

Leicester
City Council

WARDS AFFECTED
All

CABINET

30 OCTOBER 2006

CLEAN NEIGHBOURHOODS & ENVIRONMENT ACT 2005

Report of the Corporate Director of Regeneration & Culture

1. Purpose of Report

This report provides details of the new powers and responsibilities contained within the Clean Neighbourhoods & Environment Act 2005. It sets out an implementation framework for endorsement and seeks Cabinet approval of the amounts for the various fixed penalty notices covered by these provisions.

2. Summary

- 2.1 The Clean Neighbourhoods and Environment Act 2005 deals with many of the problems affecting the quality of our local environment and shares close links with anti-social behaviour, vandalism, disorder and levels of crime.
- 2.2 Since receiving Royal Assent the provisions within the Act have gradually been phased in, with the majority of provisions having now been brought into force and final government guidance has now been issued.
- 2.3 The Act provides local authorities, parish and community councils and the Environment Agency with more effective powers and tools to tackle poor environmental quality and anti-social behaviour. In particular, the Act includes sections on nuisance and abandoned vehicles, litter, graffiti, waste, noise and nuisance dogs. This report includes a summary of all of the main provisions of the Act in the Supporting Information at Section 2.
- 2.4 The report also sets out the key organisational arrangements officers have put in place in the Regeneration and Culture Department to ensure the effective implementation of the Act.

3. Recommendations

Cabinet is asked to:

- 3.1 Endorse the broad framework for implementation of the Act as set out in this report;
- 3.2 Delegate the powers introduced by the Act to the Corporate Director of Regeneration & Culture, who will make arrangements for these powers to be exercised by the relevant officers on her behalf (summarised in Section 2 of the Supplementary Information);

- 3.3 Approve the recommended amounts for the various fixed penalty notices, as set out in Appendix 1;
- 3.4 Authorise the Corporate Director of Regeneration & Culture, in consultation with the Cabinet Lead Member, to set any discounted amounts for early payment of fixed penalty notices covered by this report (Paragraph 2.58 of the Supplementary Information);
- 3.5 Endorse the proposal that fixed penalty notice receipts are retained within the relevant service areas, to help offset enforcement costs (Paragraph 2.56 of the Supplementary Information);
- 3.6 Require that Area Committees are consulted about issues of local concern and that, in particular, that they are consulted prior to the implementation of any new area-based powers (e.g. Street Litter Control Notices) or any special area-based enforcement initiatives (e.g. tackling the issue of wheelie bins and side waste on pavements) (Paragraph 3.7 of the Supplementary Information);
- 3.7 Authorise the Corporate Director of Regeneration & Culture, in consultation with the Cabinet Lead Member, to start consultation on the designation of the city centre as an area subject to controls over the distribution of printed matter(Paragraph 2.27 of the Supplementary Information);
- 3.8 Request that the Corporate Director of Regeneration & Culture brings further reports to Cabinet in relation to the potential adoption of new powers in relation to audible intruder alarms, dog control orders and the proposed transfer of responsibility for stray dogs from the police (Paragraphs 2.51, 2.46 and 2.48 of the Supplementary Information);
- 3.9 Request that the Corporate Director of Regeneration & Culture in liaison with the Corporate Director of Adult Services enters into discussions with the Chief Police officer over collaborative working in this area and, in particular, in relation to the potential for Police Community Support Officers to issue fixed penalty notices on behalf of the Council (Paragraph 2.60 of the Supplementary Information);
- 3.10 Request that the Corporate Director of Regeneration & Culture develops, in conjunction with the Youth Offending Team and police, procedures and protocols for the issuing of fixed penalty notices to juveniles (Paragraph 2.61 of the Supplementary Information); and
- 3.11 Request that the Corporate Director of Regeneration and Culture incorporates options for addressing any resourcing implications associated with the Act in the Department's Revenue Strategy for 2007/08 (Paragraph 3.5 of the Supplementary Information).

4. *Headline Financial and legal Implications*

Financial Implications

- 4.1 The Clean Neighbourhoods and Environment Act provides a range of additional enforcement powers, which the Department can use to target particular areas of concern.
- 4.2 To some extent the new enforcement powers can be applied using existing resources within the Street Scene Division. However the full resource

implications depend upon the extent to which the powers are applied in problem areas.

- 4.3 Costed alternative options will be provided in the draft Departmental Revenue Strategy for 2007/08. Whilst there will be additional income from the fixed penalty notices there will also be additional collection and legal costs and therefore applying these new powers will not be self financing

Financial implications author: Martin Judson, Head of Finance, Regeneration & Culture

Legal Implications

- 4.4 Section 2 of the Supporting Information summarises the main powers the Clean Neighbourhoods and Environment Act 2005 (“the Act”) gives to the Council to deal with problem areas and is designed to improve the quality of the local environment.
- 4.5 Appendix 1 to the report lists the amounts of fixed penalties the Council can set in relation to offences committed under the Act. Regulations allow the Council to specify the amount of the fixed penalty in relation to certain offences, detailed in the appendix between £50 and £80 and £75 and £110 depending on the offence. Therefore by approving the amounts this will allow the Council to set the maximum figure possible.
- 4.6 Although the Council now have more powers to act on a number of offences, to issue FPNs the authorised officers need to be satisfied that they have evidence of all of the elements of the offence, to prove beyond reasonable doubt that the offender committed the offence. Therefore full training will need to be given to the officers and procedures put in place so that if prosecution takes place the offences can be proved in Court.
- 4.7 Discussion has taken place between Regeneration and Culture Departments and Legal Services and elements of training already have been given in relation to certain offences in the Act. This is an ongoing process and meetings and discussions will need to take place, primarily with the Legal Services Regulatory Team to satisfy these requirements and set up the necessary procedures in relation to elements that have to be proven. This will involve a considerable increase in the workload of legal services and regeneration and culture departments and has resource implications.
- 4.8 An FPN if paid discharges the liability of conviction for which the FPN was given. Failure to pay the FPN means that the Council can take court action against that person by means of prosecution for the original offence. Therefore the Regulatory team can consider unpaid FPNs for prosecution in the magistrates Court, This underlines the requirements for procedures to be put in place so as all the evidence can be collated and considered in the event of non payment.
- 4.9 If the Council do at a later date allow discount payment on FPNs for various offences then this will need to be incorporated into the FPNs issued. Strict monitoring will be required by the payment collection teams to ascertain the date of payment in relation to the date of issue of each FPN
- 4.10 Discussion will need to take place as mentioned in paragraph 3.9 of the report in relation to considering if Police Community Support Officers can issue FPNs on

behalf of the Council and I would recommend that Legal Services is included in these discussions. Again any extension of the FPN procedures will involve increase in workload for legal services and regeneration and culture departments.

- 4.11 The Corporate Director of Regeneration and Culture will need to make sure that the delegated powers list is updated and the relevant authorised officers warrant cards are amended so that they have the relevant powers to issue FPNs and if necessary for enforcement action to take place under the Act.
- 4.12 The bulk of legal work that will arise from the 2005 Act will be undertaken by the Legal Services Regulatory Team. The Court Rules indicate that in appropriate circumstances the legal costs, as well as the investigative costs, can be required by the court to be paid by the defendant.

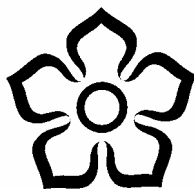
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DECISION STATUS

Key Decision	No
Reason	N/A
Appeared in Forward Plan	N/A
Executive or Council Decision	Executive (Cabinet)



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CLEAN NEIGHBOURHOODS & ENVIRONMENT ACT 2005

SUPPORTING INFORMATION

1. Background

- 1.1 On 7 April 2005 the Clean Neighbourhoods and Environment Bill received Royal Assent following a successful passage through Parliament to become the Clean Neighbourhoods and Environment Act 2005. Since that date these provisions have gradually been phased in, with the majority of provisions having now been brought into force and final government guidance has now been issued.
- 1.2 The Clean Neighbourhoods and Environment Act deals with many of the problems affecting the quality of our local environment - which forms part of a continuum with anti-social behaviour, vandalism, disorder and levels of crime.
- 1.3 The Act provides local authorities, parish and community councils and the Environment Agency with more effective powers and tools to tackle poor environmental quality and anti-social behaviour. In particular the Act includes sections on nuisance and abandoned vehicles, litter, graffiti, waste, noise and dogs.

2. Main Provisions of the Act

- 2.1 The main provisions of the Act are detailed below. Some of these provisions are complementary to existing powers, i.e. this report does not detail all of the provisions available to a local authority in relation to any given matter.

Crime and Disorder

- 2.2 Part 1 of the Act is designed to raise the profile of environmental crime in Crime and Disorder Reduction Partnerships (CDRPs). It recognises the impact that environmental crime and anti-social behaviour has on fear of crime and the role it plays in attracting more serious crime and anti-social behaviour. This part of the Act aims to ensure that local environmental quality is considered when partnerships develop strategies. The power for local authorities to gate nuisance alleyways intends to remove public access to alleyways where there is evidence that the alleyway attracts crime and anti social behaviour. The council must consult local residents and emergency services before making a gating order.

Nuisance Parking

- 2.3 Part 2 of the Act is designed to address the problem of nuisance vehicles, including those that are abandoned, those without a licence and registration mark and also those that are causing annoyance or are detrimental to the local area. Cars sold on the road through commercial businesses can cause problems and annoyance to the public and significantly blight an area. Cars repaired on the road can pose a serious health and safety hazard, take up valuable car parking spaces, look unsightly, create a noise nuisance and pollute the local environment.
- 2.4 The Act introduces two new offences targeted at people using the road to sell or repair vehicles. The definition of 'road' is that used in Section 142 of the Road Traffic Regulation Act 1984: 'any length of highway or of any road to which the public has access'. This includes both the carriageway and the footpath and access roads through estates that are owned by housing associations or the residents that live there. A motor vehicle is defined as including cars, motorbikes, the chassis of a car or motorbike, trailers and caravans.
- 2.5 The Act makes it an offence to carry out restricted works to vehicles on a road as part of a business or otherwise for reward or gain or in a way that gives reasonable cause for annoyance to people nearby. Restricted works are defined as the repair, maintenance, servicing, improvement or dismantling of a motor vehicle or any part of or accessory to a motor vehicle, including works for the installation, replacement or renewal of any such part or accessory.
- 2.6 A person will not be convicted if he/she can prove the works were not carried out as part of a business or for gain or reward. However, this defence does not apply where the carrying out of those works gives reasonable cause for annoyance to persons in the vicinity. There is no legal definition of 'reasonable cause for annoyance' and it will be up to the local authority officer's discretion to decide what constitutes an annoyance. There is also an exemption for repairs resulting from a breakdown or accident, provided they are carried out within 72 hours, or such time as the local authority authorises. Local authorities can, under this section, authorise repairs to go on longer than 72 hours.
- 2.7 The Act will also make it an offence to expose or advertise two or more vehicles for sale within 500 metres of each other. The target is not the individual private seller, so a person will not be convicted if they can prove that the vehicle sale was not as part of a business. However, DEFRA has indicated that it is considering amending these provisions to remove a number of loopholes that have already been identified.
- 2.8 In addition to the power to prosecute, local authorities may issue a fixed penalty notice (FPN) of £100. Local authorities may set a lesser amount for prompt payment, though this cannot be below £60.

Abandoned Vehicles

- 2.9 Part 2 of the Act also gives local authorities the power to remove from a road any abandoned vehicle immediately, along with the power to issue a FPN of £200 to anyone abandoning a vehicle. This includes vehicles abandoned on a private road or a road in a housing estate. Local authorities can set a lesser amount for prompt payment, though this cannot be less than £120.
- 2.10 Local authorities also have the power to dispose of or destroy immediately any vehicles considered to be abandoned as well as any vehicles without a licence

and registration. Local authorities have no obligation to try to trace the owner. In all other cases the local authority will have to try to find the owner, but if this proves impossible, or the owner does not collect the vehicle within seven days of being contacted, the local authority can dispose of the vehicle. In all cases a vehicle can be disposed of as soon as the necessary conditions are met, without waiting for the licence to expire.

Extension of Litter Offences

- 2.11 Part 3 of the Act is designed to clear up anomalies in existing legislation and extend the powers of local authorities to require the clearance of litter, which is designed to prevent littering and encourage a more responsible attitude by businesses and individuals.
- 2.12 The Act extends the offence of dropping litter to all types of land, including aquatic environments and beaches, removing the current anomaly that littering is only an offence if it takes place on the street, park or other public space. Any litter offence can be punishable by a FPN. The Act amends the definition of litter to specifically include discarded chewing gum and cigarette ends.

Litter Clearing Notices

- 2.13 Previously, local authorities could apply the duty in section 89 of the Environmental Protection Act 1990 Act for land to be kept clear of litter and refuse to other public places (such as shopping centres) by designating litter control areas. Any occupier of relevant land within that area was then required to keep their land free from litter and refuse. However, litter control areas were rarely used by local authorities, who considered the process for designation to be overly complicated.
- 2.14 The Clean Neighbourhoods & Environment Act 2005 repeals the power to designate litter control areas. As an alternative, local authorities are now able to serve "litter clearing notices" on particular occupiers where they are satisfied that the defacement caused by the litter or refuse is detrimental to the amenity of the area. These powers are not designed for use in relation to flytipping and accumulations of rubbish on privately owned land, for which other powers exist.
- 2.15 These notices can be issued in relation to any land, including private land, but exclude: public highways; land under the control of the local authority, Crown land, relevant land of a designated statutory undertaker or educational institution or land which is covered and to which the public do not have access.
- 2.16 A litter clearing notice may be served on an occupier of any land in the open, or on the owner of the land if the land is unoccupied. Notices may require the land to be cleared of litter and refuse within a certain time, and may specify steps to be taken to prevent future defacement. It is an offence to fail without reasonable excuse to comply with a litter clearing notice. This is punishable by a fixed penalty notice (FPN), which can be set at a local level between £75 and £110, with the default amount set at £100 where no amount is set by the local authority. Local authorities may set a lesser amount for prompt payment, though this cannot be less than £60.
- 2.17 When a person fails to meet the requirements of a notice, the local authority can enter the land to remove the litter and refuse. An authority may then impose a reasonable charge for this work on the person who failed to comply with the notice.

Street Litter Control Notices

- 2.18 Local authorities can also prevent accumulations of litter and refuse in and around any street or open land adjacent to any street by issuing a street litter control notice. This imposes continuing requirements on occupiers of premises to deal with litter and refuse. Whilst there is no restriction on the type of litter for which this may be used, it is primarily intended to deal with food and drink packaging and other litter caused by 'eating on the go'. The application of Street Litter Control Notices is also extended to cover mobile vendors, who can also be required to take steps to minimise and clear up litter and refuse on any street, or open land adjacent to it, that originates from their commercial or retail activities. Local authorities can only impose 'reasonable requirements' such as the provision of litter bins or litter clearance at specified times or intervals. DEFRA advises local authorities to apply the recommendations contained within existing voluntary codes of practice. It is understood that it may be possible to use these provisions to tackle problems with cigarette ends outside of premises that are subject to the forthcoming smoke-free legislation.
- 2.19 Previously, a person only committed an offence in relation to a Street Litter Control notice if, on an application by the authority, he/she failed to comply with an order of the magistrates' court requiring compliance with the notice. This required the authority to first seek a court order for compliance where a street litter control notice is not complied with, which made it difficult and costly for the authority to enforce. It is now an immediate offence not to comply with the requirements of a Street Litter Control Notice, dispensing with the requirement on the authority first to seek an order from the magistrates' court ordering compliance.
- 2.20 Offences are punishable by a fixed penalty notice (FPN), which can be set at a local level between £75 and £110, with the default amount set at £100 where no amount is set by the local authority. Local authorities may set a lesser amount for prompt payment, though this cannot be less than £60.

Controls on Free Distribution of Printed Matter

- 2.21 The act also gives local authorities the power to control the distribution of free literature to prevent it from becoming litter. Prior to this, local authorities in London and the City of Newcastle upon Tyne had the power to designate areas in which the distribution of free literature can only occur with the consent of the authority. Distribution in these areas without consent was an offence punishable by a fine and the local authority could also seize any such literature. These powers have now been repealed and replaced with similar legislation on a national basis, enabling all local authorities to place restrictions on the distribution of free literature, through the designation of areas where this control will apply, and the establishment of a consent system.
- 2.22 The Act makes it an offence to distribute, commission or pay for the distribution of free literature without consent in a designated area. Material distributed for charitable, religious and political purposes is exempted from the offence. The offence does not extend to putting literature inside a building or letter-box, nor does it apply where the distribution takes place entirely within a public service vehicle, such as a bus or coach.
- 2.23 Local authorities may make an order to designate areas where this offence will apply. However, the local authority must be satisfied that the area in question is being defaced by the discarding of free printed matter. The Act sets out the

procedure and requirements for achieving designation, including public notification, consideration of objections and timing of designation.

- 2.24 A local authority may issue consents for the distribution of free literature in a designated area. This includes provisions allowing an authority to impose conditions on the consent to prevent defacement and ensure enforcement, to refuse consent in certain circumstances, and to revoke consent. The consent may also specify that others can also distribute the material in accordance with that consent, for example, a distributor, an individual or the employees of the applicant. Local authorities can charge a fee, within the confines of overall cost recovery for this Schedule.
- 2.25 An authorised officer can also seize the material when it appears to them that an offence is being committed. A person claiming ownership of the literature may apply to the magistrates' court requesting the return of this material.
- 2.26 Offences are punishable by a FPN, with the amount set at £75 where no amount is set by the local authority. Local authorities may set any amount between £50 and £80, together with a discounted amount for early payment, which cannot be less than £50.
- 2.27 These provisions are likely to provide an important means of tackling the current problems arising from the distribution of printed matter in the city centre, particularly club and bar “flyers” distributed at night.

Graffiti and Flyposting

- 2.28 Part 4 of the Act deals with graffiti and other defacement. The Anti-social Behaviour Act 2003 allows authorised officers to issue fixed penalty notices for the offences of graffiti and fly-posting, and previously sets the amount payable for a graffiti or fly-posting fixed penalty notice at £50. This has now been amended by the Act to enable a local authority to set the amount of any fixed penalty fine for a graffiti or fly-posting offence, between £50 and £80. Where no amount is specified by a local authority, the default amount is £75. The local authority may also provide for a lesser amount to be paid if early payment is made within a specified period, though this cannot be less than £50
- 2.29 The Anti-social Behaviour Act 2003 has also been amended 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. The Act also extends the definition of an "authorised officer" to allow local authorities to authorise individuals other than their own employees to issue notices for graffiti and fly-posting offences.
- 2.30 The Anti-social Behaviour Act 2003 enables local authorities to issue notices requiring the removal of graffiti within 28 days from certain surfaces (essentially property 'in a street', rather than adjacent to a street) to statutory undertakers (such as railways and port authorities) or a person responsible for street furniture (but not private land owners). If the graffiti removal notice is not complied with, the local authority can remove the graffiti themselves and reclaim their costs. These powers have been amended (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) by extending their application to cover illegal advertising (fly posting). This enables 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. These notices are now re-named "Defacement Removal Notices".

- 2.31 The Anti-social Behaviour Act 2003 makes it an offence to sell aerosol paints to persons aged under 16. Every local weights and measures authority must now consider, once a year, whether there is a need to carry out a programme of enforcement in relation to the sale of aerosol paint to children.
- 2.32 The Act amends the Town and Country Planning Act 1990, placing a new requirement on all beneficiaries of a fly-poster (venue/record company/artist etc) to show they have taken all reasonable steps to prevent the use of fly-posting and if a fly-poster has been displayed, to secure its removal. It removes the current defence that allows beneficiaries to claim that a fly-poster was displayed without their knowledge or consent. A further amendment allows local authorities to recover the cost of removing fly-posters from the person whose goods or services are being promoted by the fly-poster.
- 2.33 Whilst the enhancement of fixed penalty notice powers in this area are to be welcomed, the key issue with the majority of these offences is catching offenders 'in the act', and that will remain a challenge. However, the Council can enhance the detection of offences by increasing the level of 'policing' resources on the ground, using intelligence to inform enforcement initiatives and by the deployment of covert surveillance equipment where appropriate.
- 2.34 The guidance issued by DEFRA also emphasises that local authorities are required to make reasonable attempts to enter into partnerships with property owners (e.g. telecommunications companies and other owners of street furniture), with the issue of FPNs being viewed as a last resort. Whilst such an approach would seem entirely reasonable, this could prove to be resource intensive work that could take some time to come to fruition. Also, with a significant proportion of street furniture being in the council's ownership, statutory powers will not always be appropriate, yet the council may need to ensure that adequate resources are deployed to remove defacement from its own property so we are consistent in applying standards to other property owners in the City.

Waste Offences

- 2.35 Part 5 of the Act comprises chapters, dealing with the transport of waste, deposit and disposal of waste and site waste. Waste offences, particularly unlawful disposal of trade waste and fly-tipping, have increased dramatically in recent years. This part of the Act aims to make businesses and individuals take more responsibility for their waste and ensure it is disposed of lawfully. Penalties for offences are increased, and fly-tipping is now an arrestable offence (this sanction has already been used in Leicester). By planning for waste management at the earliest stage in a development proposal, the Act aims to raise the importance of responsible and sustainable waste management by all involved in the use and disposal of material resources.
- 2.36 The Act removes the defence of being under an employer's instruction, for a person found transferring or dumping waste illegally. It also gives new powers to local authorities or Environment Agency officers to immediately search, seize and impound a vehicle involved in fly-tipping. There are also powers for local authorities to issue £300 fixed penalty notices to waste carriers failing to produce registration details. The local authority may also provide for a discounted amount

for earlier payment, though this cannot be less than £180. Powers to stop a vehicle on the highway will remain with uniformed constables.

- 2.37 The Act also raises the maximum fine for fly-tipping offences from £20,000 to £50,000 and the maximum term of imprisonment for non-hazardous waste offences to five years, which is the same as that for hazardous waste.
- 2.38 Provisions within the Act also allow for costs to be awarded to the local authority or Environment Agency to cover the investigation and enforcement costs incurred against anyone convicted of an offence under Section 33 of the Environmental Protection Act 1990 (unauthorised or harmful deposit of controlled waste).
- 2.39 The Act also gives powers to magistrates such that any vehicle used by a person in transporting or depositing waste unlawfully, may be confiscated and given to the relevant enforcement authority to dispose of as they wish.
- 2.40 These new powers are a way of strengthening the work currently carried out in the city to tackle the problem of flytipping and trade waste being improperly included in domestic refuse streams. The seizure powers relating to vehicles are likely to be particularly useful as a major deterrent, though these provisions are yet to be brought into force.

Offences Relating to Waste Receptacles (inc. Wheelie Bins on the Highway)

- 2.41 The Act provides waste collection authorities with a new power to issue penalty notices on householders and businesses that fail to comply with directions on the presentation of waste and recyclable materials for collection. Where an authorised officer has reason to believe that a person has committed an offence under the Environmental Protection Act (i.e. failing to comply with the local authority's directions on the presentation of waste and recyclable materials for collection) the authority can issue a fixed penalty notice. The amount can be set locally, between £75 and £110, with a default of £100 where no amount is set by the local authority. Local authorities may also provide for a lesser amount to be paid if early payment is made within a specified period, though this cannot be less than £60.
- 2.42 Many local authorities have a persistent problem in persuading all local residents and businesses to leave their rubbish out at the appointed times and remove their wheelie bins and other waste receptacles from the highway once they have been emptied. A pilot initiative last year in a range of streets in Leicester showed that informal action, followed by the service of statutory notices where necessary, resulted in 97% of wheelie bins being removed from pavements. Prosecution was the only sanction available to deal with the remaining 3%, the costs of which would have been prohibitive for tackling this problem on a citywide basis. This new power streamlines the process slightly by allowing for offences to be dealt with by way of a fixed penalty notice as an alternative to prosecution.
- 2.43 These FPN powers could also be used to tackle low participation in recycling arrangements, e.g. against householders who persistently fail to put paper, glass and plastics in green boxes or bags. However, Leicester's recycling arrangements are not totally dependant on householder participation and in view of the promotional work currently being undertaken officers do not recommend that these powers be used in this way at the present time. However, the situation can be kept under review with a report for Cabinet decision prior to any use of these powers in relation non-participation in recycling arrangements.

Site Waste Management Plans

- 2.44 This is an enabling power to develop regulations to require developers and contractors to produce a Site Waste Management Plan at the planning stage. No such regulations have been made at the present time.

Dog Control Orders

- 2.45 Part 6 of the Act is designed to simplify the current arrangements for controlling dogs and dealing with stray dogs. Dog offences, such as fouling or being let off the lead inappropriately, or let onto private land, have to date been governed by a system of bye-laws, which can be brought in by any authority to deal with a particular local problem. This part of the Act brings in a simpler Dog Control Order, and local authorities need now to designate areas, subject to regulations made by the Secretary of State, where the following would be offences:

- Dog fouling
- Letting a dog off the lead
- Allowing dog onto land from which dogs are banned
- Allowing more than a set number of dogs onto land

- 2.46 A dog control order should specify the land to which the order relates as well as the times. In practice, this means that an authority can designate any area of public land open to the air to which the public has access as being land on which the dog offences will apply. The authority will be required to publicise any dog control orders and may be required to undertake a local consultation before making an order. A fixed penalty notice, as set by the authority, can be issued by any authorised officer or person accredited by Chief Police (e.g. Police Community Support Officers) for any dog control offences. Existing bye-laws and designations will remain in place until a new Dog Control Order is made. This will be the subject of a report to Cabinet in the new year.

Termination of Police Responsibility for Stray Dogs

- 2.47 Whilst not yet in force, this section allows for the transfer of responsibility for stray dogs from the police to local authorities. At present local authorities and the police share responsibility for receiving stray dogs, with the police usually providing a night-time and weekend service. Many authorities have arrangements with private kennels to look after the stray dogs they have collected. The Act allows for the transfer of this responsibility solely to local authorities, subject to agreement over the service to be provided and the transfer of resources to enable local authorities to undertake sole responsibility. This means, subject to regulations, that responsibility for receiving stray dogs may rest solely with local authorities.

- 2.48 This presents significant operational and financial implications for local authorities. For example, under the current arrangements the City Council deals with stray dogs during normal working hours, with the Police dealing with stray dogs (and the associated kennelling costs) at all other times. There is no planned commencement date for this section as yet, but DEFRA have indicated that this will be April 2007 at the earliest.

Noise from Audible Intruder Alarms

- 2.49 Part 7 of the Act deals with noise provides a new power for local authorities to designate an area as an Alarm Notification Area, with a requirement that premises with alarms register key-holders with the local authority. Failure to register a key-holder or key holding company or to notify the authority of a change of key-holder can attract a FPN. The amount may be set locally, between £50 and £80, with a default level of £75 where no amount is set by the local authority. Local authorities

may also provide for a lesser amount to be paid if early payment is made within a specified period, though this cannot be less than £50. Any proposal to designate an alarm notification area must be published by the local authority in a local newspaper. Notice of the decision must also be sent to all premises in the area.

- 2.50 The Act gives local authority officers the power to enter a premises (although not by force, unless a warrant is obtained) to silence an alarm after 20 minutes of sounding continuously, or one hour of sounding intermittently. An authority can apply for a warrant to enter premises and can use reasonable force to do so if necessary, but must leave a notice at the premises before applying for a warrant, stating reasons for applying for the warrant. A notice must also be left entering the premises, stating what action has been taken.
- 2.51 There are a number of data protection issues associated with key-holder information, and in particular in relation to the transfer of existing data from the Police to the local authority. Officers need to do more work around the legal and operational implications of these issues before making any recommendations to Cabinet in relation to the designation of any areas. This power will be the subject of a report to Cabinet in the new year.

General Noise from Premises

- 2.52 Whilst not in force at the time of writing this report, these sections amend the Noise Act 1996 so that it also applies to licensed premises. A warning notice can be followed by a FPN if the permitted noise level is exceeded. Where the offence relates to licensed premises, a FPN fixed at £500 can be issued. An amendment to the Environmental Protection Act 1990 allows local authorities to defer issuing an abatement notice on a person to prohibit any noise nuisance and restrict its recurrence for a seven day period, while in the meantime taking other steps as it thinks appropriate for the purpose of abating or restricting the nuisance.
- 2.53 The Noise Act 1996 contains specific provisions for controlling domestic noise at night, which local authorities may elect to apply to their area. Like many other local authorities, Leicester City Council has never adopted this Act and has instead relied on using the long-standing nuisance provisions contained within the Environmental Protection Act 1990 (EPA), which are generally considered, to provide a more effective means of dealing with most noise problems (e.g. the Noise Act is very prescriptive, it imposes onerous measurement requirements, and it has been found to deter complainants by identifying them to the person creating the noise). However, the extension of the Noise Act to cover noise from licensed premises, without the need to adopt the Act, together with the £500 FPN provisions, potentially make this a useful additional means of controlling noise from licensed premises. These provisions are not yet in force and detailed government guidance is still awaited, therefore it is not possible to fully assess the operational implications at the present time.

Architecture and the Built Environment

- 2.54 Part 8 of the Act establishes the Commission for Architecture and the Built Environment (CABE) on a statutory basis.

Use of Fixed Penalty Receipts

- 2.55 Part 9 of the Act contains a number of different measures which do not neatly fit into the other parts of the Act. The Act and secondary legislation set out the requirements in relation to the setting of FPN amounts, who can be authorised to issue FPNs and the purposes to which FPN receipts can be used.

- 2.56 A summary of the amounts that can be set for each type of FPN are set out in Appendix 1 to this report, together with the levels recommended to Cabinet. In relation to the use of FPN receipts, these can be used to offset some of the costs of enforcing these new statutory provisions, including the (not insignificant) legal costs likely to arise from legal proceedings arising from contested FPNs. Keeping the FPN income within the service area to which it relates will allow transparent accounting of the relationship between income and expenditure as well as allowing officers to build a “fighting fund” to cover the legal costs of contested fines.
- 2.57 The legislation also makes provision for treating a fixed penalty as having been paid if a lesser amount is paid before a specified period (recommended to be not more than 10 days), i.e. a discount for early payment. However, minimum levels for discounted payments are also specified in legislation: for FPNs where the amount that may be set is between £50 and £80, the minimum discounted level is £50, where it is between £75 and £110, the minimum discounted level is £60, where it is £100, £200 or £300 the minimum discounted levels are £60, £120 and £180 respectively. There are no such early payment provisions in relation to the £500 fine for noise from licensed premises.
- 2.58 Providing discounts for early payment are primarily designed to encourage prompt payment, though this would obviously impact on revenue generated. As such this may be considered to be an operational issue that would need to be considered as these provisions are implemented within the City. Hence, it is not proposed that early discounts are offered at the present time, rather this will be kept under review and Cabinet authority is sought for this to be a matter delegated to the Corporate Director in consultation with the Cabinet Lead Member.
- 2.59 The legislation also specifies the uses to which each different element of FPN receipt income can be used; broadly speaking such income has to be used in connection with the functional service area. However, where a local authority is categorised as ‘excellent’ or ‘good’ under the comprehensive Performance Assessment, receipt may be used for any purpose.
- 2.60 In addition to local authority officers, FPNs for certain offences may also be issued by contractors acting on their behalf (e.g. where a local authority has contracted out its Dog Warden Service). Also, Chief Police officers may confer on Police Community Support Officers (PCSOs), and persons accredited under community safety accreditation schemes, a range of powers including the power to issue FPNs for litter, dog fouling, graffiti and flyposting powers. These powers are exercised on behalf of local authorities and receipts for FPNs issued by PCSOs would be retained by the local authority. The local authority would also retain responsibility for processing FPNs, prosecuting unpaid FPNs, and ensuring that PCSOs have a clear understanding of the local authority’s enforcement policies, procedures and strategies. As recommended in the DEFRA guidance, it is therefore proposed that officers discuss with the Chief Police officer the potential extra resource that could be provided by PCSOs.
- 2.61 DEFRA has also issued specific guidance in relation to the issuing of fixed penalty notices to juveniles (i.e. persons between the ages of 10 and 17). The guidance sets out separate approaches for persons aged 10 to 15 and those aged 16 to 17. Local authorities are strongly recommended to develop procedures and protocols in conjunction with the Youth Offending Team and police.

Abandoned Shopping and Luggage Trolleys

- 2.62 These sections outline a new power for authorities to recover from owners the cost of recovering, storing and disposing of abandoned shopping and luggage trolleys, even where the owner does not accept their return (a weakness in the previous legislation, particularly where shopping trolleys are no longer fit for purpose).

Statutory Nuisances: Insects and Lighting

- 2.63 The Act amends Section 79 of the Environmental Protection Act 1990 to include as statutory nuisances any insect from an industrial, trade or business premises that is prejudicial to health or a nuisance. It specifically excludes those protected insects included in the Wildlife and Countryside Act 1981. The definition of premises excludes agricultural, pasture and woodlands, market gardens, sites and special scientific interest and waterways. There are few problems of this nature in Leicester.

- 2.64 Section 79 of the Environmental Protection Act 1990 is also amended to include as statutory nuisances artificial light, except for that which is emitted from an airport, harbour, rail, tram or bus premises, goods vehicle operating centre, lighthouse or prison. It is envisaged that this could be an area where the City Council will receive complaints from local residents, e.g. in relation to domestic security lights. However, it is impossible to tell at this stage whether or not this is likely to present any significant resource implications for the authority. It is encouraging to note that DEFRA advises that "Christmas lights may also be the subject of complaint, and could be covered by statutory light nuisance, although this seems unlikely given their duration"!

Contaminated Land

- 2.65 All contaminated land appeals now go to the Secretary of State, rather than local magistrates as was previously the case.

Offences relating to Pollution

- 2.66 This section increases the maximum penalties under the Pollution Prevention and Control Act 1999 from 6 months to 12 months and from £20,000 to £50,000.

3 Implementation of the Act

- 3.1 Many of these new powers merely enhance the existing enforcement powers in areas where the City Council is already active, e.g. in relation to abandoned vehicles, waste and flytipping. The Act also attempts to bring together a wide range of existing environmental enforcement provisions previously spread across a number of statutes, as well as providing more expedient and effective FPN-based enforcement procedures, so that a common approach can be adopted to tackling environmental issues of concern.
- 3.2 In the same way, the Corporate Director of Regeneration and Culture will bring key services together as a key objective of the departmental organisational review. This second phase of this review is now in its final stages and will, from the 1st December 2006 implement new organisational arrangements within the Street Scene Division, including the establishment of a new Street Scene Enforcement Team tasked with working collaboratively with other relevant services to ensure that a sharper focus is given to those matters that form the core of the new Act.

- 3.3 In particular, this team will bring together the three existing Litter Wardens with two new Street Scene Enforcement Officer posts. Together these officers will provide a uniformed on-street presence to tackle issues such as litter, graffiti, flyposting, 'A' boards on pavements, etc., as well as providing a small core of enforcement officers who can also be deployed to tackle, on a prioritised, area-by-area basis, problems such as wheelie bins on pavements. At the same time this team will be under the same direct management control as the Dog & Pest Control Service, the Enviro-crime Team and the Area Environmental Health Team. The Head of Service will also take lead responsibility in ensuring effective cross-service delivery in relevant areas within the Department as a whole, as well as working with external partners such as the Police and Environment Agency to maximise opportunities for collaborative working in relation to environmental issues of concern.
- 3.4 In other areas, the Act provides powers in relatively new areas, e.g. in relation to nuisance parking, litter clearing notices, street litter control notices, controls over the distribution of printed matter, the new regime for controlling alarm noise, light nuisance, etc. Also, whilst the Act now provides an effective means of tackling problems such as wheelie bins on pavements, actually implementing these powers on a city-wide basis presents a major challenge. Every effort will be made to implement these new/enhanced powers within the newly established organisational arrangements and existing resources (including any new FPN income streams), but the extent and speed of their implementation will clearly be dependant of the level of resources available. The existing Litter Warden posts were funded from PSA reward income, which has now ended and mainstreaming them into the enforcement team pushes the financial capacity of the division.
- 3.5 As part of the Regeneration & Culture Department's draft budget strategy for 2005/06 a sum of £50,000 was proposed in relation to new responsibilities and powers arising from this Act. At that time, the extent of these powers and responsibilities was not fully known and this item was not included in the final budget approved by Council. Officers will put forward options for increasing investment in these new enforcement powers and responsibilities in the Department's 2007/08 budget strategy for Members' consideration.
- 3.6 The initial key priority issues are likely to be:
- Wheelie bins and side waste on pavements;
 - Litter arising from the distribution of printed material in the city centre;
 - The use of Street Litter Control Notices to deal with litter associated with problem take-aways and other businesses;
- 3.7 This report proposes that officers provide regular reports to Area Committees in relation to all of the matters covered by the Act and that officers work closely with Area Committees to identify issues of local concern, over-and-above the immediate priorities identified above. Furthermore, it is recommended that Area Committees are consulted prior to the implementation of any new area-based powers (e.g. Street Litter Control Notices) or any special area-based enforcement initiatives (e.g. tackling the issue of wheelie bins and side waste on pavements).

4. Other Implications

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	NO		
Policy	YES	Throughout the report	
Sustainable and Environmental	Yes	Throughout the report	
Crime and Disorder	Yes	Throughout the report	
Human Rights Act	NO		
Elderly/People on Low Income	NO		

5. Risk Matrix

RISK	LIKELIHOOD	SEVERITY IMPACT	CONTROL ACTIONS
Public demand for enforcement action (particularly in relation to wheelie bins on pavements) exceeds that which can be undertaken within existing resources	H	L	Education and advice will be used to support enforcement initiatives, which will be implemented on a prioritised basis and which will be communicated to Members and the public. Resourcing issues will be considered as part of the Department's 2006/07 budget strategy.
Budget pressures caused by the increasing costs of street cleaning, graffiti removal and dealing with flytipping	M	L	Utilising the tougher powers and implementing the higher fines detailed in this report should help reduce the incidence of problems of this nature
Failure to achieve Local Area Agreement flytipping targets	M	L	Higher fines, tougher powers (some of which are not yet in force) and increased enforcement will help deter offenders.

5. Background Papers – Local Government Act 1972

Clean Neighbourhoods & Environment Act 2005 and associated legislation
Correspondence from, and guidance issued by, DEFRA (most of which can be found at <http://www.defra.gov.uk/environment/localenv/legislation/cnea/index.htm>)

6. Consultations

Relevant services within Regeneration & Culture
Adult and Community Services (Alistair Reid)
Leicestershire Constabulary (ongoing)

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FIXED PENALTY NOTICE AMOUNTS

The table below provides a summary of fixed penalty notice provisions and the legislative requirements concerning the amount of fixed penalty payments and, where amounts can be set at a local level, the level recommended to Cabinet:

Section & Legislation	Description of offence	Amount	Recommendation to Cabinet
s. 6(1) Clean Neighbourhoods & Environment Act 2005	Nuisance parking	Amount fixed at £100	£100
s. 2A(1) Refuse Disposal (Amenity) Act 1978	Abandoning a vehicle	Amount fixed at £200	£200
s. 88(1) Environmental Protection Act 1990	Litter	Can be set at local level (between £50 and £80). Default £75	£80
s. 94A(2) Environmental Protection Act 1990	Street litter control notices and litter cleaning notices	Can be set at local level (between £75 and £110). Default £100	£110
Schedule 3A, para 7(2) Environmental Protection Act 1990	Unauthorised distribution of literature on designated land	Can be set at local level (between £50 and £80). Default £75.	£80
s. 43 Anti-social behaviour Act 2003	Graffiti and flyposting	Can be set at local level (between £50 and £80). Default £75	£80
s. 5B Control of Pollution (Amendment) Act 1989	Failure to produce authority (waste carriers licence)	Amount fixed at £300	£300
s. 34A Environmental Protection Act 1990	Failure to furnish documentation (waste transfer notes)	Amount fixed at £300	£300
s. 47ZA Environmental Protection Act 1990	Waste receptacles & putting waste out	Can be set at local level (between £75 and £110). Default £100	£110
s. 59(2) Clean Neighbourhoods & Environment Act 2005	Offences under Dog Control Orders	Can be set at local level (between £50 and £80). Default £75	£80
s. 73(2) Clean Neighbourhoods & Environment Act 2005	Failure to nominate key-holder (within an alarm notification area) or to notify local authority in writing of nominated key-holder's details	Can be set at local level (between £50 and £80). Default £75	£80
s. 8 Noise Act 1996	Noise from dwellings	Can be set at local level (between £75 and £110). Default £100	£110
s. 8 Noise Act 1996	Noise from licensed premises	Amount fixed at £500	£500