

Report of	Meeting	Date
Director of Streetscene, Neighbourhoods and Environment (Introduced by the Executive Member for Environment and Community Safety, Cllr Eric Bell)	Executive Cabinet	24 August 2006.

## **CLEAN NEIGHBOURHOODS & ENVIRONMENT ACT 2005 (CNEA)**

### **PURPOSE OF REPORT**

1. To approve the delegations and authorisations to the Director of Streetscene, Neighbourhoods and Environment (SNED) necessary for the enforcement of various sections of the Clean Neighbourhoods & Environment Act 2005 and to inform members.

### **CORPORATE PRIORITIES**

2. This report is relevant to the corporate priority which seeks to develop the character and feel of Chorley as a good place to live.

### **RISK ISSUES**

3. The issue raised and recommendations made in this report involve risk considerations in the following categories:

Strategy		Information	
Reputation		Regulatory/Legal	4
Financial	4	Operational	4
People		Other	

4. The risk/consequences of not adopting the provisions of The Clean Neighbourhoods and Environment Act 2005 ('CNEA') would be that SNED would be unable to perform the statutory functions of the council by investigating matters dealt with by the act.
5. There are potential resource implications with adopting the provisions, however it is envisaged that in the short term this work can be absorbed within the Services existing staffing structure and budget. In the medium term the resource requirements will be considered in the reorganisation of the directorate.

### **BACKGROUND**

6. The Clean Neighbourhoods and Environment Bill was published on 8 December 2004 and received Royal Assent on 7 April 2005. The act is a result of DEFRA's review of the legislative framework for providing and maintaining a clean and safe local environment to accompany the Cross-Government report Living Places - Cleaner, Safer, Greener.

7. This is the second report on the sections of the act that are relevant to SNED, some sections provide new powers and others extend existing powers to new areas. Most of the measures in this report were commenced by orders of the Secretary of State this year. However the provisions relating to selling and repairing vehicles on a road and extension of the littering offence to all open places came into effect on 7 June 2005 and the Director of SNED has been authorised for those provisions.
8. There are some sections that have yet to be commenced or will be the subject of a later report which are:
  - Repealing the provisions of the Dogs (Fouling of Land) Act 1996 and its replacement by a more comprehensive system of Dog Control Orders.
  - Termination of the Police responsibility for stray dogs.
  - Designation of alarm notification area for intruder alarms on property.
  - Controls on free distribution of printed matter.

**This report deals with the additional relevant sections of the act that have been commenced and:**

**1. Require authorisation of the Director of SNED.**

- Improving powers of entry for the silencing of audible intruder alarms.
- Power to require name and address for parking fixed penalties.
- Power to require name and address for abandoned vehicles.

**2. Require a decision from members to put them into effect.**

- Local discretion to fix the amount of certain fixed penalties. Fixed penalty offences are a simple way of discharging an offence if paid within 14 days – failure to pay would normally result in prosecution.

**3. Are administrative changes to legislation for which the Director of SNED is already authorised and are for Information.**

- Failure to give name and address for a fixed penalty offence for littering.
- Power to require name and address for noise offence.
- Litter and Street Litter Clearing Notices.
- Power to require name and address for graffiti and flyposting fixed penalties.
- Power to require owner of land to remove waste.
- Waste supplementary powers.
- Power to issue fixed penalty notice for noise from licenced premises.
- Defferal of duty to serve an abatement notice for noise.
- Removal of requirement to serve notices on certain abandoned vehicles.
- Including insects and artificial lighting within the Statutory Notice regime of s79 of the Environmental Protection Act 1990.

**PROVISIONS THAT REQUIRE AUTHORISATION OF THE DIRECTOR OF SNED**

9. Powers of Entry to Silence an Audible Intruder Alarm at Premises (Section 77 to 79 of CNEA)

Sections 77 to 79 of the act provide local authorities additional powers to deal with sounding intruder alarms causing likely annoyance. These powers are not linked to designated areas and the alarm must be sounding continuously for more than 20 minutes or intermittently for more than an hour. Once on the premises an authorised officer, with assistance if necessary, can take whatever steps are necessary to silence the alarm. This might include disabling an external alarm after serving a notice but would not include

picking a lock etc which would require a warrant from a justice of the peace. A property would have to be left in a secure state after such intervention and costs incurred may be recharged.

10. Power to Require Name and Address (section 7 CNEA “Nuisance Vehicle Fixed Penalties”)

Power to require name and address in respect of nuisance vehicle fixed penalty notices under section 6 of CNEA. Fine up to level 3 for failure of alleged offenders to give correct details.

11. Power to Require Name and Address (section 10 CNEA “Abandoning Vehicles”)

Power to require name and address in respect of abandoned vehicle fixed penalty notices under section 6 of CNEA. Fine up to level 3 for failure of alleged offenders to give correct details.

### **PROVISIONS THAT REQUIRE A DECISION FROM MEMBERS**

12. The amount of most of the existing and new proposed fixed penalty charges can be set locally within a range, with a default charge should the Council decide not to make a local decision, some are however fixed centrally for England. The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 specify minimum penalty charges and the appropriate discounted rates for payment within 10 days.

13. Nuisance Vehicle Fixed Penalty Notice (Section 6 of CNEA)

(a) Section 6(1) - Selling Vehicles on a Road

The fixed penalty offence under the nuisance vehicle sections 6 to 9 of the act is set at a fixed charge of £100 and £60 for early payment within 10 days.

(b) Section 6(1) - Repairing Vehicles on a Road

The fixed penalty offence under the nuisance vehicle sections 6 to 9 of the act is set at a fixed charge of £100 and £60 for early payment within 10 days.

14. Abandoned Vehicle Fixed Penalty Notice (Introduced by Section 10 CNEA)

The fixed penalty offence introduced into the provisions of Section 2 of the Refuse Disposal (Amenity) Act 1978 is set at a fixed charge of £200 and £120 for early payment within 10 days.

15. Litter Offences in all Open Places Fixed Penalty Notice ( Introduced by Section 19 of CNEA)

The fixed penalty offence introduced into the provisions of Section 88 of the Environmental Protection Act 1990 can be set at a local level between £50 and £80 with the default at £75 and £50 for early payment within 10 days.

16. Litter Clearing Notices and Street Litter Control Notices (Introduced by Sections 20 and 21 of CNEA Respectively)

The fixed penalty offence introduced into the provisions of Section 94 of the Environmental Protection Act 1990 can be set at a local level between £75 and £110 with the default at £100 and £60 for early payment within 10 days.

17. Graffiti and Flyposting (Introduced by Section 28 CNEA)

The fixed penalty offence introduced by Section 43 of the Anti-social behaviour Act 2003 can be set at a local level between £50 and £80 with the default at £75 and £50 for early payment within 10 days.

18. Failure to Furnish Documentation (Waste Carriers Licence) (Introduced by Section 45 of CNEA)

The fixed penalty offence introduced into Section 34 of the Environmental Protection Act 1990 is set at £300 and £180 for early payment within 10 days.

19. Offences in Relation to Waste Receptacles (Type and Presentation for Collection of Household, Commercial and Industrial Waste) Introduced by Section 48 CNEA)

The fixed penalty offence introduced into Section 47 of the Environmental Protection Act 1990 can be set at a local level between £75 and £110 with the default at £100 and £60 for early payment within 10 days.

20. Failure to Furnish Documentation (Waste Transfer Notes – Produce Authority to Transport) Introduced by Section 38 CNEA)

The fixed penalty offence introduced into Section 5 of the Control of Pollution (Amendment) Act 1989 is set at £300 and £180 for early payment within 10 days.

21. Failure to Furnish Documentation (Waste Transfer Notes – Duty of Care) Introduced by Section 38 CNEA)

The fixed penalty offence introduced into Section 34 of the Environmental Protection Act 1990 is set at £300 and £180 for early payment within 10 days.

**PROVISIONS THAT ARE ADMINISTRATIVE CHANGES TO LEGISLATION FOR WHICH THE DIRECTOR OF SNED IS CURRENTLY AUTHOURISED AND ARE REPORTED HERE FOR INFORMATION ONLY**

22. Failure to Give Name and Address (section 19 CNEA “Litter Offence”)

Introduces an offence under section 88 of the Environmental Protection Act 1990 for failure to give name and address when requested to do so or gives inaccurate information. Fine up to level 3 for alleged offenders to give correct details.

23. Power to Require Name and Address (section 82 CNEA “Noise Offence”)

Power to require name and address in respect of noise offence fixed penalty notices under section 8 B of the Noise Act 1996. Fine of up to level 3 for failure of alleged offenders to give correct details

24. Litter Clearing Notices and Street Litter Control Notices (Introduced by section 20 and 21 of CNEA respectively)

Litter Control Areas are repealed but Litter Clearing Notices are introduced into section 92 of the Environmental Protection Act 1990. The notice can be served in relation to any land in the open air which is defaced with litter to the extent that it is detrimental to amenity. The notice is served on the occupier or owner if unoccupied and can require

litter or refuse to be cleared and, if likely to recur, specify steps to be taken to prevent it becoming so defaced. Litter clearing notices may not be served in relation to land which is a highway, Crown land, statutory undertakers, litter authority [ourselves and the County Council] and educational institutions. There is an appeals procedure and a fine not exceeding level 4 on summary conviction and the authority can carry out work in default and charge for reasonable costs.

Street Litter Control Notices are already in force but section 21 of CNEA extends their application to a vehicle or store or other moveable structure set at place on or verging a street. There is a fine not exceeding level 4 on summary conviction.

25. Power to Require Name and Address (section 29 CNEA "Graffiti and flyposting")

Power to require name and address in respect of graffiti and flyposting fixed penalty notices under section 43 B of the Antisocial Behaviour Act 2003. Fine up to level 3 for failure of alleged offenders to give correct details.

26. Power to Require Owner of Land to Remove Waste (Introduced by section 50 Of CNEA)

The power to serve a notice requiring the owner of land to remove waste is introduced into the provisions of section 59 of the Environmental Protection Act 1990. Notices can be served on the land owner where there is no occupier, or the occupier can not be found without incurring reasonable expense. Notices can also be served where the owner is not the occupier if a notice has been served on the occupier but has not been complied with or the notice has been quashed and reasonable removal costs can be claimed. There is a defence that the owner was not aware nor knowingly permitted the deposit.

27. Waste Supplementary enforcement powers (Introduced by section 53 of CNEA)

This section builds on the powers of collection authorities in section 108 of the Environment Act 1995, in relation to duties under section 59 of the Environmental Protection Act 1990, to investigate waste on land to any of their functions under Part ii (waste) of the act. The specific powers are:

- To enter premises;
- To bring an authorised officer, a constable and equipment;
- To examine and investigate as required;
- To direct that premises are undisturbed;
- To take measurements and photographs as necessary;
- To take samples or articles or substances found;
- To dismantle or test any substance or article;
- To take possession of these substances;
- To require a person to give information relevant to the investigation;
- To require production of relevant information and records;
- To require any person to assist the investigation; and any other power conferred by regulations.

The current maximum penalty for an offence under section 108 is £5,000.

28. Noise from Licensed Premises etc ( Introduced by section 84 of CNEA)

The fixed penalty offence introduced into the provisions of Section 8 of the Noise Act 1996 is set at £500 issued by a local authority authorised officer, there is no discount for early payment. Section 8 has not yet been used by Chorley Borough Council but this may change with the new licensing regime and has been included here for completeness.

29. Deferral of Duty to Serve an Abatement Notice (Introduced by section 86 of CNEA)

Section 86 of the act was introduced into the provisions of Section 80 of the Environmental Protection Act 1990 Subsection (2A) to enable the local authority to defer, for up to 7 days, the issue of an abatement notice in the case of a statutory nuisance under Section 79 (1)(g) (i.e. noise emitted from premises). This is to allow discussion leading to abatement to take place, such as shutting of doors and windows or fitting a silencer to a fan etc.

30. Removal of requirement to give notice where vehicle abandoned on road or a vehicle that ought to be destroyed (Introduced by section 11 of CNEA)

The power to remove a vehicle abandoned on a road or a vehicle elsewhere in the open air that ought to be destroyed, without serving notice, is introduced into the provisions of section 3 of the Refuse Disposal (Amenity) Act 1978. The power to destroy vehicles only fit for destruction immediately has been introduced section 4 of the Refuse Disposal (Amenity) Act 1978.

31. Including Insects and Artificial Lighting within Statutory Nuisance Regime (Introduced by Section 101 AND 102 of CNEA Respectively)

Insects and artificial light are now included in section 79 of the Environmental Protection Act 1990.

#### **COMMENTS OF THE DIRECTOR OF HUMAN RESOURCES**

32. Whilst there will be some HR implications from the adoption of these new duties these are matters which can be resolved by training and retraining. Significant implications will be dealt with by the Director of Streetscene, Neighbourhoods and Environment during further phases of the SNED restructure proposals.

#### **COMMENTS OF THE DIRECTOR OF FINANCE**

33. The Director of Streetscene, Neighbourhoods and Environment has indicated that there will be some resource implications from the enforcement of new powers and duties. There will also be an effect within Legal Services. The level of these resources is not quantifiable at this time but will need to be reported at the point when the effects crystalize.

#### **COMMENTS OF THE DIRECTOR OF LEGAL SERVICES**

34. The adoption of the provisions of the Clean Neighbourhoods and Environment Act 2005, will enable local authorities to intervene in a wider range of issues in ways that were not previously open to them. The putting in place of a system of fixed penalty notices is a reflection of this. However, as has been pointed out in the report, failure to pay such penalties may well result in the Council seeking to pursue such non-payments through court action. Whilst it is not possible to predict at this stage the degree to which those served with fixed penalty notices may decide to default on payment, there could potentially be a resources issue if non-compliance with the fixed penalty system were to reach any significant degree.

## RECOMMENDATIONS

35. It is recommended that:

### [Provisions that require the authorisation of the Director of SNED]

i). The following Executive Functions be allocated to the Director of Streetscene, Neighbourhoods and Environment under Executive Arrangements made pursuant to Section 15 of the Local Government Act 2000 and be discharged by them under that Section:

The functions of:

- a) authorising the service of notices and the taking of consequential action, including carrying out work in default and the recovery of costs;
- b) issuing formal cautions;
- c) recommending to the Director of Legal Services the institution of legal proceedings; and
- d) authorising officers to exercise statutory powers of entry (including obtaining warrants),

**Pursuant to Sections 77 to 79 of The Clean Neighbourhoods and Environment Act 2005 (To silence intruder alarm) and to Section 7 of The Clean Neighbourhoods and Environment Act 2005 (Power to require name and address -nuisance vehicle fixed penalty) and Pursuant to Section 10 of The Clean Neighbourhoods and Environment Act 2005 (Power to require name and address - abandoned vehicle fixed penalty) and:**

ii).

That the following fixed penalty notice default and early payment charges are adopted:

Section and legislation	Description of offence	Recommended amount
s 6(1) Clean Neighbourhoods and Environment Act 2005	Selling vehicles on a road	Fixed £100, early payment £60
s 6(1) Clean Neighbourhoods and Environment Act 2005	Repairing vehicles on a road	Fixed £100, early payment £60
s 2A Refuse Disposal (Amenity) Act 1978	Abandoning a vehicle	Fixed £200, early payment £120
s 88(1) Environmental Protection Act 1990	Litter	Default £75, early payment £50
s 94A(2) Environmental Protection Act 1990	Street litter control notices and litter clearing notices	Default £100, early payment £60
s 43 Anti-social Behaviour Act 2003	Graffiti and flyposting	Default £75, early payment £50
s 34 A(2) Environmental Protection Act 1990	Failure to furnish documentation (waste carriers licence)	Fixed £300, early payment £180
s 47ZA(2) Environmental Protection Act 1990	Offences in relation to waste receptacles	Default £100, early payment £60
s5B(2) Control of Pollution (Amendment) Act 1989	Failure to produce authority (waste transfer notes)	Fixed £300, early payment £180
S 34A2 Environmental Protection Act 1990	Failure to furnish documentation (waste transfer notes)	Fixed £300, early payment £180

And:

**iii) that the administrative changes to legislation for which the Director is already authorised are noted.**

### **REASONS FOR RECOMMENDATION(S)**

36. To permit the Director of Streetscene, Neighbourhoods and Environment to use the additional discretionary powers of the Clean Neighbourhoods and Environment Act 2005 which are the subject of this report and to approve the levels for fixed penalty notices specified in other legislation where local discretion exists.

### **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

37. No alternatives were considered since these would not meet the Councils corporate priorities.

JOHN LECHMERE

DIRECTOR OF STREETSCENE, NEIGHBOURHOODS AND ENVIRONMENT

There are no background papers to this report.

<b>Report Author</b>	<b>Ext</b>	<b>Date</b>	<b>Doc ID</b>
Dave Bradley	5728	13 July 2006	ADMINREP/93051LM