

# CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005

Report By: Director of Environment

## Wards Affected

County-wide.

## Purpose

To outline the principal measures contained in the Clean Neighbourhoods and Environment Act 2005 and to provide an overview of the potential impact of the new Act on the services provided by the Environment Directorate.

## Reasons

To provide an overview of the powers contained in the new Act.

## Considerations

1. The new Act, gained Royal Assent on the 7th April 2005, contains a raft of new and amended legislation that is intended to strengthen local authorities powers in dealing with Anti-social Behaviour and Environmental Crime.
2. A broad summary of the new and amended powers are detailed in Paragraphs 12 – 21 below.
3. The commencement of the powers contained within the Act are still uncertain however the Act does indicate that certain powers will commence on the 7<sup>th</sup> June 2005, these powers relate are somewhat limited and relate to:
4. Measures commenced 7th June 2005:
  - a. **Vehicles** - Nuisance parking offences.
  - b. **Litter** - Extension of litter offence. Cigarette butts and chewing gum confirmed as litter.
  - c. **Advertisements** Change to defence for displaying an unauthorised advertisement.
  - d. **Waste** - Change to acting under employer's instructions defence for illegally depositing waste. Increased penalties for fly-tipping; PPC penalty changes (s105). Enabling power to develop site waste management plan regulations.
  - e. **Noise** - Increased flexibility for use of fixed penalty receipts.
5. Measures commenced October 2005:
  - a. **Vehicles** - Abandoned vehicles.
  - b. **Waste** - Repeal of divestment provisions. Fly-tipping: Recovery of investigation and clear-up costs, vehicle forfeiture;
  - c. **Crime and Disorder** - Alleygating powers.

6. Measures to be commenced in April 2006:

- a. **Crime and Disorder** - Anti-social behaviour to be taken into account in crime and disorder reduction strategies.
- b. **Fixed Penalties** - Flexibility to set level of penalties. Parish Councils able to issue FPNs.
- c. **Litter** - Litter clearing notices. Improvements to street litter control notices. Controls on free literature distribution.
- d. **Graffiti and Flyposting** - Removal notices for flyposting. Improved spray paint powers. Cost recovery for removal of fly-posters.
- e. **Waste** - Fly-tipping: extension of clear-up provisions to landowners. Fixed penalties for failure to produce waste transfer notes/waste carrier registration details. Fixed penalties for waste left out on streets. Supplementary enforcement powers (s108 EA) Reform of recycling credits scheme.
- f. **Dogs** - Dog byelaw system replaced by dog control orders. Transfer of responsibility for stray dogs (only if agreement reached on funding)
- g. **Noise** - Powers for dealing with burglar alarms. Extension of Noise Act 1996 to cover night-time noise from licensed premises; amendments to the fixed penalty provisions in that Act.
- h. **Miscellaneous** - Cost recovery for abandoned trolleys. Extension of list of statutory nuisances. Amendment to contaminated land appeals process.

7. Measures to be commenced later:

- a. **Waste** - Site Waste Management Plan Regulations to be commenced – **End of 2006**. Stop, Search and Seizure Regulations to be commenced – **Spring 2007**

8. The Act contains some useful powers for local authorities and an extension of some of the Council's duties, which will undoubtedly have cost implications. It is clear that the Government have endeavoured to offset the costs of much of this legislation by the use of fixed penalty notices.

9. A number of the new powers come with a statutory requirement to provide the service, these include:

- a. *Statutory Nuisance: Insects*
- b. *Statutory Nuisance: Light*
- c. *Termination of police responsibility for stray dogs*

10. The two statutory nuisance provisions are completely new pieces of legislation and it is anticipated that the Statutory Nuisance provisions for artificial light may produce a substantial workload for the Environmental Protection Team and will clearly increase the pressure for the Council to improve its current out-of-hours arrangements. The termination of police responsibility for stray dogs means the Council's current arrangements with the police will need to be terminated and the Council will now have to provide some means of collecting and handling stray dogs outside normal office hours. There has been an indication that funding will be switched from the police to local authorities to facilitate this, however the expectation is that the funding will probably be inadequate because this work is relatively cheap for the Police as they already operate a 24 hour service and have the basic infrastructure to cope whereas Herefordshire Council does not.

11. The new powers relating to shopping and luggage trolleys are a welcome addition and may well enable us to reduce our costs as we will be able to charge the owners of trolleys for their return. This is not the position at present, as local authorities need the agreement of the owners. To date none of the supermarkets has been willing to give this agreement and the costs of collection and disposal have fallen on the service.

## **Outline of Measures**

### 12. Crime and Disorder

- ensures that local Crime and Disorder Reduction Partnerships will take anti-social behaviour affecting the local environment into account in developing crime and disorder reduction strategies. These are issues that the Community Safety Partnership will need to address with considerable evidence being provided by the Environment Directorate.
- gives local authorities new, more effective powers to deal with alleyways affected by anti-social behaviour. It is not anticipated that these would be widely used powers in Herefordshire.

### 13. Fixed Penalty Notices (Fines)

- makes greater use of fixed penalties as an alternative to prosecution, in most cases giving local authorities the flexibility to set their own rates;
- gives parish councils the power to issue fixed penalties for litter, graffiti, fly posting and dog offences;

### 14. Nuisance and Abandoned Vehicles

- gives local authorities the power to remove abandoned cars from the streets immediately (under certain circumstances). Whilst these new powers will be useful in reducing the problems associated with abandoned vehicles, the costs associated with developing the ability to undertake this service will increase.
- creates two new offences to help local authorities deal with nuisance parking: offering for sale two or more vehicles, or repairing a vehicle, on the road as part of a business.

### 15. Litter

- makes it an offence to drop litter anywhere, including private land and rivers, ponds and lakes;
- gives local authorities new powers (litter clearing notices) to require businesses and individuals to clear litter from their land;
- strengthens existing powers for local authorities to require local businesses to help clear up litter they generate (street litter control notices);
- enables local authorities to restrict the distribution of flyers, hand-outs and pamphlets that can end up as litter;
- confirms that cigarette butts and discarded chewing gum are litter.

Much of the legislation relating to litter is extending existing powers. The extension of these powers means that we can effectively enforce in areas where we have been unable to in the past

### 16. Graffiti and fly-posting

- extends graffiti removal notices (as introduced by the Anti-social Behaviour Act 2003) to include fly-posting;
- improves local authorities powers to tackle the sale of spray paints to children;

- strengthens the legislation to make it harder for beneficiaries of fly posting to evade prosecution;
- enables local authorities to recover the costs of removing illegal posters.

## 17. Waste

- amends provisions for dealing with fly-tipping by:
  - ⇒ removing the defence of acting under employer's instructions
  - ⇒ increasing the penalties
  - ⇒ enabling local authorities and the Environment Agency to recover their investigation and clear-up costs
  - ⇒ extending provisions on clear up to the landowner in the absence of the occupier.
- gives local authorities and the Environment Agency the power to issue fixed penalty notices (and, in the case of local authorities, to keep the receipts from such penalties):
  - ⇒ to businesses that fail to produce waste transfer notes
  - ⇒ to waste carriers that fail to produce their registration details or evidence they do not need to be registered
  - ⇒ for waste left out on the streets (local authority only)
- introduces a more effective system for stop, search and seizure of vehicles used in illegal waste disposal; and enabling courts to require forfeiture of such vehicles
- introduces a new provision covering the waste duty of care and the registration of waste carriers
- introduces a new requirement for site waste management plans for construction and demolition projects
- repeals the divestment provisions for waste disposal functions to provide greater flexibility for local authorities to deliver waste management services in the most sustainable way
- reforms the recycling credits scheme to provide increased local flexibility to incentivise more sustainable waste management.

## 18. Dogs

- replaces dog byelaws with a new, simplified system which will enable local authorities and parish councils to deal with fouling by dogs, ban dogs from designated areas, require dogs to be kept on a lead and restrict the number of dogs that can be walked by one person.
- gives local authorities, rather than police, sole responsibility for stray dogs.

## 19. Noise

- reduces nuisance caused by noise by giving local authorities to:
  - ⇒ deal with burglar alarms
  - ⇒ impose fixed penalty fines on licensed premises that ignore warnings to reduce excessive noise levels
- gives local authorities greater flexibility in dealing with noise nuisance.

## 20. Architecture and the Built Environment

- establishes the Commission for Architecture and the Built Environment (CABE) on a statutory basis.

## 21. Miscellaneous

- enables local authorities to recover the costs of dealing with abandoned shopping trolleys from their owners
- extends the list of statutory nuisances to include light pollution and nuisance for insects

- improves the contaminated land appeals process.
22. The act is a key part of the Department for the Environment Food and Rural Affairs' five-year environment strategy to clean up people's immediate environment, boost sustainable development, increase energy efficiency and care for rural communities.
  23. Some believe the Act is poorly drafted in places, is unnecessary in others and that its liberal use of fixed penalty notices is an invitation to confrontation with the public. Particularly if the public see these powers as a means of raising revenue through enforcement with little or no accountability.
  24. The Local Government Association has been very supportive of the Act saying that it now gives local government all the powers it has craved for years to finally stamp out environmental crime.
  25. The new act streamlines powers dealing with abandoned vehicles, empowers local authorities to tackle graffiti, litter and dog fouling and will free up police resources when local authorities have the power to search vehicles suspected of being involved in fly tipping.
  26. The campaign group Encams is also a keen advocate of the new legislation. They have argued that giving councils discretion over the size of fines allows them to clamp down in areas where graffiti, litter or dog fouling is a serious concern. But they have also sounded a note of caution. They point out that it is really important that whoever is enforcing the act is properly trained and fully understands the extent of their powers and uses them appropriately. Local authorities also have to be clear and run a communication strategy, which allows people to stay on the right side of the law. They also express concerns about funds going back into local environmental quality.
  27. The noise nuisance section of the new Act is considered, by many, to have been hurriedly rushed through and badly drafted. The Noise and Statutory Nuisance Act 1993, which was never brought into effect, adequately dealt with misfiring intruder alarms. Existing powers have been watered down by the new legislation. Alarms no longer have to be fitted with a 20-minute cut off, only one key holder is required rather than two and councils now have to designate alarm notification areas by writing to each householder, rather than adopting the powers borough-wide. There are also concerns about how to keep tabs of people moving home, and how to ensure new householders are kept informed of their responsibilities.
  28. The act also extends the Noise Act to licensed premises allowing local authorities to issue fixed penalty notices on noisy pubs and clubs. Many believe this is overkill, as powers already exist under the Environment Protection Act 1990, the Licensing Act 2003 and the Anti-social Behaviour Act 2003.
  29. The provision in the Act to defer serving abatement notices for seven days is also seen as pointless, seven days not being long enough for anyone to realistically be able to achieve any kind of arbitration. However, one positive to come out of the noise section of the act is that Councils will now no longer have to get a magistrate's permission to cut off an external alarm that has been ringing for 20 minutes.
  30. Another area of concern is how practical legislators have been in adding artificial light to the list of nuisances under part 111 of the Environmental Protection Act. Other Environmental Protection Act nuisances either impact on public health or prevent people's enjoyment of their premises.

31. Light nuisance is going to be much more difficult as light can be kept out with curtains whereas noise can't be kept out so easily. Street lighting and other major sources of light pollution are exempt from the legislation, which seems to be largely aimed at resolving neighbour disputes over security lighting. This does mean that local authorities Environmental health staff run the risk of becoming yet further embroiled in neighbour disputes.
32. The provisions in the Act relating to Stray dogs marks a major change to the current legal position, which since 1906 has been the responsibility of the police. The Clean Neighbourhoods and Environment Act finally hands strays exclusively to local authorities. Previously they were shared responsibilities which had evolved in to a situation where the responsibility was councils during the day and the police at night. There is an acceptance that whilst this is a logical way to handle strays, Councils are not going to have the funds for holding kennels or 24-hour animal welfare teams.
33. The Act now contains some specific powers that Parish/Town Councils can now make Dog Control Orders. This new power will require a considerable degree of liaison with Parish and Town Councils to ensure that there is a sensible application of these powers and there is some degree of consistency across the County on enforcement.
34. Having considered the Fixed Penalty provisions of the Act, Officers have expressed concern over the scope for Fixed Penalty notices to cover the costs of funding services in a rural County.

### **Current Position**

35. The authority has started to implement the relevant provisions of the Act and whilst this has not been completely finalised it is expected that the new powers will be delegated in accordance with Appendix 1 to this report.
36. The Cabinet Member has now set the level for Fixed Penalty Notices for those areas where powers have now commenced, these being £100 for Litter, Fly Posting and Graffiti offences (reduced to £50 if paid within 14 days). In addition as soon as the relevant part of the Act is commenced Fixed Penalty Notices for Dog Offences will also be set at £100 (reduced to £50 if paid within 14 days).
37. Charges for the collection of Abandoned Shopping Trolleys have not yet been set, work is being undertaken with our contractors to establish a fixed charge. The Clean Neighbourhoods and Environment Act 2005 has improved the procedure for local authorities to recover their costs for abandoned shopping trolleys. It applies where a six-week period has expired and a trolley has not been claimed; the authority then become entitled to sell or dispose of it. In such cases the local authority may charge a person who appears to be the owner, an amount to cover the removal, storage and disposal of the trolley. This legislation cannot be enacted until a resolution has been made by a local authority to introduce the powers in its district or parts of its district and a period of consultation with businesses has been undertaken. How this consultation is to be undertaken is subject to guidance that is yet to be issued by DEFRA. It is considered that the relevant charges should not be levied until the guidance is issued as it may lead to legal challenges over the application of any charges to retail premises.

## **Risk Management**

Loss of reputation from not enforcing new powers.

## **Recommendation**

**THAT The report be noted subject to any comments Members may wish to make to the Cabinet Member (Environment).**

## **Background Papers**

- The Clean Neighbourhoods and Environment Act 2005
- Draft Guidance on the Clean Neighbourhoods and Environment Act 2005 - A Consultation Document - October 2005