



## **DRAFT** PORTFOLIO HOLDER DECISION NOTICE

### **PROPOSED** INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR ENVIRONMENTAL HEALTH

#### TOPIC – CONSULTATION ON CLEAN NEIGHBOURHOODS & ENVIRONMENT ACT

#### PROCEDURAL INFORMATION

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the City Secretary and Solicitor, the Chief Executive and the Director of Finance are consulted together with Chairman and Vice Chairman of the Principal Scrutiny Committee and all Members of the relevant Scrutiny Panel.

Five or more of these consulted Members can require that the matter be referred to Cabinet for determination.

**If you wish to make representation on this proposed Decision please contact the relevant Portfolio Holder and the following Committee Administrator by 5.00pm on 11 January 2006.**

#### Contact Officers:

Case Officer: Robert Heathcock, Head of Environment, Tel 01962 848 476, Email: [rheathcock@winchester.gov.uk](mailto:rheathcock@winchester.gov.uk)

Committee Administrator: Nancy Howarth, Tel 01962 848 235, Email: [nhowarth@winchester.gov.uk](mailto:nhowarth@winchester.gov.uk)

#### SUMMARY

- DEFRA recently consulted local authorities on the draft proposals for the implementation of the Clean Neighbourhoods & Environment Act. The list of provisions covered is shown at Appendix 1 to this report.
- The proposals have been considered by Officers and comments prepared as attached at Appendix 2
- It is recommended that these comments be submitted to DEFRA

#### **PROPOSED** DECISION

Submit the comments shown at appendix 2 to this notice to DEFRA

**REASON FOR THE PROPOSED DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

- Submission of these comments is considered to be an appropriate role for the portfolio holder and the content does not warrant submission to Cabinet.
- Submission to the Scrutiny panel has been considered but discounted as being inappropriate as executive decision is required not a scrutiny process.

**FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE**

n/a

**DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED**

None

**DISPENSATION GRANTED BY THE STANDARDS COMMITTEE**

None

Approved by: (signature)

Date of Decision

Councillor James Wagner – Portfolio Holder for Environmental Health

Appendix 1Summary of the Powers Contained in the Clean Neighbourhoods Act 2005.

**Part 2: Crime and Disorder** - amends the law relating to crime and disorder reduction partnerships to require them to take into account anti-social and other behaviour adversely affecting the local environment, and makes provision for the gating of minor highways that attract anti-social behaviour.

**Part 3: Nuisance parking offences** - introduces two new offences relating to nuisance parking relating to the sale and or repair of vehicles in the street and illegally parked vehicles.

**Part 4 Abandoned Vehicles** - amends the law relating to abandoned vehicles including speed up times for removal

**Part 5 Litter and refuse** - extends the statutory offence of dropping litter and amends the powers and duties of local authorities in relation to litter.

**Part 6: Graffiti and Other Defacement** - amends the law relating to graffiti, fly-posting and the illegal display of advertisements.

**Part 7: Waste** - makes miscellaneous provision about waste. Chapter 1 makes provision about the registration of carriers of particular kinds of waste. Chapter 2 makes provision about the illegal deposit of waste ('fly-tipping') and about the powers and duties of local authorities to collect and dispose of waste. Chapter 3 makes provision to deal with waste generated at construction sites.

**Part 8 Abolition of requirement to contract out waste disposal function** - In the light of the commencement (October 2005) of Section 47 of the Clean Neighbourhoods and Environment Act, repealing the requirement in Section 32 of the Environmental Protection Act 1990 for waste disposal authorities to divest their waste disposal function, guidance is given on the application of the full range of procurement options now available to waste disposal authorities

**Part 9 Dogs** - Chapter 1 allows local authorities and parish and community councils to create offences relating to the control of dogs. This power is intended as a more convenient alternative to existing powers to create byelaws. In particular, the new offences do not need to be approved by the Secretary of State. The new system replaces that contained in the Dogs (Fouling of Land) Act 1996.

Chapter 2 relieves the police of most of their statutory responsibilities for stray dogs.

**Part 10: Noise** - addresses various issues relating to noise nuisance. Local authorities are given new powers to deal with noise from intruder alarms. The powers for dealing with night time noise nuisance are extended from domestic premises to cover also licensed premises. This Part also allows local authorities to employ alternative means to resolve complaints about noise qualifying as a statutory nuisance prior to issuing an abatement notice.

**Part 11; Fixed Penalty Notices** - Guidance is given on fixed penalty notices issued for environmental offences under the Environmental Protection Act 1990, the Anti Social Behaviour Act 2003 as amended and extended by the Clean Neighbourhoods and Environment Act 2005. This Act widens and in some cases the scope of persons and bodies that may issue fixed penalty notices. In addition it also allows the amount of the fixed penalty notice to be fixed at a local level.

**Part 12 Abandoned Shopping and Luggage Trolleys** - This Part gives information on the powers available to local authorities and the Environment Agency to remedy the problem of abandoned trolleys and improved the ability for local authorities to reclaim the charges made for their recovery.

**Part 13 Statutory Nuisance from Insects and Artificial Light** - This Part introduces a duty on local authorities to check their areas from time to time for such nuisances.

Appendix 2Comments on the Draft Guidance on the Clean Neighbourhoods and Environment Act 2005**Crime and Disorder Reduction Partnerships**

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

**Comments:** the requirement that anti social behaviour adversely affecting the local environment should be considered as an issue by Crime and Disorder Partnerships for inclusion in Audits is welcomed.

**Nuisance Vehicles**

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

**Comments:** the Guidance does not cover road verges and failure to address this issue will only displace the problem and cause enforcement problems. Consideration should be given to amending the offence to read "on any land in the open air or any other land forming part of the highway including the verge".

**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?

**Comments:** Yes, more than £50.

**Litter and Refuse**

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

**Comments:** Yes.

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

**Comments:** Yes.

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

**Comments:** Yes.

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?

**Comments:** Yes.

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

**Comments:** No , further clarification is required as to how Local Authorities are to clear railway land of litter and refuse in the event of a Section 92 (9) notice or any other area where there is restricted access due to health and safety reasons.

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?

**Comments:** Yes.

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

**Comments:** Yes

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

### **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?

**Comments:** Yes, both Council and private premises may be affected. The main issue is one of "surface ownership" and finance. A partnership is a sound method of dealing with the problem but this presumably needs resourcing. Clarification is required as to who will provide these resources and who is responsible for bearing the cost of clearance.

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?

**Comments:** No.

- If not, are you planning to develop them?

**Comments:** consideration will be given to such a partnership subject to demand and adequate resources being available.

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?

**Comments:** We do not currently have a partnership in place.

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

**Comments:** No comment, as yet as the Council does not have any such partnerships in place.

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

**Comments:** This information is not currently available but is often dependent upon the location.

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

- From local authority property

**Comments:** No.

- From street furniture not owned by the local authority

**Comments:** No.

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

**Comments:** The Council is not always sure who to contact, local contacts need to be established with the relevant partners. In addition statutory undertakers need to be made aware at a national level of their duty to deal with, prevent and where necessary remove graffiti promptly from installations that they are responsible for.

### **Flyposting**

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

**Comments:** This is not a major issue in our district although we are seeing an increasing amount of fly posting with notices being placed on roadside verges or attached to highway signage/ furniture.

Q20. Can you think of any additional costs or benefits that may arise from the information on defacement removal notices for graffiti and fly posting?

**Comments:** The likely additional costs are limited to officer time associated with investigations and likely benefits include reduction in occurrences.

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

**Comments:** The Guidance is helpful.

Q22. Bearing in mind the proposed revision of the guidance, are there other amendments necessary to take account of fly posting?

**Comments:** The Guidance is helpful as it exists.

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

**Comments:** The Guidance appears to be robust.

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

**Comments:** No.

### **Waste Divestment Provisions**

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

**Comments:** No.

### **Dog Control Orders**

Q26. Do you have any comments on the draft regulations?

**Comments:** The City Council welcomes simplification of the legislation in the removal of the requirement to obtain the confirmation of the making of an order by the Secretary of State.

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

**Comments:** No.

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

**Comments:** Yes.

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

**Comments:** Not to our knowledge.

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

**Comments:** Yes as it would ensure a proper consultation process is put in place.

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

**Comments:** Dog ban areas on beaches for example work well and do send out a strong message with regard to dog fouling. Most reliable dog owners will respect a



ban which can be seasonal. Enforcement could be an issue but could be undertaken by parish Councils or wardens in National Trust areas for example. However local authorities may require additional resources if dog ban areas within their districts are extensive.

- 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?

**Comments:** : It may be useful to publish information leaflets in addition to the above, for those with no IT access, they could be made available in local hotels, B&Bs and TIC's.

### **Noise**

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

**Comments:** The current system does not work. The City Council welcomes the proposals to have designated areas. This will ensure that local authorities will be able to require key holder details for alarms within the designated area.

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

**Comments:** No.

- Q35. Do you have any views on these minimum amounts?

**Comments:** The amounts seem reasonable

- 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?

**Comments:** This would be very helpful; it would also assist in developing consistency across the country.

### **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?

**Comments:** No.

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

**Comments:** The list of consultees appears to be sufficient.

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

**Comments:** Yes.

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

**Comments:** Yes, the inclusion of administration costs associated with the service of notices is welcomed.

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

**Comments:** Yes, the inclusion of administration costs associated with the service of notices is welcomed.

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

**Comments:** Further information health and safety advice and powers of access across riparian land and ownership of the watercourse.

### **Statutory Nuisance**

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)?

**Comments:** No comments

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?

**Comments:** Generally the guidelines proposed in the consultation are too prescriptive. Balance needs to be struck between the "normal" environment where insects in all their forms provide a valuable service and a "sterile" environment where everything is so cleansed that damage to the diversity of an area may occur. Every judgment as to nuisance should be based on the nature of the area, significance of the problem to human health or nuisance and impact of the solution on biodiversity.

Notwithstanding this the specific guidance concerning cluster flies is welcomed.

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

**Comments:** Do sports have to be specified? Can guidance not simply be any sports and leisure activities taking place after dark when artificial lighting is required?

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

**Comments:** Not aware of any additional guidance being available

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

**Comments:** Not to our knowledge.

### **Regulatory Impact Assessment**

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

**Comments:** No further comment.

### **Appendix C – Regulatory Impact Assessment**

As a part of the consultation on the Clean Neighbourhoods and Environment Bill last year a partial regulatory impact assessment was completed and subsequently when the Bill was completed in April 2005. The full and final assessment is available from <http://www.defra.gov.uk/corporate/regulat/ria/2005/clean-neighbourhoods-ria.pdf>

**Q49. Do you have any comments on the Full and Final Regulatory Impact Assessment?**

**Comments:** No further comment.