

# **Environmental and Planning Services Standing Scrutiny Panel**



**Epping Forest  
District Council**

**Date of meeting: 16 November 2005**

**Portfolio: Environmental Protection  
Community Well Being**

**Subject: Clean Neighbourhoods & Environment Act 2005 (Part 1)**

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## **Recommendations/Decisions Required:**

- (1) To note the content of the Clean Neighbourhoods and Environment Act 2005;  
and**
- (2) To receive a further report on the guidance consultation and the use of  
Community Wardens at a future meeting**

## **Report:**

### Introduction

1. The Clean neighbourhoods and Environment Act 2005 is a substantial piece of new legislation covering a very wide range of issues. The Panel wished to receive a report on the Act, and furthermore, following a specific request by Councillor Mrs Whitehouse, details on the use of Community Wardens and how their use / deployment interfaced with the Act and the additional powers it provides.

2. It is therefore proposed to address the issues in two parts:

Part 1: An introduction to the Act, its new powers and possible consequences

Part 2: The Government consultation on the guidance and the issue of Community Wardens

This is the part 1 report.

### Background to the Act

3. The Act received the Royal Assent on the 7<sup>th</sup> April 2005. Its publication and introduction followed a government consultation exercise during 2002, which this Council responded to. The consultation sought views on how better to manage the environment and how to more effectively deal with environmental issues which caused great concern to residents (e.g. litter, dumping, fly-tipping, fly-posting etc). Some of these issues have been legislated through the Anti-social Behaviour Act 2003, but the majority of the issues are dealt with in this Act.

4. What is very clear is that Government, having listened to the concerns of local authorities and provided a raft of new powers, expects to see these new powers used, bring the improvements in environmental condition which residents wish to see. The Act is in a number of parts covering the following broad issues:

Part 1: Crime & disorder  
Part 2: Vehicles

Part 3:	Litter & refuse
Part 4:	Graffiti & other defacement
Part 5:	Waste
Part 6:	Dogs
Part 7:	Noise
Part 8:	Architecture & the Built Environment
Part 9:	Other
Part 10:	Other

### Crime & disorder

5. The Crime & Disorder Act 1998 requires local authorities to implement crime reduction strategies. Part 1 of this Act now requires these strategies to take into account “low level” crime such as litter, graffiti, fly-tipping etc.

6. The Act amends the Highways Act and enables local authorities to erect a physical barrier restricting public access to a highway over which the public would normally have access. These are known as “Gating Orders” and provide a means of dealing with nuisance behaviour in such areas. The Order does not permanently remove the access thereby enabling the decision to restrict to be reviewed at a later date.

### Vehicles

7. The Act creates a range of new offences in relation to:

- selling vehicles on the roadside
- repairing vehicles on the road

These powers are intended to deal with garages and other businesses creating a nuisance through these types of activities. Powers are also provided to issue a fixed penalty notice for these offences.

8. Additional powers have been provided with regard to abandoned vehicles, including:

- the use of fixed penalty notices
- easier removal from private and other roads
- speedier removal where vehicles are abandoned and should be destroyed
- speedier destruction of vehicles held in storage after removal

These powers are useful, but care will be needed to ensure that the public understands the effects. We have many instances now of owners disputing the Council’s action in removing a car reported as and removed due to abandonment. If vehicles are destroyed in a shorter time frame, such problems may increase.

9. Powers are provided to deal with “nuisance parking” on land which is not a road, and enables vehicles to be treated as abandoned with equivalent controls as set out above.

### Litter & refuse

10. A number of changes have been made with regards to offences relating to littering and refuse. In summary these are:

- the offence of dropping litter is extended to all places in the open air where the public have access without payment. This includes land owned by local authorities, statutory undertakers, educational establishments and the Crown
- the offence has been extended further to deal with dropping litter in rivers and lakes and down to the low water mark for coastal authorities
- where local authorities issue fixed penalty notice for the offence of littering, the authority may determine the level of that penalty. Where they choose not to the penalty will be £75.

As with a parking offence, the penalty may be reduced if paid within a defined period of time.

- the Act provides authorised officers with the power to require the name and address of someone suspected of littering; it is an offence not to provide those details
- Parish and Town Councils are designated as litter authorities and can authorise officers to issue fixed penalty notices
- the previous power to designate areas as “litter control areas” has been repealed and replaced with a power to serve “litter clearing notices” on occupiers of land where it is considered that they or their business activity is responsible for the littering.
- the existing law on the service of “street litter control notices” is extended to include street vendors, vehicles and stalls. Enforcement has been simplified by the removal of the requirement to seek consent from a Magistrates’ Court before the notice could be enforced
- fixed penalty offences become available for these street littering offences, with the authority being able to set the penalty, or where it does not, it being set at £100
- local authorities are able to better control the distribution of free literature, through a consent system in designated areas. Fixed penalties can be applied.
- the definition of litter has been amended to ensure that discarded cigarettes, cigars and chewing gum are clearly included as litter

11. The above changes are considerable and provide a raft of powers for dealing with litter, all of which are to be welcomed. However, the authority will have to carefully consider whether and how to use these powers, particularly those involving the use of fixed penalty offences, which in general terms are best issued by officers in uniform.

#### Graffiti & other defacement

12. The Anti-social behaviour Act 2003 provides powers for authorised officers to issue fixed penalty notices for the offences of graffiti and fly-posting. The penalty was £50. AS with litter, this Act enables the authority to set the penalty, but where it does not, the penalty is set at £75. These powers are also extended to Parish and Town Councils, but the penalty level must be that set by the principal litter authority (i.e. the district council).

13. The present power to require, by service of notice, the removal of graffiti, is extended also to fly-posting.

14. There are other changes:

- powers for Trading Standards to deal with the sale of aerosol paints to children
- changes to the defence available to landowners in the Town & County Planning Act 1990 in respect of action on illegal advertisements, in that the local authority no longer has to prove that the landowner consented to the display of an advertisement
- the powers to deal with placards and posters are simplified, in that where a notice served is not complied with, costs can be recovered from a person whose goods or services are identified on the placard or poster.

#### Waste

15. There are new and revised powers in respect of the transport of waste. In summary these are:

- where waste is illegally transported, the defence of acting “under the instructions of an employer” is removed
- changes to registration requirements (not a district function)
- to provide the same powers of stop and search of vehicles to the police and district councils as currently provided to the Environment Agency. Only a police officer may stop a vehicle on the highway, and if a police officer detains a vehicle he is deemed to have done so on behalf of the local authority.
- fixed penalty notices may be issued to deal with offences, the level being set at £300.

16. These additional powers are far reaching, but will need considerable thought ahead of

use. The nature of the issue, and dealing with illegal transportation of waste has potential for the health & safety of officers, and it is unlikely that action will be pursued without the support of a uniformed police officer.

17. In dealing with the illegal depositing or disposal of waste, the following is a summary of the changes / revisions:

- where waste is illegally deposited, the defence of acting “under the instructions of an employer” is removed
- penalties are increased from £25,000 to £50,000 and the term of imprisonment increased to 5 years
- on conviction the investigating authority can seek to include the costs of the investigation in any claim for legal costs
- on conviction a Court can award “clean up costs” to the investigating authority
- on conviction a Court may confiscate vehicles
- creation of fixed penalty offences for incorrect documentation, the penalty being set at £300
- to provide the same powers of stop, search and seizure of vehicles to the police and district councils as currently provided to the Environment Agency. Only a police officer may stop a vehicle on the highway, and if a police officer detains a vehicle he is deemed to have done so on behalf of the local authority

18. As under transportation, these new investigative and control powers are extensive, and the same caveats apply.

19. There are a raft of changes relating to local authority waste collection and disposal functions, summarised as follows:

- the requirement for disposal authorities to contract out disposal is revoked
- local authority can issue fixed penalty notices to persons who do use the correct waste receptacles. The penalty can be set by the authority, but if not is £100.
- changes to the arrangements for the payment by the County of recycling credits to collections authorities. This is currently the subject of a separate consultation exercise.
- extension of the power to require occupiers of land to clear rubbish to the owner where the occupier cannot be determined. The Environment Agency and collection authorities have power to act in default and recover costs
- authorities can retain fixed penalty income
- investigatory powers extended to match those of the Environment Agency

### Controls on Dogs

20. The making of Dog byelaws is replaced by “dog control orders”. These will be easier to make than byelaws and will be available to local authorities and town and parish councils. Model offences will be put forward by government.

21. There will be changes to the current fixed penalty arrangements enabling an authorised officer of a town or parish council to enforce orders made by the principal authority. As for other fixed penalties the penalty can be set by the local authority or will otherwise be £100. Names and addresses can be demanded or an offence is committed.

22. As for litter offences, thought will have to be given to these new enforcement powers, with particular consideration to the use of uniformed officers.

23. At present the responsibility for dealing with stray dogs is shared jointly with the police. This act removes the responsibility from the police. This is a concern, especially if there is an expectation that local authorities will provide a 24/7 service for the collection and kennelling of stray dogs.

## Noise

24. The Council already has extensive powers for dealing with noise nuisance. However, society is becoming noisier and unfortunately certain elements within our communities continue to make a nuisance to the detriment of their neighbours. The Act provides extensions to powers, summarised as follows:

- ability to designate part of the district as an “alarm notification area”, whereby key holders must be notified to local authorities, who can then require action in respect of intruder alarms. There are fixed penalty notices associated with these procedures
- officers have powers to enter premises to deal with noisy alarms. The new Act provides additional protection through indemnifying officers (and the authority) who have acted in good faith
- changes are made to the fixed penalty arrangements within the Noise Act 1996 (deals with night time noise), whereby penalty levels can be set and income retained. Officers can also require names and addresses to be provided. A further provision extended these powers specifically to licensed premises is provided, with a higher fixed penalty provision of £500.
- The law at present requires an officer to serve an abatement notice if he/she believes that a noise nuisance exists. The new Act enables this action to be deferred for 7 days if an officer believes that persuasion may provide the solution. If at the end of the 7 day period the nuisance remains, the statutory notice must be served.

## Architecture and built environment

25. Not relevant to district councils

## Miscellaneous

26. The Act sets out appropriate usage for retained fixed penalty income by district and local councils, which in the main relate to environmental protection and anti-social behaviour.

27. Authorities are empowered to recover costs associated with abandoned shopping trolleys, whether claimed by the owners or not

28. Insect nuisance from trade or industrial premises are now included as a statutory nuisance. Artificial light from certain premises is similarly included.

## Enactment

29. Not all of the Act is yet in force, the majority of it becoming available for use in April 2006, subject to the detailed guidance being available by that time. The elements currently in force are (as of 7<sup>th</sup> June 2005):

- selling or repairing vehicles on the road
- extension of litter to all open places
- extension of definition of litter to include cigarettes and gum
- changes to statutory defences relating to illegal advertisements
- changes to statutory defences relating to transportation and deposition of waste
- receipts from noise fixed penalty notices extended to intruder alarms
- increase in pollution fines to £50,000 etc.

## Comments on changes / additions

30. Reference has been made in the foregoing text about how the Council will need to consider some of these new powers. It is clear that government will expect these new powers to be used, and this expectation will certainly extend to residents, especially as the new arrangements come into force in April next year.

31. The fundamental issue for the Council revolves around the use of fixed penalty notices; whether and how they are to be used. Whilst there are some authorities who empower non uniformed officers to issue fixed penalty notices, by and large the officers enforcing in this way are uniformed. This is for the following reasons:

- (1) offenders are more likely to respond to a uniformed person because they are clearly identified and can be seen as a person in authority;
- (2) uniformed officers can be accredited, under the Police Reform Act 2002, providing them with specialist training and police support in their work; and
- (3) non uniformed officers are considered to be 'at risk'

32. It is possible for the council to authorise other persons to undertake some of these enforcement roles, and this extends to the police and police community support officers for certain offences. This will be dealt with in greater detail in the next report on the guidance and Community Wardens.

33. Some of the new provisions will be able to be utilised once they are available, as part of normal enforcement duties. It is likely that Cabinet will be required to amend the existing levels of delegated authority to relevant officers, and this will be dealt with once the guidance is confirmed at commencement dates confirmed.