

AGENDA ITEM NO.

**CABINET
LICENSING AND PROTECTION PANEL**

**1 SEPTEMBER 2005
20 OCTOBER 2005**

CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 (Report by Head of Environmental Health Services)

1. INTRODUCTION

- 1.1 The purpose of this report is to allow Members to consider the implications of the Clean Neighbourhoods and Environment Act 2005 and to seek Member approval for the delegations of authority for dealing with powers and duties arising out of the implementation of the Act.

2. BACKGROUND INFORMATION

- 2.1 On 7 April 2005 the Clean Neighbourhoods and Environment Bill received Royal Assent. The majority of the measures will commence during the next year, and a consultation on the regulations and guidance is expected shortly from DEFRA.
- 2.2 The LGA has also produced (13 July 2005) a detailed 'Get in on the Act' guide to the new Act and the opportunities it brings for local authorities.
- 2.3 There are increased enforcement powers included in the Act for a variety of 'environmental crimes' also powers to adopt alternative enforcement strategies for some offences, such as the use of fixed penalty notices. These are powers rather than duties and the Council may determine that it has no wish to adopt the powers in this Act. However, the national publicity is likely to create an expectation among Council-tax payers that their local authority will enforce the law to resolve any neighbourhood problems.
- 2.4 Should Members chose to use these new enforcement powers Huntingdonshire District Council, in common with many local authorities, does not presently have the necessary trained staff to implement the provisions of this Act. In particular, the alternative enforcement strategies will need staff to be trained in the application and limitation of the new powers and also for the Council to agree an amended Enforcement Policy in relation to environmental crimes.

3. IMPLICATIONS

- 3.1 Some of the new powers that came into force on 7 June 2005, could potentially be added to existing enforcement briefs and the increased workload absorbed, in the first instance, by existing staff. Staff would need additional training. However, the likely demand for these enforcement powers cannot be estimated. After the first year the additional workload will need to be assessed. For example: the issues that could then be addressed would include:
- ◆ The parking of two or more motor vehicles on a road or roads, merely in order to be sold. This new role could be adopted by the Enforcement Officer (Abandoned Vehicles) or a Planning

Enforcement Officer (should it relate to private land or a private roadway).

- ◆ Causing annoyance by repairing vehicles on a road or a trader repairing vehicles on a road. This new role could be adopted by Officers within the Environmental Health Services Division and would supplement their existing powers in relation to noise nuisance.

3.2 There are new powers that came into force on 7 June 2005. The authority does not necessarily have adequate staff to implement or enforce these offences. This would include tackling the offence of dropping litter anywhere in the open air, including rivers or lakes.

3.3 There are also new powers, which should come into force during 2006, which could be, potentially, added to existing enforcement briefs. Again the likely demand for these enforcement powers cannot be estimated. After the first year the additional workload will need to be assessed. The issues that could then be addressed would include:

- ◆ Notice to be served on the *owner* of the land requiring him to clear waste where there is no occupier or the occupier cannot be found without the enforcing authority incurring unreasonable expense. A waste collection authority can enter the land, remove the waste or take such specified steps and recover the costs of doing so from the occupier or owner. The enforcement could be implemented by Environmental Health, as it represents an amendment to their existing powers, and the practical remedy could be achieved by the Operations Division.
- ◆ Immediate removal of 'no-value' abandoned vehicles from public roads. This is an accelerated process. The work is already undertaken by the Enforcement Officer (Abandoned Vehicles). He currently (July 2005) achieves an average removal time of around 4 days (for all abandoned vehicles not just wrecks), within the present legal constraints.
- ◆ A new system will replace the Dogs (Fouling of Land) Act 1996 and will involve 'dog control orders'. The enforcement may not be markedly different for the Council's Dog Warden. However the 'dog control orders' are potentially complicated and will require both extensive consultation with the Parish Councils in the district and support from the Council's Legal Services Division in drafting the new Orders. There is no existing capacity to undertake the breadth and detail of consultation that will be required without a noticeable impact on other work. There are also likely to be difficulties in providing the necessary legal support and input from existing resources.
- ◆ The creation of a new statutory nuisance: "insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance" **creates a new duty**, rather than just conferring powers. This new role will be adopted by Environmental Health Enforcement Officers and Environmental Health Officers and is an extension of their existing duties in relation to nuisance.

- ◆ The creation of a new statutory nuisance: "artificial light emitted from premises so as to be prejudicial to health or a nuisance" **creates a new duty**, rather than just conferring powers. This new role will be adopted by Environmental Health Enforcement Officers and Environmental Health Officers and is an extension of their existing duties in relation to nuisance. This change in particular may require more night-time working.
- 3.4 Gating of minor highways that attract anti-social behaviour can be undertaken by the Highways Authority. A new role to determine the need for gating in Huntingdonshire could be implemented by the Community Safety Unit (CSU). The CSU would need to liaise with Cambridgeshire County Council's Highways officers to co-ordinate the use of the powers. The community safety activity is also grant funded in part so the longevity of the unit is heavily dependent on continued funding.
- 3.5 There are new powers, which should come into force during 2006. The authority does not currently have staff to implement or enforce these new areas. They are powers that the Council does not have to adopt but there may be an expectation among residents that any neighbourhood problems will be resolved. This expectation may be hard to meet in any other way.
- ◆ Service of "litter clearing notices" on particular occupiers where Officers are of the view that defacement caused by litter or refuse is detrimental to the amenity of the locality.
 - ◆ Extension of the application of street litter control notices to cover also vehicles, stalls and other moveable structures used for street vending.
 - ◆ Designation of leaflet control areas, and consent system.
 - ◆ Cost recovery for removing or obliterating illegally displayed posters or placards.
 - ◆ Designation of Huntingdonshire (or part of it) as an audible intruder alarm notification area – previous register administered by police (linked to noise enforcement).
 - ◆ Extended powers under the Noise Act 1996 to take action to deal with noise at night from premises where there is either a premises licence or a temporary event notice in effect under the Licensing Act 2003.
- 3.6 There is also a changed **duty** that may come into force during 2006 that Huntingdonshire District Council does not currently have resources to meet. This Act removes the responsibility of the police for dealing with stray dogs. The effect will be that there will be no round-the-clock facility for people to use to leave stray dogs that have been found. The terms of the change have not yet been set nor have the national implications for funding been agreed with Central Government.
- 3.7 This Act will allow, eventually, the issue of fixed penalty notices (FPNs) to offenders instead of resorting to prosecutions through the Courts for some offences. Members will recall the Anti-Social

Behaviour Act 2003 included similar scope for some offences. However, the use of FPNs is a significant business process change. The offences that may in future attract a fixed penalty under this Act include:

- ◆ Offences under the Noise Act 1996.
- ◆ Offence of abandoning a vehicle - £200 maximum penalty.
- ◆ Dropping litter – penalty fixed at £75, unless set by the local authority.
- ◆ Person who has not complied with a litter clearing notice or a street litter control notice – £100, unless set by the local authority.
- ◆ Increased penalty for graffiti and fly posting - £75, unless set by the local authority. (The penalty was previously £50.)
- ◆ Breach of 'dog control orders' - £75, unless set by the local authority.
- ◆ Offence of failing to nominate or notify details of a key-holder, in an alarm notification area - £75, unless set by the local authority.

4. CONCLUSION

4.1 This report gives an indication of the breadth of the new powers that are to become available in the next 12 months. The list is not exhaustive as the Act is an extensive document with 111 sections and 5 schedules. There are increased enforcement powers included in the Act for a variety of 'environmental crimes' also powers to adopt alternative enforcement strategies for some offences, such as the use of fixed penalty notices.

4.2 This Act requires local authorities to become increasingly pro-active in resolving neighbourhood problems. Huntingdonshire District Council does not presently have suitable resources to implement all the provisions of this Act. In order to plan for the implementation of the Act and to facilitate the use of existing powers as the need arises officers need the necessary authority to act.

5. RECOMMENDATIONS

5.1 To consider an initial response to the powers outlined in the report.

5.2 It is RECOMMENDED that delegated authority be given to the Director of Operational Services to appoint authorised officers to enforce the relevant provisions of the Clean Neighbourhoods and Environment Act 2005:

- ◆ Under Part 2 of the Act in relation to nuisance parking, abandoned and illegally parked vehicles.
- ◆ Under Part 3 of the Act as it extends the statutory offence of dropping litter and amends the powers of local authorities in relation to litter.

- ◆ Under Part 4 of the Act as it amends the law relating to graffiti, fly-posting etc.
 - ◆ Under Part 5 of the Act in relation to the miscellaneous provision about waste.
 - ◆ Under Part 6 of the Act as it allows local authorities to create offences relating to the control of dogs.
 - ◆ Under Part 7 of the Act as it addresses various issues relating to noise nuisance.
- 5.3 That delegated authority be given to the Director of Operational Services, after consultation with the relevant executive councillor:
- ◆ To have proceedings instituted to prosecute an offender through the Courts, for offences under the provisions of Parts 2, 3, 4, 5 and 6 of the Act.
- 5.4 That delegated authority be given to the Director of Operational Services, after consultation with the chairman and vice-chairman of the Licensing and Protection Panel (as appropriate):
- ◆ To have proceedings instituted to prosecute an offender through the Courts, for offences under the provisions of Part 7 of the Act.
- 5.5 That delegated authority be given to the Director of Operational Services, after consultation with the portfolio-holder of 'Housing and Public Health' (or successor) and a relevant Ward Member to formally request Cambridgeshire County Council to exercise their authority:
- ◆ Under Part 1 of the Act to allow the gating of minor highways that attract anti-social behaviour.
- 5.6 That a further report be submitted to Cabinet related to the implementation of Fixed Penalty Notices.

BACKGROUND INFORMATION

Clean Neighbourhoods and Environment Act 2005

Cabinet Report 6 May 2004 - Anti-Social Behaviour Act 2003

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