

**JOINT MEETING CABINET MEMBER FOR NEIGHBOURHOODS AND
ECONOMIC REGENERATION AND DEVELOPMENT SERVICES**

**Venue: Town Hall, Moorgate
Street, Rotherham**

Date: Monday, 19 June 2006

Time: 11.30 a.m.

A G E N D A

1. To determine if the following matters are to be considered under the categories suggested in accordance with the Local Government Act 1972.
2. To determine any item which the Chair is of the opinion should be considered as a matter of urgency.
3. Clean Neighbourhoods and Environment Act 2005 (Pages 1 - 11)
- to refer to Cabinet for recommendation to Council the delegation of powers in respect of the Clean Neighbourhoods and Environment Act 2005

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS
--

1.	Meeting:	Joint Delegated Powers Meeting – Cabinet Members for Housing & Environmental Services and Economic Regeneration & Development Services
2.	Date:	19th June 2006
3.	Title:	Clean Neighbourhoods and Environment Act 2005
4.	Programme Area:	Neighbourhoods and Economic & Development Services

5. Summary

This report covers the impact of the introduction of the remaining provisions of the Clean Neighbourhoods and Environment Act 2005 from 6th April 2006. The powers in the Bill were previously reported in January 2005.

6. Recommendations

- 1. THAT THE NEW POWERS IN THE CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005 BE NOTED.**
- 2. THAT THE CABINET MEMBER APPROVES THE DELEGATION OF THE POWERS IN RESPECT OF THE CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT 2005, AND THE ENVIRONMENTAL PROTECTION ACT 1990, AS SET OUT IN APPENDIX I.**
- 3. THAT THE LEVEL OF FIXED PENALTY FOR VARIOUS OFFENCES ARE SET AT THE DEFAULT LEVELS SET OUT IN THE ACT, AND ARE SUBJECT TO REVIEW BY WAY OF REPORT TO CABINET MEMBER FROM TIME TO TIME.**

7. Proposals and Details

The 2005 Act is in ten wide ranging parts. This report includes the impact of Parts 1 (Crime and Disorder) 2 (Nuisance parking) 3 (Litter and refuse) 4 (Graffiti) 5 (Waste) 6 (Dogs) 7 (Noise) and 9 (Miscellaneous). The Act amends and modernises some existing legislation, and brings in several new offences. There is an emphasis on the use of fixed penalties.

The proposal is that the powers available to Local Authorities in Parts 1, 2, 3, 4, 5, 6, 7 and 9 be delegated to their respective Heads of Service.

The powers proposed to be delegated in the relevant parts of the Act are set out in appendix I.

The powers in the Act are wide ranging and form part of the Council's recently adopted Enviro Crime strategy. Specific examples in the action plans in the strategy include use of new Litter Control notices to encourage fast-food businesses to deal with the litter originating from their retail activities and use of stop and search waste powers together with inspection of businesses to help meet targets to reduce fly-tipping. Few of the powers are new in style or application, and officers are generally familiar with the enforcement mechanisms.

There are a number of working parties and groups to deliver the strategy, and the powers will be delegated down to those officers who need the powers and who have received suitable training. For example, the new Rotherham warden service and the Parking Attendants have had sufficient training to be authorised to request names and addresses of those people found littering, and will be able to report those people for any offence of failing to provide these details. The issuing of fixed penalties will be centralised with the appointment of a legal support clerk.

There are key areas where further authority will be sought from members, particularly those relating to dog control orders, burglar alarm notification areas, and control of free literature. Other powers will be integrated into existing duties, for example the power to request details of waste consignment notes could be exercised by Enforcement staff inspecting premises for other reasons.

8. Finance

The new powers will largely be used by existing staff who are part of Neighbourhood Enforcement and Rotherham Warden services. Budgets for these services are already set. The revenue from fixed penalties will contribute to the legal support clerk (see below) and the promotion and educational activities carried out by the unit. Other staff may be required to assist in the implementation of the Act by observing offences and reporting them to Enforcement Officers.

9. Risks and Uncertainties

Local Authorities are permitted to use the income generated by the payment of these notices to help meet the cost of certain specified functions. It is proposed to use this income to offset the cost of the new legal support clerk.

The new Rotherham Warden service has many other duties, and the service will need to consistently gather sufficient evidence to sustain legal cases, in order to justify the issue of fixed penalty notices. This work can be complex and subject to legal challenge at any point.

Should the number of fixed penalties issued fall, or those which are issued become void through challenge, this subsidy will reduce, and the reduced deterrent could adversely impact on cleanliness standards. Accordingly, the administration of fixed penalty notices will require to be closely monitored, in terms of the number of offences seen and the quality of the evidence gathered.

The Act also provides for the termination of police responsibility for stray dogs. Although this has yet to be enacted, it will have a considerable impact on the service, as the Council will be the sole authority to receive dogs. It is understood that Department for Environment, Food & Rural Affairs and the Home Office are currently discussing the budgetary options for this handover.

10. Policy and Performance Agenda Implications

(a) Community Strategy

The Act has links to the following Priorities of Action in the Strategy: **“Promoting community safety and community cohesion”** and **“Improving the fabric of the area and creating a better, cleaner environment”**. Increasingly the wider benefits of cleaner neighbourhoods are seen as impacting on the health of communities and crime.

(b) Corporate Plan

The powers in the Act will contribute to the following priorities :**“Rotherham Alive”, “Rotherham Safe”** and **“Rotherham Proud”**. Having clean and attractive neighbourhoods is much more important than just aesthetics: the physical environment we live in affects how we feel about ourselves and about life in general. People are much more likely to take pride in their locality if it is clean. Accordingly the provisions of the Act will contribute directly to the Corporate priorities.

(c) Cross Cutting Issues

Sustainability; The proposed powers will help contribute to the social and environmental well being of neighbourhoods.

Regeneration; Implementation of the measures proposed in the Act will contribute towards several of the Regeneration Priorities including: **“Improve and promote the image of Rotherham.....”** and **“Provide sustainable neighbourhoods of quality..... and a good environment”**

Safer Rotherham Implications; The state of the local environment is inter-related with anti-social behaviour, vandalism, fear of crime and crime. A key section in the Act is the measure to amend the Crime and Disorder Act 1998 to require the Crime and Disorder Reduction Partnership (Safer Rotherham Partnership) to take account of environmental crime in their strategies.

BVPI's; The legislation will impact beneficially on several BVPI's but in particular BVPI 89 – the percentage of people satisfied with the cleanliness standard in their area. This increased to 58% (previously 46%) in 2003/2004 with a target of 70% in 2006/2007 in the Performance Plan.

Local area agreement Through the new Enviro-crime Strategy the powers in the Act will help meet the “stretch targets” in the Local Area Agreement to reduce incidents of fly tipping and graffiti.

11. Background Papers and Consultation

Enviro Crime Strategy

Clean Neighbourhoods and Environment Act 2005

Environmental Protection Act 1990

Department for Environment, Food & Rural Affairs Guidance March 2006

Rotherham Reachout 12, July 2005

Joint Delegated Powers Meeting Report - Clean Neighbourhoods and Environment
Bill – Initial Report, January 2005

**Contact Name : *Mark Parry, Neighbourhood Enforcement Manager, 3121,
mark.parry@rotherham.gov.uk***

Appendix I

Schedule of powers to be delegated to Head of Neighbourhood Services / Head of Streetpride Service

These powers include the Acts described, and any orders, regulations, statutory instruments, or statutory codes of practice made thereunder and any future modifications, enlargements or amendments thereof. The powers conferred include those specified via the Council's Delegation of Powers.

Schedule of Powers Delegated to Head of Neighbourhood Services

(All sections relate to the Clean Neighbourhoods and Environment Act 2005 unless specified. EPA90 means the Environmental Protection Act 1990)

Section	Power	Comments
Litter		
EPA90 S92A(1)	S92A(1) Power to serve a "litter clearing notice" on the occupier / owner of any land open to the air, subject to certain exceptions e.g. a highway, requiring them to clear the land of litter	Inserted by S20 Clean Neighbourhoods and Environment Act 2005
EPA90 S92C(2)	S92C(2) Power for the Local Authority to prosecute for failure to comply with "litter clearing notice"	Inserted by S20 Clean Neighbourhoods and Environment Act 2005
EPA90 S92C(3)	S92C(3) Power for the Local Authority to take action themselves to clear the land and recover reasonable costs if "litter clearing notice" not complied with.	Inserted by S20 Clean Neighbourhoods and Environment Act 2005
EPA90 S94A(2)	S94A(2) Power to give an opportunity to discharge liability for an offence under S92C(2) or S94(8) by paying a fixed penalty	Inserted by S22 Clean Neighbourhoods and Environment Act 2005
EPA90 S94A(4)	Power to set the level of fixed penalty for offences under S92C(2)	Inserted by S22 Clean Neighbourhoods and Environment Act 2005
EPA90 S94B Schedule 3A Para 2(1)	Power to designate land upon which it is an offence to distribute free literature	Inserted by S23 Clean Neighbourhoods and Environment Act 2005
EPA90 S94B Schedule 3A Paras 1(1) and 1 (2)	Offence of distributing, or causing another person to distribute, free literature	Inserted by S23 Clean Neighbourhoods and Environment Act 2005
EPA90 S94B Schedule 3A Para 7(2)	Power to give an opportunity to discharge liability for an offence under Schedule 3A Para 1 by paying a fixed penalty	Inserted by S23 Clean Neighbourhoods and Environment Act 2005
EPA90 S94B Schedule 3A	Power to require name and address by officer who believes an offence of	Inserted by S23 Clean Neighbourhoods and

Para 7(7)	distributing free literature has been committed	Environment Act 2005
EPA90 S94B Schedule 3A Para 7(8)(a) and (b)	Power to prosecute for failure to provide name and address or providing false details	Inserted by S23 Clean Neighbourhoods and Environment Act 2005
EPA90 S93(1)	Power to issue "street litter control notices"	Power not originally adopted under 1990 Act
EPA90 S94(8)	Power to prosecute for failure to comply with a "street litter control notice"	S94(8) amended by S21(3) Clean Neighbourhoods and Environment Act 2005
Graffiti		
Anti Social Behaviour Act 2003 S43A	Power to specify amount of fixed penalty for an offence of graffiti	Inserted by S28 Clean Neighbourhoods and Environment Act 2005
Anti Social Behaviour Act 2003 S43B(1)	Power to require name and address by officer who believes an offence of graffiti has been committed	Inserted by S29 Clean Neighbourhoods and Environment Act 2005
Anti Social Behaviour Act 2003 S43B(2)	Power to prosecute for failure to provide name and address or providing false details	Inserted by S29 Clean Neighbourhoods and Environment Act 2005
Waste offences		
Control of Pollution (Amendment) Act 1989 S5	Power to require authority from person engaged in transporting waste, search vehicle, test any thing found thereon, or seize vehicle where officer believes controlled waste being transported	Inserted by S37 Clean Neighbourhoods and Environment Act 2005
Control of Pollution (Amendment) Act 1989 S5(9)	Power to require details from occupant of vehicle	Inserted by S37 Clean Neighbourhoods and Environment Act 2005
Control of Pollution (Amendment) Act 1989 S5(10)	Power to prosecute for offence under S5(9) for failure to provide details	Inserted by S37 Clean Neighbourhoods and Environment Act 2005
Control of Pollution (Amendment) Act 1989 S5B(2)	Power to issue fixed penalty for failure to comply with duty to provide authority to transport waste	Inserted by S38 Clean Neighbourhoods and Environment Act 2005
EPA90 S34A	Power to issue fixed penalty for failure to comply with duty to furnish documents	Inserted by S45 Clean Neighbourhoods and Environment Act 2005
EPA90 S34A	Power to issue fixed penalty in respect	Inserted by S45 Clean

	of failure to comply with duty to furnish documents	Neighbourhoods and Environment Act 2005
EPA90 S34B(4) and (5)	Power to search any vehicle, or stop any vehicle or enter premises to search or seize the vehicle	Inserted by S46 Clean Neighbourhoods and Environment Act 2005
EPA90 S34B(8)	Power to require occupant of vehicle to provide information	Inserted by S46 Clean Neighbourhoods and Environment Act 2005
S34(7) and (9)	Power to prosecute for offences under S34B (4), (5) and (8)	Inserted by S46 Clean Neighbourhoods and Environment Act 2005
S34C	Power to remove seized property	Inserted by S46 Clean Neighbourhoods and Environment Act 2005
EPA90 S47ZA	Power to issue fixed penalty in respect of an offence under S46 or S47.	Inserted by S48 Clean Neighbourhoods and Environment Act 2005
EPA90 S47ZB	Power to specify amount of fixed penalty for an offence under S46 or S47.	Inserted by S48 Clean Neighbourhoods and Environment Act 2005
EPA90 S59ZA	Power to request a land owner to remove tipped waste	Inserted by S50 Clean Neighbourhoods and Environment Act 2005
Dog Control		
S55(1)	Power to make dog control orders	Clean Neighbourhoods and Environment Act 2005
S59(2)	Power to give an opportunity to discharge liability for a breach of a dog control order by paying a fixed penalty	Clean Neighbourhoods and Environment Act 2005
S60(1)	Power to specify amount of fixed penalty for a breach of a dog control order	Clean Neighbourhoods and Environment Act 2005
S61(1)	Power to require name and address by officer who believes a breach of a dog control order has been committed	Clean Neighbourhoods and Environment Act 2005
S61(2)	Power to prosecute for failure to provide name and address or providing false details	Clean Neighbourhoods and Environment Act 2005
Noise		
S69	Power to designate alarm notification areas	Clean Neighbourhoods and Environment Act 2005
S71(4)	Power to prosecute for failure to notify nomination of key holder, or failure to nominate key holder under S72	Clean Neighbourhoods and Environment Act 2005
S73	Power to give an opportunity to	Clean Neighbourhoods

	discharge liability for a breach of S71 or S72 by paying a fixed penalty	and Environment Act 2005
S74	Power to specify amount of fixed penalty for a breach of S71 or S72	Clean Neighbourhoods and Environment Act 2005
S76(1)	Power to require name and address by officer who believes an offence under S71 or S72 has been committed	
S76(2)	Power to prosecute for failure to provide name and address or providing false details	
S77(3) & S78	Power of entry to premises, if necessary by applying for a warrant	
Noise Act 1996 S8A	Power to set amount of fixed penalty for offence under Section 8	Inserted by Clean Neighbourhoods and Environment Act 2005 S82
Noise Act 1996 S8B(1)	Power to require name and address by officer who believes an offence under S8 has been committed	Inserted by Clean Neighbourhoods and Environment Act 2005 S82
Noise Act 1996 S8B(2)	Power to prosecute for failure to provide name and address or providing false details	Inserted by Clean Neighbourhoods and Environment Act 2005 S82

Schedule of Powers Delegated to Head of Streetpride Service

(All sections relate to the Clean Neighbourhoods and Environment Act 2005 unless specified).

Section	Power	Comments
Inserts new part 8A (Section 129A) into the Highways Act 1980	Power to make vary and revoke gating orders restricting public access to certain highways and install barriers	Inserted by S2
S3	Power to prosecute for exposing 2 or more vehicles on sale on a road	Only applies to businesses
S4	Power to prosecute for repairing vehicles on a road	Only applies to persons carrying out activities for gain or reward
S6	Power to issue fixed penalty notice for exposing two or more vehicles for sale or repairing vehicles on a road	
S7	Power to require name and address to issue notice under section 6	
Inserts new sections 2A, 2B and 2C into Refuse	Power to issue FPN in respect of abandoned vehicles and to require	Inserted by S10

Disposal (Amenity) Act 1978	name and address to issue notice	
Environmental Protection Act 1990 Schedule 4, inserts part 3A	Power to charge owner of abandoned shopping trolley for removal, storage and disposal	Inserted by S99

Appendix II Fixed Penalty Notices

The Act permits the Authority to set its own level of fixed penalty for various offences and permits a discount for early repayment. The Act also sets a default value to be used where a local authority has not set a different value. Draft regulations have included maximum and minimum amounts between which local authorities can set the level of fixed penalty, including minimum amounts for early repayment.

Local authorities in the region have been meeting jointly to agree these amounts in order to ensure minimum discrepancy between the amounts set in each authority's area. This is primarily in the interests of the public, as amounts need to be fair and consistent across the region. It may also avoid difficulties in court, where it is possible a guilty defendant may refer to lower penalties in neighbouring local authorities, and request a lower fine in line with these lower amounts. It would also avoid the possibility of a "league table" approach by the media.

To avoid these anomalies, it has been informally agreed that the regions Local Authorities will use the default level of fixed penalty as set out in Appendix II. Accordingly, a recommendation is made that the default level of fixed penalty is used.

Reachout 12 in July 2005 asked for views on the use of fixed penalty notices in the fight against enviro crime. Those majority of surveyed (around 80% for littering and dog fouling, less for graffiti, flyposting and graffiti) felt that fixed penalty notices should be offered as an alternative to prosecution. Whilst a question on discounts for early payments was not asked directly, 33% said that payment by instalments should *not* be allowed, indicating a fairly hard line by those surveyed. Varying amounts of fixed penalty for various offences were suggested by the survey, and the results are shown in the table below. It can be seen that those surveyed tended towards the upper margins of the amounts suggested.

LEVEL OF FIXED PENALTY NOTICES (CURRENTLY £50) THAT RESPONDENTS FEEL IT IS REASONABLE TO IMPOSE FOR EACH OFFENCE %					
	£30	£50	£75	£100	not provided
Dog fouling	25	32	8	34	2
Littering	35	38	6	20	1
Fly tipping	3	10	8	77	2
Fly posting	20	31	11	35	3
Graffiti	9	22	13	55	1
UNWEIGHTED SAMPLE BASE = 952					

Appendix III

Fixed Penalty Notices – Default Amounts

Act and Section	Description	Default Level	Permitted Range
Environmental Protection Act 1990			
S88(1)	Leaving litter	£75	£50-80
94A(2)	Breach of street litter control notice	£100	£75-110
Schedule 3A para 7(2)	Unauthorised distribution of free literature	£75	£50-80
S47ZA(2)	Waste receptacle offences	£100	£75-110
Clean Neighbourhoods and Environment Act 2005			
S59(2)	Offences under dog control orders	£75	£50-80
S73(2)	Failure to nominate key holder in alarm notification area	£75	£50-80
Noise Act 1996			
S8	Noise from domestic premises	£100	£75-110
Anti Social Behaviour Act 2003			
S43	Graffiti and flyposting	£75	£50-80