

Clerk of the Parish Council

**Corporate Services  
North Wiltshire District Council**  
Monkton Park  
Chippenham  
Wiltshire SN15 1ER  
DX 34208 CHIPPENHAM

Our Ref:

Your Ref:

13 July 2006

Dear Sir/Madam

**CLEAN NEIGHBOURHOOD AND ENVIRONMENT ACT 2005**

You are probably aware of the changes brought about by the introduction of the above legislation on 6<sup>th</sup> April 2006. The Act extends new powers to town and parish councils by the extension of the existing legislation and the creation of new offences.

Parish Councils have concurrent functions in respect of litter dropping, graffiti, fly-posting and dog control orders. Please see the enclosed explanatory notes for further details. The following list sets out the fixed penalty prescribed by the Act.

Dropping Litter	£75.00
Graffiti	£75.00
Fly-posting	£75.00
Breaches of dog control orders	£75.00

The District Council has set up a working group of officers to consider the enforcement of the new legislation. In order to avoid duplication, please could you let me know if your parish council has considered or intends to consider exercising these new powers.

Yours sincerely



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INVESTOR IN PEOPLE



## **PART 3: LITTER AND REFUSE**

### **Offence of dropping litter**

#### **Clause 18 Extension of litter offence to all open places**

68. Section 87 of the Environmental Protection Act 1990 (the 1990 Act) makes it an offence to drop litter in a place in the open air to which the public are entitled or permitted to have access without payment, including any covered place open to the air on at least one side and to which the public has access. It also includes relevant land owned by local authorities, statutory undertakers, designated educational institutions and Crown land.

69. Clause 18 extends the scope of that offence so that it is now an offence to drop litter *anywhere* in the open air in the area of a principal litter authority, regardless of ownership. However, it is not an offence to drop litter in a covered place open to the air on at least one side to which the public does not have access.

70. This includes land covered by water, so that the offence extends to dropping litter into bodies of water, such as rivers or lakes. The area of a local authority which is on the coast extends down to the low-water mark under section 72 of the Local Government Act 1972. Therefore it will be an offence to drop litter anywhere above the low water mark (and thus an offence to drop litter on beaches).

71. It does not extend the duty on principal litter authorities (and others) to keep their relevant land clear of litter and refuse as set out in section 89 of the 1990 Act.

72. The exceptions to the offence that are set out in section 87 of the 1990 Act are amended so that no offence is committed if the littering was authorised by law or done by or with the consent of the owner, occupier, or other authority or person having control of the area (subsection (4A)). Consent may only be given in relation to a watercourse, lake or pond if the same person owns all the surrounding land (subsection (4B)).

#### **Clause 19 Litter offence: fixed penalty notices**

73. Clause 19 amends section 88 of the 1990 Act, under which an authorised officer of a litter authority may give a person who he has reason to believe has committed an offence under section 87 a notice offering that person the opportunity to discharge any liability to conviction for that offence by payment of a fixed penalty.

74. *Subsection (2)* amends section 88 to enable a principal litter authority to specify the amount of fixed penalty to be applied in its area; where the authority sets no such amount the fixed penalty shall be £75. Powers set out in section 97A (introduced by clause 24) of the 1990 Act enable regulations to be made by the Secretary of State or the National Assembly for Wales to set a minimum and maximum range within which the fixed penalty amount can be set. The litter authority to which a fixed penalty is payable may provide for treating it as having been paid if a lesser amount is paid before the end of such (shorter) period as it may specify.

75. *Subsection (3)* inserts new section 88 (8A)-(8C) that provides that where an authorised officer of a litter authority proposes to give a person a fixed penalty notice, he may require that person to give him his name and address, and it is an offence for that person to fail to do so or to give false or inaccurate information.

76. *Subsection (4)* classifies all parish and community councils as litter authorities. This has the effect of enabling parish and community councils to authorise officers to serve fixed penalty notices for the litter offence under section 88 of the 1990 Act. Under subsection (6) the Secretary of State or the National Assembly for Wales may make regulations prescribing conditions that must be met by an individual before he can be authorised by a parish and community council to issue fixed penalty notices. This could, for example, relate to certain training standards or competencies.

77. In *subsection (5)* the description of an "authorised officer" is extended under a revised section 88(10) to allow litter authorities to authorise individuals other than their own employees to issue fixed penalty notices on their behalf.

## **General**

### **Clause 24 Fixed penalty notices: common provision**

101. Clause 24 introduces a new section 97A into the 1990 Act, applying general provisions relating to the fixed penalty notices associated with the offence of dropping litter, litter clearing notices, street litter control notices and the distribution of printed matter. It enables the appropriate person (the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales) to make regulations which may set a range within which a locally determined fixed penalty amount must fall. Such regulations may also restrict the extent to which and the circumstances in which an authority may permit the payment of lesser amounts. The clause also enables the appropriate person, by order, to change the amount of the fixed penalty where no local rate is set by the relevant authority.

### **Clause 25 Exclusion of liability**

102. Clause 25 further amends the 1990 Act, by introducing new section 97B. That section protects a principal litter authority and any other person described in section 97B(2) against liability to an occupier or owner of land for damages or otherwise arising out of the exercise of certain powers relating to entry on to land (as specified in the section) in the context of either a litter clearing notice or a litter abatement notice. The circumstances in which this exclusion does not apply are also set out (bad faith, lack of due care etc).

### **Clause 26 "Appropriate person"**

103. Clause 26 introduces into section 98 of the 1990 Act a definition of the "appropriate person" for the purposes of Part 4 as the Secretary of State in relation to England, and the National Assembly for Wales in relation to Wales.

## **Clause 27 Meaning of "litter"**

104. Clause 27 clarifies the meaning of "litter" for the purposes of Part 4 of the 1990 Act, by specifically including cigarettes, cigars and like products and discarded chewing gum (including bubble gum). Although these are already considered to fall within the definition of litter, the intention of this clause is to provide clarity for practitioners.

## **PART 4: GRAFFITI AND OTHER DEFACEMENT**

### **Graffiti and fly-posting**

#### **Clause 28 Graffiti and fly-posting offences: fixed penalty notices**

105. Section 43 of the Anti-social Behaviour Act 2003 allows authorised officers to issue fixed penalty notices for the offences of graffiti and fly-posting, and currently sets the amount payable for a graffiti or fly-posting fixed penalty notice at £50.

106. Clause 28 enables a local authority to vary the fixed penalty amount for a graffiti or fly-posting offence in its area. Where no amount is specified by a local authority, this clause also raises the base amount from £50 to £75. This amount may be changed by an order made by the appropriate person. In either case, the local authority may provide for a lesser amount to be paid if early payment is made within a specified period. In addition, the appropriate person (the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales) may make regulations relating to the fixed penalty amount, for example to specify a range within which the amount should fall.

107. Parish and community councils (by way of their qualifying as "litter authorities" under section 88(9)(f) of the 1990 Act, and thus as "local authorities" under these provisions) are also given the power to issue fixed penalty notices for the graffiti and fly-posting offences. The effect of *subsections (2) and (3)* of clause 28 (relating to the definition of "relevant local authority") is to require them to adopt the amount specified by the local authority.

#### **Clause 29 Fixed penalty notices: powers to require name and address**

108. Clause 29 further amends the Anti-social Behaviour Act 2003 to give an authorised officer of a local authority the power to require the name and address of a person to whom he proposes to give a fixed penalty notice, and makes it an offence for that person either to fail to give that information or to give false or inaccurate information.

### **Clause 30 Fixed penalty notices: authorised officers**

109. Clause 30 extends the definition of an "authorised officer" to allow local authorities to authorise individuals other than their own employees for the purpose of giving notices for graffiti and fly-posting offences.

110. *Subsection (2)* enables the appropriate person (the Secretary of State in relation to England and the National Assembly for Wales in relation to Wales) to make regulations prescribing conditions that a person must satisfy before a parish or community council may authorise that person to issue notices on their behalf for graffiti and fly-posting offences.

### **Clause 31 Extension of graffiti removal regime to fly-posting**

111. Sections 48 to 52 of the Anti-social Behaviour Act 2003 enable local authorities to issue notices requiring the removal of graffiti within 28 days from certain surfaces to statutory undertakers (such as railways and port authorities) or a person responsible for street furniture. If the graffiti removal notice is not complied with, the local authority can remove the graffiti themselves and reclaim their costs.

112. Clause 31 amends the powers to issue graffiti removal notices (in respect of the defacement of a relevant surface to a degree that is detrimental to the amenity of an area or that is offensive) under sections 48-52 of the Anti-social Behaviour Act 2003 by extending their application now also to cover illegal advertising (fly posting). This will enable a removal notice to be issued requiring the removal of any poster or flyer displayed on a relevant surface in contravention of regulations made under section 220 of the Town and Country Planning Act 1990.

113. Paragraph 17 of Schedule 4 makes consequential amendments to the Antisocial Behaviour Act 2003 so as to re-name these notices as "defacement removal notices".

## **PART 6: DOGS**

### **CHAPTER 1: CONTROLS ON DOGS**

173. Local authorities and parish and town councils can currently make byelaws to control dogs on certain areas of land. Section 236 of the Local Government Act 1972 sets out the byelaw-making process and requires that byelaws be "confirmed" by the relevant authority before they can have effect. Dog byelaws for England are confirmed by the Secretary of State for Defra and in Wales by the National Assembly. Those committing an offence under a dog byelaw risk a fine of up to £500 in court.

174. This system is considered costly and complicated to administer, both for central and local government. The Bill will replace the current system of dog byelaws with a new system of "dog control orders". This new system is modelled on the Dogs (Fouling of Land) Act 1996; this sets out an offence in the Act which can then be applied by local authorities by order in relation to designated land in their area.

175. Likewise, under the proposed new system local authorities and parish councils will be able to provide by order for offences to apply in designated land in their area. The offences will be standard offences which will be prescribed in regulations; the prescribed offences will include fouling by dogs (and therefore the Dogs (Fouling of Land) Act 1996 will be repealed). But the new system will also allow for other types of dog-related offence relating to the keeping of dogs on leads in designated areas, the exclusion of dogs from such areas and the maximum number of dogs that one person may walk in such an area.

176. It is intended that the regulations will provide "model" offences which may then be applied by a local authority or parish council to specified areas of land accessible to the public; but (where appropriate) local authorities and parish councils will also be given some flexibility in relation to certain details of the offences; for example, the model offence in relation to the number of dogs that may be walked by one person may leave it to the local authority or parish council to specify whatever number of dogs they deem appropriate in relation to the land where the offence is to apply. It is also intended that local authorities and parish councils will be able to specify penalties applicable to offences, within constraints set by regulations.

## **Dog control orders**

### **Clause 55 Powers to make dog control orders**

177: Clause 55 enables "primary authorities" (which equate to local authorities) and "secondary authorities" (meaning principally parish and town councils) to make orders that apply offences aimed at the control of dogs ('dog control orders') to specified land in their area.

178. *Subsection (3)* sets out the four categories of offence that can be provided for. The effect of *subsection (4)* is that the scope of offences that can be provided for in dog control orders will be set out in regulations. It is intended that, where appropriate, the offences described in regulations will not be applicable to working dogs and guide dogs.

### **56 Dog control orders: supplementary**

179. Clause 56 requires the appropriate person to make regulations which set out: the maximum penalties for dog offences; the content and format of dog control orders; and the process to be undertaken by primary and secondary authorities before and after making such orders (including requirements in respect of consultation on, and publication of, such orders).

### **Clause 57 Land to which Chapter 1 applies**

180. Clause 57 provides that dog control orders may apply to all public land which is open to the air. *Subsection (3)* allows for exclusions, by order, to the types of land that can be subject to dog control orders.

## Clause 58 Primary and secondary authorities

181. This clause defines primary and secondary authorities. Secondary authorities are parish and community councils (in England and Wales, respectively). *Subsection (3)* enables other bodies to be designated as secondary authorities. This is intended to deal with bodies, such as commons conservators, which have powers under private Acts to make byelaws to control dogs. It could also be used to designate statutory bodies with responsibilities for substantial areas of land.

## Fixed Penalty Notices

### Clause 59 Fixed penalty notices

182. Clause 59 allows authorised officers of primary and secondary authorities, or an authorised person working on their behalf, to issue a fixed penalty notice offering members of the public an opportunity to discharge any liability for offences under a dog control order.

183. Generally, an authorised officer of an authority can only issue a fixed penalty notice in respect of offences provided for by that authority. There is one exception: the effect of *subsection (1)(b)* is to enable an authorised officer of a secondary authority to issue a fixed penalty notice in its area in respect of a dog control order offence created by a primary authority.

### Clause 60 Amount of fixed penalties

184. Clause 60 enables a primary or secondary authority to specify the amount of fixed penalty in relation to their own dog control orders. Authorities will also be able to allow for the payment of a lesser amount if the fine is paid within a specified time period. Where no amount is specified at the local level, the fixed penalty is set at £75. Clause 60 also provides the appropriate person (as defined in clause 66) with the power to make regulations relating to the fixed penalty - in particular, to prescribe a range within which penalties fixed at the local level must fall; the appropriate person may also (by order) substitute the figure of £75 referred to above with a new amount.

### Clause 61 Power to require name and addresses

185. Clause 61 provides an authorised officer of a primary or secondary authority with the power to require the name and address of a person if the officer proposes to give him a fixed penalty notice, and makes it an offence for that person either to fail to give that information or to give false or inaccurate information.