

Scrutiny of the draft Environment (Principles and Governance) Bill

Written submission from

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Second submission

In my earlier submission I wrote:

“Stating explicitly that litter is not covered would of course draw attention to its exclusion. This is why the bill is equivocal on “litter” / EPA S89”.

Committee members may feel that DEFRA would not act in such a Machiavellian way. I have therefore prepared the following note demonstrating how they recently manipulated the Parliamentary system in a similar manner with negative consequences for the nation

How DEFRA manipulated the Parliamentary system to exclude Highways England from having powers to issue civil law penalties for littering from vehicles and how this means that that these important new regulations do not apply on the motorways.

Section 154 of the Anti-social Behaviour, Crime and Policing Act 2014 (1) amended the Environmental Protection Act, by adding section 88A to it (2). This enabled the government to introduce regulations whereby the registered keeper of a vehicle would be liable to a civil law penalty if litter was seen being thrown from it.

However, the regulations could only empower bodies *who had the statutory duty to keep the highway / land, where the offence took place, clear of litter.*

For offences committed on the highway this means Highways England (for all motorways and some trunk roads) and the relevant local authority (for all other highways including the other trunk roads on the HE network).

Highways England and their predecessor Highways Agency have always adamantly refused to accept they have the powers to prosecute people seen littering on their network and, more importantly, the operators of waste transport vehicles who spill their loads onto it. After much campaigning on my part the DfT have reluctantly confirmed that they do indeed have these powers (3).

HE are not a “litter authority” for the purposes of EPA S88 (not to be confused with S88A) and they can therefore only issue on-the-spot fines for littering if they obtain authorisation from the relevant local authority. They have never done this.

It should be noted that all of these offences come under the criminal law. The new regulations are dealt with under the civil law.

I believe that before consulting on the regulations DEFRA and the DfT decided that HE would not be given the powers to issue the new penalties.

However, this would mean that they could not be applied to offences committed on the motorway and certain trunk roads. Camera technology could not therefore be used where it would be most productive in catching offenders, namely, at the bottom of motorway off-slip roads.

This unpalatable information was carefully removed from the subsequent discussions.

In their consultation document DEFRA wrote (4):

“To maintain parity, rather than give new enforcement functions to Highways England in isolation, we propose that district councils should remain responsible for all littering enforcement (criminal or civil) on the Strategic Road Network”.

When the draft regulations came before the Commons for approval and the issue of litter at the side of motorways and dual carriageways was raised DEFRA minister Therese Coffey said (5):

“There is certainly a clear message in raising the issue that councils will have powers to do that. For our highways, and particularly our strategic road network, Highways England has an arrangement with the litter authority, whereby the litter authority is still responsible for clearing the litter from that side. It is perfectly possible for councils to work closely with Highways England once they have these powers, to use the camera footage that will be available to try to tackle and identify those who litter. The key thing we want to do is deter the behaviour in the first place”.

To the casual reader both these statements imply that councils would be able to cover for Highways England across the whole of their network in the application of the new civil law offence. The exclusion of the motorways etc from the regime was not explained. In the consultation document no questions were put regarding it for the respondents to comment on.

When the regulations came before the Lords Baroness Jones of Whitchurch asked (6):

“Also, am I right in saying that responsibility for litter on the side of motorways has transferred to Highways England? If so, will it have the same powers to catch and fine drivers throwing litter out of car windows, which again is a real blot on our landscape?”

The question was not answered during the debate nor did Maggie Jones receive a written response as is the normal practice in such cases.

I rest my case.

- (1) <http://www.legislation.gov.uk/ukpga/2014/12/section/154/enacted>
- (2) <http://www.legislation.gov.uk/ukpga/1990/43/section/88A>
- (3) <https://www.cleanhighways.co.uk/legislation/highways-englands-powers-to-prosecute-epa-offences>
- (4) https://consult.defra.gov.uk/environment/litter-penalties/supporting_documents/Reducing%20litter%20%20Consultation%20on%20penalties%20for%20environmental%20offences.pdf (para 104)
- (5) <https://www.cleanhighways.co.uk/wp-content/uploads/2018/11/Litter-from-vehicles-Hansard.pdf>
- (6) [https://hansard.parliament.uk/lords/2018-02-01/debates/2942B15F-266E-4AE7-99DB-C14663508386/LitteringFromVehiclesOutsideLondon\(KeepersCivilPenalties\)Regulations2018](https://hansard.parliament.uk/lords/2018-02-01/debates/2942B15F-266E-4AE7-99DB-C14663508386/LitteringFromVehiclesOutsideLondon(KeepersCivilPenalties)Regulations2018)

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