

Department of Environment, Food and Rural Affairs

'Clean Neighbourhoods' consultation

Northgate Information Solutions' response

September 2004

Summary

- Northgate warmly welcomes the Department for Environment, Food and Rural Affairs' consultation on 'Clean neighbourhoods'. The proposals represent a joined up approach to promoting cleaner, safer neighbourhoods – the number one concern of local people.
- Everyone should enjoy the right to live free from environmental and social nuisance, and this right should be respected by all. It is fundamental to the quality of life and community well-being. To achieve this we need a strong and robust system of community justice built on two equal pillars – help and enforcement.
- We must do everything we can to prevent low-level environmental crime and environmental nuisance through information, education and well-targeted enforcement. The proposal to extend the objectives of Crime and Disorder Reduction Partnerships to include reference to local environmental crime is welcome and is consistent with meeting public concerns at a local level.
- The growing use of the penalty notice system to tackle social and environmental nuisance needs to be accompanied by a national framework for their operation allowing for: local flexibility; clear guidelines for the growing number of enforcement agencies, including local authorities; and robust performance management and review.

Community justice and clean neighbourhoods

1. Everyone should enjoy the right to live free from environmental and social nuisance, and this right should be respected by all. It is fundamental to the quality of life and community well-being. To achieve this we need a strong and robust system of community justice built on two equal pillars – help and enforcement.
2. Demoralised communities living in run-down or neglected environments need to know that broader social issues – inequality and social deprivation – will be tackled at the same time as their day to day concerns such as poor street lighting, dirty streets and fear of crime.
3. Community well-being is founded on trust between local citizens and public authorities. Where there is perceived inactivity on the part of public authorities in dealing with citizens' day to day concerns, local citizens are less likely to trust their ability to deliver fair and efficient public services. When social nuisance or crimes are reported, but nothing done, then the community becomes a victim too.
4. A proactive approach to educating and promoting community well-being, backed up by a stronger enforcement system, where clear and decisive action is taken to tackle individual concerns, could help to enhance public trust and improve service delivery.

5. Northgate warmly welcomes the Department for Environment, Food and Rural Affairs' consultation on 'Clean neighbourhoods'. The proposals represent a joined up approach to promoting cleaner, safer neighbourhoods – the number one concern of local people.
6. In particular, we welcome the proposal to include local environmental crime within the remit of existing processes for dealing with crime and disorder. The proposal to extend the objectives of Crime and Disorder Reduction Partnerships to include reference to local environmental crime is welcome and is consistent with meeting public concerns at a local level.

Penalty notice enforcement

Extending enforcement

7. The proposals contained within 'Clean neighbourhoods' extend the use of penalty notice enforcement in a number of ways.
8. Firstly, it increases or widens the offences for which penalty notices may be issued. These include: extending the litter offence to dropping litter on all types of land; extending free literature distribution controls to local authorities outside of London; specifically including chewing gum and smoking related materials as litter; failure to comply with waste collection authority specifications for the time at which waste should be put out for collection; and being responsible for a vehicle which has been removed as a nuisance vehicle.
9. Secondly, the proposals depart from traditional government practice where penalty notices are used predominantly as a means of tackling low-level crime and infringements committed by individuals. Instead the document proposes to use penalty notices as a means of promoting compliance within the waste regulatory system.
10. It proposes to give local authorities and the Environment Agency the power to issue fixed penalty notices to: businesses that fail to produce waste transfer notes and to keep the receipts from such penalties; and to waste carriers that fail to produce their registration details or evidence that they do not need to be registered. It also proposes a new duty for developers and contractors to produce a Site Waste Management Plan giving local waste collection authorities the option of issuing penalty notices. It also proposes to introduce new measures to extend the power of local authorities to issue fixed penalty notices for noise at night to operators of licensed premises.
11. Thirdly, it proposes to increase the flexibility of local authorities by allowing them to set the level of penalties for offences for which they have primary responsibility (within a national framework of maximum and minimum levels).
12. Fourthly, it seeks to ensure that local authorities are able to keep the receipts for penalty notices issued by them.

13. Fifthly, it proposes to give authorised officers the power to request names and addresses, and failure to give this information will constitute an offence.
14. Finally, it proposes to extend the power to issue fixed penalty notices to other bodies.

Ensuring equity with enforcement

15. Penalty notices give authorities with limited resources an additional means of dealing efficiently with minor offences. Used appropriately, penalty notices can be an effective way of dealing with high-volume low-level crime, environmental and social nuisance and other forms of minor civil infringements of the law which are currently either processed through the courts or where no action is undertaken. They give authorities with limited resources an additional means of dealing efficiently with minor offences.
16. Used appropriately, the penalty notice system can divert individuals away from the courts and remove the stigma of having a criminal record. They can also have an educative role. Penalty notices can have a "ripple" effect. Once imposed on individuals for particular offences or infringements, word of mouth quickly leads to other individuals improving their performance in order to avoid paying similar fines. By integrating them into the educative process they may assist changing attitudes and behaviour, at least, in the short term.
17. Northgate believes that the penalty notice system can play an integral role in the administration of justice, but that the system is only as effective as it is fairly enforced. The wider use of penalty notices should be part of a co-ordinated policy mix of education, the promotion of rights and law enforcement to optimise prevention of low-level social and environmental nuisance.
18. Community engagement and inclusion in developing effective policies and effective practice is crucial. Any effective strategy must involve the community both in problem-solving and change management. This is particularly the case should local authorities be given the powers to set their own levels of penalty charges for a wider number of offences.
19. It is essential that all authorities with enforcement responsibilities benefit from clear guidelines that direct them in the fair and appropriate use of penalty notices. Enforcement staff must be sufficiently skilled and trained to operate the system fairly and equitably.
20. Whilst Defra is committed to providing guidance to authorities, our concern is that there needs to be a strong national framework governing penalty notices as a whole, if public confidence in the system is not to be undermined.
21. On a national basis, there is an apparent lack of consistency governing penalty notices. Whilst the Home Office has developed principles in relation to setting the level of the financial penalty, there has been little focus on the fact that the penalty notice system has become one of the major forms of administration of justice in this country.
22. The lack of consistency partially arises partly from the fact that responsibilities for different offences and infringements can lie with different government departments. These inconsistencies relate to issues such as the amount of time an individual has to pay; the effect of non-payment of the penalty notice – in some cases the fine is increased and

registered as a fine but in others the individual will face prosecution for the original offence; whether or not public bodies can hypothecate penalty notices and for what purposes the receipts may be used; and whether or not the behaviour engaged in falls under criminal or civil law.

23. As the use of penalty notices grows, there are strong arguments for a Penalty Notice Act to ensure a joined up approach to policy making and to help assist in educating the public about their responsibilities. This new act would lay out the principles and practices for the use of penalty notices in tackling what is, in effect, a new category of infringements related to community wrongdoing.
24. Standardisation of the approach should neither rule out local flexibility nor the need for specific departmental guidelines. However, it should provide a uniform national framework which aids compliance. It can also be used as part of the community education process to ensure that the public fully understands why there is a need to tackle community wrongdoing in this way.
25. At the same time there appears to be a paucity of data and management information on the operation of the penalty notice system as a whole. If the public is to perceive the system as fair, it must be accountable. Any extension needs to ensure that information is collected on a council-wide basis, particularly if hypothecation is to grow or if local authorities are to fix their own amounts. These two trends may reinforce some public perceptions that the system is being used to raise cash or that a postcode lottery exists.
26. Unlike court fines, penalty notices are not related to the ability to pay. This means that problems can occur if individuals are allowed to accrue large amounts of unpaid fines. Enforcement systems should monitor their use. But there needs to be consideration of a wide range of measures to tackle the problem of non-payment if it is not to grow. Since the non-payment of a penalty notice ends up, in many instances, as a registrable fine, this could lead to an increase in criminality.
27. Some local authorities currently provide time to pay arrangements or payment by instalments, although the legislation governing anti-social behaviour penalty notices does not currently provide this. In Canada, the Contraventions Act 1992 provides individuals with a right to representation about the fine, fee or sentence to be imposed or whether the person ought to be given time to pay the fine or fee. Other methods which could be considered are payment through the tax system or discounts for those on low incomes who pay promptly and provide evidence of low income.

Monitoring adverse impact

28. The impact of enforcement systems on individuals and on public confidence generally must be adequately monitored. If penalty notices are used inappropriately, questions can be raised about their power as a deterrent and whether they violate human rights principles, due process and fairness.
29. Any extended use of penalty notices should be accompanied by guidelines providing that public authorities review the use of such systems and put in place practices to measure and prevent adverse impacts. This will help to send out a strong message to the public that

systems will be tested to ensure that there is no underlying bias which would lead to disproportionate, unequal or unfair treatment on account of factors such as gender, disability, special needs and religion.

30. It is important to ensure that enforcement measures, in so far as it is possible, are directed at organisations and individuals who knowingly commit low-level criminal or civil offences. This means taking measures to inform the public about their responsibilities and rights. They should be prepared for new changes in law so that they understand the implications of continuing their actions.
31. Whilst penalty notices may provide an efficient and cost-effective means of dealing with minor offences, the penalty notice system is only as fair as it is operated. This means that particular attention should be paid to the training and resources of staff who will operate the system – from police officers through to enforcement managers. Staff should be adequately equipped to understand how human rights and diversity issues impact on service delivery, and be able to deal with the public in a courteous, fair, equitable and consistent fashion.
32. As with any financial penalty, penalty notices must be effectively enforced to provide both a deterrent and reassurance to the public that such issues will be tackled. Consideration must be given to what systems are in place to track and evaluate any scheme introduced. Enforcement systems must be responsive, transparent, accountable, equitable and audited.

Tackling corporate anti-social behaviour

33. We all have a responsibility to ensure community well-being, whether we are an individual, an organisation, a public sector body or part of the private sector. If individuals believe that there is one standard of law for the corporate body and another for themselves, this will undermine public trust in the justice system.
34. Corporate environmental nuisance must be tackled in much the same way as individual behaviour. All too often, hard-pressed authorities do not have the time to tackle high-volume, low-level non-compliance with regulatory rules. Yet this may result in daily suffering for employees at work or undermine levels of compliance generally. Traditionally, the use of penalty notices in the regulatory system has been underplayed or ignored.
35. Defra's recent proposals mark a strong shift towards extending the use of penalty notices to tackle corporate anti-social behaviour. Northgate believes that much greater consideration needs to be given to using penalty notices as an additional tool in the regulatory environment. We understand that Defra is considering using penalty notices under fisheries legislation, but we believe that with the right safeguards in place, there may be wide areas of legislation where penalty notices could provide an additional tool for enforcers.
36. At a federal level in Australia, penalty notices are normally known as infringement notices and are used as a significant part of the regulatory system. Some of the laws and regulations which include provision for penalty notices are outlined in the table below. This shows the extent of their use within the regulatory system.

Table 1 Australia - laws and regulations which provide for the issuing of infringement notices

Aboriginal Land (Lake Condah and Framlingham Forest) Act	Air Navigation (Fuel Spillage) Regulations 1999
Air Navigation Regulations 1947	Airports (Building Control) Regulations 1996
Airports (Control of On-Airport Activities) Regulations 1997	Airports (Environment Protection) Regulations 1997
Airports (Surface Traffic) Act 1960	Child Support Act 1988
Civil Aviation Act 1988	Close Corporations Act 1989
Commonwealth Electoral Act 1918	Conservation Act 1999
Corporate law economic reform program (Audit Reform & Corporate Disclosure) Act 2004	Corporations Act 1989
Corporations Regulations 2001	Customs Act 1901
Defence Force Discipline Act 1982	Defence Act 1903
Education Services for Overseas Students Regulations 2001	Environment Protection and Biodiversity Conservation Regulations 2000
Environment Protection and Biodiversity Financial Sector (Collection of Data) Act 2001	Excise Act 1901
Great Barrier Reef Marine Park Act 1975	Fisheries Management Regulations 1992
Interstate Road Transport Regulations 1986	Income Tax Assessment Act 1936
Migration Regulations 1994	Interstate Road Transport Act 1985
Quarantine Regulations 2000	National Parks and Wildlife Conservation Act 1975
Radio communications Regulations 1993	Radio communications Act 1983
Road Transport Reform (Dangerous Goods) Act 1995	Referendum (Machinery Provisions) Act 1984
Road Transport Reform (Dangerous Goods) Regulations 1997	Road Transport Reform (Heavy Vehicles Registration) Act 1997
Superannuation (government co-contribution for low income earners) Act 2003	Spam Act 2003
Taxation Administration Act 1953	Sydney Airport Demand Management Act 1997
	Tradex Scheme Act 1999

Hypothecation

37. During the Anti-social Behaviour Bill, Northgate lobbied for local authorities to retain their receipts, believing that a standardised approach between offences would simplify the system and that receipts should be used to improve community well-being. We also think that local authorities should be able to pool receipts to encourage economies of scale in enforcement.

38. Whilst we welcome the fact that Defra proposes that local authorities should retain their receipts, we are aware that there is a lack of consistency across the penalty notice system as to what purpose local authorities may use the receipts. Defra is also proposing to consult on giving good and excellent authorities greater freedom and flexibility. But care should be taken that this does not result in public confusion.

About Northgate

Northgate is a technology services company with a difference. It is committed to high quality public services and understands the public sector. That knowledge is core to its business.

Northgate's task is to enhance public sector value through intelligent use of people and information technology systems and to share in the economic and social benefits that this brings.

Northgate assists the fire and rescue service, local authorities and the police to promote community well-being by helping them provide citizens with accessible and responsive one-stop services based on clear and accurate information.

For more information:

David Meaden
Managing Director, Public Services
Northgate Information Solutions
Boundary Way
Hemel Hempstead
HP2 7HU