

Proposals for the 10th London Local Authorities Bill

Response of the Chartered Institute of
Environmental Health

October 2007

The Chartered Institute of Environmental Health

As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines; run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

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1. General

- 1.1 The CIEH recognises that the 10th London Local Authorities Bill is wide-ranging in its contents and therefore has restricted comments to specific policy areas.
- 1.2 The CIEH is happy to work with London Councils and other agencies to provide advice and guidance on issues raised in this response document.

2. Proposal: Penalty Charges for Environmental Offences

- 2.1 The CIEH notes that London Borough Councils are currently authorised to give persons fixed penalty notices for a range of offences, but it is generally sceptical about proposals which would exclude the court system and place local authority staff in a quasi-judicial role. Some offences may be indisputable but others may not be so clear cut and defendants may feel pressurised into accepting FPN through the structure of such schemes (for example, where there is a "discount" for prompt payment) or through the unavailability of advice. De-criminalising the offence would also remove the discipline of the criminal burden of proof.
- 2.2 The CIEH believes that it is wrong in principle for enforcement agencies to have a financial interest in their function and that there are existing mechanisms which can be adequately used to pursue offenders.
- 2.3 The CIEH does not therefore support this proposal for the reasons outlined in 2.2 above.

3. Proposal: Street Litter Control Offences

- 3.1 The CIEH acknowledges that some local authorities consider that smoking related litter has increased since the introduction of the Smokefree Regulations in July 2007. The full impact of these regulations has not yet been seen, given the relatively short timescale since introduction of the regulations and the time of year during which the regulations were introduced. Work is still being done by Local Authorities to help educate and support businesses to implement the regulations, and in particular, helping them make arrangements or provide facilities for persons who still wish to smoke. This means that the situation regarding smoking related litter may change over the coming months and will take time for a full assessment of the situation and resource burden on London local authorities to be seen.
- 3.2 None the less, an inconsistency in enforcement options currently exists, with making of street litter control notices being possible for most buildings under Section 94 of the Environmental Protection Act 1990. Non commercial buildings (including most public sector) are not currently included.
- 3.3 This proposal is to extend the range of premises for which a street litter control notices can be issued in London to allow them to be issued in respect of any non-domestic premises.
- 3.4 The CIEH supports this proposal to ensure consistency of enforcement and a fair and equitable regulatory burden upon all non domestic building occupiers. It acknowledges that there may be concerns about enforcement of public sector buildings (including those which it owns and operates) but is aware of other areas of regulatory enforcement where this scenario currently occurs. In existing areas of enforcement, these concerns are covered by guidance and advice for officers.
- 3.5 The CIEH considers that this anomaly needs to be addressed to ensure consistent application of existing legislation across the non commercial sector and therefore supports the proposal.
- 3.6 It would also support the formulation of advice and guidance for enforcement officers on dealing with public sector buildings (if needed) through the London SmokeFree Forum.

4. Proposal: Houses in Multiple Occupation – Management Notices

- 4.1 The creation of the Housing Act 2004 has removed the power (which previously existed under the 1985 Act) for a London borough council to require remedial measures to be carried out by service of a management notice to Houses of Multiple Occupation (HMO). This proposal is to allow a London borough council to be given powers to require remedial measures to be carried out in respect of any breach of management duty in a HMO's.
- 4.2 The CIEH accepts that there was not widespread use of these powers under the Housing Act 1985 (taken from its own annual reports) but that they were used by a number of London authorities which had particular problems in this area, and were considered a useful tool.
- 4.3 The CIEH considers that there is an anomaly in the current legislation by not allowing management notices to be served, leaving prosecution as the only formal option to secure compliance under the 2004 Act. This is at odds with regulation in other areas of environmental health (and the preceding Housing Act) where service of a notice is widely used as a method of securing compliance with the regulations. Service of a notice is also considered to be a key step in a staged approach to enforcement. They also confer a right of appeal on the person upon whom the notice is served and ensure that there is clarity and transparency about legal responsibilities. The provision for works to be carried out in default also exists and this allows works to be completed (and associated costs recovered) in a minority of cases where compliance is not achieved.
- 4.4 The CIEH is also aware of the difficulties that can be faced by the managers of HMO's in monitoring and carrying out repairs, particularly where they house the most vulnerable tenants. Service of a notice can also be helpful in this scenario to ensure that a structure is in place for remedying deficiencies in a property.
- 4.5 The CIEH therefore supports this proposal and consider that they will provide a means to help improve the standard within HMO's in London and that they will help London borough council officers carry out their duties effectively.

5. Proposal: Display of Food Premises Inspection Notices

- 5.1 Under current legislative provisions, display of information from the various "Scores on the Doors" schemes which exist is only voluntary. This means that, naturally, only some of the highest scoring premises chose to do so. The CIEH has previously made clear its support for the principle of "Scores on the Doors" schemes (such as that operating in London) as they allow the public to make more informed choices about where to eat, recognise businesses which do maintain high standards and highlight those which do not.
- 5.2 The CIEH also recognises that research conducted in other countries, including the US, have shown that overall standards within food businesses have improved (as well as business turnover) as a result of these schemes.
- 5.3 This proposal would impose a duty on the proprietor of a food business to display information relating to the most recent food hygiene inspection, likely in the form of a star rating sticker or certificate at each entrance to the premises (or at the place where food is served if there is no customer entrance).
- 5.4 The CIEH considers that the compulsory display of "Scores on the Doors" information is essential to ensuring that these benefits for businesses and consumers are recognised to their maximum potential. It will mean that all businesses will have to display this information, including those which do not maintain good standards of food hygiene and accepts that this may well result in a loss of trade for those businesses. Notwithstanding this, it sees display as key to improving the standards of food safety within London as a world class capital city.
- 5.5 The CIEH also considers that the offence of altering or forging the displayed information is absolutely essential to ensure consumers and businesses are protected from rogue traders and strongly supports this element of the proposal.
- 5.6 The CIEH therefore supports this proposal to display food premises inspection notices.

6. Proposal: Social Club Premises

- 6.1 It is proposed to set up a system of registration of social club premises, with the ability for London authorities to impose conditions upon registration. There would also then be a system of closure orders to deal with those which are experiencing disorder which would be made by a senior police officer.
- 6.2 The CIEH does not believe that it is generally appropriate for the Police to enforce noise controls and closure on the grounds of public nuisance and disorder and consider that this power should be reserved for local authorities as in the Anti Social Behaviour Act.
- 6.3 The CIEH therefore does not support this proposal for the reasons outlined in 6.2 above.

7. Proposal: Distribution of Free Refreshments

- 7.1 The CIEH acknowledges that homelessness continues to be a problem in large cities such as London, and recognises the excellent work that is done by charities and volunteers to help this sector of the community.
- 7.2 This proposal identifies that free food and refreshments are regularly distributed on public land, particularly by organisations that wish to assist the homeless. It states that this can cause nuisance to occupiers of premises in the vicinity of such land.
- 7.3 Whilst the CIEH accepts the possibility that this distribution of food to the homeless could cause problems for occupiers of premises, it considers that there is existing legislation in place to deal with the problem of nuisance in the form of the Environmental Protection Act 1990. It does not believe that the problem justifies the solution proposed and hopes that mediation between parties could be used effectively to deal with issues such as this.
- 7.4 The CIEH therefore does not support this proposal for the reasons outlined in 7.3 above.

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