

## **APPENDIX 1**

### **THE CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 (“the Act”)**

#### **OVERVIEW**

The Act provides local authorities with more effective powers 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. Many of the new provisions relate to powers not duties. Councils need to decide which powers they will use.

#### **COMMENCEMENT**

All provisions of the Clean Neighbourhoods and Environment Act 2005 are now in force except:-

- Those parts of Schedule 1 that extend the Noise Act 1996 to apply to licensed premises – which will be brought into effect in October 2006; and
- Section 68 (stray dogs) - there is no planned commencement date for this section as yet.

#### **AREAS**

Areas covered by the Act include: -

- 1. Abandoned and Nuisance Vehicles
- 2. Litter and Refuse
- 3. Defacement (graffiti and fly-posting)
- 4. Waste
- 5. Dog Control Orders
- 6. Noise
- 7. Statutory Nuisance (light and insects)
- 8. Abandoned trolleys

DEFRA has issued guidance on the above to help Councils put the provisions into practice. DEFRA has also issued guidance on the new Code of Practice for Litter and Refuse, and on the fixed penalty regime as altered by the 2005 Act.

#### **PARISH COUNCILS**

The Act includes new powers for Parish Councils to issue fixed penalty notices (FPN) for litter, graffiti, fly posting and dog offences. DEFRA has produced a separate guidance document to accompany the Act, aimed specifically at Parish Councils or other authorities who are new to issuing fixed penalty notices:-  
<http://www.defra.gov.uk/environment/localenv/legislation/cnea/parishcouncilguide.pdf>

#### **TRAINING**

DEFRA has developed the approved training course that will need to have been attended by any personnel that are to be authorised to issue fixed penalty notices on behalf of a parish council.

## MODEL FORMS

DEFRA has developed the following example forms as part of its guidance to assist local authorities in using the legislation: -

- |                                 |                                      |
|---------------------------------|--------------------------------------|
| A Model Fixed Penalty Notice    | B Model Litter Clearing Notice       |
| C Model Litter Abatement Notice | D Model Street Litter Control Notice |

## **1. ABANDONED AND NUISANCE VEHICLES (SECTIONS 3 - 9)**

### BACKGROUND

Local authorities have a duty to remove abandoned vehicles under the Refuse Disposal (Amendment) Act 1978 and this duty remains. However, the Act amends the 1978 Act creating new powers for local authority authorised officers to issue fixed penalty notices in respect of abandoned vehicles. It also helps speed up the process of disposing of abandoned vehicles.

The Act creates two new nuisance-parking offences, and allows authorities to issue fixed penalty notices for these offences.

### NUISANCE PARKING

#### 1. Offences

These offences are aimed at businesses that use the public road as a 'showroom' and people who use the road as a 'workshop'.

- Section 3 of the Act makes it an offence for a person to park motor vehicles on a road or roads, where the vehicles are parked merely in order to be sold. The offence is committed if there are two or more vehicles within 500 metres of each other. The maximum fine on summary conviction is level 4 (currently £2,500) on the standard scale;
- Section 4 makes it an offence to carry out "restricted works" to vehicles on a road. "Restricted Works" covers repair, maintenance, servicing, improving or the dismantling of a motor vehicle or any part or accessory. The maximum fine is level 4 on the standard scale on summary conviction.

#### 2. Powers

- Section 6 of the Act enables authorised officers to issue a fixed penalty notice for offences under section 3 (exposing vehicles for sale) and section 4 (repairing a vehicle on the road);
- Section 7 provides an authorised officer with the power to require the name and address of an offender if the officer proposes to give him a penalty notice.

#### 3. Fixed Penalties

- Section 6 also provides that the fixed penalty is £100, although the Secretary of State can alter that amount and an authority can accept a lesser amount;
- Section 8 governs the use of fixed penalty receipts which must be used for specified purposes.

## ABANDONED VEHICLES: -

The Act creates new fixed penalty powers in respect of abandoned vehicles, which are aimed at making it easier and less costly for local authorities to deal with abandoned vehicles. It achieves this by amending the Refuse Disposal (Amenity) Act 1978 (which makes it an offence to abandon a motor vehicle).

### 1) Fixed penalties for Abandoning Vehicles

- Section 10 of the Act inserts after section 2 of the 1978 Act three new sections - 2A, 2B and 2C;
- The new section 2A gives an authorised officer the power to issue a fixed penalty notice in respect of an offence of abandoning a vehicle;
- Section 2B enables an authorised officer to require the name and address of the person to whom he proposes to issue a fixed penalty notice;
- Section 2C enables local authorities to use the receipts from these penalties for the purposes of their functions under the 1978 Act and sections 99 to 102 of the Road Traffic Regulation Act 1984, and for other functions as specified in regulations.

### 2) Making it Easier for Local Authorities to Deal with Abandoned Vehicles

- Section 11 of the Act amends section 3 of the 1978 Act. Previously if a vehicle that appeared to be abandoned was found on private land, a notice had to be served on the occupier of the land. If the occupier did not respond, the local authority had to wait 15 days before removing the vehicle;
- Where the vehicle was on a private road, it was difficult to identify the occupier. Section 11(2) removes the requirement to serve a notice on the occupier of land where the vehicle is on a 'road';
- Section 3(5) of the 1978 Act required a local authority to affix a notice to a vehicle 24 hours prior to removal where it was considered to be in such a condition that it ought to be destroyed. The 24-hour notice sometimes attracted instances of anti-social behaviour such as vandalism and arson;
- The Act amends this, enabling local authorities to immediately remove any vehicle in such a condition if they think it has been abandoned;
- Section 12 of the Act amends section 4 of the 1978 Act by removing the requirement to wait for the expiration of a valid licence before an abandoned vehicle can be disposed of by an authority. This allows any vehicle that is only fit for destruction to be destroyed immediately - thus saving on storage costs.

### 3) Have Regard to Guidance

- Authorities are required to have regard to guidance given by the "appropriate person" when exercising their functions in relation to the removal and disposal of abandoned vehicles;

## **2 LITTER AND REFUSE (SECTIONS 18 - 27)**

### BACKGROUND

The Environmental Protection Act 1990 (EPA) governs much of the law on litter and refuse and the Act makes amendments to this Act. SLDC is a Principal Litter Authority under the 1990 Act.

Section 87 of the EPA 1990 makes it an offence to drop litter and section 88 allows litter authorities to issue fixed penalties for an offence under the section. The Act

amends section 88 so that Parish Councils are now litter authorities who can issue fixed penalty notices.

The Act introduces a Litter Clearing Notice regime (which replaces Litter Control Areas) and extends the application of Street Litter Control Notices.

## CHANGES

### 1. Dropping Litter

- Section 87 (places where it is an offence to drop litter) of the Environmental Protection Act 1990 has been widened by section 18 of the Act;
- Broadly, it is now an offence to drop litter in any place in the area of a Principal Litter Authority which is open to the air; This will include private land, rivers, ponds and lakes;
- Coastal local authorities now have the power to prosecute the dropping of litter on beaches;
- The Act confirms that cigarette butts and discarded chewing gum are litter.

### 2) Fixed Penalty Powers for Dropping Litter

- The Act now allows a local authority to specify the amount of a fixed penalty payable in its area - within a range specified by regulations. The previous position was that the Secretary of State specified the amount payable. The Secretary of State still has the power to set the range from which an authority can choose (see FPN Guidance Note and table);
- The Act now provides that all Parish and Community Councils are litter authorities. This means that their authorised officers have the powers to issue FPNs;
- The Act enables litter authorities to employ persons other than their own employees to issue the FPNs - e.g. third party contractors (subject to background checks, suitability, training etc);
- Note that guidance by DEFRA provides that people new to issuing FPNs (including Parish/Community Councils) must attend training courses and reach a certain standard before they start using their new powers.

### 3) Litter Clearing Notices

- Litter Clearing Notices replace the previous Litter Control Area system which was rarely used by authorities (and thus section 90 of the 1990 Environmental Protection Act is repealed);
- Under the previous system an area had to be designated as a Litter Control Area before a Litter Abatement Notice could be served;
- Now there is no need to designate a Litter Control Area before a Litter Clearing Notice can be served;
- The Act introduces sections 92A, 92B and 92C to the 1990 EPA;
- These new sections allow Principal Litter Authorities to serve Litter Clearing Notices on businesses and individuals obliging them to clear litter from their land;
- The Litter Clearing Notice can be served on any land which is open to the air which in the opinion of the authority is defaced by litter or refuse so as to be detrimental to the amenity of the locality (Section 92A (1) and (2));
- The newly introduced section 92C makes it an offence to comply with a Litter Clearing Notice punishable by fine up to level 4 (£2500) on the standard scale;

- As an alternative to prosecution, the new section 94A introduces a fixed penalty notice regime where someone fails to comply with a Litter Clearing Notice;
- The Litter Clearing Notice can specify the standard to which the land must be cleared and a specified period within which to clear it (not less than 28 days);
- If the land is not cleared satisfactorily the Principal Litter Authority can enter and clear the land and recover the expense of doing so;
- Only officers authorised in writing by the Principal Litter Authority can issue these fixed penalties. It does not extend to officers outside the employment of the authority (i.e. contractors can't be used here).

#### 4) Street Litter Control Notices

- Sections 93 and 94 of the EPA 1990 provide local authorities power to tackle street litter generated further to activities on adjacent premises; This is intended to deal with food and drink packaging and other litter generated by eating 'on the go' as well as litter from cash points and lottery tickets dropped outside shops;
- Street Litter Control Notices can be served by a Principal Litter Authority requiring businesses to clean up the litter and implement measures to prevent the land from becoming defaced again;
- The Act simplifies and extends the existing system so as to allow local authorities to use Street Litter Control Notices where mobile operations such as burger vans are causing problems;
- Street Litter Control Notices provide an enforcement mechanism to place responsibility on to owners and businesses that are contributing to the problem;
- Failure to comply with the requirements specified in a Street Litter Control Notice is an offence punishable by fine up to level 3 on the standard scale (£1000);
- Fixed Penalty Notices can be issued as an alternative to prosecution;
- Only authorised officers in the employ of the Principal Litter Authority can issue these fixed penalty notices. It does not extend to authorised officers employed by contractors).

#### 5) Distribution of Free Literature

- The Act introduces a new power for Principal Litter Authorities to control the distribution of free literature;
- Principal Litter Authorities now have the power to designate areas within which it is an offence to distribute free literature;
- Distribution within a designated area without consent is punishable by fine up to level 4 (currently £2500) on the standard scale;
- Fixed penalty notices may be issued as an alternative to prosecution (see table at end of this report);
- Principal Litter Authorities are allowed to charge a fee for issuing a consent;
- The new section lays down a procedure which Principal Litter Authorities must follow when they want to designate an area under the section (public notice of intention to make Order, consideration of objections, publish on website etc);
- There is a specific exemption from the offence of distributing within a designated area for political, charitable or religious purposes;
- If a person is found to be distributing free literature in a designated area without consent, an authorised officer may seize all or any of the material.

## 6) Public Registers

- Principal Litter Authorities (other than a County Council or Joint Board) must under section 95 maintain a register containing copies of all Street Litter Control Notices and all Designation Orders;
- This must be kept for so long as they are in force;
- They must be available for public inspection at all reasonable times free of charge and copies provided on payment of a reasonable charge.

## **3. DEFACEMENT (GRAFFITI AND FLY POSTING) (SECTIONS 28 - 34)**

### BACKGROUND

Under sections 48 to 52 of the Anti Social behaviour Act 2003, local authorities could issue graffiti removal notices on the owners of "relevant surfaces" requiring the removal of graffiti within 28 days. Relevant surfaces include the surface of structures on any street and the surface of any land owned by a statutory undertaker.

Further, under section 224 of the Town and Country Planning Act 1990, it is an offence to display advertisements which contravene section 220 of the 1990 Act. This was used for to prosecute persons guilty of fly posting.

The Act amends the operation of the existing legislation renaming graffiti removal notices as defacement removal notices. It also allows defacement removal notices to be served in respect of fly posting. Further, since Parish Councils now qualify as litter authorities (see **2. Litter and Refuse**), they are now able to issue fixed penalty notices for relevant offences described in the 2003 Act. This includes fixed penalties for fly posting under the 1990 Town and Country Planning Act above - however under the new section 43A(2) they are required to adopt the amount specified by the superior local authority.

The defence available to the beneficiaries of fly posting under section 224 of the Town and Country Planning Act (undertaken without consent) has been removed.

### CHANGES MADE BY THE ACT

#### 1) Defacement Notices

- Section 31 amends the 2003 Act by extending the application of graffiti removal notices to cover illegal advertising (fly posting);
- Amendments to the 2003 Act re-name these notices as "defacement removal notices";

#### 2) Amendments to Town and Country Planning Act 1990 Fly Posting Defence

- Section 224 of the 1990 Act provides that it is an offence to display an advertisement in contravention of regulations made under section 220 of the 1990 Act. A person found guilty can be fined up to level 4 on the Standard Scale (£2,500);
- Until now it has been difficult for local authorities to prosecute under this section unless the person displaying the advertisement was identifiable. The difficulty was the defence available for an owner of the land or a person benefiting from the advertisement where he proves that the advertisement was displayed without his knowledge or consent;

- The Act (section 33) has amended the defence in section 224 by removing the obligation for a local authority to prove that the person consented to the display of an advertisement in contravention of the regulations;
- This makes it more difficult for the beneficiaries of fly posting to avoid prosecution by simply claiming they never consented to the advertisement.

### 3) Recovery of Costs

- Section 34 of the Act has introduced provisions enabling a local authority to recover the costs incurred in removing or obliterating the illegally displayed posters or placards;
- Subsection (3) allows local authorities to enter both occupied and unoccupied land to remove posters or placards;
- These costs are recoverable from the person who displayed the poster or placard, or caused it to be displayed, or if they are not able to be identified, from the person whose goods, services or concerns are publicised;
- This means the beneficiaries of the fly-posting can be pursued - which was not possible before the amendments made by the Act.

### DEFRA GUIDANCE

Local authorities using the powers should have regard to DEFRA's guidance which is available from their website. Points from the guidance include: -

- Local authorities should try to enter into partnership arrangements with companies who are likely to be affected by the widening of local authority's powers in this area;
- The local authority should identify the local companies likely to be affected and make contact with them to inform them that the authority has powers in this area;
- Local authorities should be sympathetic to these companies and attempt to agree timetables for removal of graffiti/fly posting. Defacement Removal Notices should be a last resort;
- But companies who own a lot of property which is defaced by graffiti and fly posting should be clearing this as part of their general maintenance programmes;
- Requests for graffiti and fly post clearing should be necessary and proportionate;
- A local authority should consider issuing a notice where it can demonstrate it has made reasonable attempts to contact the owner of the affected property and enter into a voluntary partnership agreement – and the owner has failed to respond;
- The procedure set out in the DEFRA Guidance for issuing a notice should be followed;
- Local authorities should comply with DEFRA's cleaning guidelines guidance;
- Recovery of expenditure means the costs incurred in cleaning the property concerned, not overheads;
- Invoice the company concerned and payment should be made in 60 days;
- Fixed Penalty Notice receipts can be used for enforcement or prevention activities, educational campaigns and promotions.

#### **4. WASTE (SECTIONS 35 - 54)**

SLDC is a waste collection authority (but not a waste disposal authority – that is Cumbria County Council) under the Environmental Protection Act 1990.

#### **CHANGES MADE BY THE ACT**

##### **1) Transport of Waste**

- Under Section 1 of the Control of Pollution (Amendment) Act 1989, it is an offence for anyone who is not a registered carrier of controlled waste to transport such waste within Great Britain in the course of any business of his or otherwise with a view to profit. Controlled waste is defined as household, industrial and commercial waste;
- Section 35(1) of the Act amends the 1989 Act so as to remove the defence of acting under one's employer's instructions;
- Section 37 substitutes section 5 of the Control of Pollution (Amendment) Act 1989 with new sections 5 and 5A. Under sections 5 and 5A, an authorised officer of a waste authority (e.g. district council) is able to search and seize a vehicle that he reasonably believes is being used in the commission of an offence under section 1 of the 1989 Act (transporting controlled waste without being registered);
- Under the new section 5, an authorised officer can also require any person transporting controlled waste to produce his authority to do so;
- Under the new section 5B of the 1989 Act (inserted by section 38 of the 2005 Act) fixed penalties can now be issued to a person who fails to provide his authority when asked to do so by an authorised officer;
- Only the police have the power to stop vehicles;
- The above provides waste collection authorities with greater powers to deal with persons who are fly tipping.

##### **2) Deposit and Disposal of Waste**

Under section 33 of the Environmental Protection Act 1990 (the "1990 Act") it is an offence to deposit controlled waste on any land (Fly Tipping)

- Section 40 of the Act removes the defence previously available to a charge under this section of acting on an employer's instructions;
- Section 41 of the Act increases the penalties associated with breaches of section 33. It has been said that fines levied under this section in the past have not reflected the seriousness of the offence;
- Sections 42, 43 and 44 of the Act introduces three new sections (33A, 33B and 33C) into the 1990 Act;
  - Under s33A an authority can claim the costs of investigation where they secure a conviction under section 33 (Fly Tipping);
  - Under s33B where a person is convicted of fly tipping, the court now has a power to order that the costs associated with cleaning up the deposited waste be paid to the relevant waste collection authority;
  - Section 33C provides that if a person is convicted under section 33, the court can order that the defendant forfeit any vehicle (in which he has rights) used to commit the offence. Forfeiture could be to the waste collection authority (i.e. the district council) if it has brought the prosecution.

##### **2) Offences relating to Production of Documentation**

- Under Section 34 (5) of the 1990 Act people who deal with waste (importers, producers, carriers, treaters, disposers, controllers etc) are required to make

and retain and furnish documents in respect of their duties under the 1990 Act.

- A fixed penalty regime has been introduced (the new section 34A of the 1990 Act) in relation to the duty imposed by the 1990 Act to provide specific documentation upon request (see table at end of the report – fixed at £300)
- This means that a waste collection authority has the power to issue fixed penalty notices (and keep the receipts) to:-
  - Businesses that fail to produce waste transfer notes
  - Waste carriers that fail to produce their registration details or evidence that they do not need to be registered
  - For waste left out on the streets

### 3) Search and Seizure of Vehicles

- Section 46 of the Act introduces new sections (34B and 34C) into the 1990 Act
- These provide powers for waste collection authorities to search and seize vehicles connected to offences under section 33 (illegal fly tipping or waste disposal) or section 34 (the duty of care on anybody who deals with waste)

### 4) Side Waste/Waste Receptacle FPNs

- New sections (s47ZA and s47ZB) are inserted into the 1990 Act which will empower authorised officers to issue fixed penalty notices to people who commit offences under section 46 or 47 of the 1990 Act.
- This means if people do not comply with the requirements by a waste collection authority with regard to waste receptacles, they could be issued with a fixed penalty.
- It also applies to receptacles for commercial and industrial waste

### 5) Power to require Owner of Land to Remove Waste

- Section 50 inserts section 59ZA into the 1990 Act;
- Under this a waste collection authority will have the power to serve notice on the owner of land requiring fly tipped waste to be removed;
- Previously this power was restricted to the occupier of the land;
- This will enable the authority to tackle fly tipped land where the owner has neglected the land, but where there is no occupier. It will enable landowners to be charged for removal of waste.

### 6) Waste Management Plans

- Under section 54 of the 2005 Act the Secretary of State may make regulations requiring persons to prepare plans for the management and disposal of waste created in the course of destruction and demolition;
- Further guidance and detail is awaited on this particular area of the Act

## **5. DOG CONTROL ORDERS (SECTIONS 55 - 67)**

### BACKGROUND

Prior to the Act, local authorities and Parish and Town Councils had the power to make byelaws regarding dogs, and the power to designate land under the Dogs (Fouling of Land) Act 1996 regime. This system was considered costly and complicated to administer.

### CHANGES MADE BY THE ACT

- A new system of Dog Control Orders ('DCOs') has been introduced;
- No new byelaws can be made, and the Dogs (Fouling of Land) Act 1996 is repealed;
- Regulations provide "model" offences which may then be applied by a local authority or Parish Council to specified areas of land accessible to the public;
- The Dog Control Orders (Prescribed Offences and Penalties etc) Regulations provide 5 offences which may be prescribed in a Dog Control Order:
  - Failing to remove dog faeces;
  - Not keeping a dog on a lead;
  - Not putting and keeping a dog on a lead when directed to do so by an authorised officer;
  - Permitting a dog to enter land from which dogs are excluded;
  - Taking more than a specified number of dogs on to land (expert advice is that a person can't control more than six dogs at one time).
- Penalties are a fine up to level 3 (£1000) on the standard scale. Payment of a fixed penalty may be offered in place of prosecution;
- Both Primary (e.g. District Councils) and Secondary (e.g. Parish Councils) Authorities may make Dog Control Orders.

### DOG CONTROL ORDERS (DCOs) MADE UNDER THE ACT

- The form of wording in the Orders is prescribed by regulations and must be followed precisely;
- A DCO may be brought into force no sooner than 14 days after it has been made - there is no requirement for confirmation by the Secretary of State.

### What Land

- A DCO can be made in respect of any land which is open to the air and to which the public are entitled or permitted to have access (with or without payment). It also applies to some covered places;
- But the Secretary of State has the power to designate types of land which are not to be subject to all or some Dog Control Orders;

### Defences/Exemptions

- There are defences in all Dog Control Orders of (1) having a reasonable excuse for failing to comply with an Order OR (2) acting with the consent of the owner or occupier of the land, or of any other person or authority which has control of the land;
- Anyone with any type of assistance dog (e.g. guide dog) is not subject to a DCO excluding dogs from land.

### Primary and Secondary Authorities

- Primary Authorities includes County and District Councils; Secondary Authorities includes Parish Councils and bodies designated by the Secretary of State;
- A Primary Authority's DCO supersedes a Secondary Authority's DCO where they are for the same offence and on the same land;
- To avoid overlap the Dog Control Orders Procedures Regulations require Primary and Secondary Authorities to consult each other before coming forward with proposals for Dog Control Orders.

### Transitional Arrangements

- New dog byelaws/designations under the 1996 Act cannot be made.;

- But existing byelaws remain in force until a DCO is made in respect of the same offence and the same land (at which point the byelaw lapses);
- Designations under the 1996 Act remain in force until they are superseded by a DCO made under the Act.

#### Making a DCO

- Must follow the procedure set out in regulation 3 of the Dog Control Orders (Procedures) Regulations 2006 or the Order will be invalid;
- To avoid challenge by the Courts, an authority must show that a DCO is a necessary and proportionate response to problems caused by the activities of dogs and those in charge of them (Balancing test - the interests of those in charge of dogs against the interests of those affected by the activities of dogs);
- Authorities must consult any other Primary or Secondary Authorities in the area to be covered by the Order;
- Must publish a notice in newspaper - special form/procedure/consultation period to follow here. Authority must consider representations made;
- There are further rules on considering representations made, the time limit within which a DCO can come into force, placing further adverts in local newspaper and for amendments to the DCO;

#### Signage

- The DCO Regulations state that where practicable signs must be placed summarising the Order on land to which the new Order applies.

#### Fixed Penalty Notices

- This is a new power for Secondary Authorities (e.g. Parish Councils);
- Fixed penalties for offences under Dog Control Orders may be issued by authorised officers under section 59(1) and (2) of the 2005 Act;
- Authorised Officers are defined under section 59(11) as: -
  - Employees of Primary and Secondary Authorities who are authorised for this purpose;
  - Any person authorised (including employees of that person) in writing by a primary or secondary authority in pursuance of arrangements made by that person and the relevant authority;
  - section 62 extends the same powers to Police Community Support Officers and other persons accredited by Chief Police Officers under the Police Reform Act 2002.
- Authorised officers of Primary and Secondary Authorities have the power to require the name and address of a person to whom they wish to issue an FPN;
- Before they issue FPNs, Parish/Town Council Officers must satisfy conditions linked to training (c.f. Environmental Offences (FPs) MPs Regulations 2006).

## **6. NOISE (SECTIONS 69 - 76)**

### BACKGROUND

Sections 69 - 76 of the Act introduce new powers to deal with noisy and unattended burglar alarms.

### CHANGES MADE BY THE ACT

- Under section 69(1) a local authority may designate all or any part of its area as

- an alarm notification area;
- The authority must follow a consultation procedure if it wants to do this (publish notice of proposal in newspaper inviting representations within 28 days, notice of decision in newspaper stating date of the designation takes effect which must not be more than 28 days hence);
- Where a local authority has designated an area an alarm notification area, then under section 71(2) of the Act, people who have installed intruder alarms must nominate a key holder and give details to the local authority;
- Failure is an offence punishable up to level 3 on the standard scale (£1000);
- A fixed penalty notice regime is also implemented for this offence by sections 71 - 76.
- See fixed penalty notice table for the range of fines available for this offence

## **7. STATUTORY NUISANCES (LIGHT AND INSECTS) (SECTIONS 101 AND 102)**

### OVERVIEW

Section 79 of the Environmental Protection Act 1990 defines what constitutes statutory nuisances (examples are fumes, gas, dust, noise etc). Local authorities have a duty to investigate and take action against statutory nuisances.

Local Authorities must take reasonable steps to investigate complaints of such nuisances and, once satisfied that a statutory nuisance exists or may occur or recur, local authorities must serve an abatement notice.

### CHANGES

#### 1) Insects

- Section 101 amends section 79 of the 1990 Act so that insects emanating from all premises other than domestic premises are capable of constituting a statutory nuisance;
- This measure is intended to provide local authorities with a remedy to nuisances from insect infestations on relevant industrial and trade premises;
- It is not intended to be used against naturally occurring concentrations of insects on land, or in ways that would affect biodiversity;
- Regard should be had to DEFRA's more detailed guidance before using this new statutory nuisance;
- Likely sources of insect nuisance (listed by DEFRA) include poultry houses/farms, sewage treatment works, manure/silage storage areas, animal housing, stagnant ditches and drains, landfill sites and refuse tips, waste transfer premises, the commercial parts of mixed commercial/residential blocks of buildings (excluding the residential premises contained therein), trade or business premises (e.g. contaminated goods, kitchen areas), slaughterhouses, used car tyre recycling businesses
- INSECTS EMANATING FROM DOMESTIC PREMISES ARE NOT COVERED BY THIS REGIME

#### 2) Artificial Lighting

- Section 102 amends section 79 so that artificial lighting is capable of constituting a statutory nuisance in certain circumstances;
- Artificial light nuisance is a source of light that in the opinion of a trained public health professional, who makes an assessment on a case-by-case

basis, interferes with someone's use of their property and/or might be prejudicial to someone's health;

- This is different from light pollution and the statutory nuisance regime will not necessarily be the appropriate tool to deal with light pollution;
- It is anticipated that most complaints to local authorities will concern the following: -
  - Domestic Security Lights
  - Commercial Security Lights
  - Healthy Living and Sports Facilities
  - Domestic Decorative Lighting
  - Exterior Lighting of Buildings and Decorative Lighting of Landscapes
  - Laser Shows / Light Art / Sky Beams
- More detailed guidance on investigating on each of these areas is provided by DEFRA's Guidance and should be consulted where complaints are made.

## **8. ABANDONED TROLLEYS (SECTION 99)**

### **BACKGROUND**

- Prior to the Act, charges were only payable by persons actually claiming the return of their trolleys. If proceedings were brought against a person for the recovery of such a charge, it was a defence for him to prove that he was not the owner of the trolley at the time it was removed.

### **CHANGES**

- Section 99 amends Schedule 4 to the Environmental Protection Act 1990 so as to enable a local authority to charge the person believed to be the owner of an abandoned shopping or luggage trolley for its removal, storage and disposal
- Local Authority includes District Councils for the purposes of this section.

## **9. OTHER POINTS**

### **Stray Dogs (Section 68)**

The Act gives local authorities sole responsibility for stray dogs. Previously the responsibility has been shared between the police and local authorities. DEFRA has indicated that this change will come into force when a transfer of the relevant resources has been agreed.

This may have large implications for district councils because the service will need to be able to operate outside office hours (outside office hours the police are currently obliged to receive stray dogs). The Council will be required to take in stray dogs 'round the clock' and will require more budgetary resource for this. The changeover of responsibility is currently not expected before June 2007.

### **Powers Not Duties**

It should be borne in mind that the Act contains powers not duties. Councils need to decide which powers are appropriate for their area.

## Wider Fixed Penalty Powers Should Not Be Seen As A Source Of Revenue

Fixed Penalties should not be seen as a new source of revenue. A Council's target should be to ensure compliance with the legislation under which they have fixed penalty powers.

A Council's target should be to issue no fixed penalties rather than an increasing number.

The more fixed penalties/prosecutions issued by a Council, the greater the Council is penalised under Best Value Performance review.

## **CODE OF PRACTICE ON LITTER AND REFUSE**

### **BACKGROUND**

Section 89(1) and (2) of the Environmental Protection Act 1990 imposes duties on certain landowners and occupiers (Duty Bodies) to keep specified land clear of litter and refuse, and duties on local authorities and the Secretary of State to keep clean public highways for which they are responsible. Under Section 89(7) the Secretary of State can publish a code of practice to help interpretation of these duties. A new code has been published. This new code came into force on 6 April 2006 and replaced the old Code dated 1st June 1999.

The New Code affects SLDC because it is a Duty Body and a Principal Litter Authority. Re-zoning of areas, rescheduling of cleaning times may be necessary.

### **NEW CODE OF PRACTICE ON LITTER AND REFUSE: 6 April 2006**

- Replaces the previous code of 1st June 1999;
- Issued under Section 89(7) of the EPA 1990;
- Reclassifies the different types of land managed by Duty Bodies into 4 main zones based on intensity of activity and health and safety limitations to help guide Duty Bodies on the intensity of management required;
- 1. High Intensity of Use 2. Medium. 3. Low and 4. Special
- **Duty Bodies should allocate land into one of the 4 zones and manage it accordingly;**
- **Duty Bodies are expected to publish details of these zones for their land and make them available to the public on request;**
- All Duty Bodies in an area should consult together and develop an integrated approach to zoning. THIS SHOULD BE LED BY THE PRINCIPAL LITTER AUTHORITY and zoning should be completed within 1 year of commencement of the new Code coming into effect (i.e. by April 2007);
- It is recommended that any zoning or re-zoning is done after a period of consultation, any body under a duty should consult the Principal Litter Authority when changing an existing zone or zoning a previously unzoned area;
- Duty Bodies are expected to set their cleaning schedules so that they meet their duty to keep their relevant land clear of litter and refuse and highways clean;
- As a last resort, if litter and refuse is not cleaned, response times have been set for each of the 4 classifications of land by which time land must be returned to an acceptable standard;

- If Duty Bodies don't clean within the response times they can be subject to a Litter Abatement Order or a Litter Abatement Notice issued under the Environmental Protection Act 1990.

DEFRA HAVE PUBLISHED A GUIDANCE TABLE SETTING OUT THE RESPONSE TIMES FOR EACH CLASSIFICATION OF LAND

## **DEFRA'S FIXED PENALTY NOTICES GUIDANCE**

### **BACKGROUND**

The Clean Neighbourhoods and Environment Act 2005 introduces and widens a range of offences for which Fixed Penalty Notices ('FPNs') can be issued. It also classifies Parish Councils as litter authorities meaning their authorised officers have the ability to issue Fixed Penalty Notices - a power they have not had before.

### **POINTS TO NOTE FROM THE GUIDANCE**

- It is recommended that authorities starting to issue fixed penalties for the first time allow a well publicised lead-in period before any notices are issued (3 months recommended by DEFRA);
- During this time when an offence is committed a fixed penalty should not be issued;
- Parish Councils should make sure they have enough resources to pursue unpaid fixed penalties;
- Comprehensive training courses have been developed to help ensure any staff involved in enforcement are adequately trained (details available from DEFRA).

### **Who can issue FPNs?**

- Authorised Officers of various local authorities;
- The definition of Authorised Officer varies depending on the offence -see the fixed penalty notice table,
- For some offences it can include 3rd party contractors (Litter, Dog Control Order, Graffiti, Fly posting, Flyering and Alarm Notification Area and FPNs) for others it can only be local authority authorised officers (e.g. Abandoning Vehicle FPNs);
- In all cases it includes an employee of a local authority authorised in writing to issue fixed penalties on behalf of that authority;
- Authorised employees of Parish Councils but they must complete an approved course of training recognised by the Secretary of State;
- Also the Environment Agency, National Park Authorities. The Broads Authority and Police Community Support Officers.

### **Amounts**

- Some offences enable a local authority to specify the amount within a range;
- If an Authority does not specify an amount, a default amount will apply;
- Ranges are: -
  - From £50 - £80 for those offences with a default amount of £75 (e.g. offences under Dog Control Order)
  - From £75 to £110 for those offences with a default of £100 (e.g. street litter control notices)

- In determining the level local authorities will need to take into account the deterrent effect of different levels and people's readiness to pay and the levels of fines imposed locally for the relevant offence in a magistrates court;
- The aim is to have fixed penalties that are not too high for local conditions, or higher than the likely fine if it isn't paid;
- It is recommended that local authorities consult the police when setting fixed penalty levels. Parish Councils setting penalty levels for dog control offences should consult their relevant higher authority;
- Fixed penalties issued by Parish Councils must use the amount specified by the local authority in whose area they are issued.

#### Discount for Early Payment

- The Act introduces a power for authorities to offer a discount for early payment;
- It is recommended that the period within which the discount applies is 10 days;
- Government regulations have specified the amount by which the discounts cannot fall: -
  - For offences with default rate of **£75** (not less than £59)
  - **£100** (£60)
  - **£200** (£120)
  - **£300** (£180)

#### Form of Fixed Penalty Notices

- There is no prescribed form under law, but FPNs do have to contain a minimum amount of detail regarding the offence, the amount, how to pay and details of early payment;
- DEFRA have provided example FPNs but authorities should tailor these examples to meet their individual needs.

#### Receipts

- Receipts must be used for functions specified in the Acts under which fixed penalties are issued (but a local authority categorised as good or excellent under CPA can use receipts on any function of the local authority).

#### What do Councils need to do?

- For any Fixed Penalties being issued for the first time - allow a well publicised lead-in period (3 months);
- Parish councils should make sure they have the resources to recover unpaid fixed penalties (including the legal resources);
- Attend DEFRA training courses;
- Councils need to authorise officers in writing to issue fixed penalties;
- Where councils are issuing FPNs for offences for the first time, they need to allow a 3 month lead in period;
- Parish Council Officers need to attend approved training courses;
- Councils needs to decide what amount within the prescribed range they intend to use for a fixed penalty, after taking into account local conditions, and consulting with the police;
- Councils also need to decide what discount amount they are going to adopt;
- Councils need to decide on a form for fixed penalty notices - use government forms as a basis and tailor to meet individual needs;
- Councils need to make they sure use receipts from fixed penalties for purposes authorised under the act by which they were issued.

Implications of Taking up Full Powers for Parish Councils

- "It is important that any local authority that issues fixed penalty notices takes the necessary steps to ensure that they are paid" - Margaret Beckett;
- Resources needed - officers and legal resources will be needed for enforcement and prosecutions (where FPNs are not paid)

**Clean Neighbourhoods and Environment Act Offences for Which Fixed Penalties are Available**

Section	Description	Amount	Who can Issue	Joint Approach?	Priority
s. 6(1) Clean Neighbourhoods and Environment Act 2005	<u>Nuisance Parking</u>	<b>Amount fixed at £100.</b>	Local authority authorised officers ( <u>County District</u> )		
s. 2A(1) Refuse Disposal (Amenity) Act 1978	<u>Abandoning a Vehicle</u>	<b>Amount fixed at £200</b>	Local authority authorised officers ( <u>District</u> )		
s. 88(1) Environmental Protection Act 1990	<u>Litter</u>	Can be set at local level (between (£50-£80). <b>Default £75</b>	Litter authority authorised officers, including persons not directly employed by the authority ( <u>Parish and District and Contractors</u> ) Police Community Support Officers and other persons accredited under Community Accreditation Schemes under the Police Reform Act 2002	Common level of FPN preferable. Need to join up with parishes	

Section	Description	Amount	Who can Issue	Joint Approach?	Priority
s. 94A(2) Environmental Protection Act 1990	<u>Litter Clearing Notices</u> and Street litter control notices	Can be set at local level (between £75-£110). <b>Default £100</b>	Principal litter authority authorised officers ( <u>District</u> )		
Schedule 3A, para.7 (2) Environmental Protection Act 1990	<u>Controls on 'flying'</u> Unauthorised distribution of literature on designated land	Can be set at local level (between £50-£80). <b>Default £75</b>	Principal litter authority ( <u>District Council</u> ) authorised officers, including persons not directly employed by the authority (e.g. contractors)		
s. 43 Anti-social Behaviour Act 2003	<u>Graffiti and fly-posting</u>	Can be set at local level between £50-£80). <b>Default £75</b>	Local authority authorised officers, including persons not directly employed by the authority ( <u>District and Parish Councils and contractors</u> ); Police Community Support Officers and other persons accredited under Community Accreditation Schemes under the		

Section	Description	Amount	Who can Issue	Joint Approach?	Priority
			Police Reform Act 2002		
s. 5B(2) Control of Pollution (Amendment) Act 1989	Failure to produce authority waste transfer notes)	<b>Amount fixed at £300</b>	Waste collection authorities and Environment Agency (acting through their officers)		
s. 34A(2) Environmental Protection Act 1990	<u>Failure to furnish documentation (waste carrier's licence)</u>	<b>Amount fixed at £300</b>	Waste collection authorities ( <u>District Council</u> ) and Environment Agency (acting through their officers)		
s. 47ZA(2) Environmental Protection Act 1990	<u>Offences in relation to waste receptacles</u>	Can be set at local level (between £75-£110). <b>Default £100</b>	Waste collection authority authorised officers ( <u>District Council</u> )		
s. 59(2) Clean Neighbourhoods and Environment Act 2005	<u>Offences under Dog Control Orders</u>	Can be set at local level (between £50-£80). <b>Default £75</b>	Authorised officers of primary and secondary authorities, including persons not directly employed by the authority ( <u>District and Parish Councils and Contractors</u> ); Police Community Support Officers and	Common level of FPN preferable. Need to join up with parishes	

Section	Description	Amount	Who can Issue	Joint Approach?	Priority
			other persons accredited under Community Accreditation Schemes under the Police Reform Act 2002		
s. 73(2) Clean Neighbourhoods and Environment Act 2005	<u>Failure to nominate key holder (within an alarm notification area) or to notify local authority writing of nominated key holder's details</u>	Can be set at local level between £50-£80). <b>Default £75</b>	Local authority authorised officers, including persons not directly employed by the authority		
s. 8 Noise Act 1996	<u>Noise from dwellings</u>  <u>Noise from licensed premises</u>	Can be set at local level (between £75-£110). <b>Default £100</b>  <b>Amount fixed at £500</b>	Local authority officers  Local authority officers		