

IN PARLIAMENT

LONDON LOCAL AUTHORITIES BILL

SESSION 2007-2008

HOUSE OF LORDS

REPORT OF
THE SECRETARY OF STATE
FOR

PRIVATE BILL OFFICE

07 MAR 2008

HOUSE OF LORDS

THE DEPARTMENT OF ENVIRONMENT, FOOD AND RURAL AFFAIRS

ON

THE LONDON LOCAL AUTHORITIES BILL (HL)

PART 2

PENALTY CHARGES

The Secretary of State opposes Clause 4 (penalty charges for littering and dog related offences)

Defra has raised its concerns with London Councils who are advising the Parliamentary Agents, Sharpe Pritchard.

Issue

Clause 4 of the 10th London Local Authorities Bill (HL) seeks to decriminalise littering and various dog offences including:

Dog (Fouling of Land) Act 1996;
Fouling of Land by Dogs Orders;
Dogs on Leads Orders;
Dogs on Leads by Direction Orders;
Dog Exclusion Orders;
Dogs (Specified Maximum) Orders
Control of Dogs on Roads

The Secretary of State opposes this clause on the basis that the current enforcement system is widely accepted by local authorities with around 200 authorities across England using the current powers to issue fixed penalty notices for a range of environmental offences. As a comparison, this exceeds the number of authorities (around 150) who have chosen to operate a decriminalised parking system.

The number of fixed penalty notices being issued has increased dramatically. For litter alone, numbers are up from 2265 in 2000-01 to close to 44,000 for 2006-07. Further, payment rates for fixed penalty notices are also improving

dramatically, from 49% in 2004-05 to 72% for 2006-07 – with some authorities today achieving payment rates in excess of 90% - rates that are unheard of when compared to other fine systems – both criminal and decriminalised.

Given that the majority of extra powers in the Clean Neighbourhoods and Environment Act came into force in April 2006, it is expected that number of fixed penalty notices will continue to grow as local authorities recognise the importance of high quality local environments and continue to invest in and improve their enforcement teams.

In addition to the increases in the number of fixed penalty notices being issued and increases in payment rates, the proportion of cases being prosecuted in the courts, following the non payment of a fixed penalty notice, is also increasing. as local authorities realise the value of the public profile that this gives to their enforcement work. Today the overwhelming majority of metropolitan councils are using the fixed penalty notice powers and are prosecuting in the courts - it is the smaller district councils that are not. (The latter are not using the fixed penalty notice powers as they do not experience the same levels of blight as the more urbanised areas).

The proposal to decriminalise litter and dog offences contained within the Bill arise from concerns regarding the fact that local authorities cannot claim costs for bringing cases to court and to reduce a perceived problem with the number of non payment cases in the courts.

However, it needs to be remembered that the way the current powers are constructed, provides the option to offer a fixed penalty notice in order to keep cases out of the courts. Where used effectively, many authorities are achieving payment rates as high as 95% for the fixed penalty notices they issue. This good practice has been shared in a recently published guidance document on the appropriate use of fixed penalty notices. We expect this to improve payment rates further and help keep cases out of the courts.

Indeed, even if decriminalisation of environmental offences eased pressure on the courts completely, it would only remove around 2000 out of over a million cases from the system and, therefore, its impact would be negligible. A related issue that needs to be considered is that enforcement in the courts represents only a small proportion of the activity and resource taken to enforce against environmental crimes. The majority of effort comes in the form of putting enforcement staff on the street and providing the back office systems to support this activity.

Further, it needs to be remembered that any decriminalised system would not be without burdens. If the decriminalised parking model was followed there would have to be an appeals process set up. This would come at a substantial cost. The current system is simple; if an offence is committed a fixed penalty notice is offered, if it goes unpaid then an authority considers prosecution in the magistrates court for the original offence.

It may be argued that the decriminalisation of the parking system example provides a model of what a decriminalised system for litter and dog offences could look like. However, the overwhelming motivating factor for local authorities to operate a decriminalised parking system took place when they were given the right to retain the income from the tickets they issued, not because the system was decriminalised. The use of fixed penalty notices for environmental crimes, under the current system is still in its infancy, in that local authorities were only allowed to keep the income from fines generated in 2001-02. Since this time, as has been shown above, their use has increased dramatically.

On the income argument, unlike parking offences the majority of environmental crimes are not committed openly. It can be very difficult to actually catch someone dropping a piece of chewing gum or a sweet wrapper, and certainly a lot harder than it is to catch someone who overstays in a parking bay. To contend that to decriminalise will lead to an increase in the number of people caught committing offences, might be true to a limited extent, but it is not considered to be of such a scale that significant additional income will be generated so as to offset the costs of establishing any new system.

During drafting of the now published enforcement guidance, many of those authorities that use fixed penalty notice enforcement confirmed that if they witnessed anyone committing an offence they were already giving a fixed penalty notice. To this end, the income generated is already limited by the number of offences that are committed. Decriminalisation would not change this. Hence additional income will not arise from a decriminalised system.

Finally, at a time when the public is engaging more with the environmental agenda, decriminalising these offences could be presentationally damaging. Changing the behaviour of the citizen is as much about education as it is enforcement and we need to encourage this balance to be retained, which the current system facilitates quite well. A successful prosecution can provide publicity for local authority enforcement work which may deliver a return which outweighs the issue of a loss of revenue between the costs of taking a case to court and the costs awarded to a local authority. A local authority may not be awarded the full costs to cover their legal costs but the resulting publicity from a successful conviction may outweigh these costs in terms of educating the wider population of the potential implications of committing a littering or the various dog offences.

Conclusions

The proposed decriminalised system within the Bill will come at a significant cost. This could be perceived as burdensome given the set up and ongoing management costs.

There are also presentational issues that need to be considered carefully. A decriminalised system could be interpreted as a charter for local authorities to raise additional revenue on the back of their residents. Further, if the

decriminalised parking model is followed and bailiffs are used to enforce against fines that go unpaid the prospect is that before long individuals may face repossession, for example, for a dropped sweet wrapper.

The proposed introduction of a decriminalised Penalty Charge Notice scheme in this bill will create confusion for the public in understanding whether litter and dog offences are a criminal or civil matter which could have repercussions for effective enforcement not only in London but also for the rest of England.

Further, the current system is yet to reach maturity. There has been a great deal of effort and investment by the majority of local authorities to use the current powers; this in agreeing their strategies, resourcing their current operations, training staff and developing a professional approach to enforcing against crimes that are considered by the wider community to be just that.

To develop a new system now will put at risk the advances made by the majority of local authorities working within the current system.

I therefore believe that it is unnecessary to decriminalise local environmental offences now as it would not lead to an increase in the number of authorities issuing tickets or, for that matter, the number of tickets being issued.

Signed by:
Jonathan Shaw

Parliamentary Under Secretary of State
Department for Environment, Food & Rural Affairs

15 February 2008