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**Report to**

Scrutiny Co-ordination Committee  
Cabinet

7<sup>th</sup> December 2005

13<sup>th</sup> December 2005

**Report of**

Director of City Services

**Title**

Response to the DEFRA Draft guidance on the Clean Neighbourhoods and Environment Act 2005

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**1 Purpose of the Report**

- 1.1 The purpose of this report is to provide a response to a consultation paper and a partial regulatory impact assessment produced by The Department of Environment, Food and Rural Affairs (DEFRA) entitled "Draft guidance on the Clean Neighbourhoods and Environment Act 2005".

**2 Recommendations**

- 2.1 Scrutiny Co-ordination Committee is recommended to consider the report and forward any recommendations they wish to make to Cabinet.
- 2.2 The Cabinet is recommended to:
- 2.2.1 Examine the suggested responses to the consultation document, and partial risk assessment detailed in Appendix A, and agree the final response to be returned to DEFRA.

**3 Information/Background**

- 3.1 On the 7<sup>th</sup> April 2005 the Clean Neighbourhoods and Environment Act received royal assent. The main provision of the Act comes into force during April 2006, however some specific areas of the Act came into force on the 7<sup>th</sup> June 2005.
- 3.2 The Act was specifically introduced to address problems affecting the quality of our local environment, which forms part of a continuum of anti-social behaviour, vandalism, disorder and levels of crime. The measures have been developed over the last two years following the Urban summit and consultation exercises such as 'Living Places – Powers, Rights, and Responsibilities' and the 'Clean Neighbourhoods consultation'
- 3.3 In order to assist local authorities with their new powers the Government intend to issue guidance. In order to ensure the most suitable guidance is given the Government has produced draft guidance and requested local authorities to submit comments no later than the 2<sup>nd</sup> January 2006.
- 3.4 The Local Authority has responded to the legislation by producing a implementation plan. This was approved by Cabinet on the 1<sup>st</sup> November 2005.

**4 Proposal and Other Option(s) to be Considered**

- 4.1 There are no other Government proposals or other options to consider.
- 4.2 Cabinet should note that any responses sent to DEFRA might be publicised.

**5 Other specific implications**

	<b>Implications (See below)</b>	<b>No Implications</b>
Best Value	✓	
Children and Young People		✓
Comparable Benchmark Data		✓
Corporate Parenting		✓
Coventry Community Plan		✓
Crime and Disorder	✓	
Equal Opportunities		✓
Finance	✓	
Health and Safety		✓
Human Resources		✓
Human Rights Act		✓
Impact on Partner Organisations		✓
Information and Communications Technology		✓
Legal Implications	✓	
Neighbourhood Management	✓	
Property Implications		✓
Race Equality Scheme		✓
Risk Management		✓
Sustainable Development		✓
Trade Union Consultation		✓
Voluntary Sector – The Coventry Compact		✓

**5.1 Best Value**

Under BV199 the City Council are required to monitor Local Environmental Quality. In particular litter, detritus, fly posting, and graffiti must be graded to establish an overall cleanliness rating. The new guidance aims to enable local authorities to take further enforcement action and in turn this should have a positive impact on the City Councils cleanliness rating.

**5.2 Crime and Disorder**

Recent research has shown that the local Environmental Quality in a persons living environment has a significant impact on their health and well-being. Residents in areas,

which have a low environmental quality often have an increased "fear of crime". Evidence also supports the view that the onset of environmental crime, in an area, acts as a precursor for more serious anti-social behaviour and crime.

The guidance should assist enforcement officers in using the new legislation and in turn this will have a positive impact in reducing the levels of crime and anti-social behaviour relating to the environment.

**5.3 Finance**

The guidance has proposed draft ranges for fixed penalty fines that are detailed in Appendix B. Officers will examine the guidance so that appropriate feedback can be given to DEFRA. Under the legislation Local Authorities will have the discretion to set the level of fines for their own area. A report will therefore be presented to members when the final government guidance has been issued so a decision can be made on the level of fines that will be issued in Coventry.

**5.4 Legal Implications**

The guidance will have potential legal implications, as the guidance will provide assistance to the courts when interpreting the legislation. It is important that the local authority provides any concerns it has with the draft guidance before they are finalised.

**5.5 Neighbourhood Management**

The guidance contained in the consultation document will allow a more co-ordinated approach to tackle environmental crime. Neighbourhood Management will provide a link between the city council services, which enforce this legislation and residents themselves.

**6. Timescale and expected outcomes**

The consultation ends on the 2<sup>nd</sup> January 2006. Once the document has been approved it will be forwarded to DEFRA.

	<b>Yes</b>	<b>No</b>
<b>Key Decision</b>		√
<b>Scrutiny Consideration (if yes, which Scrutiny meeting and date)</b>	√ 7 <sup>th</sup> December 2005  Scrutiny Co-ordination Committee	
<b>Council Consideration (if yes, date of Council meeting)</b>	√	

## **List of background papers**

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### **Papers open to Public Inspection**

Draft Guidance on the Clean Neighbourhoods and Environment Act 2005  
<http://www.defra.gov.uk/corporate/consult/clean-neighbourhood05/index.htm>

Clean Neighbourhood and Environment Act 2005   BGH 5<sup>th</sup> Floor  
Enforcement Policy

## Appendix A

### Crime and Disorder Reduction Partnerships

Q1. Do you have any comments on the guidance regarding crime and disorder partnerships?

Department consulted – Community Safety, Chief Executives

The inclusion of Antisocial Behaviour and Environmental Crime within Crime and Disorder Reduction Strategies will facilitate a more holistic approach in improving livability.

### Nuisance Vehicles

Q2. Do you have any comments on the guidance for nuisance vehicles?

Department consulted – Parking Enforcement Unit, City Development Directorate

No Comments.

### Abandoned Vehicles

Q3 What, in your opinion, would constitute unreasonable costs? Should this be made clearer in any revised guidance by setting a monetary or percentage value?

Department consulted – Street Services, City Services Directorate

It is very difficult to assess what could be considered unreasonable - ultimately the local authority is almost certainly going to have to move abandoned vehicles whatever the cost.

It would be a very unusual case where the city council recovery costs would exceed £75 and this upper-end figure is usually for removal from soft ground.

Apart from soft ground, other more costly scenarios may include removal utilising a crane or water equipment – and as these two are relatively uncommon it is perhaps unfair to include such costs within any definition. Such cases would need to be determined according to individual circumstances.

Revised guidance maybe more useful if a monetary value in the region of £100 was included.

## Litter and Refuse

Q4. Does the guidance provide adequate explanation of definitions given in the legislation?

Department Consulted – Environmental Health, City Services Directorate

There is confusion as to whether there is a legal requirement for officers to issue notices 'on the spot' when a littering incident occurring or whether fixed penalty notices can be issued later through administration process. The guidance could be improved by clarifying this issue.

The powers to grant authorisation to non-council employees outside of the Police Reform Act 2002 are most welcome and give greater flexibility.

Q5. Is it clear on the extent of the section 89 duty, and the land areas and bodies to which it applies (section 2)?

Department consulted – Street Services, City Services Directorate

Yes

Q6. Are the procedures for issuing notices easy to follow?

Department Consulted – Environmental Health, City Services Directorate

The majority of the procedures for issuing notices are easy to follow, however it would be useful if the guidance was supported by flow diagrams.

The guidance fails to expand on the procedures that should be used when a fixed penalty notice is not paid or when the local authority opts to take formal prosecution.

The guidance could therefore be improved by explaining whether local authorities need to apply to the magistrates court to obtain a street litter order.

Q7. Do you think the guidance sets out the responsibilities of local authorities, landowners and others in a fair and consistent manner? Do you find the information on partnership working helpful?

Department Consulted – Environmental Health, City Services Directorate

The guidance sets out the responsibilities for local authorities, and land owners in a fair consistent manner. This information will be useful to partners. It would be of

additional benefit if the guidance expanded on what the local authority is not responsible for. For example, this local authority receives a large number of requests for alleyways to be cleansed and it is often the case that households are not aware of their responsibilities.

Q8. Are health and safety issues and access to private land adequately covered in section 10?

Department Consulted – Environmental Health, City Services Directorate

Yes

Q9. Is the document adequately cross-referenced with other guidance on litter, such as the Code of Practice on Litter and Refuse and guidance on fixed penalties?

Department Consulted – Environmental Health, City Services Directorate

Yes

Q10. Annex i: Is this additional information on standards of compliance for Litter Clearing Notices and Street Litter Control Notices helpful?

Department Consulted – Environmental Health, City Services Directorate

The provision of guidance concerning mobile traders operating in lay-bys would be welcome. The format and content required in the Public Register (section 95) would be useful i.e. is a plan or a map required.

Picture diagrams of the grading would also support the information.

Q11. Annex ii: Will you make use of the model forms provided? Is there anything else that should be included in them?

Department Consulted – Environmental Health, City Services Directorate

Yes.

## **Graffiti**

Q12. Do you have a problem with graffiti on property and street furniture to which the powers in the Anti-Social Behaviour Act 2003 may apply in the future, or, in the case of the graffiti pilots, apply already?

Department consulted – Street Services, City Services Directorate

Yes

Q13. The Home Office graffiti guidance recommends that partnerships are developed between local authorities and the property owners as the preferred method for dealing with graffiti removal.

Do you have these arrangements in place already?

If not, are you planning to develop them?

Department consulted – Street Services, City Services Directorate

Yes

No decision has been made to develop partnerships.

Q14. Where you are currently involved in a graffiti partnership, how effective has it been in tackling graffiti? Do you anticipate the use of removal notices in your area once the powers have been commenced?

Department consulted – Street Services, City Services Directorate

No Comments.

Q15. What costs have fallen on you as a local authority/statutory undertaker/property owner as a result of graffiti partnerships being established?

Department consulted – Street Services, City Services Directorate

No comments.

Q16. In cases where repeat graffiti occurs, what is the estimated time lapse in graffiti returning?

Department consulted – Street Services, City Services Directorate



Approximately 1 Week

Q17. Do you collect data on the number of hours spent by local authority staff on cleaning off graffiti?

- From local authority property
- From street furniture not owned by the local authority

Department consulted – Street Services, City Services Directorate

Yes. There are both combined

Q18. How would you describe your working relationship with owners of street furniture/educational institutions/statutory undertakers who may be affected by these powers?

- Good
- Bad
- Not sure/no contact

Department consulted – Street Services, City Services Directorate

No comments.

### **Flyposting**

Q19. To what extent is flyposting already being dealt with alongside graffiti removal; for example, are fly-posters and graffiti routinely removed at the same time, and are anti-flyposting coatings being applied along with antigraffiti coatings?

Department consulted – Street Services, City Services Directorate

No comments submitted.

Q20. Can you think of any additional costs or benefits that may arise from the introduction of defacement removal notices for graffiti and flyposting?

Department Consulted – Environmental Health, City Services Directorate

The notices will hopefully encourage companies to take protection measures

such as using anti-vandal paint. This will incur extra costs.

Q21. Is the current guidance on graffiti useful? Are there any omissions, if so, what else needs to be included?

Department consulted – Street Services, City Services Directorate

Yes

Q22. Bearing in mind the proposed revision of the guidance, are any other amendments necessary to take account of flyposting?

Department Consulted – Environmental Health, City Services Directorate

It is possible that local authorities can take action against persons fly posting through use of the Highways Act 1980. Many local authorities have used this legislation to prosecute companies benefiting from the poster. The legislation states that the person erecting the poster can be prosecuted however, it is to the interpretation of the Courts of whether this can be applied vicariously to the company. It would be helpful if the Government could amend this legislation so that local authorities can also use it to prosecute companies.

With regards to 'removal notices' it would be useful if local authorities could also specify works that could be undertaken to prevent further fly posters/graffiti from being applied to the relevant surface (i.e. requesting stippled paint to be applied to the surface.)

## **Waste**

Q23. Do you have any comments on the guidance for Transport of Waste?

Department Consulted – Environmental Health, City Services Directorate

Coventry City Council welcomes the guidance for the transport of waste. There is however, a significant need for more specific guidance as many local authorities have limited experience of this area of enforcement. The local authority would also welcome a more formalized training structure so officers around the council can obtain nationally recognised qualifications. At present the Environment Agency have released guidance regarding the local authorities responsibilities with regard to fly tipped waste investigations. Further guidance would be welcomed to define the local authorities role in enforcing duty of care responsibilities.

Q24 Do you have any comments on the guidance for Deposit and Disposal of Waste?

Department Consulted – Environmental Health, City Services Directorate

Again, the local authority would welcome more guidance in this area, and would like to see a more formalized training structure. It is felt that despite the 'costing the earth' guidance magistrates still instigate insufficient sentences to deter fly tippers. The guidance is over two years old, it may therefore be of benefit if more refresher training/guidance was given to magistrates.

It would also be useful to have draft forms to enable local authorities to give sufficient information to the court to enable vehicle connected with fly tipping to be seized.

The Government needs to issue guidance on whether local authorities can require land owners/ occupiers who have been targeted by fly tippers to protect land from further fly tipping (I.e. fencing, bollarding). This should be introduced into the legislation if local authorities cannot do this.

### **Waste Divestment Provisions**

Q25 Do you have any comments on the interim guidance issued for waste divestment?

Department consulted – Street Services, City Services Directorate

The City Council is fortunate to already have a LAWDC in place with the revised arrangements enabling a more flexible and integrated approach to meeting the City's waste management requirements in the future through joint working arrangements with existing and where appropriate future partners, without the more prescriptive and restrictive previous compulsory competitive tendering and divestment processes.

Also particularly welcome is the requirement of developers/contractors to produce site waste management plans that should further reduce construction/demolition fly tipping and encourage waste minimisation and recycling. Will need careful monitoring probably through "planning" officers required to inspect works at various stages.

### **Dog Control Orders**

Q26 Do you have any comments on the draft regulations?

Department consulted – Environmental Health, City Services Directorate

The continuance of designations made under the Dog Fouling of Land Act 1996 is welcomed.

Q27 Are there any other types of land that should be excluded from dog control orders, and why?

Department consulted – Environmental Health, City Services Directorate

No

Q28 Is the list of assistance dogs exempted from each dog control order sufficient?

Department consulted – Environmental Health, City Services Directorate

Yes

Q29 Do any bodies which currently have byelaw making powers for dog control purposes wish to be designated as secondary authorities?

Department consulted – Environmental Health, City Services Directorate

No

Q30 Should the recommendation for primary and secondary authorities to consult each other prior to proposing dog control orders be made a legal requirement?

Department consulted – Environmental Health, City Services Directorate

Yes

Q31 How effective will dog ban orders be on unenclosed land, and what difficulties would this present regarding enforcement?

Department consulted – Environmental Health, City Services Directorate

This is not an issue in Coventry.

Q32 What other methods can authorities use to communicate the effect of orders and the land to which they apply to those living outside the area; would the website of the authority suffice?

Department consulted – Environmental Health, City Services Directorate

The suggested methods are sufficient.

## **Noise**

Q33 Do you have any comments on the guidance for noise?

Department consulted – Environmental Health, City Services Directorate

The guidance is adequate.

### **Fixed Penalty Notices**

Q34 Do you have any views on the ranges proposed above?

Department consulted – Finance and ICT

The default values are acceptable.

Q35 Do you have any views on these minimum amounts?

Department consulted – Environmental Health, City Services Directorate

The Consultation has mainly suggested a 40% discount, this be consistently adopted through the all the fixed penalty notice. It is suggested that a discount should apply if settled within 10 days of the notice being issued. Given that the minimum limit for prosecution is 14 days, we would suggest a discount period of 5 days is more appropriate. We would also suggest that discounts only be applicable for 1st offences. Subsequent offences should be fined at full rate.

Q36 Defra intends to develop, with practitioners, models of possible fixed penalty form, which will be made available for comment on the Defra website. Do you think that such models would be helpful?

Department consulted – Environmental Health, City Services Directorate

The Local Authority would welcome model forms to be used for fixed penalty notices.

### **Abandoned Shopping and Luggage Trolleys**

Q37 Defra intends to issue guidance on developing partnership solutions to reduce abandonment. Do you have any examples of joint working or good practice to prevent trolley losses and encourage swift retrieval?

Department consulted – Street Services, City Services Directorate

No, but the local authority would support a partnership approach with the retailers as this could dramatically reduce transportation costs. Any realistic agreement with retailers for a more efficient process than the legislation dictates would rely on building up a relationship based on trust.

Q38 Is this list of consultees sufficient? Is there anyone else who should be included?

Department consulted – Street Services, City Services Directorate

Yes

Q39 Is 'at least every five years' a suitable recommended time period for reviewing the operation of the Schedule?

Department consulted – Street Services, City Services Directorate

Yes

Q40 Is the guidance clear on the procedure for seizing, removing, storing and disposing of trolleys under the legislation?

Department consulted – Street Services, City Services Directorate

Yes but following the guidance to the letter would be very resource intensive so the preferred course of action should be as in A37

Q41 Are there any other costs that should be specifically mentioned here?

Department consulted – Street Services, City Services Directorate

No

Q42 Would it be helpful to provide any further guidance on the removal of trolleys from watercourses? If so, what information do you require?

Department consulted – Street Services, City Services Directorate

Yes. Information on powers to require supermarkets to remove the trolleys, and take action against them.

Q43 Are there any other schemes which should be included (bearing in mind that the land covered by the scheme must form part of an agricultural unit)?

Department Consulted – Environmental Health, City Services Directorate

There are no extra schemes that we feel should be included. However we would like to highlight the problems faced with domestic odour nuisance. At present local authorities can only take action against odour from commercial premises we therefore cannot take action against domestic odours and we would ask that this should be amended.

Q44 What should be included in a section on environmental cost benefit?  
What would constitute unacceptable environmental damage? How would the level at which environmental damage became unacceptable be assessed?

Department Consulted – Environmental Health, City Services Directorate

No Comments

Q45 Are there other sports that should be added to this list? Could any be omitted?

Department Consulted – Environmental Health, City Services Directorate

No additional sports.

Q46 What other sources of information on artificial light could be included?

Department Consulted – Environmental Health, City Services Directorate

No Comment

Q47 Are there any other schemes that could be added to this list? Could any be omitted?

Department Consulted – Environmental Health, City Services Directorate

No comment.

### **Regulatory Impact Assessment**

Q48 Do you have any comments on the Full and Final Regulatory Impact Assessment?

Department Consulted – All consultees.

None from Environmental Health – We are still awaiting further details on 'stray dogs'.

Table 1:

Section and legislation <sup>9</sup>	Description of offence	Who can issue FPNs	Amount
s. 6(1) Clean Neighbourhoods and Environment Act 2005	Nuisance parking	Local authority authorised officers	Amount fixed at £100.
s. 2A(1) Refuse Disposal (Amenity) Act 1978	Abandoning a vehicle	Local authority authorised officers	Amount fixed at £200
s. 88(1) Environmental Protection Act 1990	Litter	Litter authority <sup>10</sup> authorised officers including persons not directly employed by the authority (see paragraph below); Police Community Support Officers and other persons accredited under the Police Reform Act 2002	Can be set at local level. Default £75
s. 94A(2) Environmental Protection Act 1990	Street litter control notices and litter control notices	Principal litter authority authorised officers	Can be set at local level. Default £100
Schedule 3A, para.7(2) Environmental Protection Act 1990	Unauthorised distribution of literature	Principal litter authority authorised officers, including persons not directly employed by the authority (see paragraph 12 below)	Can be set at local level. Default £75
s. 43 Anti-social Behaviour Act 2003	Graffiti and flyposting	Local authority and parish council authorised officers, including persons not directly employed by the authority (see	Can be set at local level.
		paragraph 12 below); Police Community Support Officers and other persons accredited under Community Accreditation Schemes under the Police Reform Act 2002	Default £75
s. 5B(2) Control of Pollution (Amendment) Act 1989	Failure to produce authority (waste transfer notes)	Waste collection authorities and Environment Agency (acting through their officers)	Amount fixed at £300
s. 34A(2) Environmental Protection Act 1990	Failure to furnish documentation (waste carriers licence)	Waste collection authorities and Environment Agency (acting through their officers)	Amount fixed at £300
s. 47ZA(2) Environmental Protection Act 1990	Offences in relation to Waste receptacles	Waste collection authority authorised officers	Can be set at local level. Default £100
s. 59(2) Clean Neighbourhoods and Environment Act 2005	Offences under Dog control orders	Authorised officers of primary and secondary authorities, including persons not directly employed by the authority (see paragraph 11.12 below); Police Community Support Officers and other persons accredited under Community Accreditation Schemes under the Police Reform Act 2002	Can be set at local level. Default £75
s. 73(2) Clean Neighbourhoods and Environment Act 2005	Failure to nominate key-holder (within an alarm notification area)	Local authority authorised officers, including persons not directly employed by the authority (see paragraph 12 below)	Can be set at local level. Default £75
s. 8 Noise Act 1996	Noise from dwellings	Local authority officers	Can be set at local level. Default £100
	Noise from licensed premises	Local authority officers	Amount fixed at £500



Governments suggested discount rating.

- For offences with a default rate of £75, **£40**;
- For offences with a default rate of £100, **£60**;
- For offences with a default rate of £200, **£120**;
- For offences with a default rate of £300, **£180**