response by 30th September 2011

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Introduction

The Northern Ireland Local Government Association (NILGA) is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties in Northern Ireland. The upkeep of the public realm is a key issue for local government due to the huge impact it has on our communities and investment in our districts. The overall impression of a neighbourhood has an impact on many areas of importance to local government, including tourism, civic pride, economic development, well-being and social capital. It is the NILGA view that the provision of appropriate legislation to enable councils to take care of the public realm and develop robust enforcement practices is to be encouraged.

NILGA advocates that councils continue to have a positive impact on the environment and is pleased to be able to have an opportunity to comment on this consultation. The Association was a key stakeholder in the policy development work prior to the passing of the Clean Neighbourhoods Act 2011 by the NI Assembly and is keen to liaise closely with the Department on developing the necessary subordinate legislation.

NILGA is pleased that the Clean Neighbourhoods and Environment Act 2011 has now been introduced in Northern Ireland. The Act has given councils additional powers to deal with litter, nuisance, alleys, fly-posting and graffiti, abandoned and nuisance vehicles, dogs, noise and statutory nuisance. NILGA views this legislation to be vital in complementing the forthcoming power of well-being which we hope will soon be introduced in Northern Ireland.

We trust that our comments below will be taken into account when developing the final proposals on litter guidance. This response has been developed by the NILGA Waste and Environment Working Group, in liaison with the Chief Environmental Health Officers Group.

Overarching Issues

- **Resourcing**

It is the policy of NILGA that any new government policy or initiative which increases the cost of providing local authority services must be adequately resourced by government, in line with the New Burdens Doctrine in place in England and Wales.

It is the NILGA view that much of the proposed Clean Neighbourhoods and Environment Act 2011 is a new burden on local government in Northern Ireland, and we would strongly disagree with the Department view that implementation of this legislation will be cost neutral across local government. It is clear that funding arising from the fixed penalty notice system as proposed, will not be nearly enough to resource the powers included in the CN&E Act and subordinate legislation.

The implementation of this legislation will impose a considerable burden on local government which if not eased through support of central government may result in a lack of implementation of the legislation and therefore the benefits of same will not be realised.

NILGA is currently developing an evidence base to enable local government to begin lobbying for a review of The Magistrates' Courts (Costs in Criminal Cases) Rules (Northern Ireland) 1988, which prescribes orders for the payment of costs of prosecution or defence fees for solicitors or counsel, with an upper limit of £75. It is clear that court costs to councils for the majority of these cases amount to much more than £75.

- **Guidance**

Many of the requirements of the Clean Neighbourhoods and Environment Act 2011 require clear and concise technical guidance to enable consistent and satisfactory implementation. NILGA will continue to encourage the Department to work with local government to produce appropriate new guidance or to revise existing guidance, and to allow sufficient time for this vital activity. Appropriate guidance is necessary both for councils and for the public and NILGA therefore broadly welcomes this provision in relation to litter.

Specific Issues

- **Code of Practice on Litter**

General

NILGA would affirm that the district councils in Northern Ireland strive to ensure that they comply with their duties under the Litter (NI) Order 1994 so that the land for which they are responsible for cleansing is maintained to highest standards possible within the resources available.

The draft Code of Practice advocates that the standards outlined in the Code should be used by other managers of land that are not subject to Article 7, to enable effective management of land for which they are responsible. NILGA believes that the Code should place more emphasis on the responsibilities of those landowners who are not statutory undertakers to ensure that they have a civic duty to keep their lands maintained so as not to lead to defacement of an area.

NILGA notes that the proposed Code of Practice does not make any reference to the responsibilities of event organisers to make arrangements for the removal of litter from public and private land during and following their events. Many events, such as sporting events, concerts, parades and other one off events, can significantly increase the litter levels and require additional resources to cleanse. The guidance does not make any reference to how these types of events can be managed so that there is a limited impact on the resources of councils in undertaking the clean-up operation following such events. Clean-up after public events places an additional burden on finite resources and, in the spirit of the 'polluter pays' principle, there may be merit in requiring event organisers to bear some if not all of the financial responsibility for clean-up operations during and following these types of events.

NILGA believes that the guidance should make it incumbent upon event organizers to make arrangements to clear any land that is adversely affected by litter associated with their event either in partnership with the local council or independently with the proviso that the land is reinstated to a 'Grade A' standard. NILGA would be supportive of councils that wish to impose charges for clean-up operations following public events, where event organizers fail to make their own arrangements for street cleaning. The Guidance should be revised to address this matter.

Definition of Litter

NILGA welcomes the clarification that is provided in this paragraph regarding what constitutes litter. It is noted and welcomed that the standards in the Code do not apply to trodden-in chewing gum.

Definition of Waste

NILGA notes that under the definition of waste, one sack of rubbish should usually be considered as fly-tipping rather than litter. Whilst it is helpful to have this benchmark for the purpose of litter classification, NILGA would like further clarification on how this would be regarded when a street is being assessed for compliance with the standards. For example how would the presence of a bag of waste influence the grading of a street?

Grades of Cleanliness

NILGA notes the grading standards “A” to “D” specified in the Code however, believes that an intermediate grading system should be introduced using the NI195 system of grading (formerly BVPI 199). As presently designed, the achievement of an “A” grading is aspirational rather than practical as the presence of one small piece of litter such as a cigarette end will result in the reduction of the standard of cleanliness in a street from an “A” to a “B”. An intermediate grading system would offer a practical solution to this issue (and is more reflective of the challenges of cleaning an area to a grade “A” standard) but would not detract from the overall standard of cleanliness that could be practicably achieved within an urban setting.

NILGA wishes to clarify how the grading system is to be applied, i.e. within a defined area, radius or transect. The assessments currently undertaken by Tidy NI are undertaken within 50m transects.

Pictorial examples of the grading principles in different settings

The pictorial examples are too small and do not depict clear examples of the various grading standards. In particular, the picture showing a “Grade B on a relevant surface” is unclear and should be enlarged to show a clearer example of a Grade “B” standard.

Zones and Timings

NILGA acknowledges that the Code has re-classified the different types of lands required to be cleansed and managed, into high, medium and low intensity. This poses particular issues for busy urban centres, given the response times specified. It is likely that more urban councils would require a substantial increase in expenditure to increase the current level of service that is already in place. This element of the proposed Code of Practice should be reviewed to ensure that reasonably practicable cleansing regimes are devised to maintain high standards of street cleanliness with appropriate response times without incurring additional expenditure.

It is noted that the proposed Code of Practice suggests that cleansing routines should be undertaken outside of normal working hours when there are access problems. NILGA would highlight that operations of this nature are more costly as it involves the payment of overtime and as such, increases the overall cost of street cleansing.

The last sentence of paragraph 9.6 should be amended to read that “duty bodies respond within 3 hours of a report to the “Duty Body”.

Detailed Descriptions of Land Uses

It is unclear in paragraph 11.9 whether the duty to keep land clear of litter also extends to the removal of litter from the waterways. The guidance should provide some clarity around this issue by stating if it falls outside the scope of the Code of Practice. Canals and rivers running through urban areas can be subject to large quantities of litter and other items. It is unclear as to which authority is responsible for arranging removal and what cleansing strategies should be adopted to deal with this issue on a routine basis. It is the local government experience that litter and other items are left in the water by the Water Authority unless they cause impedance to the flow of water.

- **Guidance on the Litter (NI) Order 1994, as amended by the Clean Neighbourhoods and Environment Act (NI) 2011**

Offence of Leaving Litter, prosecution and fixed penalties

NILGA welcomes the clarification regarding the discarding of litter into waterways including drains, as this had previously been challenged and had been the subject of various interpretations which resulted in fewer fixed penalty notices being issued in circumstances where litter had been discarded into drains.

Power to Require the Clearance of Litter from other land areas – Litter Clearing Notices

NILGA broadly welcomes the powers to require the occupiers and owners of land to clear their land of litter and is of the view that this will be a very useful tool in tackling the widespread problem of litter on land generally.

A serious concern has been expressed to NILGA by councils however, in that the Guidance distinguishes when it is appropriate to use Litter Clearing Notices and states that these Notices should not be used for fly-tipping. NILGA believes that fly-tipping and littering are inextricably linked, as fly-tipped bagged waste in particular has a tendency to burst open, resulting in a litter problem. NILGA is therefore of the opinion that the current guidance will constrain how Councils use Litter Clearing Notices and believes that the Guidance should state that Litter Clearing Notices should also be applicable where fly-tipped waste has the potential to result in defacement of an area by litter.

Under the section showing examples of requirements to be imposed by a Litter Clearing Notice, the example should also include a step to ensure that arrangements are in place for the maintenance and emptying of any bins that are provided for the containment of the waste.

Street Litter outside premises

Paragraph 6.10 sets out the details of the requirements that Councils can make in Street Litter Control Notices. Under this section, reference should also be made to ensuring that any bins that are provided under the terms of a Street Litter Control Notice are emptied at suitable frequencies and maintained by the businesses.

Controlling the Distribution of Free Literature

Consent and conditions

NILGA notes that conditions may be attached to any consents that are given in respect of leaflet distribution so as to prevent defacement, however, there appears to be no sanctions or redress for councils in the event that of non-compliance with consent conditions. NILGA believes that revocation of the consent will not effectively deal with one-off events and that there should be some financial sanction put in place within the fee structure e.g. a refundable deposit to take account of these circumstances where the conditions of consent are breached.

Inclusion of model conditions would also be extremely helpful for councils, to ensure appropriate guidance is available as to how consents may be properly applied.

Preventing Cigarette Litter - Guidelines for District Councils

General Comments

NILGA notes that this document is primarily aimed at providing guidance to councils on how to reduce the levels of cigarette litter on their land and how to form partnerships with businesses in their area. NILGA is of the view that the document should place a greater emphasis on the role of local businesses in contributing to the efforts to reduce the level of cigarette litter.

NILGA notes that the first paragraph of this document refers to “cigarette butts” where as in the proposed Code of Practice on Litter they are referred to as “cigarette ends” The documents should use the same terminology throughout for consistency.

Ashtrays

Paragraph 5 states that research indicated that people will not walk more than 12 metres to dispose of their cigarette litter and that this fact should be taken into consideration when installing ashtrays. It would not be practical to install ashtrays at such short intervals and NILGA would propose that this is where there should be a greater emphasis placed on the need for businesses to provide ashtrays on the perimeter of their premises, to supplement the bins/ashtrays that are provided by the local council.

Change littering behaviour

A number of councils have undertaken educational campaigns with local businesses, for example the Belfast City Council “No Smoke without Litter” campaign, in which participating businesses sign a commitment to deal with the cigarette litter generated from their business and as an incentive the business is offered equipment to help keep their shop fronts clean. NILGA is strongly supportive of the development of guidance containing local good practice examples and would assist in the wide promotion of such good practice. .

Other Comments on Draft Regulatory Impact Assessment and Draft Regulations

NILGA agrees that a change is necessary to the legislation to allow an extension to the list of premises that can be issued with a Street Litter Control Notice including all cafes, bars restaurants etc. It is disappointing to note that commercial office blocks have not been included within the extended list, which will leave a large gap in the powers available to councils to tackle this problem. Commercial office blocks continue to contribute significantly to the quantities of litter on the streets particularly within an urban setting and NILGA believes that this is a good opportunity to address this gap in the legislation. The issue of fixed penalty notices to individuals outside of these types of premises does not in itself effectively reduce the quantities of litter on the street and requires some effort from the occupiers of such buildings to address the problem by implementing cleansing regimes and providing appropriate bins/ashtrays. District council efforts to deal with multi-occupancy office blocks has been met with varying degrees of success and in the absence of legislative powers to deal with this problem, large accumulations of cigarette litter will continue to be an eyesore where the occupants of such buildings fail to co-operate with their council’s efforts to address these matters on a voluntary or partnership basis.

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