

## **Clean Neighbourhood and Environment Act 2005 Update**

### **1. Purpose of the Report**

To further brief the Committee regarding the implications of the Clean Neighbourhood and Environment Act 2005 (CNAE) as requested at a previous committee.

### **2. Links to Corporate Business Plan**

This links more directly to the Waste Minimisation, Cleaner, Safer and Better Streets, but also relates to Customer Focus as well as Partnerships.

### **3. Background Information**

- 3.1 The Clean Neighbourhood and Environment Bill gained Royal Assent in 2005. Most of the powers are now in force from April 2006. A summary of the contents of the Act is attached as Appendix A.
- 3.2 The Act contains a number of measures designed to improve the quality of the local environment by giving local authorities (including powers to Town and Parish Councils) and the Environment Agency to deal with issues identified in Appendix A.
- 3.3 The Act either extends existing legislation or creates new offences and allows the respective enforcement authority to prosecute or to use fixed penalty notices. A list of the penalty notice fines was presented to this Committee on 23<sup>rd</sup> March 2006 and this has been repeated as Appendix B for convenience.
- 3.4 Receipts from the fixed penalty notices are intended to be both a deterrent and to cover the cost of enforcement, however, there are restrictions limiting the expenditure of receipts generally to clean neighbourhood and environment incentives.
- 3.5 The implementation of the Act can be as wide or narrow as the Council sees fit. It also allows Parish and Town Councils to take action if they so wish in certain areas relating to street literature, graffiti, flyposting and breaches of dog control orders. Therefore, the implications are not limited to this Council.
- 3.6 A report was considered by the Executive on 20<sup>th</sup> April 2006 where approval was given to an amended scheme of delegations to Officers to include the delegation set out in Appendix C of this report.
  - Gating orders
  - Nuisance parking
  - Abandoned vehicles

- Litter and refuse
  - Graffiti and flyposting
  - Placards and posters
  - Shopping and luggage trolleys
  - Waste
  - Control of dogs
  - Audible intruder alarms
  - Noise from premises
  - Statutory nuisances
- 3.7 Parish Councils will be able to authorise employees and contractors to issue fixed penalty notices within the areas referred to previously in this report.
- 3.8 At the meeting held on 23<sup>rd</sup> March 2006, this Committee was informed that as part of the review of Cleansing and Amenities a sub group had been set up to create an enforcement and education strategy. The reports of the sub group has been considered by the Best Value Improvement Board and a separate report on the Committee agenda refers to this.
- 3.9 However, the Committee should be aware that enforcement and education strategy relates to a number of matters covering other legislation mainly linked to waste and does not solely relate to the CNAE Act 2005. In this context the Council approved a pressure bid to improve the management and supervisory capacity of Cleansing and Amenities (C&A) and to improve the education and enforcement capacity to enable the service to better exercise its functions. The main emphasis has been to improve capacity on street scene services mainly covering cleansing. A report covering the human resourcing implications was approved by the Personnel, Licensing and Administration Committee on 3<sup>rd</sup> July 2006 which will now enable recruitment to the new posts.
- 3.10 The Committee should also be aware that the report to the C&A Improvement Board only related to services covered by C&A only but the CNAE Act 2005 covers other aspects of Council services provided by other business areas such as Environmental Health, for example. It has always been the intention that an overall approach to enforcement is considered by a wider officer group once a level of education and enforcement had been agreed for C&A. This can now be progressed further.
- 3.11 Nevertheless, the Council needs to have a view from the Parish and Town Councils as to whether they wish to exercise their powers under the CNAE Act 2005 as this may influence to what extent this Council does in the future. The informal response from the Town Councils has

been mixed but The Team Leader for Legal Services is writing formally to each of the Town and Parish Councils to establish if they intend to use these new powers so that this can be taken into account by officers.

3.12 The corporate plan priority relating to Cleaner and Better Streets essentially incorporates partnership working across Wiltshire in two areas:

1. Management of street scene

*Indicators by which performance will be measured*

Cleanliness of land within the local authorities' control as measured by :

- a) BVPI 199a – litter and detritus
- b) Public satisfaction with the street scene.

This includes:

- Quality and location of street furniture (e.g. benches, street lighting, signs, litter bins, railings)
- Condition of the road and pavement surface
- Well lit public spaces
- Litter-free town centre
- Weed killing and maintenance of grassed areas
- Enforcement of parking restrictions
- Removal of abandoned vehicles

2. To provide a clean, safe and healthy street and lane scene for Wiltshire residents

*Indicators by which performance will be measured:*

- a) Reduce alcohol-related re-offending
- b) Percentage of survey<sup>i</sup> respondents who when asked the question "Over the last two years do you think that anti-social behaviour in your area has increased/ stayed the same/got worse/decreased" answered "increased".

3.12 Stretch targets have been set across the 5 Wiltshire Authorities with an end date of March 2008.

3.13 The corporate priority for North Wiltshire supports this Wiltshire wide strategic objective and parts of the CNAE Act 2005 may now be used to support this. However, as the Act has a wider scope than the current corporate priority, as part of the Council's performance and business planning framework there will

be an opportunity to extend the scope of this portfolio if Members consider this as a priority in the future. Resourcing levels will need to be considered accordingly.

- 3.14 This potentially links in with the Governments programme Cleaner, Safer Greener Communities, linked to the 'Respect' agenda.

#### **4 Financial Implications**

- 4.1 The greater use of enforcement powers will inevitably have financial implications but the CNAE Act 2005 introduces fixed penalty notices which are intended to cover the costs of enforcement. However, there will be start up costs and depending on the level of enforcement and who does this, then the financial aspects will need to be given further consideration.

#### **5 Community and Environmental implications**

- 5.1 The Act's primary purpose is to improve the environment by reducing 'enviro-crime' through enforcement action or the deterrent of fines. This therefore has positive implications for our communities.

#### **6 Human Resource Implications**

- 6.1 These will depend on any future enforcement options

#### **7 Equal Opportunity Implications**

- 7.1 These will depend on any future enforcement options

#### **8 Legal Implications**

- 8.1 The Act is intended to widen the legal powers and scope of prosecution powers. The decision made by the Executive on 20 April 2006 has provided delegated powers to enforce the Act if required.

#### **Documents used in preparing this report**

- The LGA publication 'Get in on the Act'
- Reports to the Overview and Scrutiny Committee on 15<sup>th</sup> December 2005 and 23 March 2006
- Report to the Executive Committee on 20 April 2006

REPORT OF THE CUSTOMER SERVICES STRATEGIC MANAGER TO  
OVERVIEW AND SCRUTINY COMMITTEE- 20<sup>TH</sup> JULY 2006-07-10

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**Appendix A**

## Summary of the Clean Neighbourhoods and Environment Act 2005

## Part 1 – Crime and Disorder

The Crime and Disorder Act 1998 is amended, to ensure that Crime and Disorder Reduction Partnerships include the quality of the local environment when developing their strategies. It also gives local authorities new powers to gate nuisance alleyways.

## Part 2 – Vehicles

Local Authorities are given significant new powers to deal quickly with abandoned and nuisance vehicles. Local authorities will be able to immediately remove any abandoned vehicle from a road. They will no longer have to wait until a valid licence expires before disposing of a vehicle and will also be able to immediately dispose of any vehicles not displaying a licence and registration mark. There are two new offences to address the problem of businesses or individuals using the road as a showroom or workshop for the sale or repair of vehicles.

## Part 3 – Litter and Refuse

The offence of dropping litter will be extended to any land open to the air, regardless of ownership, whilst clarifying that chewing gum and smoking related materials are litter. There is a new power to issue Litter Clearing Notices. This replaces the previous Litter Control Areas powers. These can be issued in relation to most land for which there is no duty to clear litter and refuse, including most private land. Existing provisions on street litter control notices will now specifically include mobile vendors and all principal litter authorities will have the power to restrict distribution of leaflets (flyering) in designated areas.

## Part 4 – Graffiti and other Defacement

The Act includes stronger powers to address graffiti and fly-posting by extending graffiti removal notices to include fly-posting. The fly-posting offence is strengthened to make it more difficult for the beneficiaries of fly-posting (venue, record company, artist, etc) to evade prosecution. Local authorities will also have new powers to recover the cost of removing fly-posters and enforce the ban on the sale of spray paints to under 18s. Parish and community powers will be empowered to issue Fixed Penalty Notices (FPNs) for graffiti and fly-posting.

## Part 5 – Waste

This part of the Act provides stronger powers, penalties and deterrents to enforce against individuals, businesses and criminal gangs caught fly-tipping or disposing of their waste illegally or irresponsibly. Local authority and Environment Agency officers will be able to issue Fixed Penalty Notices (FPNs) for a range of waste offences and will have new powers to immediately search, seize and impound a vehicle involved in fly-tipping. New guidance to magistrates will increase the penalties and costs awarded for fly-tipping offences. Authorities will be able to issue (FPNs) to householders and businesses not complying with the waste collection regulations.

Land owners as well as occupiers will have responsibility for cleaning fly-tipped waste from their land.

This part also supports local authorities to develop sustainable waste management strategies, by abolishing the requirement to contract out waste disposal functions and requiring developers and contractors to produce a Site Waste Management Plan.

#### Part 6 – Dogs

The Act will transfer registration of stray dogs from the police to local authorities, subject to an agreed transfer of resources. The Act will also scrap the existing dog byelaw system and replace it with a new Dog Control Order, giving authorities and parish councils the power to designate areas where dog fouling, letting a dog off the lead, excluding dogs from designated land and walking more than a set number of dogs will all be offences.

#### Part 7 – Noise

The Act gives local authorities a new power to designate an area as an alarm notification area, with a requirement to register key-holders with the local authority. Local authority officers will be able to enter a premises (although not by force unless a warrant is issued) to silence an alarm sounding continuously for 20 minutes or sounding intermittently for 1 hour. The Act also gives local authorities the power to issue FPNs for noise nuisance at night to operators of licensed premises. A warning notice would be issued in the first instance, with a FPN (set at £500 for nuisance from licensed premises) available for further offences.

#### Part 8 – Architecture and the Built Environment

The Commission for Architecture and the Built Environment (CABE) will be established on a statutory basis.

#### Part 9 – Miscellaneous

This part clarifies regulations around fixed penalty notices and the use of penalty receipts. This part also gives authorities the power to charge owners for the cost of recovering, storing and disposing of abandoned shopping and luggage trolleys, regardless of whether or not the owner accepts their return. Statutory nuisances will be extended to include artificial light from premises and insects, whilst all Contaminated Land Appeals will go to the Secretary of State, rather than local magistrates as at present.

#### Fixed Penalty Notices (FPNs)

These can be used instead of prosecution for a large number of the new offences introduced by the Act. Local authorities can issue fixed penalty notices for offences on litter, dog fouling, night time noise, graffiti, fly-posting, free literature distribution, vehicles, waste collection and site waste management plans. FPNs for failure to produce waste transfer notes or waste registration details, or Nuisance Vehicles, all have set levels.

If the person served with the FPN fails to pay it within fourteen days, the only sanction is for the Authority is to prosecute for the original offence. No prosecution may be instigated if the FPN is paid within the fourteen days.

Local authority officers issuing FPNs also have a new power to demand names and addresses from offenders, with a maximum fine of £1000 for failure to do so.

The Act provides for new provisions on fixed penalties to be brought into force by order of the Secretary of State (in England) or National Assembly (in Wales). This will be by April 2006. It is intended to bring most provisions on fixed penalties into force at the same time. Until the new provisions come into force, new offences (such as those in section 3 and 4 for nuisance parking) will need to be prosecuted through the courts.

#### Retention of FPN receipts

All fixed penalty notice receipts can be retained by the local authority. They are not intended to raise revenue but to provide an adequate deterrent and cover the cost of enforcement.

#### FPN levels

The amounts of the fixed penalty have been set at particular levels, but these can be varied by the local authority, within minimum and maximum amounts, except for offences on transfer of waste, which are set at £300, noise nuisance from licensed premises, which are set at £500, nuisance vehicles, which are set at £100 and abandoned vehicles, set at £200.

#### Who can issue FPNs?

A fixed penalty notice may be issued by an employee of the authority who is authorised in writing to do so by the authority. With regard to Part 2 the authorised officer must be an employee of the authority. With regard to Section 45 Part 5, the FPN is issued by the 'authority'. With regard to part 3, part 4, aspects of part 5, part 6, part 7 the power to issue FPNs is extended to other persons authorised by the authority, including parish councils. The Parish Council would be responsible for enforcement and any variable fine levels would be set by the District Council, except those relating to dogs, which the Parish Council can vary.

#### Use of fixed penalty receipts

A local authority may use fixed penalty receipts for the purposes of its qualifying functions.

#### Parish Councils

Parish councils will be able to authorise employees and contractors to issue FPNs for all litter, graffiti, fly-posting and dog offences. A parish council will also be able to make a dog control order (at present they can issue bye-laws in relation to dog offences). It is intended that Parish councils will also be able to retain FPN receipts, subject to meeting requirements that will be in regulations and will be directed by regulations to qualifying use of receipts.

**Appendix B**

A.	Sale of Vehicles on Street	£100.00
B.	Repair of Vehicles on Street	£100.00
C.	Abandoned Vehicles	£200.00
D.	Dropping litter	£75.00
E.	Litter cleaning notice	£100.00
F.	Street cleaning notice	£100.00
G.	Street literature	£75.00
H.	Graffiti	£75.00
I.	Fly-posting	£75.00
J.	Unlawfully transporting controlled waste	£300.00
K.	Failure to keep records relating to controlled waste	£300.00
L.	Waste receptacles	£100.00
M.	Breaches of dog control orders	£75.00
N.	Alarm notification	£75.00
O.	Noise at night time	£100.00 (£500.00)



**Appendix C****ADDITIONS TO THE SCHEME OF DELEGATION TO OFFICERS  
CLEANSING AND AMENITIES OPERATIONS CO-ORDINATOR**

FUNCTION	CONSULTATION	CONDITIONS
<p>S2 of the Refuse Disposal Amenity Act 1978: authority to prosecute for the offence of unauthorised dumping under S2 of the 1978 Act.</p>	Legal Services T/L	
<p>S2A of the Refuse Disposal Amenity Act 1978: authorised officer for the purpose of issuing a fixed penalty notice for the offence of abandoning vehicles.</p>		
<p>S87 of the Environmental Protection Act 1990: authority to prosecute for the offence of leaving litter.</p>	Legal Services T/L	
<p>S47 of the Anti Social Behaviour Act 2003: authority to authorise officers in writing for the purpose of issuing a fixed penalty notice under the S43 (1) of the 2003 Act for the offences of graffiti/other defacement and fly posting.</p>		
<p>S48 of the Anti Social Behaviour Act 2003: authority to serve a graffiti removal notice (to include fly-posting) and in default of compliance with the notice to remove etc the graffiti or fly-posting and to enter upon land to do so.</p>		

FUNCTION	CONSULTATION	CONDITIONS
<p>S49 of the Anti Social Behaviour Act 2003:</p> <p>authority to serve a notice setting out the costs which the authority proposes to recover in exercising its powers to remove graffiti and/or fly-posting.</p>		
<p>S5 of the Control of Pollution (Amendment) Act 1989:</p> <p>authority to prosecute for failure to produce an authority to transport controlled waste.</p>	Legal Services T/L	
<p>S9(1B) of the Control of Pollution (Amendment) Act 1989:</p> <p>authority to authorise officers in writing to exercise the powers of an authorised officer under the following sections of the 1989 Act:</p> <ul style="list-style-type: none"> <li>• S5 power to require production of authority and to stop and search etc</li> <li>• S5A seizure of vehicles</li> <li>• S5B issue of a fixed penalty notice for offences under S5</li> </ul>		
<p>S34A of the Environmental Protection Act 1990:</p> <p>authority to authorise officers in writing to issue a fixed penalty notice for failure to comply with a duty to furnish documents under S34(5) of the 1990 Act.</p>		
<p>S34B of the Environmental Protection Act 1990:</p> <p>authority to authorise officers in writing to search and seize vehicles together with ancillary powers prescribed by S34B of the 1990 Act.</p>		

FUNCTION	CONSULTATION	CONDITIONS
<p>S46 &amp; S47 of the Environmental Protection Act 1990:            authority to prosecute for failure to comply with reasonable requirements of the authority relating to receptacles for household, commercial and industrial waste.</p>		
<p>S472A of the Environmental Protection Act 1990:            authority to authorise officers in writing to issue fixed penalty notices for offences relating to receptacles for household waste and commercial and industrial waste under SS46 and 47 of the 1990 Act.</p>		
<p>S59 of the Environmental Protection Act 1990:            authority to serve a notice requiring the occupier of land to remove unlawfully deposited waste.</p>		
<p>S59(7) of the Environmental Protection Act 1990:            authority to remove unlawfully deposited waste where it is necessary to prevent pollution and to take other steps to eliminate or reduce the consequences and to commence proceedings to recover the costs of such works of removal, reduction or elimination.</p>		
<p>S592A of the Environmental Protection Act 1990:            authority to serve a notice on the owner of land requiring the removal of unlawfully deposited waste.</p>		

FUNCTION	CONSULTATION	CONDITIONS
S87 of the Environmental Protection Act 1990: authority to prosecute for the offence of littering.	Legal Services T/L	
S88 of the Environmental Protection Act 1990: authority to authorise officers in writing to issue a fixed penalty notice for the offence of littering.		
S92A of the Environmental Protection Act 1990: authority to serve a littering clearing notice.		
S92C of the Environmental Protection Act 1990: authority to prosecute for the offence of failing to comply with the requirements of a litter clearing notice.	Legal Services T/L	
S93 of the Environmental Protection Act 1990: authority to issue street litter control notices.	Legal Services T/L	
S93 of the Environmental Protection Act 1990: authority to prosecute for failure to comply with a street litter control notice.		
S94A of the Environmental Protection Act 1990: authority to authorise officers in writing to issue a fixed penalty notice for the offences of failure to comply with a litter clearing notice or a street litter control notice.		

*ENVIRONMENTAL HEALTH TEAM LEADER*

FUNCTION	CONSULTATION	CONDITIONS
<p>S80 of the Environmental Protection Act 1990:            authority to serve an abatement notice relating to statutory nuisances arising from lighting or insects.</p>		
<p>S80 of the Environmental Protection Act 1990:            authority to prosecute for failure to comply with abatement notice relating to a statutory nuisance arising from lighting or insects.</p>	<p>Legal Services T/L</p>	
<p>S77 of the Clean Neighbourhoods and Environment Act 2005:            authority to authorise officers to enter premises in order to silence intruder alarms.</p>		
<p>S78 of the Clean Neighbourhoods and Environment Act 2005:            authority to apply for a warrant for an officer authorised under S78 of the 2005 Act to enter premises using reasonable force if necessary to silence an intruder alarm.</p>		

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