

Report to Environmental and Planning Services Scrutiny Standing Panel

Date of meeting: 1 December 2005

Subject: Clean Neighbourhoods and Environment Act 2005

Draft Guidance Consultation

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Recommendation:

That the Panel consider and respond to the questions identified in the report which seeks views on the draft Government guidance for the Clean Neighbourhoods and Environment Act 2005

Introduction

1. The Clean Neighbourhoods and Environment Act 2005 received the Royal Assent in April 2005. Some measures came into force in June, some in October but the majority do not come into force until April 2006. Before bringing these later powers into being the Government is consulting upon the guidance government it intends to provide to local authorities in support of the new legislative provisions. Separate guidance will be issued by the Home Office and the ODPM with regard to 'Gating Orders' and flyposting respectively.
2. The consultation period ends on the 2 January 2005 and alongside the basic guidance document is also seeking views on the need to support the guidance through advice, peer support, seminars, workshops and the like.
3. At the last meeting of the Panel members received an introduction to the Act, the issues it covered and the new powers that were to be made available to local authorities. Members are requested to bring that report and the guidance to the meeting since this paper will cover the issues in the same order. It is therefore not proposed in this report to set out again the basic details but just to deal with the specific questions posed by the consultation.

Crime and Disorder

4. Strategies made under the auspices of the Crime & Disorder Act 1998 will be required to include specific references to environmental crime. Government wish to ensure that matters such as littering, flyposting & graffiti are included, and following local audits strategies include action to deal with it. The next round of audits are due in 2007 and then published in 2008.

Question: Do you have any comments on the guidance regarding inclusion of environmental crime into crime & disorder partnerships and strategies?

Nuisance parking offences

5. These new powers only relate to offences under this Act and not to any other parking offences. These new offences are targeted at:
 - (a) persons who run businesses and sell vehicles from local streets; and
 - (b) persons who run businesses and repair vehicles on local streets.

In neither case is it intended to penalise residents who wish to sell a vehicle. Similarly where a resident needs to undertake repairs to a vehicle on the road in order to be able to move it they can, but it must not cause a nuisance or go on for longer than 72 hours.

6. With respect to the sale of vehicles it is proposed to apply where:

- (a) a person leaves two or more vehicles are parked within 500 metres of each other on a road or roads which are advertised for sale; or
- (b) a person causes this to happen

The fine is up to £2,500

7. In respect of vehicle repairs, an offence is committed if repairs are carried out on a road. There is a defence to demonstrate that repairs were not part of a business or for reward, but this defence does not apply if there is reasonable cause for annoyance to persons in the vicinity. This would mean that ordinary residents will be 'caught' if they repair cars on the road and the authority believes that this is causing annoyance to local people.

The fine is also £2,500.

The 72 period of grace can be extended by the local authority

Question: Do you have any comments on the guidance for nuisance vehicles?

Abandoned vehicles

8. This guidance supports the existing legislation and changes to it made by this Act. Existing legislation makes it an offence to abandon a vehicle on any land in the open air or on any other land forming part of the highway. The maximum penalty is £2,500 and this Act provides the power to issue fixed penalty notices in lieu of formal Court action.

9. Local authorities have a duty to remove abandoned vehicles, but where these are not on the highway, they are not required to do so if the cost is unreasonably high. The law does not prescribe 'abandoned' but the guidance sets out 'clues' such as:

- untaxed
- no DVLA record
- present for a long period of time
- significant damage
- burned out
- lacking one or more number plates
- containing waste

However, no road tax is not considered sufficient of itself to assume abandonment.

10. Removal from non highway land is dependant upon cost. However, the guidance suggests that local authorities should not refuse to remove abandoned vehicles on these ground unless costs are "unreasonable"

Question: What constitutes unreasonable cost and should government provide guidance by setting a monetary or percentage value?

Litter & refuse

11. There are a range of changes and additions to the legislation relating to litter & refuse. There are 8 questions on this part of the guidance. The basic changes were set out in the last report in paragraphs 10 and 11. It is not practical in this report to set out all the various changes in detail and members are therefore requested to read part 5 of the guidance document so that the questions set out on page 24 can be responded to.

12. It is the view of officers that the guidance is clear and helpful, but the guidance is not solely targeted at local authority professionals and members. The guidance is also intended to assist the public who wish to complain where necessary to take action upon a landowner for their failure to keep land free of litter etc. Members are therefore requested to read and consider the guidance in that light and make comment as appropriate.

Graffiti and other defacement

13. The Anti-social behaviour Act 2003 empowered local authorities to serve notices on statutory undertakers and others to remove graffiti. These powers were trialed in 12 local authorities, including Epping Forest starting in April 2004. These powers are now to be rolled out on a national basis, and local authorities and statutory undertakers are encouraged to set up graffiti partnerships.

14. This Act further extends these powers to deal with flyposting. Further guidance will be issued on this particular subject in due course. The notices to be served will be known as “defacement removal notices”.

15. The defences of landowners relating to flyposting, placards and posters have strengthened council powers, in that it is no longer a defence for a landowner to simply claim that they were not aware. They have to clearly prove that they did not know, or that steps were taken to prevent or remove the display. defacement notices should not be used in these circumstances, but for street furniture and statutory undertakers’ equipment.

16. There are a number of questions posed on page 70 of the guidance document, which can best be dealt with by the Crime Reduction Coordinator, especially given the Council’s and his experience through the graffiti trials previously mentioned. It is hoped that he will be able to attend the meeting or else provide written assistance to enable the questions to be responded to or commented upon.

Waste

17. 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 are 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.

18. These powers are intended to enable authorities to deal more effectively with illegal dumping and provide a more effective waste audit trail.

Question: Do you have any comments on the guidance relating to the transportation of waste?

Deposit and disposal of waste

19. 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

20. This part of the Act also empowers waste collection authorities to issue fixed penalty notices with respect to sections 46 and 47 of the Environmental Protection Act 1990. This issue was discussed at the last cabinet meeting when delegation was sought for officers to utilise these powers. cabinet agreed in principle but deferred any use until a further report to the February 2006 meeting.

21. The powers to require land owners to deal with fly-tipped waste have been widened to enable action to be taken against an owner where there is no occupier, the occupier cannot be found or the occupier has failed to comply with earlier enforcement action. Whilst rightly considered to be an action of last resort, the powers may be useful in dealing with waste when all other investigative avenues have proved to be fruitless.

22. The powers of investigation by officers have also been widened to include (inter alia):

- powers of entry
- be accompanied by another officer or constable
- powers to investigate as required
- powers to take photographs, measurements etc
- powers to take samples
- powers to seize equipment and materials
- powers to require document disclosure

Question: Do you have any comments on the guidance relating to deposit & disposal of waste?

Waste disposal functions

23. This part of the guidance relates specifically to the waste disposal authorities such as Essex County Council, because it enables WDAs to provide disposal facilities themselves rather than having to contract these services out. However this part of the guidance also relates to the relationships between WDAs and WCAs with a view to ensuring that best value is provided across the entire waste management process for the local taxpayer.

24. The current partnership between the County Council and the Districts / Boroughs demonstrates that in Essex the thrust of the guidance is already being adhered to. Rather than go into detail on the existing arrangements in this report, it is suggested that members read this section and raise any issues at the meeting.

Question: Do you have any comments on the guidance relating to waste disposal functions?

Dog control orders

25. The Act replaces the somewhat cumbersome system of dog control orders with Dog Control Orders. The regulations enabling this are set out as appendices to the guidance document.

Question: Do you have any comments on the draft regulations?

26. The regulations provide for five offences:

- (i) failing to remove dog faeces
- (ii) not keeping a dog on a lead
- (iii) not putting a dog on a lead if requested to do so
- (iv) allowing a dog onto land where a dog is not permitted
- (v) taking more than a specified number of dogs onto land.

The penalty for non compliance is £1,000 or the penalty can be discharged through a fixed penalty notice.

Orders can be made by district and town/parish councils

27. The land to be included in the order is effectively the same as for litter, namely all land open to the air, including that partially enclosed such as bus shelters and railway platforms. The Secretary of State intends however to exclude certain land including:

- (a) forestry commission in relation to all dog control orders
- (b) roads in relation to excluding dogs from specified land.

Question: Should any other land be excluded?

28. There will be a defence for a dog owner where the act takes place with the consent of the land owner. Other defences include working dogs and 'specialist' dogs used by persons with visual or hearing difficulties or similar.

Question: Should there be other exemptions?

29. Orders may be made by primary and secondary authorities (i.e. district and boroughs, Counties where there is no district, London Boroughs etc). Secondary authorities are town and parish councils. The Secretary of State can designate other organisations as secondary authorities thereby providing them with the power to make orders. An example in this area might include the Lee Valley Park Authority.

Question: Views on the extension of secondary authorities?

30. It will be important to avoid an overlap of 'conflict' between primary and secondary authorities in making and enforcing orders. It will therefore be necessary for the respective authorities to consult.

Question: Should this consultation be made a legal requirement?

Noise

31. 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.

32. The Act also clarifies the circumstances whereby an authorised officer may gain entry to a property where an alarm is sounding continuously. Entry is permitted initially without force and an alarm can be silenced. Entry by force is only permitted on the basis of a warrant and all other steps must first have been attempted. The Act also makes it clear that provided officers acted in good faith neither they nor the authority can be held liable following action to silence an alarm.

33. It is worth noting that in the context of this part, car alarms are not included in these controls.

Question: Do you have any comments on the guidance relating to noise or intruder alarms?

Fixed penalty notices

34. Whilst there are very few specific questions about fixed penalties, it is important that members understand what is proposed. Fixed penalty notices (FPN) are seen as an expedient way of dealing with offences, and are seen by the government as having public support provided that their use is seen as reasonable and even-handed.

35. FPN are seen as part of an overall environmental crime strategy, with a mix of use of FPN for “lesser” offences and action through the courts for the more serious. It is suggested that the use of FPN be part of the Council’s enforcement policy and it should be introduced following consultation with the community and other agencies, particularly of course the Police.

36. FPN should only be used where there is sufficient evidence to support a formal prosecution, and where FPN are not paid they have to be followed up through the courts. Furthermore, there should be careful planning and consideration ahead of their use, with a well publicised lead-in period in order to ensure community support and acceptance.

37. Pages 128 and 129 set out which offences can be dealt with via the FPN procedure, along with the fines which can be levied. In most cases the fines can either be set by the authority, or if they choose not to do so, there is a government set default fine. Officers within Essex have been considering this consultation with a view to seeking a countywide approach to the use of FPN and the level of fine. There is merit in this approach since there will be public disquiet if a FPN fine in one district is noticeably different in one district than another for the same offence. At present officers feel that the default fine should be adopted along with the early payment reduction (see pages 130 – 131)

Question: Do you have any views on the level / range of penalties?

38. On the same theme of consistency, officers feel that there is merit in all councils using the same FPN pads and related documentation. The consultation refers to this and asks:

Question: Should Defra, with practitioners develop model paperwork for placement on the Defra website?

39. The income from FPN can be retained by authorities to use on related issues. The table on pages 133 – 134 sets out where and how the income can be used.

Other issues

40. The remainder of the consultation deals with issues such as abandoned shopping trolleys and changes to nuisance provisions relating to insects and light. Questions 37 to 45 relate to these more technical matters and on this basis they are not set out in this report. Officers will however provide comment as appropriate for members to consider at the meeting so that the response has full member involvement and endorsement.