

SUMMARY OF THE MAIN PROVISIONS OF THE CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 (THE ACT)

1. PART 1: CRIME AND DISORDER

Section 1: Crime and Disorder Reduction Strategies

Section 1 of the Act amends the Crime and Disorder Act 1998 to require local authorities to consider low level anti-social behaviour and environmental crime such as littering, graffiti, fly-posting, nuisance vehicles and fly-tipping in the composition of their “crime reduction strategies”. Waverley’s Crime Reduction Strategy (2005 – 2010) was published in 2005. This takes into account anti-social behaviour and environmental crime.

Section 2: Gating Orders

Section 2 of the Act amends the Highways Act 1980 to provide local authorities with a means to erect, or allow the erection of, a physical barrier to restrict public access to a highway over which the public would normally have a right of passage (‘Gating’). It is expected that this power will predominantly be used to address crime and anti-social behaviour in built-up areas. Any such Orders will require prior notification to occupiers of premises affected by the proposals and consideration of their responses. A local authority must also hold a local public inquiry in any circumstances that might be provided for in regulations. Gating Orders may be challenged in the High Court on certain specified grounds. The gating or ‘stopping’-up of a highway would normally be a matter for the Highway Authority (Surrey County Council in Waverley).

2. PART 2: VEHICLES

Section 3: Nuisance Parking (Selling Vehicles on a Road)

Section 3 makes it an offence for a person to park motor vehicles on a road or roads where they are parked merely in order to be sold. That person must be displaying two or more vehicles within 500 metres of each other for the offence to be committed. This section is intended to target those who run a business selling motor vehicles and use the road to show and advertise them rather than individual private sellers of single vehicles. Private sellers cannot be convicted if they can show that they were not acting for the purposes of a business.

Section 4: Nuisance Parking (Repairing Vehicles on a Road)

Section 4 makes it an offence to cause a nuisance by carrying out regular vehicle maintenance on the public highway as part of a business activity. It is not intended for private individuals carrying out minor repairs to their own vehicles.

Liability for these vehicle-related offences can be discharged by the payment of a Fixed Penalty Notice that is initially set at £100. A duly authorised officer of the Council is given the power under Section 7 of the Act to require an offender to give their name and address if the duly authorised officer proposes to give him a Fixed Penalty Notice. It is an offence to fail to provide the information asked for or to give inaccurate information.

These powers will prove useful in addressing nuisance caused by residents carrying out regular vehicle repairs, on a number of different vehicles, particularly where it has not been possible to establish that a business is being run from a property but nevertheless the level of activity is causing a nuisance. On Borough Housing Estates there may be occasions when it is appropriate for Housing Officers to use these powers, elsewhere it may be more appropriate for Planning Officers to use these powers.

Sections 10 to 12: Abandoned Vehicles

Section 10 of the 'Act' has inserted new provisions into the Refuse Disposal (Amenity) Act 1978 to give local authorities powers to issue Fixed Penalty Notices for the offence of abandoning a vehicle. The fixed penalty sum is initially set at £200.

Section 11 of the Act enables the local authority to immediately remove abandoned vehicles from private roads. Previously, where it appeared that a vehicle had been abandoned on private land, a local authority needed to serve a Notice on the occupier of the land; if the occupier did not respond, the local authority had to wait 15 days before removing the vehicle. Whilst this did not cause a practical problem in relation to private driveways, it was difficult to identify the occupier when a vehicle was left on a private road. The 'Act' removes the need to serve a Notice on the occupier of the land where the vehicle is on a 'road' (which may include roads that pass through housing estates), thus allowing the local authority to immediately remove the vehicle in question.

Section 11 also enables the local authority to immediately remove any vehicle where it is considered to be in such a condition that it ought to be destroyed. Previously a local authority would affix a Notice to the vehicle 24 hours prior to removal, which sometimes led to the vehicle attracting anti-social behaviour such as vandalism and arson.

Section 12 of the Act removes the requirement to wait for the expiry of a valid road licence before proceeding with disposal. Any vehicle that is only fit for destruction may be destroyed immediately. In other cases, if the owner or occupier cannot be traced or fails to respond to a Notice, the vehicle can then be disposed of. Any vehicle not displaying both a registration mark or current licence may be disposed of immediately.

The Council already has a policy of removing abandoned vehicles within 24 hours of having the right to do so. The new powers allow more prompt action on burnt out or vandalised cars but, in general, there is no need for a major overhaul of the current operating procedures. The new powers

enhance and broaden the opportunities to respond but will be used sensibly and practically within existing resources. Consideration of enforcing the offence of abandoning a motor vehicle will need to take into account the resources necessary to identify and trace the relevant owner.

3. PART 3: LITTER AND REFUSE

Section 18: Extension of Dropping Litter Offence

Section 18 of the 'Act' extends the scope of Section 87 of the Environmental Protection Act 1990 (EPA 1990) so that it is now an offence to drop litter **anywhere** in the open air, regardless of ownership of the land in question. The offence is also extended to dropping litter into bodies of water such as rivers, ponds and lakes. Section 87 of the EPA 1990 makes it an offence to drop litter in a place in the open air to which the public have access *without payment*. This includes relevant land owned by local authorities, statutory undertakers, educational institutions and Crown land.

Section 20: Litter Clearing Notices

Section 20 of the Act repeals the power previously available to local authorities to designate litter control areas. Local authorities (very infrequently) used this power since it was considered that the process for designation was overly complicated. The 'Act' therefore inserts, as an alternative, a new Section 92(a) into the Environmental Protection Act 1990 empowering local authorities to serve "Litter Clearing Notices" on particular occupiers where they believe that defacement caused by litter or refuse is detrimental to the amenity of the area. A person on whom a Litter Clearing Notice is served has the right of appeal to a Magistrates Court. It is an offence not to comply with a Litter Clearing Notice "without reasonable excuse". If a person disregards the Notice, the litter authority can enter the land and remove the litter and refuse and then impose a reasonable charge on the person who did not comply.

Section 21: Street Litter Control Notices

Local authorities have the power to issue Street Litter Control Notices under Sections 93 and 94 of the Environmental Protection Act 1990. Section 21 of the 'Act' amends the 1990 Act to extend the application of Street Litter Control Notices to cover vehicles, stalls and other moveable structures used for street vending so that mobile vendors can also be required to take steps to minimise and clear up litter originating from their activities.

Section 22: Failure to Comply with Notices

Offences relating to non-compliance with Litter Clearing Notices and Street Litter Control Notices may also be penalised by Fixed Penalty Notices. The default amount is £100.

Section 23: Controls on Free Distribution and Printed Matter

Section 23 allows local authorities to control the free distribution of printed matter to prevent such material becoming litter. It will be open to local authorities to designate areas where the distribution of free literature will be an offence unless prior consent has been obtained. Material distributed for charitable, religious or political purposes will be exempt, as will material put inside a building, letterbox or public service vehicle. A Fixed Penalty Notice can be served on a person distributing the material or on the person who has commissioned the distribution. The default level of fine has been established at £100. The designation of Waverley's off-street car parks, as areas where distribution of printed matter is an offence, will enable 'bill-sticking' on cars and street furniture, and the resulting littering, to be controlled by Fixed Penalty Notices. The Off-Street Parking Order already prohibits the distribution of printed matter in car parks but contravention can currently only be addressed by prosecution which is a last resort.

Section 27: Meaning of Litter

Section 27 of the 2005 Act clarifies the meaning of litter for the purposes of the Environmental Protection Act 1990, by specifically including cigarettes, cigars and like products as well as discarded chewing gum and bubble gum. These items were already considered to fall within the definition of litter but this section is included to provide clarity.

4. PART 4: GRAFFITI AND FLY-POSTING

Section 28: Graffiti and Fly-Posting Penalties

Section 28 of the 'Act' enables a local authority to vary the fixed penalty sum for the offences of applying graffiti and fly-posting. This was fixed at £50 under previous legislation but is automatically increased to £75 where the local authority does not set a tariff (Annexe 3).

Section 30: Fixed Penalty Notices - Authorised Officers

Section 30 extends the definition of 'authorised officer' to allow local authorities to authorise individuals other than their own employees for the purpose of issuing Fixed Penalty Notices for graffiti and fly-posting offences. This would, for instance, allow Waverley to authorise Town and Parish Council Officers to carry out this function.

Section 31: Extension of Graffiti Removal Regime to Fly-Posting

Sections 48 to 52 of the Anti-Social Behaviour Act 2003 enable local authorities to issue Notices requiring the removal of graffiti within 28 days. These Notices could require statutory undertakers, such as railways and port authorities, or persons responsible for street furniture, to remove graffiti (e.g., on electricity sub-stations, telecoms street cabinets etc.). If the Notices were not complied with, the local authority were enabled to remove the graffiti themselves and reclaim their costs. Section 31 of the 'Act' amends these

powers by extending their application to cover illegal advertising (e.g. 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.

Section 32: Sale of Aerosol Paints to Children

Section 54 of the Anti-Social Behaviour Act 2003 makes it an offence for aerosol paints to be sold to persons under the age of 16. The 'Act' introduces a further provision to the Anti-Social Behaviour Act 2003 requiring the relevant part of the County Council (as the Trading Standards Authority) to consider at least once a year the extent to which they should be enforcing a non-sale of aerosol cans to under-16s.

Section 33: Unlawful Display of Advertisements

It is currently an offence under Section 224 of the Town and Country Planning Act 1990 to display an advertisement in contravention of regulations made under Section 220 of the Act. Section 224 deems the owner or occupier of the land on which the advertisement is displayed, or a person whose business or concerns are advertised, to be 'displaying' that advertisement, but a defence is available to a person where the advertisement was displayed without their knowledge or consent. The 'Act' restricts this defence to cases in which the person concerned can either prove that the display was without their knowledge or that they took all reasonable steps either to prevent the display or, once displayed, to remove the advertisement.

Section 34: Removal of Placards and Posters

Section 225 of the Town and Country Planning Act 1990 enables a local authority to serve a Notice on a person who has illegally displayed placards and posters. The local authority were also entitled to remove or obliterate the posters or placards where the person failed to do so within the time limits specified in the Notice. Section 34 of the 'Act' allows local authorities to recover the costs they incur in removing or obliterating the illegally displayed posters or placards, where the person has failed to comply with a Notice. These costs are recoverable either from the person identified in the poster or placard as having displayed it or caused its display or, if that person cannot be identified, from the beneficiary of the advertisement. The Town and Country Planning Act 1990 is amended by the 'Act' to enable the local authority to enter both unoccupied and occupied land in order to remove unlawful posters or placards.

5. PART 5: WASTE

CHAPTERS 1 & 2: WASTE TRANSPORT DEPOSIT AND DISPOSAL

The licensing and regulation of waste storage, transport, deposit and disposal in England is undertaken by the Environment Agency largely under the

provisions of the Control of Pollution (Amendment) Act 1989 (COPAA) supplemental by various provisions of the Environmental Protection Act 1990. Under Section 1 of COPAA, it is an offence for anyone who is not a registered carrier of controlled waste to transport such waste in the course of any business or otherwise with a view to profit. Controlled waste is defined as household, industrial and commercial waste. Contravention of these Regulations has normally been prosecuted by the Environment Agency (EA). The Clean Neighbourhoods Act (the 'Act') now gives powers to both the EA and the Waste Collection Authorities (WCAs) to issue Fixed Penalty Notices, and/or prosecute, for a range of offences related to this activity. Waverley is the Waste Collection Authority for the Borough. Those offences are:

Section 35: Unregistered Transportation

This Section eliminates a loophole in COPAA which enabled a driver not having a registered Waste Carrier's Licence to use the defence of acting under his/her employer's instruction.

Section 36: Registration Requirements and Conditions

Section 36 of the 'Act' amends the provisions in COPAA 1989 relating to Registration Certificates for carriers of controlled waste. Regulations made under COPAA may now include provision for the registration of carriers of controlled waste to be subject to conditions relating to the vehicles they use, as well as the possible revocation of registration as a waste carrier in the event of breach of such a condition.

Section 37: Powers to Stop, Search and Seize Vehicles

Section 5 of COPAA allowed an authorised officer of a Waste Disposal Authority (e.g. Surrey County Council) to stop and search vehicles he/she reasonably believed to be transporting controlled waste in breach of the Regulations. The 'Act' allows Waste Collection Authorities (e.g. Waverley) and the Environment Agency to search and instantly seize unregistered vehicles being used to transport waste. A police officer in uniform remains the only person empowered to stop a vehicle on a public road. Where a vehicle is seized by a police officer without a local authority officer present, it is seized on behalf of the relevant Waste Collection Authority. The fixed penalty for unregistered transportation of controlled waste is initially set at £300.

Section 38: Failure to Produce Authority

Section 38 allows the Waste Collection Authority or the Environment Agency to issue a Fixed Penalty Notice to businesses and waste carriers who fail to provide the necessary authority for transporting waste. The penalty is set at £300.

Section 40: Illegal Deposit of Waste (Fly-Tipping)

Section 40 eliminates a loophole in COPAA which permitted the defence of acting on one's employer's instruction.

Section 41: Penalties on Conviction

Section 41 increases the penalties on conviction of the illegal disposal of controlled waste from £20,000 to £50,000 and a maximum term of imprisonment to five years.

Section 42: Investigation and Enforcement Costs

Section 42 enables the Court to make an Order requiring an offender to pay the enforcing authorities' investigation and enforcement costs and any costs associated with the seizure of vehicles involved in the offence. The enforcement authorities are defined as the EA and the Waste Collection Authorities.

Section 43: Clean-up Costs

Section 43 enables the Court to make an Order requiring the offender to pay either the EA or the WCA or occupier or owner of the land any costs they incur in removing illegally deposited or disposed of waste.

Section 44: Forfeiture of Vehicles

Section 44 enables the Court to make an Order to deprive the offender of his/her rights to a vehicle (and its contents) if the Court is satisfied that the vehicle was used in or for the purpose of the commission of the offence.

Section 45: Failure to Provide Documentation

Section 45 of the 'Act' allows for a Fixed Penalty Notice to be issued to a person who contravenes the requirement under Section 34 of the Environmental Protection Act 1990 to have a written description of waste that is being transferred whenever they import, produce, carry, keep, treat or dispose of such controlled waste. The fixed penalty for this offence is set at £300.

Section 48: Offences Relating to Waste Receptacles

Section 48 allows Waste Collection Authorities to issue Fixed Penalty Notices for offences under Sections 46 and 47 of the EPA 1990. These sections deal with the receptacles for household, commercial and industrial waste. Local authorities can serve Notices on occupiers specifying, for example, that they must present specified waste receptacles in specified places to facilitate collection. The provisions under the 'Act' replace prosecution through the Courts with Fixed Penalty Notices. This would be used as a last resort with householders who failed to present waste and recyclables in the prescribed manner, but would enable local authorities to deal more effectively with, for example, businesses that leave volumes of waste out on the streets for extended periods causing detriment to the street scene and additional litter picking costs to the Council.

6. CHAPTER 3: SITE WASTE MANAGEMENT PLANS

Section 54 provides power to introduce regulations to require developers and contractors in construction and demolition to prepare and operate site waste management plans.

The Regulations came into force on 6 April 2008 making Site Waste Management Plans (SWMPs) compulsory for all construction/building projects costing over £300,000. A SWMP records the amount and type of waste produced on a construction site and how it is to be recycled, re-used or disposed of. If any person responsible for a relevant construction project fails to produce a SWMP, when required to do so by an enforcement authority, that person is guilty of an offence. That liability may be discharged by payment of a fixed penalty of £300.

The purpose of the Regulations is to increase the amount of construction waste that is recovered, re-used and recycled, improve materials resource efficiency and prevent illegal waste activity by requiring that waste is disposed of appropriately, in accordance with the waste duty of care.

In a two-tier authority area, the Regulations may be enforced by:

- the Environment Agency;
- the County Council;
- the District Council.

7. PART 6: DOGS

CHAPTER 1: CONTROLS ON DOGS

Until now, local authorities, and Town and Parish Councils have been able to control dogs on specified areas of land by making dog fouling byelaws in relation to that land under the Dogs (Fouling of Land) Act 1996. Those byelaws needed to be 'confirmed' by the Secretary of State for the Environment. This system was considered costly and cumbersome to administer. The CNEA enables that process to be replaced with a system of 'Dog Control Orders' which set out a range of offences (as opposed to just dog fouling) for the control of dogs on designated land. Any existing dog fouling byelaws will continue to be applicable unless and until 'Dog Control Orders' are made under the CNEA.

The range of offences set out in the CNEA include dog fouling, the keeping of dogs on leads, the exclusion of dogs from certain areas and the maximum number of dogs that one person may walk in a designated area.

The local authority can set the criteria for those offences based on the 'model' offences set out in the Regulations, e.g. the number of dogs that may be walked by one person in relation to the particular land when the offence is to apply. Liability for those offences may be discharged by way of a Fixed Penalty Notice.

Section 55: Powers to make Dog Control Orders

Section 55 enables local authorities and Town and Parish Councils to make Dog Control Orders and sets out the offences that can be provided for in those Orders, viz:

- (a) failing to remove dog faeces;
- (b) not keeping a dog on a lead;
- (c) not putting, and keeping, a dog on a lead when directed to do so by an authorised officer;
- (d) permitting a dog to enter land from which dogs are excluded; and
- (e) taking more than a specified number of dogs onto designated land.

Section 56 requires the local authority to set out the maximum penalties for dog offences, the content and format of the Dog Control Orders and the process to be undertaken for consultation on, and publication of, such Orders.

Dog Control Orders may be applied to all public land that is open to the air. Dog Control Orders provide exemptions, in particular cases, for registered blind people, for deaf people, and for other people with disabilities, who use trained assistance dogs.

Fixed Penalty Notices

Section 59 enables authorised officers of local authorities and Town and Parish Councils, or an authorised person acting on their behalf, to issue Fixed Penalty Notices offering offenders an opportunity to discharge any liability for offences under a Dog Control Order. Those authorities can specify the amounts of those penalties, but a default sum (£75) is set in the Act if no amount is specified by the authority.

Section 61 provides an authorised officer with the power to require the name and address of a person if the officer proposes to give them 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.

Section 62 enables a Chief Police Officer to authorise Community Support Officers to issue Fixed Penalty Notices relating to dog control offences.

8. STRAY DOGS

Section 68: Termination of Police responsibility for stray dogs

This Section removes the responsibility of the police for dealing with stray dogs but the Police retain the right to seize and detain dogs under the Dogs (Protection of Livestock) Act.

9. PART 7: NOISE

CHAPTER 1: AUDIBLE INTRUDER ALARMS

Alarm Notification Areas

Sections 69 to 76 of the Act introduces new powers for local authorities to deal with the annoyance caused by audible intruder alarms. A local authority can designate its area, or a part of it, as an Alarm Notification Area. Once designated, the occupier or owner of any premises (residential or non-residential) must notify the Council of the contact details of a key-holder for the premises. The Council can then seek the assistance of the key-holder in silencing the alarm. It is an offence, in such circumstances, to fail to nominate or notify the local authority of the details of the key-holder.

The Council must advertise the intention to designate an Alarm Notification Area and must consider representations on such a proposal. Where it decides to proceed with a designation, it must notify every premises in the designated areas.

Amount of Fixed Penalty

Liability for offences under this Section may be discharged by payment of a fixed penalty which may be determined by the local authority or, in the absence of such determination, is set at the default level of £75. Receipts from Fixed Penalty Notices under this Section must be used on functions operated under this Section or under the Noise Act 1996 or the statutory noise nuisance under the Environmental Protection Act 1990.

Sections 77 and 78: Power of Entry

Section 77 provides an authorised officer of the Council with the power of entry (but not by force) in order to silence an intruder alarm in a designated area, provided 'reasonable steps' have first been taken to get the key-holder to do so.

Section 78 requires that, where the authorised officer is unable to enter the premises without the use of force, the Council must seek a Warrant from a Justice of the Peace to make forceful entry.

An authorised officer will be able to enter premises to silence an alarm which causes nuisance or annoyance to persons living or working in the vicinity if the alarm sounds continuously for 20 minutes or intermittently for one hour.

9. CHAPTER 2: GENERAL NOISE NUISANCE FROM PREMISES

Specific night-time noise offences were introduced by the Noise Act 1996. Sections 82 to 84 of the CNEA extend the Noise Act powers to deal with noise at night to premises for which there is either a Premises Licence or a Temporary Event Notice in effect under the Licensing Act 2003. These Sections also introduce the power to serve Fixed Penalty Notices for offences

under the Noise Act. Where that relates to noise from dwellings, the Council may set the penalty level of which the default level is £100. In relation to licensed premises, the fixed penalty is £500 with no power for the local authority to set an alternative.

10. PART 9: MISCELLANEOUS PROVISIONS

Section 99: Abandoned Shopping Trolleys

Section 99 amends the Environmental Protection Act 1990 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. Prior to this Section coming into force, charges were only payable by persons actually claiming the return of their trolleys.

Section 101: Statutory Nuisance : Insects

Section 101 amends Section 79 of the EPA 1990 so as to include “insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance” as a statutory nuisance under the Act. This has the effect of subjecting nuisance insects from such premises to the statutory nuisance regime in the EPA.

Section 102: Statutory Nuisance : Lighting

Section 102 amends Section 79 of the EPA 1990 so as to include “artificial light emitted from premises so as to be prejudicial to health or a nuisance” as a statutory nuisance under the Act. This has the effect of subjecting nuisance lighting to the statutory nuisance regime in the EPA.