

Scrutiny of the draft Environment (Principles and Governance) Bill

Written submission from

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Summary

I am concerned that when this legislation is enacted it will not apply to the statutory duty to keep land clear of litter and Highways England, and many local authorities, will continue to ignore this duty unchecked by an oversight body. To rectify this references to “natural environment” should be replaced by “environment” and in Section 30 “land” should be amended to “land (including the public highway and public open spaces)”.

The bill should apply to the statutory duty to keep land clear of litter

One of the key pieces of Environment Law is S89 (1) of the Environmental Protection Act (1990) which requires that local authorities and Highways England must **ensure** that they **keep** their land and highways, **clear** of litter and refuse so far as is practicable. (1)

If a body fails to comply with this duty the only recourse for the citizen is to complain to the magistrate’s court under EPA S91- *Summary proceedings by persons aggrieved by litter*. If the court finds that they have not acted reasonably, they would be required to pay the duty body’s cost which could be several thousand pounds. This procedure is simply unfit for purpose. (2)

Contrast this with a failure of the same body to comply with its duty under the Freedom of Information Act. The citizen can make a complaint to the Information Commissioner at no cost even if the decision goes against them.

It is imperative therefore that this bill should be amended to make it clear it applies to EPA S89(1).

This will be key to freeing our country from the scourge of litter by getting Highways England and local authorities to take their responsibilities seriously.

Why I think this may not happen

The government will be opposed to this because successful complaints to the Office for Environmental Protection will lead to a demand for additional funding from local authorities to reverse the decline in spending on street cleansing. (3)

It will also expose the failure of Highways England since 2015, and the DfT before then, to comply with the EPA S89(1) duty - not in this case because of a lack of funding - but because of poor management of their service provider contracts.

How this will be achieved

If the bill as presently worded becomes law the government will be able to claim that litter is not covered as its presence does not affect the “natural” environment.

I believe the government have begun referring to the “natural environment” (e.g. in their 25-year Environment Plan) rather than just the “environment” for the sole purpose of quietly removing litter from the environmental agenda.

This focus away from litter was also apparent when the DfT set its environmental Key Performance Indicators for Highways England in the first Road Investment Strategy. KPIs were set for “noise” and “biodiversity” and PIs for “air quality” and “greenhouse gas emissions”. No performance measures were set for “litter”. (4)

As a consequence, HE’s statutory monitor, the Office of Rail & Road, stated that that assessing HE’s compliance with EPA S89 was outside the scope of their functions. (5)

The 1990 Environmental Protection Act dealt with the nation’s environmental concerns namely air pollution, waste on land, contaminated land, clean air, nature conservation etc *and litter* under the plain banner of the environment. We should continue in this vein.

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.

Section 30 includes in its definition of the “natural environment” “land” but excludes “other structures”. Is the litter on a motorway verge, on “land” or on an “other structures”?

Paragraph 211 of the Explanatory Notes attached to the Bill indicates that “waste management”, might be covered. But does “street cleansing” come within “waste management”?

Recommendations

1. Replace all references to the “natural environment” by the “environment”.
2. Amend 30 (c) to:

(c) land (*including the public highway and public open spaces*), water and air (except *the interior of* buildings ~~or other structures~~ and water ~~or and~~ air inside them).

If you do not feel that it is appropriate to amend the bill along these lines please amend it so that it is clear to MPs and the Lords as it passes through parliament that litter / compliance with EPA S89(1) is excluded.

- (1) <http://www.legislation.gov.uk/ukpga/1990/43/section/89>
- (2) <https://www.cleanhighways.co.uk/legislation/epa-s91-litter-abatement-orders/epa-s-91-litter-abatement-orders-not-fit-for-purpose>
- (3) <https://www.cleanhighways.co.uk/local-authorities/council-spending-on-street-cleaning-falls-by-12>
- (4) <https://www.cleanhighways.co.uk/legislation/denial-misrepresentation-of-statutory-duty-on-litter>
- (5) <https://www.cleanhighways.co.uk/orr/orr-confirmation-that-they-do-not-monitor-hes-compliance-with-epa-s89>

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